

What has the U.S. government gained by formalizing Team Telecom? —Team Telecom and the FCC's Dual Security Approach

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Abstract

The paper discusses the impact of formalizing informal institutions in the U.S. telecom market. Any foreign telecom company seeking to provide services between a foreign country and the U.S. must obtain a Section 214 license from the Federal Communications Commission (FCC). In 2020, an interagency group called Team Telecom, which had been advising the FCC on the security aspects of its reviews informally for some time, was formalized. This led to the revocation of existing Chinese licenses, but there has been little independent assessment of what Team Telecom intends to achieve by being formalized. Accordingly, this paper compares FCC license records between 2001 and 2022 to better understand Team Telecom's informal and formalized reviews from a new institutional theory approach. Here, we show that the formalization of Team Telecom has increased the risk of the retroactive revocation of existing licenses through revocation or voluntary surrender. Against the backdrop of China's global rise, not only has Team Telecom strengthened its authority, but the FCC has utilized the formalization to expand its security policy domain without explicit advice from the Executive Branch. We point to the possibility that the formalization of Team Telecom was an opportunity for the FCC to reinterpret its founding objectives and begin to assert its security authority with the support of Congress. As a result, a dual security approach toward licensing has been created by Team Telecom and the FCC. This study provides a better understanding of new telecommunications regulations by Team telecom and the FCC and captures a turning point in the FCC's attempt to fulfill its role as a national security regulator.

Keywords: International telecommunication; Team Telecom; U.S.–China Relations; Security.

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Executive Summary

With the advent of the 5G era, foreign telecommunications firms are poised to invest substantially in the U.S. market. Nevertheless, certain entities are encountering hurdles in entering or sustaining operations in the U.S. due to security apprehensions. Any firm seeking to offer telecommunications services between the U.S. and another nation must secure a Section 214 license from the Federal Communications Commission (FCC). However, the formalization of an interagency group called Team Telecom in 2020, which has traditionally and informally advised the FCC on security aspects of its reviews, has led to an unusual situation—the revocation of existing licenses held by Chinese companies. Subsequently, there have been further developments, including FCC enforcement actions extending beyond Chinese firms and revisions to the review process for submarine cable landing licenses. In practical terms, the benefits derived by the U.S. Government from formalizing Team Telecom's informal review remain ambiguous. Thus, this paper aims to elucidate the new regulatory landscape under the formalized Team Telecom Review by examining disparities between informal and formal reviews. While past studies have flagged concerns regarding license reviews during the approval phase, literature on post-approval reviews is scant, with limited evidence from long-term records. Consequently, this study scrutinizes over 4,000 Section 214 license applications from January 2001 to April 2022 through the lens of historical institutionalism to shed light on license application and post-approval review processes. The study found that both the Executive branch and the FCC have begun to impose restrictions from a security perspective in response to China's economic rise and the perceived threats arising from its cyber activities. Our findings divulge that the formalized Team Telecom is better equipped to terminate existing licenses expeditiously via revocation or voluntary surrender, irrespective of the company's origin. A pivotal aspect of this study is the revelation of not only a reinforcement of Team Telecom's authority but also that of the FCC. Through formalizing Team Telecom, the FCC could annul licenses of Chinese entities without amending the Communications Act, thus establishing a precedent for license revocation sans Executive branch recommendation. Leveraging this precedent, the FCC has embraced the trend of strategically broadening its interpretation of the foundational purpose of Article I of the Communications Act, “for the purpose of national defense” and “for the purpose of promoting safety of life and property,” commencing security determinations. This does not necessarily constitute an abuse of administrative discretion, and an objective evaluation entertains the prospect that Congress endorses and tacitly supports this novel regulatory approach. We contribute to identifying and delineating a new regulatory paradigm created that have emerged out of the U.S.-China conflict. This research represents a further step toward reevaluating U.S. telecommunications regulation through a security lens.

1. Introduction

When China joined the World Trade Organization (WTO) in 2001, we could not have foreseen the U.S. government's eventual assertion that "China presents ... one of the top national security issues for [the U.S.], and 5G is at the leading edge of that challenge."¹

In recent years, cybersecurity qua Information and Communications Technology (ICT) infrastructure has become increasingly important in many countries. The primary concern is how the government can best achieve the objective of securing the nation's networks.² In particular, the implementation of the 5G network is causing geopolitical, economic, and security-related conflict among nations.³ Led by the United States, some nations have excluded Chinese companies such as Huawei from their national telecommunication networks, while attention has been focused on expelling Chinese telecom operators from the U.S. market. During the Trump administration, independent regulatory agencies, described by Huawei as a sort of "junior-varsity" of national security, also began to emphasize security over the market.⁴

In 2019, the Federal Communications Commission (FCC), an independent regulatory body of the U.S. telecom market, denied China Mobile's Section 214 license application, which seeks to enable telecommunication service between the United States and a foreign point. Although the FCC does not belong to the Executive Branch, this decision was made on the recommendation of an interagency group in the Executive Branch, informally known as "Team Telecom." In Section 1 of the Communications Act of 1934, Congress established the FCC "for the purpose of national defense" and "for the purpose of promoting safety of life and property."⁵

However, the purpose clause is simply a congressional policy statement, and in practice, the FCC is considered to have little security authority or expertise. For over twenty years, Team Telecom has informally assisted the FCC in reviewing national security and law enforcement concerns related to foreign investment in the U.S. telecom sector.

On April 4, 2020, President Trump signed Executive Order 13913 to formalize Team Telecom.⁶ The FCC explained how this modernization rule was implemented to improve the transparency and timeliness of the informal Team Telecom review.⁷ However, by 2022, the FCC had already revoked the Section 214 licenses of four Chinese companies (including China Telecom and China Unicom) based on the concerns of the formalized Team Telecom. When the U.S. market opened to foreign investment in 1998, revocation of a license was thought not to occur.⁸ After the revocation of the Chinese company's license, the FCC has moved to tighten regulations, including penalties for licenses held by Russian companies, which has never happened before. Accordingly, the formalized Team Telecom does not appear to have provided transparency and remains a controversial issue.

From a new institutional theory approach, this paper aims to rethink U.S. telecommunications regulation from a security perspective and to identify new approaches under the new Team Telecom rules. Consequently, this paper proposes the following research question: *what has the U.S. government gained by formalizing Team Telecom?*

Previous studies have focused neither on Team Telecom's post-application oversight nor its relationship with the FCC actors. Furthermore, there appears to have been no quantitative, long-term analysis of Team Telecom's review for more than a decade, even though, in most cases, the data has been publicly available as part of the FCC's filing record. Although there are several studies on Team Telecom's review, they provide little record-based evidence that draws from the FCC's database. To compensate for this shortcoming in literature, this study analyzed more than twenty years of data using the FCC's International Bureau Filing System.⁹

Our results provide evidence that the risk of retroactive revocation of existing licenses is increasing, suggesting that dealing with Chinese companies' licenses was a driving factor in the consideration of formalization. As a result, this study revealed that after the Team Telecom formula, the U.S. government can more easily terminate existing licenses by using a voluntary surrender approach or revocation. In revoking the license of a Chinese company, the FCC set a precedent for making security decisions without the advice of an administrative agency. Citing the founding purposes of Section 1 of the Communications Act of 1934, "for the national defense" and "to promote the security of life and property," the FCC began to assert its security authority.

This shift implies a pivotal moment toward establishing an independent, international telecommunications regulatory structure, which the United States has been pursuing. This paper reveals the two-way security enhancements made by Team Telecom and the FCC with the release of Executive Order 13913.

2. Literature Review

First, this paper will review the relationship between the FCC and Team Telecom and confirm the reality that the FCC has delegated security perspectives to Team Telecom. Next, in the following, I focus on Team Telecom and The Committee on Foreign Investment in the United States (CFIUS) to identify their similarities and differences.

2-1 The Federal Communications Commission and Team Telecom

The FCC uses the Communications Act of 1934 and the Submarine Cable Landing License Act to conduct licensing. These two acts are said to contain legislative histories reflecting national security concerns that existed at the time of enactment.¹⁰ However, the legislative history of

these laws is not entirely clear, and the meaning of some of their provisions is ambiguous. For example, Article I of the Communications Act of 1934, the purpose for which the FCC was established, includes the phrase “for the purpose of national defense.” In the 1970s, Hamilton Loeb noted that it is unclear why the “national defense” provision was included in the Communications Act of 1934 and that the record of congressional deliberations is scant, so there is little hope of uncovering the legislative history or intent of this language. He also questioned how the FCC's goals of promoting competition policies and “national defense” along with the national goal of “to promote the security of life and property,” would be achieved in the new environment.¹¹ Thus, whether the FCC has security authority has been controversial since the days of the telegraph. On the other hand, especially since the market opening of the 1990s, existing studies have not adequately discussed the relationship between the FCC and security.

Until the mid-1990s, Cindy J. Cho argued that the FCC was considered to have taken national security concerns very seriously, even more so than market competition. However, after the market's liberalization, she pointed out that the FCC focused more on market competition than on security. Based on the conclusion of the WTO Basic Telecommunications Agreement in February 1997, the U.S. opened its market to foreign carriers in earnest. In July 1997, before the agreement went into effect, the FCC issued its 1997 Foreign Participation Order, stating its policy of approving applications from WTO members except in exceptional circumstances. In its review of applications under Sections 310 and 214 of the Communications Act, the FCC determined whether it is in the "public interest" to grant the application. The FCC declared that it would defer to the expertise of administrative agencies in determining these "additional public interest factors". On the other hand, in 1997, during the era of the market being opened to foreign companies, the FCC argued that consideration of these factors was "extremely rare".¹²

In response, Laura Sherman argued that after the market was opened, administrative agency involvement in FCC reviews became routine in the telecommunications sector.¹³ Harold W. Furchtgott-Roth used FCC records of acquisition and merger reviews from 1997 to 2002 to show reviews involving the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and the Department of Defense (DOD) were carried out from a security perspective. He has served as an FCC Commissioner since November 1997, and have been aware of the problems with the FCC's review practices.¹⁴ Bryan Tramont, who was the FCC's Legal Advisor, also stated that the Administration was using the FCC's license transfer procedures to address national security concerns.¹⁵ This involvement in the FCC's review by the Executive Branch is understood currently known as Team Telecom.

The DOJ, FBI, Department of Homeland Security (DHS)—which was established after the September 11th attacks and began participating in Executive Branch reviews—and the DOD co-lead Team Telecom.¹⁶ In addition to the security agencies, Team Telecom also includes economic government agencies such as the National Telecommunications and Information Administration (NTIA), the United States Trade Representative (USTR), and the State Department. In analyzing telecommunications applications (Section 214 authorizations and cable landing licenses) where there is disclosable foreign ownership and requests for a declaratory ruling under Section 310(b)(4), the FCC will coordinate the application/petition with the Executive Branch for national security, law enforcement, foreign policy, or trade concerns.¹⁷ Figure 1 shows an informal Team Telecom review process.

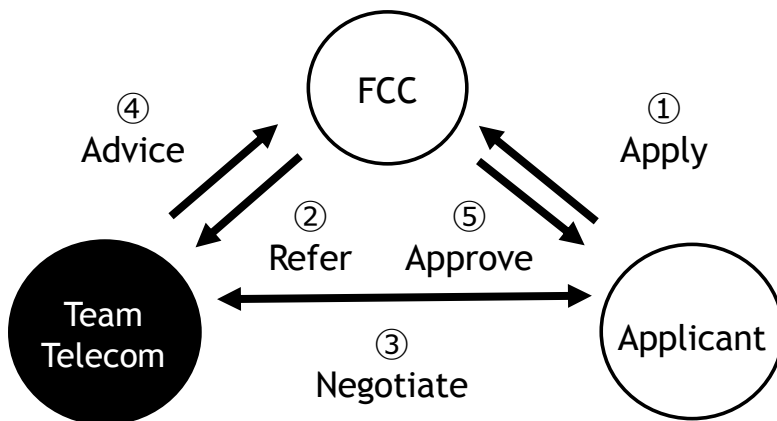


Figure 1 Team Telecom Informal Review Process

It is believed that the FCC has readdressed applications by international companies comprised of at least 10% direct or indirect foreign ownership to Team Telecom for review. After a referral by the FCC, Team Telecom determines whether it needs to negotiate a mitigation agreement with applicants for the condition of approval and can then recommend that the FCC grants authority on the condition that the applicant complies with the agreement. Such agreements take two forms: Letters of Assurance (LOA) and National Security Agreements (NSA).¹⁸ Kathleen Abernathy raised the question of the FCC making mitigation agreements entered into by administrative agencies a condition of FCC licensure. She pointed out a situation in which the FCC has no say in the content of mitigation agreements made by administrative agencies, but must treat those agreements as a condition of approval for FCC licenses.¹⁹ We can understand from her argument the idea that the FCC grants approval conditional on a mitigation agreement, but has little expertise in security matters and cannot draft the content of a mitigation agreement or oversee compliance with that agreement.²⁰

While there are pros and cons to the informal nature of such an informal review of Team Telecom, there are some studies that are worth noting as compensating for the lack of security authority by the FCC. For example, J.W. Abbott noted that by "deferring" the security perspective to the Executive Branch in licensing, the FCC is efficiently leveraging the expertise of other agencies. He also emphasized that this Team Telecom deferral process is not directed, mandated, or addressed by any statute. The FCC's deference to the Executive Branch is extremely sincere and cooperative, even though there is no legal requirement to do so. For example, that the FCC will not take action on the application until Team Telecom completes its review of the application²¹. From a slightly different angle, Mike Sherling worked on an analysis of the FCC jurisdiction over cybersecurity. She proposed that the FCC implement cybersecurity measures for ISPs under Section 1 of the Communications Act to keep pace with the Internet age. However, as this study also mentions, it is generally understood that Article 1 of the Communications Act is merely a policy statement by Congress and does not directly grant security authority to the FCC.²²

In summary, it has been shown from this review that the FCC has emphasized the competition policy perspective and left the security perspective to the administrative agencies.

2-2 The Committee on Foreign Investment in the United States and Team Telecom

CFIUS is the formal interagency organization responsible for security investment review across sectors.²³ Because telecommunications carrier acquisition deals also involve the transfer of FCC licenses, CFIUS as well as Team Telecom will be involved from a licensing review perspective. CFIUS has been distinguished from Team Telecom as a separate agency, but both interagency groups work closely on acquisition and merger reviews of U.S. companies in the telecommunications sector.²⁴

The similarities between the two organizations, which have the same members and use similar mitigation agreements, have been called into question under the suspicion of duplicative reviews.²⁵ However, differences have also been observed. One study noted that Team Telecom is able to examine greenfield investments (new investments), which are not subject to CFIUS review, and in which there is no transfer of control over the company. whereas CFIUS in the Foreign Investment and National Security Act (FINSAs) era required a maximum of 90 days to reach a conclusion, Team Telecom's review period is not specified.²⁶

Team Telecom, in contrast to CFIUS, has been understood to be less subject to congressional control. Team Telecom, in contrast to CFIUS, has been criticized for bureaucratic drift.²⁷ Bureaucratic drift means that a bureaucratic agency creates policies that deviate from the

intent of Congress at the time of legislation.²⁸ On the other hand, in recent years, some have taken a positive view of this Mechanism of Bureaucratic Drift. Daphna Renan regards Team Telecom as an interagency organization that can overcome congressional mandate and oversight and achieve objectives that cannot be achieved by a single agency. She argues that Team Telecom differs from CFIUS in that it is an organization that brings and effectively utilizes the resources allocated to its agencies, free from congressional oversight.²⁹ Also, because Team Telecom only advises the FCC, Team Telecom's actions are considered less subject to judicial as well as legislative scrutiny. Indeed, unlike CFIUS, whether Team Telecom is subject to judicial review will not be considered until at least 2017.³⁰

Recent research that drew from the FCC's review records has revealed that Team Telecom may have originated from CFIUS. According to this investigation, Team Telecom originated when CFIUS security officials began using the FCC reviews in the face of inadequate CFIUS reviews. The DOD and the DOJ used the FCC's review of license transfers, which runs concurrently with CFIUS's acquisition and merger reviews, to begin negotiating mitigation agreements with applicants. Figure 2 shows the origins of Team Telecom's informal review.³¹

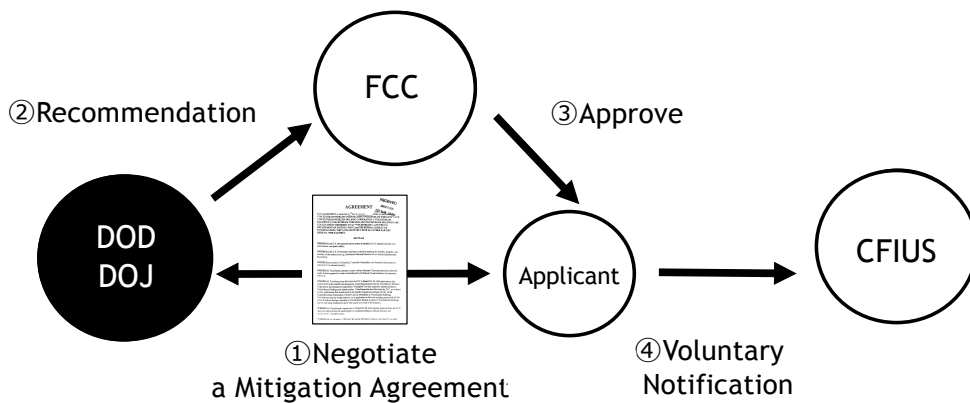


Figure 2 The origins of Team Telecom's informal review

Looking at Figure 2, it can be observed that after the security agency and the applicant entered into an abatement agreement, the FCC approved the agreement, and the applicant voluntarily notified CFIUS. This process that was observed in the early 2000s. Then, when CFIUS was reformed by the 2007 FINSA, Team Telecom began to separate from CFIUS and is claimed to have become a full-fledged organization.³² According to existing research, CFIUS has historically kept a close eye on Chinese companies. For example, in February 1990, CFIUS ordered the China Aeronautics Technology Import and Export Corporation (CATIC), a public Chinese company, to divest its interest in a U.S. aircraft-parts manufacturer it had acquired in late 1989.³³ The passage of FINSA was also prompted in part by congressional concerns about

acquisitions by Chinese companies, including the June 2005 announcement of the acquisition of the U.S. company Unocal by the Chinese oil company CNOOC (China National Offshore Oil Corporation).³⁴

CFIUS has also attempted to strengthen its authority under the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018. As such, CFIUS can now review new greenfield investments, causing the scope of their reviews to overlap with those of Team Telecom.³⁵ The new formalized Team Telecom comprises five features: a membership system chaired by the DOJ; a threat assessment by the Director of National Intelligence (DNI); a two-step review; an annual report to the U.S. president; and the authority to review existing licenses.³⁶ The CFIUS FIRRMA passage process is characterized by "bipartisan cooperation among legislators," and some consider the unanimous preference of Congress, the administration, and the Executive Branch for China to be a factor in its smooth passage.³⁷

As with the CFIUS reforms by FIRRMA, a body of literature links the formalization of Team Telecom to growing concerns about China. The literature on Team Telecom's formalization has heightened the revocation of existing licenses, such as those of Chinese state-owned companies. Rikako Watai pointed out that the security recommendations submitted by Team Telecom to the FCC were extended to existing licenses after formalization. She also considered how the Senate Permanent Subcommittee on Investigations report (PSI report) expressed security concerns about Chinese government-owned telecommunications companies operating in the U.S., which prompted the informal Team Telecom renewal.³⁸ Paul Tremolo also discussed the Administration's recommendation to the FCC to revoke China Telecom's the Section 214 license after the formalization of Team Telecom. The recommendation was issued as a response to the concerns expressed in a letter from U.S. Senators. Tremolo predicted that China Unicom would suffer the same fate and lose its license in the coming months³⁹—and indeed, China Unicom's license was revoked in 2022, along with those of Pacific Networks and ComNet. Since then, the FCC has been active in security initiatives, citing the revocation of Chinese companies' licenses.

For example, in April 2022, the FCC moved to revise the historic State Department review under the Cable Landing License Act of 1921.⁴⁰ Although this State Department review had been streamlined in the early 2000s, the FCC has moved to reinstate the State Department review in conjunction with the formalization of Team Telecom. FCC Commissioners called this a security approach in their statement revoking the China Unicom's license in 2022. This revised examination is considered to be a reinterpretation by the FCC and the State Department of the Submarine Cable Landing License Act of 1921.⁴¹

Also in April 2022, the FCC announced that it would fine a British company, Truphone, over indirect ownership of a company license owned by a Russian billionaire following the invasion of Ukraine. This was the first time the FCC revoked or imposed penalties from a security perspective. The FCC emphasizes that this security response targeting Russia follows the revocation of Chinese companies' licenses. In the latest study, it was noted that it is unclear whether the FCC imposed the fine based on Team Telecom's recommendations.⁴²

To summarize, research has linked CFIUS and the formalization of Team Telecom to bipartisan concerns about China. On the other hand, the revocation of Chinese companies' licenses had implications for other FCC policies. Although researchers considered the formal launch of Team Telecom to have occurred because of growing concerns about China, this has not been adequately substantiated by evidence.

2-3 Hypothesis

New Institutionalist economist Douglass North argues that major changes in the formal system are constrained by informal institutions that remain tenacious and that the long-term outcome tends to be a reorganization in both directions of formal and informal institutions to achieve a new equilibrium.⁴³ This "reorganization in both directions" may be analogous to the reform of the formal institutions of CFIUS, the origin of Team Telecom, and the informal institutions of Team Telecom.

Prior studies show that Team Telecom bears similarities to CFIUS in the following aspects: both organizations have a Chair, conduct DNI assessments, are subject to examination, and submit reports to the President. CFIUS focuses on mitigation compliance and monitoring; Team Telecom may be similarly inclined. It is also necessary to explore Team Telecom's post-review process, but existing research has not yet captured this aspect.

Taken together, the relationship between CFIUS and Team Telecom has been of interest to researchers, but the changing relationship between the FCC and Team Telecom has not been fully discussed. It is also understood that the FCC delegates security perspectives to Team Telecom in license reviews and that Team Telecom, as an auxiliary to the FCC, is not subject to congressional or judicial jurisdiction. Existing research indicates that Team Telecom has had significant influence over the FCC licensing, despite the lack of an explicit legal basis since the informal era. The formalization of Team Telecom is likely to have an impact on the way the FCC is regulated, and it will be essential to examine the issue from this perspective. In fact, although the Section 214 review analyzed in this study was based on the Communications Act,

there were indications that the FCC was moving to reinterpret the Submarine Cable Landing License Act in response to Team Telecom's increased formalization.

The U.S. government's reversal of its position on Chinese high-tech since the Trump administration has become quite public and widely noticed, but both CFIUS and Team Telecom's reforms are considered to function as countermeasures to China. CFIUS examinations of Chinese companies prior to FIRRMA have been analyzed extensively in the literature. On the other hand, prior studies have not fully discussed how Team Telecom has dealt with Chinese companies in informal examinations.

In light of these factors, this paper argues that the U.S. government has strengthened its post-approval review authority in response to the perceived growing threat from China and has achieved a new regulatory mechanism through Team Telecom and the FCC. To substantiate this claim, it is necessary to capture the evolution of Team Telecom's informal reviews prior to 2020, given the lack of existing research.

3. Methods

Team Telecom is characterized by its ambiguous relationship with Congress. This may present difficulties in analysis from the perspective of political control theory, which considers how various controlling entities exercise influence over the bureaucracy. Therefore, this study's analysis uses the new institutional theory, which emphasizes the possibility that political institutions such as parliaments and bureaucracies act autonomously and that the institutions influence the policy preferences of social groups.

New Institutionalism consists of three main schools: rational choice institutionalism, historical institutionalism, and sociological institutionalism.⁴⁴ Within the theoretical framework of the new institutional theory, this study adopts the approach of historical institutionalism, which distinguishes between organizations and institutions and views actors' interests as internal factors. This is because the rational institutional theory takes actors' interests as a given, and changes in actors' internal factors may not be captured in a long-term analysis.

In addition, the sociological institutional theory does not distinguish between institutions and organizations, so it may be difficult to capture the changes in organizational relationships prompted by institutional reforms. Therefore, based on the historical institutionalism that emphasizes path dependence, this study uses the FCC's review records to conduct a process-tracking analysis of the Team Telecom review process. This analysis seeks to uncover how the U.S. government designs new approaches by exploring the extent to which its approaches are influenced by path dependence.

Here, we use North's definition of institutional theory, which emphasizes path dependence as well as historical institutionalism. He strictly distinguishes institutions from organizations, likening institutions to rules and organizations to players in a game. In this study, North defined “institutions” as “the rules of the game” in a society or, the limitations of human interaction as conceived by people. Existing research in North understands that institutions are distinguished as formal or informal by whether they are documented. As with existing studies of historical institutionalism, “formal” is explicitly stated and codified in a set of laws, principles, and rights. In contrast, “informal” rules are not explicitly codified but are revealed through the actions of individuals.⁴⁵ Organizations are defined as “groups of individuals bound by some common purpose to achieve their objectives,”⁴⁶

This paper will focus primarily on Team Telecom and the FCC, rather than addressing the relationship between Team Telecom and CFIUS. We will clarify the relationship between Team Telecom's unstated informal security review and the FCC's codified law, the Communications Act of 1934, using a new institutional theory that addresses the relationship between informal and formal institutions.

In this study, we analyzed new licenses approved from 2001 (when China joined the WTO) through April 2022, after which Chinese companies' licenses were revoked. The data included grant applications with mitigation agreements. Additionally, the analysis included the applications or licenses of five Chinese companies that were either denied or revoked by the FCC: China Telecom Americas (China Telecom), China Unicom Americas (China Unicom), Pacific Networks Corp. (Pacific Networks), its wholly owned subsidiary ComNet USA (ComNet), and China Mobile International (USA) Inc (China Mobile). Table 1 provides summarized information on the Chinese licenses.

Table 1 Analysis of the FCC Reviews of Chinese Companies' Licenses

File Number	Applicant Name	Filed Date	Grant Date	Last Action Date	Last Action
ITC-214-20010613-00346	China Telecom (Americas) Corporation	2001/6/13	2001/7/20	2021/10/26	Revoked
ITC-214-20020716-00371	China Telecom (Americas) Corporation	2002/7/16	2002/8/21	2021/10/26	Revoked
ITC-214-20020724-00427	China Unicom (Americas) Operations Limited	2002/7/24	2002/9/27	2022/1/27	Revoked
ITC-214-20020728-00361	China Unicom (Americas) Operations Limited	2002/7/27	2002/9/11	2022/1/27	Revoked
ITC-214-20070907-00368	Pacific Networks Corp.	2007/9/7	2008/9/3	2009/1/2	Surrendered
ITC-T/C-20070725-00285	China Telecom (Americas) Corporation	2007/7/25	2007/8/15	2007/8/16	Granted
ITC-214-20090105-00006	Pacific Networks Corp.	2009/1/5	2009/4/8	2022/3/16	Revoked
ITC-T/C-20080913-00428	ComNet (USA) LLC	2008/9/13	2009/4/24	2009/5/7	Consummated
ITC-214-20090424-00199	ComNet (USA) LLC	2009/4/24	2009/4/24	2022/3/16	Revoked
ITC-214-20110901-00289	China Mobile International (USA) Inc.	2011/9/1	-	2019/5/9	Denied

The analysis is divided into three parts based on trends with the Chinese licensees. As Table 2 indicates, the first period (January 2001–December 2010) and the second (January 2011–April 2020) were under informal Team Telecom review. The formalized review started in the third period (April 2020–April 2022). During each of these periods, we investigate the licenses from the perspective of the application review and post-approval review.

Table 2 Three Periods of Analysis (January 2001–April 2020)

	Type	Grant Period	Period Title
①	Informal	January 2001-December 2010	Licensing approval for Chinese Companies
②	Informal	January 2010-April 2020	China Mobile’s Application and Rejection
③	Formalized	April 2020-April 2022	Revoking Chinese Companies’ Licenses

Finally, we compare the first two informal periods with the third formalized period to clarify what is new for Team Telecom reviews. Based on the results, we will make considerations and draw conclusions. In the analysis below, We will show that as U.S. concerns about China grew, the Team Telecom review process was gradually established, increasing the need for the FCC to make its own security decisions.

3-1 January 2001–December 2010 : Licensing Approval for Chinese Companies

As Chinese companies entered the U.S. market after 2001, combined with the establishment of the Executive Branch review process, the response to Chinese companies became stricter. In the following, we identify the FCC's approval of applications from Chinese companies in the 2000s with no abatement agreement in place because the administrative agency failed to scrutinize the applications. This would later lead to the limitations of Team Telecom's informal institution.

Reviewing Application: DHS Participation and Leadership

Between 2001 and 2010, we observed that the Executive Branch had mitigation agreements in 34 applications among 3,237 applications granted by the FCC. As noted in the Existing Studies section, Team Telecom's informal review had its origins in CFIUS, beginning with the FCC's intervention in its review of license transfers. Because new investments were not subject to CFIUS review, it is likely that the administrative agencies had not previously been able to scrutinize new licenses corresponding to new investments. Table 3 shows how the Executive Branch was involved in Section 214 application reviews.

Table 3 Executive Branch Review of License Applications (January 2001–December 2010)

Grant Year	Applicant Name	Mitigation Agreements	Executive Branch in Mitigation Agreements	Executive Branch Petitioned	Grant Year	Applicant Name	Mitigation Agreements	Executive Branch in Mitigation Agreements	Executive Branch Petitioned
2001	China Telecom	x	x	x	2008	Intelsat USA	NSA*	DOJ, FBI	–
	Reach	NSA*	DOJ, FBI	–		Ekofon	LOA	DOJ, DHS	DOJ, DHS
2002	China Telecom	x	x	x		Pacific Networks Corp.	LOA	DHS, DOJ	DHS, DOJ
	China Unicom	x	x	x		Cablemas	LOA	DHS	DOJ, DHS
	China Unicom	x	x	x		Horizon	NSA*	DOJ, DHS	DOJ, FBI, DHS
2004	Tata Communications	NSA	DOJ, DHS, FBI	DOJ, DHS, DOD, FBI	2009	Pacific Networks Corp.	LOA	DHS, DOJ	DOJ, DHS
2006	Intelsat USA	LOA	DOJ, DHS, FBI	DOJ, DHS, DOD, FBI		FastIPCalls	LOA	DOJ, DHS	DOJ, DHS
	BTI America	LOA	DOJ, DHS, FBI	DOJ, DHS, FBI		ComNet	LOA	DHS, DOJ	DOJ, DHS
	Belgacom	LOA	DOJ, DHS, FBI	DOJ, DHS, FBI		WX	LOA	DOJ, DHS	DHS, DOJ
	T-Mobile USA	NSA*	DOJ, FBI	–		Inmarsat Group	NSA*	DOJ, DHS	–
2007	Reach	NSA*	DOJ, FBI	–	ACT	LOA	DHS, DOJ	DOJ, DHS	
	Del Castillo	LOA	DOJ, DHS, FBI	DHS	Stanacard	LOA	DOJ, FBI	DOJ	
	Redes Modernas	LOA	DOJ, DHS, FBI	DHS	GTI	LOA	DOJ	DOJ	
	Sage VOIP	LOA	DOJ, DHS, FBI	DHS	VIZADA	NSA*	–	DOJ, FBI, DHS	
	JuBe	LOA	DOJ, DHS, FBI	DHS	Comsat	NSA*	–	DOJ, FBI, DHS	
	Space Net	LOA	DOJ, DHS, FBI	DHS	2010	Cable & Wireless	LOA	DHS	DHS
	Rebtel Services	LOA	DOJ, DHS, FBI	DHS		Hibernia Atlantic	LOA	DHS, DOD, DOJ	DOJ, DHS
	Air Channel	LOA	DOJ, DHS, FBI	DHS		Airus	LOA	DOJ, DHS	DOJ, DHS
	Zed Telecom	LOA	DHS, DOJ, FBI	DHS		OPT	NSA*	DHS, DOJ	–

Note. Shaded areas highlight applications of Chinese companies specifically mentioned in the text.
 * Diversion of another license's mitigation agreement
 - No record

We infer from Table 3 that the Executive Branch was less focused on the new licensing in the early 2000s. The table also shows just one application (Reach) had a mitigation agreement in 2001. Indeed, the applications from China Telecom and China Unicom filed in 2001 and 2002 were approved without any agreements with the Executive Branch. Similarly, several applications in the early 2000s were approved with no comments by the Executive Branch, even though they had 10% or more direct or indirect foreign ownership. For example, an application filed in 2004 for a wholly owned subsidiary of Deutsche Telekom, which is funded by the German government, was approved in a little over a month without any record of review by the administrative agency.⁴⁷ In contrast, the 2006 application (T-Mobile), which the table indicates the DOJ and FBI entered into a mitigation agreement, also from a wholly owned subsidiary of Deutsche Telekom. The applicant is on record pointing out that the security agency did not require an abatement agreement for the same conditions in 2004.⁴⁸

In response to China's rapid economic development since joining the WTO, some sectors of U.S. society voiced fears that China poses an economic and military “threat” in 2005.⁴⁹ Around the same time, with the establishment of the DHS’s Office of Policy, the Executive Branch became involved in the review of Section 214 licenses from the late 2000s. The Executive Branch used LOAs and NSAs to encourage applicants to commit to information security matters, including preventing surveillance by foreign governments or entities. For example, on the DHS’s initiative, Pacific Networks signed an LOA in 2008 and 2009, and ComNet signed an LOA in 2009. It should be recalled that LOAs and NSAs were never used in the China Telecom and China Unicom applications in the early 2000s—which were similarly

controlled by the Chinese government as Pacific Networks and ComNet. The parent company of Pacific Networks and ComNet was CITIC (CITIC Telecom International Holding Limited), a Hong Kong investment company wholly owned by the Chinese government. Figure 3 is a partial attachment to the mitigation agreement between Pacific Networks and the Executive Branch in 2008.

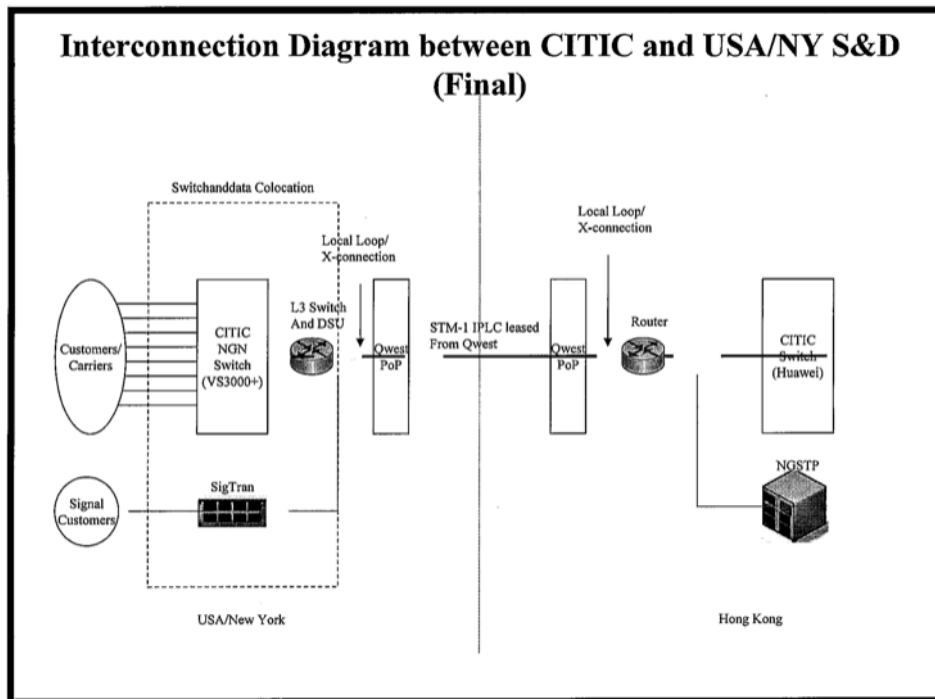


Figure 3 The Pacific Networks’ Application Document Indicating Huawei Equipment

Source: From PETITION submitted by DHS/ DOJ/ FBI Petition to Adopt Conditions and Letter of Assurances., by the FCC, 2008, (<https://fcc.report/IBFS/ITC-214-20070907-00368/661672>)⁵⁰

Figure 3 shows the interconnection diagram connecting Hong Kong, where CITIC is located, to the U.S. The interconnection diagram shows the use of equipment from Huawei, a Chinese telecommunications equipment company. At the time, this application was approved after entering into a mitigation agreement with the Executive Branch.

CITIC acquired ComNet, which was incorporated in Delaware, and in the same year, Pacific Networks applied for a license again with ComNet in 2009. Pacific Networks’ application in 2009 required a three-page LOA to be signed by the company as well as an agreement with seven required or conditional notices. At this time, these provisions were still more robust compared to others. However, the mitigation agreement also did not include provisions pertaining to the supply chain, such as notification of changes in telecommunications equipment still in use or restrictions on the use of certain equipment.

These reviews for these Chinese companies were conducted before political concerns about Huawei and ZTE were raised, as we shall see later. In the 2010s, using the mitigation agreement, Team Telecom even went so far as to verify what type of equipment the applicant was using. The U.S. government refused to allow U.S. networks to be built by Chinese telecommunications equipment and also became concerned about Chinese telecommunications companies connecting to its networks.

Post-Approval Review: The Process was Not Established

There was no uniform interagency process for post-approval supervision, as was the case during the review, from the FCC records. We found no record of the Executive Branch monitoring mitigation agreements to date.

Rather than monitoring the agreement, the Executive Branch dealt with older licenses that did not have agreements in place in the early 2000s by re-signing agreements, because once an application was approved, the Executive Branch could not renegotiate the agreement unless the applicant filed a new application.⁵¹ For example, Team Telecom did not object to China Telecom's applications in 2001 and 2002, and both were approved. At the time of China Telecom's filing of another application in 2007, the DHS renegotiated with China Telecom to enter into an agreement for licenses previously approved in the early 2000s.

Additionally, it is worth mentioning that China Telecom's LOA in 2007 was not renewed until 2021 when the license was revoked. Joshua Abbott assessed that mitigation agreements cannot be renegotiated simply because they are out of date. While mitigation agreements can be adjusted to accommodate technological innovations and other changes without legal restrictions, he described mitigation agreements as "fixed from the moment it is signed." Therefore, the terms of the mitigation agreement were said to remain in force as written, even if the network technology of the telecommunications carrier changed over time. Thus, without any new action from the applicant, even if the license was reviewed by the Executive Branch at the time of approval and a mitigation agreement was signed, its renewal could not be brought about.⁵²

It is important to remember that the Executive Branch had left two China Unicom licenses with no agreement until the licenses were revoked in 2022. The existence of such a license will be a major incentive to consider formalizing Team Telecom.

Post-approval reviews and license revocations began in the 2010s, which is discussed in more detail later, as China's economic growth surpassed Japan's and started to approach that of the United States. China experienced rapid economic development and increased the U.S. trade deficit. In 2010, China overtook Japan to become the world's second-largest economic power behind the United States in terms of the GDP and, consequently, an economic threat to the U.S.⁵³

3-2 January 2011–April 2020 : China Mobile’s Application and Rejection

In addition to China's economic threats, the Executive Branch became increasingly concerned about cyber threats to national security.⁵⁴ The Executive Branch noted that in 2010, traffic to 15% of the world's Internet destinations was rerouted through Chinese servers for about 18 minutes.⁵⁵ Some experts claimed that this was done by China Telecom and speculated that it was a large-scale experiment to control the flow of traffic.⁵⁶ In 2011, China Mobile filed a new application for a Section 214 license, following China Telecom and China Unicom. Around that time, Team Telecom began to monitor licenses with mitigation agreements.

In the following, we capture how Team Telecom and the FCC faced limitations in their review of the revocation of existing licenses for Chinese companies when China Mobile's new application was filed in the face of an increased stance against China.

Reviewing the Application: The DOJ Encompasses the FBI Leadership

Between January 2011 and April 2020, we observed that Team Telecom had mitigation agreements with 79 applications among 978 applications granted by the FCC. Table 4 illustrates how the Executive Branch was involved in the application reviews.

Table 4 Executive Branch Review of License Applications (January 2011–April 2020)

Grant Year	Applicant Name	Mitigation Agreements	Executive Branch in Mitigation Agreements	Executive Branch Petitioned	Grant Year	Applicant Name	Mitigation Agreements	Executive Branch in Mitigation Agreements	Executive Branch Petitioned	
2011	Rules Telecomm	LOA	DOJ	DOJ	2015	Netuno	LOA	DOJ	DOJ,DOD	
	Antel USA	LOA	DOJ	DOJ		US Voicecom	LOA	DOJ	DOJ,DHS	
	Homeland Phone	LOA	DOJ	DOJ		One Allied Fund	LOA	FBI	DOJ,FBI	
	IP To Go	NSA*	DOJ	DOJ		Sheng Li	LOA	FBI	DOJ	
2012	Communications Rey	LOA	DOJ	DOJ		AMERICA NET	LOA	FBI	FBI,DOJ	
	T-Mobile USA	NSA*	DOJ,FBI,DHS	-		SHUF	LOA	FBI	DOJ	
	GSH	LOA	DOJ	DOJ, DHS		RouteTrader	LOA	FBI	DOJ	
	Electrosoft Services	LOA	DOJ	DOJ, DHS		ALCALLER	LOA	FBI	DOJ,FBI	
	Bright Packet	LOA	DOJ	DOJ, DHS		011Now Technologies	LOA	FBI	FBI	
	Voiamo US	LOA	DOJ	DOJ		Emsitel	LOA	FBI	FBI	
2013	Itsofel	LOA	DOJ	DOJ		emveno	LOA	DOJ,FBI	DOJ,FBI	
	TI Sparkle North America	LOA	DOJ	DOJ		Vista Latina	LOA	FBI	FBI	
	Gentel Corp.	LOA*	DOJ,FBI,DHS	-		My Fi	LOA	FBI	DOJ,FBI	
	Cohere Communications	LOA	DOJ	DOJ		Five9	LOA	FBI	DOJ	
	Advanced Voice Technologies	LOA	DOJ	DOJ		Dharm	LOA	DOJ	DOJ,FBI	
	Ocean Technology	LOA	DOJ	DOJ		US Matrix Telecommunications	LOA	DOJ	DOJ	
	42COM	LOA	DOJ	DOJ		US Telephone & Telegraph	LOA	DOJ	DOJ	
	Telefonica Digita	LOA	DOJ	DOJ		2016	Reliance	LOA	DOJ	DOJ
	Moontius	LOA	DOJ	DOJ			Tampnet Inc.	LOA	DOJ	DOJ,FBI
	Phonesty	LOA	DOJ	DOJ	Telecom Services Network		LOA	DOJ,FBI	DOJ	
	Synety Group PLC	LOA	DOJ	DOJ	Telkom USA		NSA	DOJ	DOJ	
Angel Americas	LOA	DOJ	DOJ,FB	iTalk Mobile	NSA		DOJ	DOJ,FBI		
TELEDIREK	LOA	DOJ,DHS	DOJ,DHS	IP Network America	LOA		DOJ	DOJ		
Voice Trader	LOA	DOJ	DOJ	HIGHCOMM	LOA		DOJ	DOJ,FBI		
amaysim	LOA	DOJ	DOJ	Moxtel	LOA		DOJ	DOJ,FBI		
TWare Connect	LOA	DOJ	DOJ,FBI,DHS	Swisstek Telnet	LOA		DOJ	DOJ,FBI		
Angel Mobile	LOA	DOJ,FBI	DOJ,DHS	Cyan Security USA	LOA		DOJ	DOJ,FBI		
2014	Quickly Phone USA	LOA	DOJ,FBI	DOJ,DHS	2017	TX Voice Wholesale	LOA	DOJ	DOJ,FBI	
	iTellum	LOA	DOJ	DOJ,DHS		TvF Cloud	LOA	DOJ	DOJ	
	Telediga	LOA	DOJ	DOJ,DOD,DHS		Lexitel	LOA	DOJ	DOJ	
	Altex	LOA	DOJ	DOJ,DOD,DHS		2018	NYXCMM	LOA	DOJ	DOJ
	Flock FZ-LLC	LOA	DOJ	DOJ,DOD,DHS	MATCHCOM		LOA	DOJ	DOJ,FBI	
	3GTY	LOA	DOJ,FBI	DOJ	Zero Technologies		LOA	DOJ	DOJ,FBI	
	First Technology Development	LOA	DOJ,FBI	DOJ	Ztar Mobile		LOA	DOJ	DOJ,FBI	
	VoxVision	LOA	DOJ,FBI	DOJ,DHS	VRT USA		LOA	DOJ	DOJ,FBI	
	KOL	LOA	DOJ,FBI	DOJ,DHS	Rebel Networks		LOA	DOJ	DOJ,FBI	
	Yatango	LOA	DOJ,FBI	DOJ,DHS	eKaleo	LOA	DOJ	DOJ,FBI		
	iTalk24	LOA	DOJ,FBI	DOJ,DHS	2019	Neutral Networks USA	LOA	DOJ	DOJ	
	COMMKONEKT	LOA	FBI	DOJ,FBI		2020	SORACOM	LOA	DOJ	DOJ
	Speed Telco	LOA	DOJ	DOJ,FBI						

*Diversion of another license's mitigation agreement
 - No record

During this period, the review process became primarily led by the DOJ's National Security Division. Mitigation agreements began to include supply chain measures. This may be due, in part, to the fact that bipartisan congressional leaders began expressing concerns about Huawei and ZTE Corporation to the FCC in late 2010.⁵⁷ U.S. telecommunications companies were considering large contracts to purchase equipment from these Chinese telecom companies. Huawei has become the world's number one company by revenue in the international market for telecommunications equipment, such as switching equipment and routers in 2013.⁵⁸

In May 2013, Bipartisan congressional leaders launched a supply chain working group that same year to address the issue of how to regulate U.S. telecom companies' use of Chinese telecom equipment and services.⁵⁹ Stewart Baker, who is former Assistant Secretary for Policy of DHS, briefed Team Telecom and CFIUS at the request of Congress. He then testified that CFIUS and Team Telecom's jurisdiction is not as broad as the FCC's jurisdiction, as they are not matters involving foreign companies. And Bipartisan also asked Baker "To what extent does our nation's intelligence community work with the FCC to assess threats to our telecommunications infrastructure?" Congress recognized Team Telecom as a complement to CFIUS in the face of growing concerns about China. After that, the bipartisan group also expressed interest in strengthening the FCC's security authority, recognizing that Team Telecom and CFIUS alone cannot scrutinize the supply chains of U.S. companies.⁶⁰ In other words, during the Obama administration in Congress, bipartisanship recognized Team Telecom as a complement to CFIUS in the face of growing concerns about China, and strengthening the authority of CFIUS, Team Telecom, and the FCC was one of the issues.

China Mobile's new application for 2011 had been pending review for a long time after it was reviewed by Team Telecom. The U.S. government's concern began to grow that increased connections between U.S. and Chinese carriers would increase the opportunity for routing errors to propagate, as China Telecom was suspected of doing in 2010.⁶¹ In 2015, the Chinese government strongly criticized Team Telecom's review of China Mobile's license to the U.S. government at the WTO for withholding its approval for more than a few years. The Chinese government inquired about China Mobile's license, asking, "Which department objected to the approval of the license?" and "Does the U.S. plan to correct the abuse of the national security review in the telecom sector?" Interestingly, the Chinese government also asked the U.S. government for advice on how to address the disagreements among the relevant departments.⁶² The applicant also met with a representative of the USTR, who expressed concern about the lengthy review process of the case,⁶³ and it can be inferred that there was a divergence of opinion among the ministries involved Team Telecom.

According to the attorney who represented China Mobile's application, the informal Team Telecom review sometimes resulted in a stalemate between the security agencies and a larger group that included economic agencies such as the NTIA, USTR, and State Department. As a result, the reviews sometimes lasted for years, with the most notable case being an eight-year review of a carrier license application submitted by China Mobile.⁶⁴

Team Telecom's informal review was protracted, and the FCC, out of respect for the Administrative Office, put the application on hold for several years until the Administrative Office moved, while the FCC did not move. However, while China Mobile's application was put on hold for an extended period by Team Telecom, the FCC attempted to improve its review of Team Telecom.

The FCC proposed reforms to Team Telecom in September 2015, with FCC Commissioner Michael O'Rielly calling the Team Telecom process an “Inextricable Black Hole” that left applicants “subject to the whims of individual Team Telecom members at that moment.” He was also concerned that the review could be criticized as being “Subject to Politics,” and that such a scenario would have the potential to undermine the establishment of an autonomous international telecommunications regulatory framework that the United States has actively pursued over an extended period.⁶⁵ It is noteworthy that O'Reilly asked Congress to legislate team telecom in a CFIUS FINSA-like law in November 2015, but Congress did not respond.⁶⁶ Under O'Rielly's leadership, in 2016, the FCC began reforming Team Telecom, an initiative by clarifying the informal review of Team Telecom through FCC rules to improve the length and opacity of the review process.⁶⁷

Although supported by the industry, there was a divergence of opinion between Team Telecom and the FCC. With the formalization, Team Telecom moved to expand the informal institutions and to further strengthen its power. On the other hand, the FCC attempted to limit Team Telecom's actions by proposing stricter review periods. As a result, reforms were derailed by the transition to the Trump administration.

Post-Approval Review: Revoked or Surrendered

Team Telecom progressively established a process to ensure compliance with mitigation agreements. Beginning with the 2011 budget documents, the DOJ began making references to Team Telecom and requested personnel to strengthen the CFIUS and Team Telecom structure. According to the DOJ, previously, the departments responsible for CFIUS and Team Telecom matters rarely conducted on-site inspections or audits of companies, limiting their ability to provide post-approval oversight.⁶⁸ From as early as 2012, based on information found in the

FCC’s records, we observed that Team Telecom started to confirm the existing licenses. Table 5 shows how the license status changed during this period.

Table 5 Status Change of Existing Licenses (January 2011–April 2020)

	Applicant Name	Grant Year	Mitigation Agreements	Last Action Year	Last Action		Applicant Name	Grant Year	Mitigation Agreements	Last Action Year	LastAction
1	Intelsat USA	2006	NSA *	2016	Surrendered	16	Alrus	2010	LOA	2018	Surrendered
2	Belgacom	2006	LOA	2018	Surrendered	17	IP To Go	2011	LOA	2016	Revoked
3	Redes Modernas	2007	LOA	2016	Revoked	18	GSH	2012	LOA	2014	Surrendered
4	Sage VOIP	2007	LOA	2014	Revoked	19	Ocean Technology	2013	LOA	2016	Revoked
5	JuBe	2007	LOA	2016	Revoked	20	42COM	2013	LOA	2019	Surrendered
6	Space Net	2007	LOA	2018	Revoked	21	Telefonica Digita	2013	LOA	2018	Surrendered
7	Air Channel	2007	LOA	2018	Revoked	22	Angel Americas	2013	LOA	2019	Revoked
8	Zed Telecom	2007	LOA	2018	Surrendered	23	TELEDIREK	2014	LOA	2018	Surrendered
9	Intelsat USA	2008	NSA*	2019	Surrendered	24	amaysim	2014	LOA	2015	Surrendered
10	Cablemas	2008	LOA	2019	Revoked	25	Angel Mobile	2014	LOA	2019	Revoked
11	Horizon	2009	NSA	2016	Surrendered	26	Altex	2014	LOA	2017	Surrendered
12	FastIPCalls	2009	LOA	2019	Surrendered	27	Speed Telco	2014	LOA	2016	Surrendered
13	WX	2009	LOA	2018	Revoked	28	Routetrader	2015	LOA	2018	Surrendered
14	ACT	2009	LOA	2014	Revoked	29	Swisstok Telnets	2017	LOA	2018	Surrendered
15	Hibernia Atlantic	2010	LOA	2015	Surrendered	30	TvF Cloud	2017	LOA	2018	Surrendered

Note. Shaded area indicates the license revoked.

*Diversion of another license’s mitigation agreement

As the Table 5 shows, we can see two statuses were recorded: surrendered and revoked. Because of non - compliance with the existing mitigation agreement, Team Telecom requested that the FCC revoke 15 existing authorizations. From 2014 onward, the FCC revoked 12 of the 15 licenses while the rest were returned with a “surrender” status by the applicants. All of the cases in which the revoked mitigation agreements were entered into were for companies that were clearly not in a position to operate a license, for example, the business itself had already ceased to exist. Based on these findings, Team Telecom decided that the licensees could not abide by the mitigation agreement and requested the FCC to revoke their license, which was carefully handled by the FCC. To begin with, Section 214 of the Communications Act, on which the license is based, does not specify a procedure for revocation of the license, and the FCC had not promulgated any rules establishing the procedure. Therefore, the FCC has implemented the revocation of Section 214 licenses through a series of practices, such as using the procedures of other licenses as a backup.

The ultimate decision to revoke a license for a violation of the mitigation agreement is a matter for the FCC to exercise its authority. On the other hand, the determination of whether a mitigation agreement had been violated or not was the role of Team Telecom, not the FCC itself, and the decision was essentially based on Team Telecom's “recommendation”. In the informal era of Team Telecom, the FCC could not revoke a license on security grounds for a license for which a mitigation agreement had been entered into without a “recommendation” from Team Telecom. Similarly, for licenses for which no mitigation agreement had been executed, the FCC

could not enforce the license against the applicant on security grounds because Team Telecom could not make a recommendation in the first place. Thus, the FCC's reliance on Team Telecom's security recommendations was problematic.

The reason it took 8 years for the FCC and Team Telecom to review China Mobile's application could be attributed to the limitation of license revocation. The review was complicated by the fact that two other Chinese government-owned companies, China Telecom and China Unicom, had already been granted licenses in early 2000.⁶⁹ Indeed, China Mobile had pointed out to the FCC in 2013 that the delay, in this case, was particularly egregious and discriminatory, given that other foreign carriers, including other China-based operators, had received licenses.⁷⁰ If the Executive Branch were to reject China Mobile's application, it would also have to revoke China Unicom's existing license to avoid criticism that it was discriminatory. However, there is no precedent for recommending that Team Telecom revoke a license without an agreement, as seen in China Unicom's license.⁷¹ Even with an expanded interpretation of Team Telecom's informal institutions, it would have been difficult to revoke the license retroactively for security reasons.

For the FCC, the retroactive revocation of existing licenses from a security perspective has been a difficult issue to tackle to take the lead in amending the Communications Act and FCC rules to make it happen. If the FCC initiated a rulemaking, it would be unprecedented in the FCC's experience to date and would likely face significant pushback from the industry.⁷² To avoid major side effects, the FCC has chosen to take measures that are outside its influence, and as a result, the most likely explanation is that the FCC has had to be cautious in its rulemaking. In the absence of recommendations, the FCC had not developed a license revocation procedure in the first place, and the FCC's expansive interpretation of the Communications Act, which has left security decisions to administrative agencies, had its limitations. Thus, the limitations of Team Telecom's informal institution and the limitations of the FCC's formal institution overlap over the revocation of licenses for Chinese companies. The issue of China Mobile's license application was not settled by the Obama administration and was concluded under the Trump administration.

In September 2018, Team Telecom recommended to the FCC a denial of China Mobile's application filed in 2011, which took seven years to review. In response to this action, the FCC formally rejected the application in 2019. As a reason for denying the application, the FCC cited the U.S. government's increased concern in recent years about the Chinese government's malicious cyber activities such as computer intrusions and economic espionage. The FCC also implied that existing licenses, such as China Telecom and China Unicom, should be revoked.⁷³

Jonathan Hillman describes this as “the end of an eight-year ordeal for China Mobile, but for China Telecom and China Unicom, a new battle was just beginning.”⁷⁴

And the remarks of Commissioner Jeffrey Starks, who became the FCC commissioner under the Trump administration at the time of the China Mobile application denial, are particularly noteworthy. He began by citing Section 1 of the Communications Act of 1934 to justify the FCC's exercise of security authority, emphasizing that Congress established the FCC “for the purpose of national defense” and “for the purpose of promoting safety of life and property.” Starks argued that with great respect for the expertise of the executive branch, the FCC must make its own decisions with a view to maintaining national defense and the security of life and property in light of its responsibilities from Congress.⁷⁵

Indeed, during the Trump administration, some members of Congress were interested in the FCC itself taking an active role in cybersecurity issues. Regarding these ideas, O'Reilly assured legislators that the FCC did not have significant authority over security, and that the FCC was able to coordinate with Team Telecom.⁷⁶ O'Reilly strongly disagreed with the interpretation that Section 1 of the Communications Act of 1934 gives the FCC universal authority over cybersecurity.⁷⁷ The FCC Chairman Pai also noted the limitations of the FCC's exercise of security authority under current law and argued for the need for congressional revision of the law. Pai expressed the view that currently the only debatable source of authority is Section 1 of the Communications Act, which is a very high-level and broad statement that does not give the FCC security authority.⁷⁸

In the 2000s, FCC Chairman William Kennard also argued that the FCC is not a national security expert and therefore leaves decision-making to the Executive Branch.⁷⁹ In other words, FCC Commissioners such as Pai and O'Reilly continue the traditional view of the FCC as an organization that the security role assigned to the FCC by Congress is a supportive one. On the other hand, it can be noted that FCC Commissioner Starks' views differ from those of successive FCC Commissioners.

On May 16, 2019, the day after the FCC rejected China Mobile's new application, we found reports of increasing pressure from the administration about formalizing Team Telecom.⁸⁰ In September 2019, Democratic Senator Charles Schumer and Republican Senator Tom Cotton sent a letter to the FCC, stating that the business licenses granted to China Telecom and China Unicom Telecom in the United States needed to be reviewed.⁸¹ Pai told legislators that he had instructed the responsible departments to review the licenses of existing Chinese companies, as soon as the FCC rejected China Mobile's application.⁸² The FCC came under high-level pressure to make security decisions and review its relationship with Team Telecom.

3-3 April 2020–April 2022 : Revoking Chinese Companies’ Licenses

On April 4, 2020, President Trump signed Executive Order 13913 to formalize both Team Telecom and its process. The new Team Telecom is comprised of commission members and advisors, operating under the official name of “The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.” The Executive Order appointed the DOJ as the chair of the committee, with exclusive authority to communicate with applicants or licensees on behalf of Team Telecom, initiate the review, make the final decision in the event of a tied vote, and monitor compliance with all mitigation measures.

However, the Executive Order did not give Team Telecom independent authority. Team Telecom only provided “advice” to the FCC as a recommendation, and the FCC maintained its traditional construction, respecting the expertise of the administrative agency and making the final approval decision. Team Telecom, while they became a formalized ministerial organization, remains an organization that is effectively outside the jurisdiction of the judicial and legislative branches of government.⁸³

The DOJ established a dedicated compliance and enforcement team, which was separated from the review teams in early 2018. The team monitors the mitigation agreements with CFIUS and Team Telecom to ensure that they are complied with and, when necessary, enforced.⁸⁴ After formalization, Team Telecom agencies began referring to themselves as “Compliance Monitoring Agencies (CMAs).” On the other hand, the FCC commissioners told welcoming Team Telecom and affectionately referred to them as “National Security Partners.”

In the following, we capture the collaboration between Team Telecom and the FCC, which overcame the limitations of the existing institutional framework for revoking the licenses of Chinese companies by formalizing Team Telecom, and the FCC's policy shift in response to the Trump administration's change in policy toward China.

Reviewing Applications: DOJ as Chair of New Team Telecom

After the formalization, it was stipulated that eligible applicants notify the security agencies and Team Telecom members of their application information at the same time as or prior to the FCC. This means that regardless of the FCC's remittance, the situation will now be one in which eligible application information will be shared with the administrative agencies, which can be taken to mean that the lack of coordination between Team Telecom and the FCC in the review process has been resolved. Between April 2020 and April 2022, we observed that the Executive Branch had established mitigation agreements in 17 applications among 76 applications granted by the FCC. Table 6 shows how the Executive Branch is involved in the application review.

Table 6 Executive Branch Review of License Applications (April 2020–April 2022)

Grant Year	Applicant Name	Mitigation Agreements	Executive Branch in Mitigation Agreements	Executive Branch Petitioned
2020	AFRIX Telecom	LOA	DOJ	DOJ
	Pivotel America	LOA	DOJ	DOJ
	Reach Mobile	LOA	DOJ	DOJ
	FIDELITEL	LOA	DOJ	DOJ
	Itel Networks	LOA	DOJ	NTIA
	Tadiran Telecom	LOA	DOJ	NTIA
	Liberty	LOA	DOJ	NTIA
	ARIA TEL	LOA	DOJ	NTIA
	Telecom2Go	LOA	DOJ	NTIA
2021	Plintron	LOA	DOJ	NTIA
	Wuru Telecom	LOA	DOJ	NTIA
	Marcatel	LOA	DOJ	NTIA
	InfCloud	LOA	DOJ	NTIA
	Interoute	LOA	DOJ,DHS	NTIA
2022	Oktacom	LOA	DOJ	NTIA
	Rakuten	LOA	DOJ	NTIA
	Vocus Group	LOA	DOJ	NTIA

Note. Shaded areas highlight applications specifically mentioned in the text.

Per the modernization rule, the NTIA began submitting petitions on behalf of the Executive Branch to report the results. It is evident from Table 6 that the NTIA became a notifier in mid-2020, indicating that the review process began under a new structure. In the 2000s, LOAs were only a few pages. As a result of the increase in provisions, LOAs in the 2020s are typically ten pages or more. Although the presidential decree introduced a two-trial review period of 120 and 90 days, no new examination period was less than 200 days, and some licenses took more than 400 days.

Post-Approval Reviews: Voluntarily Surrendered Licenses or Revoked

Executive Order 13913 granted Team Telecom significant authority to review existing authorizations by a majority vote from the committee members. Article 6 of the Executive Order allowed Team Telecom to review existing licenses and Article 9 allowed the FCC to recommend revocation. The FCC established FCC rules in 2020 in conjunction with the Executive Order.

In this rule, the FCC interpreted that Team Telecom was granted permission to review “at any time” existing licenses that the FCC had previously referred only to the Executive Branch,⁸⁵ in other words, including those that have not resulted in mitigation agreements.

The review of existing licenses was an issue that was not considered during the 2016 Team Telecom reform. Besides the review of existing licenses, and the recommendation for retroactive

license revocation, is only provided for in Executive Order 13913, with no change to FCC rules; only in this regard, during the 2020 rulemaking, the FCC decided that no new rules or separate procedures were needed to handle the review of existing licenses until the practice built up.⁸⁶

Voluntary Surrender

The DOJ was authorized to monitor compliance with any mitigation measures, which Team Telecom recommended that the FCC impose as a condition of licensure.⁸⁷ Table 7 shows a series of “voluntary surrenders” of licenses with mitigation agreements.

Table 7 Status Change of Existing Licenses (April 2020–April 2022)

	Applicant Name	Grant Year	Mitigation Agreements	Last Action Year	Last Action		Applicant Name	Grant Year	Mitigation Agreements	Last Action Year	LastAction
1	Rebtel Services	2007	LOA	2020	Surrendered	22	011Now Technologies	2015	LOA	2020	Voluntary Surrender
2	Ekofon	2008	LOA	2020	Surrendered	23	Emsitel	2015	LOA	2021	Voluntary Surrender
3	Rules Telecomm	2011	LOA	2020	Voluntary Surrender	24	emveno	2015	LOA	2020	Voluntary Surrender
4	Homeland Phone	2011	LOA	2020	Voluntary Surrender	25	Vista Latina	2015	LOA	2020	Voluntary Surrender
5	Voiamo US	2012	LOA	2020	Voluntary Surrender	26	MyFi	2015	LOA	2020	Surrendered
6	Itsoftel	2013	LOA	2020	Voluntary Surrender	27	Dharm	2015	LOA	2020	Voluntary Surrender
7	Moontius	2013	LOA	2020	Voluntary Surrender	28	US Telephone & Telegraph	2015	LOA	2020	Voluntary Surrender
8	Voice Trader	2014	LOA	2021	Voluntary Surrender	29	Telecom Services Network	2016	LOA	2021	Voluntary Surrender
9	TWare Connect	2014	LOA	2020	Surrendered	30	iTalk Mobile	2016	NSA	2021	Surrendered
10	iTellum	2014	LOA	2020	Voluntary Surrender	31	IP Network America	2016	LOA	2021	Voluntary Surrender
11	Telediga	2014	LOA	2020	Voluntary Surrender	32	Moxtel	2017	LOA	2020	Voluntary Surrender
12	Flock FZ-LLC	2014	LOA	2021	Surrendered	33	Cyan Security USA	2017	LOA	2020	Surrendered
13	3GTY	2014	LOA	2021	Voluntary Surrender	34	TX Voice Wholesale	2017	LOA	2020	Surrendered
14	VoxVision	2014	LOA	2020	Voluntary Surrender	35	Lexitel	2017	LOA	2020	Voluntary Surrender
15	KOL	2014	LOA	2020	Voluntary Surrender	36	NYXCOMM	2018	LOA	2022	Surrendered
16	Yatango	2014	LOA	2020	Voluntary Surrender	37	MATCHCOM	2018	LOA	2020	Voluntary Surrender
17	COMMKONEKT	2014	LOA	2022	Voluntary Surrender	38	Zero Technologies	2018	LOA	2020	Voluntary Surrender
18	Netuno	2015	LOA	2020	Voluntary Surrender	39	Ztar Mobile, Inc.	2018	LOA	2022	Voluntary Surrender
19	US Voicecom	2015	LOA	2020	Voluntary Surrender	40	VRT USA	2018	LOA	2022	Surrendered
20	AMERICA NET	2015	LOA	2022	Voluntary Surrender	41	eKaleo	2019	LOA	2020	Voluntary Surrender
21	SHUF	2015	LOA	2022	Voluntary Surrender	42	Wuru Telecom	2021	LOA	2022	Surrendered

Even though international Section 214 authorizations have no set term or expiration date, 31 voluntary surrenders had been confirmed in just two years, including companies from countries other than China. The letters to notify the FCC of voluntary surrenders were formalized. All the letters stated that the licensees had already informed the DOJ that they had waived their rights. According to budget documents, in 2020 the DOJ promoted the initiative to reassess all lower-risk CFIUS and Team Telecom mitigation agreements and terminate those that were no longer necessary.⁸⁸ Considering these facts, it is most likely that the emergence of the new licensing status, voluntary surrender, can be identified as a part of this DOJ initiative. In short, we have observed that the Executive Branch now has wide discretionary powers to review existing licenses and that non-national operators other than Chinese companies are also affected by the new rule.

The Executive Branch had limited recourse to officially force a renegotiation of the agreement unless the applicants submitted a new application. The revoked licenses of three Chinese companies (excluding China Unicom) illustrate this point well. As we have seen, Team

Telecom started monitoring on the record as early as 2012. However, even after that, they did not update the agreements with Chinese companies in the late 2000s. As Table 8 shows, the mitigation agreement requirement has expanded with the times, from information security to supply chain measures, becoming stronger over time.

Table 8 Comparison of Mitigation Agreements (2007–2022)

Grant Year	2007	2009	2009	2022	2022	2022
Applicant Name	China Telecom	Pacific Networks	ComNet	Oktacom	Rakuten	Vocus
Mitigation Agreements	LOA	LOA	LOA	LOA	LOA	LOA
Certify CALEA (Communications Assistance for Law Enforcement Act) Compliance				•	•	•
POC (Point of Contact) or LEPOC (Law Enforcement Point of Contact)	•	•	•	•	•	•
Change to POC or LEPOC		•	•	•	•	•
PII for Foreign Persons with Access to U.S. Records				•	•	•
New Personnel Screening Policies				•	•	•
Network Diagrams and Topology Maps				•	•	•
Requests for Information or Legal Process from Foreign Person or Foreign Government	•			•	•	•
U.S. Records Storage and/or Access Outside of the United States	•	•	•	•	•	•
Discovery of Security Incident/ Other Incidents or Breaches		•	•	•	•	•
Discovery of Unauthorized Access to Customer Information				•	•	•
NIST-Compliant Cybersecurity Plan Network Systems Security Plan				•	•	•
Change to Network Operations Center				•	•	•
Principal Equipment and Equipment Vendor List				•	•	•
Outsourced or Offshored Service Providers List				•	•	•
Material changes (Change in Ownership and Service Portfolio)	•	•	•	•	•	•
Site Visits		•	•	•	•	•
Compliance report		•	•			
Annual Report				•	•	•

Note. Shaded areas highlight applications of Chinese companies' licenses in the 2000s.

Older agreements, such as those signed before 2010, contained few provisions, were broad in scope, and provided little for Team Telecom to verify. This was exactly the case with the Chinese companies in Table 8. The Chinese firms had launched new services, which were not envisioned when the agreement was originally negotiated. However, as J.W. Abbott stated, Team Telecom could not renegotiate mitigation agreements simply because they became outdated.⁸⁹ Now the Executive Branch can reevaluate to determine whether an agreement adequately reflects the security concerns of the time and negotiate a voluntary surrender at the appropriate time. Even though Team Telecom is now a ministerial-level organization, it does not have

independent authority and is acting under the FCC's laws but with expanded discretionary authority. And we will capture below, after the formalization of Team Telecom, not only Team Telecom but also the FCC began to address security concerns from its own approach.

Revoking Chinese State-owned Companies' Licenses

On April 9, 2020—five days after the release of the Executive Order—the NTIA recommended to the FCC that China Telecom's license should be revoked. Based on this, the FCC began the process of revoking the licenses of China Telecom, as well as China Unicom, Pacific Networks, and ComNet, which had not received Team Telecom's recommendation. Finally, by 2022, the FCC had revoked all four China-owned telecom companies. On June 9, 2020, the Senate Subcommittee on Investigations released a PSI report, which sharply criticized Team Telecom for its lack of oversight of Chinese companies operating in the U.S. over the past nearly two decades.⁹⁰

The FCC first revoked China Telecom's license for non-compliance with the mitigation agreement as one reason in 2021. The Executive Branch insisted that the national security environment had changed significantly since 2007 when the FCC last certified China Telecom's Section 214 authorization. They highlighted that the 2019 Director of National Intelligence's (ODNI) worldwide threat assessment identified China as the most active strategic competitor responsible for cyber espionage. In that report, cyber issues were listed at the top.⁹¹

In 2022, linked to China Telecom's license revocation, the FCC revoked the rest of the Chinese licenses including China Unicom, which had not entered into a mitigation agreement, for significant national security and law enforcement risks, similar to China Telecom. Before formalizing Team Telecom, there had been a revocation of licenses for mitigation agreement violations. Given such precedents, it was of note that China Unicom's licenses approved in the early 2000s—even though they had not signed any agreement with the Executive Branch—were to be revoked in 2022. Such a license revocation—without an agreement, given national security—was never seen on record before.

By March 2022, the FCC revoked the licenses of China Unicom, Pacific Networks, and ComNet. It is noteworthy that the actions taken by all but three companies against China Telecom were not based on formal “recommendations” from Team Telecom, unlike China Telecom. The FCC was able to revoke the licenses of Chinese companies by Executive Order 13913, without amending the Communications Act of 1934 or formulating FCC rules. Table 9 shows the changes in the statuses of the licenses of the four Chinese companies.

Table 9 Status Change of Existing Chinese Licenses (April 2020–April 2022)

Application Name	Grant Year	Mitigation Agreements	Action by the Executive Branch	FCC Revocation Date
China Telecom	2000 2001	● (Signed in 2007)	Recommendation	2021/10/26
China Unicom	2002 2002	×	Information Sharing	2022/1/27
Pacific Networks	2009	●	Information Sharing	2022/3/16
ComNet	2009	●	Information Sharing	2022/3/16

Note. Shaded areas highlight action by the Executive Branch mentioned in the text.

As shown in Table 9, only one company, China Telecom, made an official Team Telecom recommendation on its own. Here we show that the FCC ultimately revoked the licenses of all three companies apart from China Telecom without any explicit recommendations from Team Telecom. The three companies were not recommended by Team Telecom, but rather the FCC asked Team Telecom to make a comment. The Executive branch assured the FCC that it was not a formal recommendation under Article 6 of the Executive Order, and only provided the FCC with information on Chinese companies.⁹² However, The FCC revoked all the licenses, ambiguously, as if the information provided by the Executive Branch was a “recommendation.”

China Unicom claimed that proceeding with the revocation of its license without Team Telecom’s recommendation would usurp the role that the agency has played for the FCC for over 20 years.⁹³ We can see that the FCC can now make the revocation possible from a security standpoint at their discretion, even without the Executive Branch initiating a reexamination, with or without a mitigation agreement. From another perspective, Team Telecom also allows the FCC to make the decision from a security aspect, without their recommendation.

In short, with the formal launch of Team Telecom, the FCC can now revoke the licenses of Chinese operators without amending the Communications Act, setting a precedent for revoking licenses without Executive Branch recommendation, as in the case of China Unicom's license. in January 2022.⁹⁴ A few months later, the licenses of Pacific Networks and ComNet were also revoked. Commissioner Starks' words are noteworthy as the FCC rejected China Mobile's 2019 license application and completed the revocation of the four companies' China licenses. He described this series of the FCC actions as an affirmation of the FCC's legal responsibility to enhance national security and protect national defense and the safety of life and property.⁹⁵

After April 2022, when the license revocation of the four Chinese companies was completed, new FCC regulatory trends noted in existing studies began to be observed. From these FCC's actions, it can be captured that the FCC has taken advantage of Team Telecom's formalization to expand on the basic purpose of Article 1 of the Communications Act, "for the purpose of national defense" and "for the purpose of promoting safety of life and property." It has tended to strategically expand its interpretation and initiate its own strategic security decisions. With the track record of revoking four Chinese licenses, the FCC has begun to expand its security measures such as Revision of submarine cable licensing review,⁹⁶ fines for licenses related to Russian companies.⁹⁷ These are FCC security efforts that are not based on explicit Team Telecom recommendations.

And in March 2023, the FCC began proposing a process to periodically review existing section 214 licenses and hinted at the possibility of revocation in some cases. This includes licenses from non-foreign carriers whose applications have been forwarded to Team Telecom, as well as licenses from U.S. companies. This FCC's new action plan should be noted.⁹⁸ As a new rule, the FCC proposed a one-time collection and periodic review of foreign ownership information for approved licenses. The proposal also includes checking whether operators use Huawei, ZTE, and other Chinese telecommunications equipment for their facilities and networks. It is envisioned that failure to comply with this information collection within a timeframe, or if the information collection raises certain concerns, will result in license revocation. The new rule is proposed as a precedent for the revocation of Chinese companies' licenses.⁹⁹

In the press release for this proposal, the FCC Chairwoman Jessica Rosenworcel emphasized that the FCC had revoked the licenses of four Chinese companies based on "recommendations" from security agencies. With this, the FCC claims to have established a clear process for suspending a foreign carrier's right to operate in the United States when there are national security concerns that cannot be mitigated.¹⁰⁰ However, it can be noted from this study that Team Telecom's involvement in the reexamination of the four Chinese companies was disparate, with Team Telecom making "recommendations" only for China Telecom. In the release, the FCC also listed the Revised review of submarine cable licenses and fines for licenses related to Russian companies as "national security actions,"¹⁰¹

Commissioner O'Rielly had already resigned from the FCC before Chinese companies' licenses were revoked. He had previously warned and implied that the FCC was unnecessarily broadening some statutory provisions, such as using "national security" language of the statute to justify its authority to block some companies from participating in the market.¹⁰²

4. Results: Terminate Existing Licenses more easily

We analyzed FCC data on Section 214 licensing applications from January 2001 to April 2022. As a result, not only Team Telecom but also the FCC succeeded in expanding their respective spheres of activity toward the realm of security. This is supported by our analysis that after the Team Telecom formula, the U.S. government can more easily terminate existing licenses by using a voluntary surrender approach or revocation. By 2010, nine years after joining the WTO, China had become the second-largest economy behind the United States. Subsequently, the new threats of increased economic strength and cyber activity may have increased the U.S. government's perception of the threat from China. Under these circumstances, the post-approval review was tightened over the years. The DOJ has led the review since the 2010s and is now the chair of Team Telecom with strong authority. Table 10 summarizes the analysis about Executive Branch involvement on the FCC Licensing Review before and after Formalization.

Table 10 Executive Branch Involvement Before and After Formalization

Type		Informal		Formalized
Grant Year		January 2001-December 2010	January 2011-April 2020	April 2020-April 2022
Lead Agency		DHS from 2006	DOJ, FBI	DOJ as Chair of Team Telecom
Mitigation Agreement		34 Licenses	79 Licenses	17 Licenses
Surrendered	With Mitigation Agreement	2 Licenses	19 Licenses	11 Licenses
Revoked	With Mitigation Agreement	0	12 Licenses	4 Licenses
Revoked	Without Mitigation Agreement	0	0	2 Licenses
Voluntary Surrender	With Mitigation Agreement	0	0	31 Licenses
Expired (Surrendered + Revoked + Voluntary Surrender)		2 Licenses	31 Licenses	48 Licenses

Note. Shaded area indicates two major differences between informal and formalized Team Telecom in terms of post-approval review.

In Table 10, after Team Telecom's formalization, it is evident that the U.S. government has two major powers that are distinct from those of the informal team in terms of reviewing existing licensing: (a) voluntary surrenders caused by reassessment of mitigation agreements without a new application at any time and (b) revocation of two existing licenses without mitigation agreements. We concluded that these two critical changes would increase the risk of the retroactive revocation of license holders, including operators other than Chinese in the future.

Recent literature analyzed the Executive Branch review at the time of approval as a point of concern. However, this study reveals that post-approval reviews are also worthy of concern.

4-1 Voluntary Surrender with Mitigation Agreements

We observed 31 voluntary surrenders of licenses with mitigation agreements after Team Telecom was formalized. From 2001 to 2022, 81 of the 130 signed agreements had already expired, and 48 of the 81 expired licenses were terminated as a voluntary surrender or surrender during the previous two years. While the Executive Branch used to renegotiate agreements, such occasions typically arose only when the applicant sought a new FCC authorization. For example, as mentioned earlier, the DHS renegotiated the agreement with China Telecom in 2007 for the licenses approved in the 2000s. Voluntarily surrendered licenses (“voluntary surrender”) indicated that Team Telecom can review and close the existing license at any time, without any new application as before. After Team Telecom's formalization, the administrative agency can now return licenses to the company after approval without careful coordination with the FCC. Of course, the FCC will still have licensing authority, but we believe it is worth noting that Team Telecom's discretion in the FCC's licensing process has been expanded and will have a significant impact on company's behavior even after approval.

4-2 Revoked Licenses without Mitigation Agreements

After the Executive Order was introduced on April 4, 2020, Team Telecom immediately led the review of the existing licenses of the four Chinese companies, regardless of any preexisting mitigation. As a result, the FCC revoked all of them. Previously, the unformalized Team Telecom only requested that the FCC revoke existing authorizations because of non-compliance with the agreement. However, the new Team Telecom formalizing informal institutions enabled the FCC to revoke two of China Unicom's licenses without a mitigation agreement. This is because of a new rule; as long as the FCC sent the application to Team Telecom at application review, the existing licenses could be revoked, even if Team Telecom did not raise any concerns at the time of approval. Importantly, by 2022, three of the four Chinese companies had had their licenses revoked without a clear recommendation from Team Telecom. This provided an opportunity for the FCC to proactively initiate new national security measures.¹⁰³ The FCC proposed new rules so that even the existing licenses that are not referred to the Executive Branch at the time of licensing can be reviewed and revoked for their status.¹⁰⁴ Implying cooperation with Team Telecom, reinterpreted Section 1 of the Communications Act, and FCC has moved to strengthen regulations for the security purposes.

5. Discussion: FCC's Invisible Reformat and Bipartisan Support

The results of this study's analysis suggest that the Executive Branch and the FCC sought to achieve greater authority for post-approval reviews against the perception of the growing threat from China. In addition to China's economic rise, Chinese cyber activities are believed to have increased the U.S. government's perception of China as a threat. And it is noteworthy that the FCC's move to tighten security regulations has accelerated after the revocation of the Chinese company's license. In fact, the FCC Chairman Rosenworcel said that in 2023, the FCC will be more focused on network security than at any point in its history.¹⁰⁵

In March 2021, Commissioner Starks stressed that "the partnership between the FCC and Team Telecom is critical to the future of America's telecommunications networks." And he added, "After years of serving primarily as a supporting agency on national security issues, a bipartisan consensus appears to have formed in support of a greater role by the FCC. That requires us to increase our in-house expertise so that we can act with confidence and gain a deeper understanding and appreciation for the work of our partners.,"¹⁰⁶ Although the "a bipartisan consensus" referred to by Starks is not specified, it is possible that Congress may have supported the FCC's policy change in light of this study. The situation at least confirms the actions of legislators who tacitly support the FCC's actions.

The bipartisan group that led FIRRMA's development asked the FCC to work with Team Telecom in 2017.¹⁰⁷ It can be considered that this congressional bipartisan group was aware in the release of Executive Order 13913 and tacitly approved the increased regulation by Team Telecom and the FCC. For example, one of the bipartisans, Senator Marco Rubio, is on record as having been briefed by the NTIA on Team Telecom's formalization prior to the announcement of the Executive Order.¹⁰⁸ Rubio calls the FCC's revocation of the Chinese company's license a "commendable action." He described the revocation of the licenses of these four Chinese companies as "a strong example of the Commission's instrumental role in mitigating this danger to the U.S. Government and the consumer base alike."¹⁰⁹

In addition, the analysis suggests that the bipartisan PSI report,¹¹⁰ which prior studies consider to have prompted the formalization of Team Telecom, can be reinterpreted as a call for the FCC reform in the wake of Team Telecom's formalization. This is because the Senate report describes facts that differ from the Team Telecom and the FCC considerations and practices captured in the analysis. Figure 4 shows the number of international telecommunications license applications and the number of licenses with abatement agreements from 2001 to 2022.

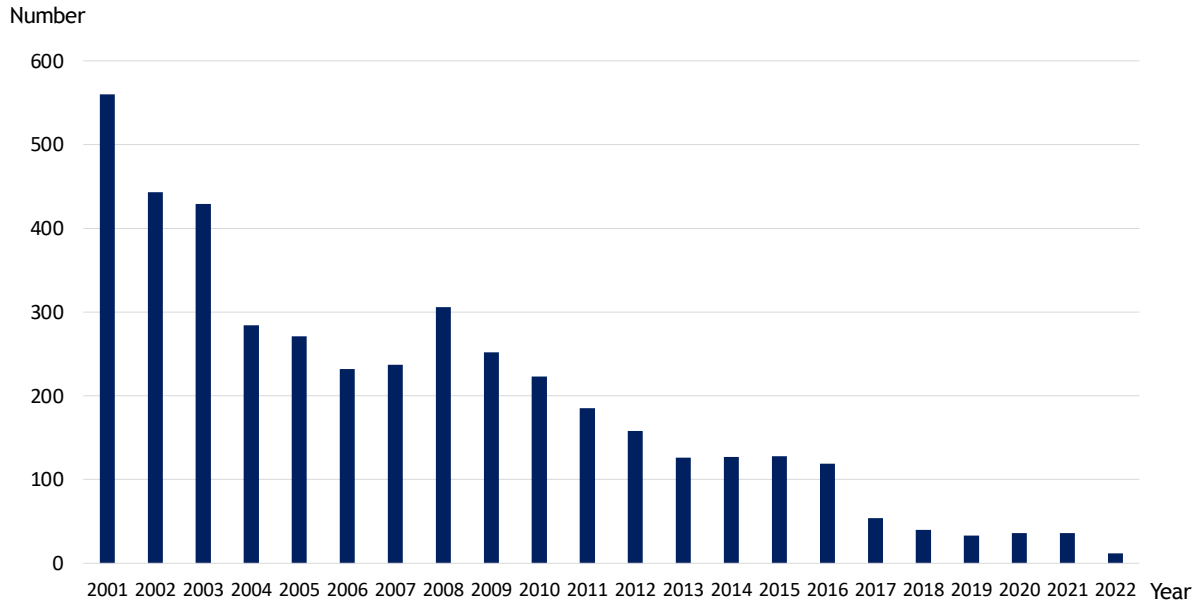


Figure 4 Change in the Number of Licenses Authorized under Section 214

As shown in Figure 4, the number of licenses approved peaked in 2000 and, with a few exceptions, declined steadily each year thereafter. The number of licenses approved continued to decline as the era of market entry ended and the number of applications declined. Only about 30 licenses were approved in the 2020s. During the 1990s and early 2000s, when the U.S. market was opened to foreign companies, a large volume of applications had to be processed. From this change in the number of applications, it can be inferred that there were operational constraints in the FCC's review process that forced it to rely on a uniform approach that regulates by the total amount of foreign capital. In fact, many licenses were approved in 14 weeks with streamlined processing.

As indicated in the analysis, in the early 2000s, even licenses of wholly owned subsidiaries of government capital were approved without the involvement of administrative agencies. China Unicom's license was filed on July 24, 2002, and the record shows that it was approved with no administrative agency involvement in the FCC's review and no abatement agreement. Meanwhile, in an investigation by the Senate Homeland Security and Governmental Affairs Committee, the FCC is described as having referred China Unicom's new license application to Team Telecom.¹¹¹

According to the congressional report, the FCC sent the application to Team Telecom and requested that the FCC report any concerns by September 3, 2002. It is reported that Team Telecom expressed no concerns about the application and the FCC approved it two weeks after receiving it. Yet, no record of the FCC's forwarding the application to the administrative agency

can be found in the FCC's review records. The Senate investigation report states that the FCC submitted its records to Congress, but the contents of those records have not been made public.

This study was unable to confirm the process by which the FCC referred applications to the administrative agency from the early 2000s. Since new investments were not subject to CFIUS review, the administrative agency's concern was with the review of license transfers and not with the scrutiny of new licenses. Although the FCC claims to have referred China Unicom's license to the Administrative Office, the latter makes no specific mention of this. In other words, given Team Telecom's origins, the review trends at the time, and the maturity of the FCC's referral process, it is possible that the Chinese company's license was approved by the FCC without being referred to the administrative agency.

The fact that the congressional report stated that the FCC had forwarded China Unicom's license to the administrative agency makes it easier for the FCC and Team Telecom to reexamine the license. In other words, the congressional report described the existence of a practice that was not a reality and may have supported the FCC's increased security regulations. In fact, the report was referenced by the FCC in its decision to revoke the license of a Chinese company.¹¹² Also referenced in court cases between Chinese companies and the FCC, the FCC obtained a favorable decision from the court to expand its security response in future litigation. On December 20, 2022, regarding the FCC's response to China Telecom's license revocation, the court stated, "If it is a matter of national security, the FCC may decide to revoke it immediately,"¹¹³ The FCC welcomed the court's decision and proceed with its review of all Section 214 licenses beginning in 2023.¹¹⁴

Given that more than 500 applications were filed each year in the 1990s and early 2000s, it is possible that many licenses were approved without scrutiny, as was the case with Chinese companies. Furthermore, after Team Telecom became official, the FCC suggested that all licenses be reviewed, including those applications that were not sent to the administrative agency. And the FCC actions are actually based on the recommendations of the PSI report.

These bipartisan actions capture not only concerns about China but also the changing security environment surrounding the telecommunications sector and the need to change traditional approaches accordingly. Aspects that the U.S. government considers a threat, such as supply chains and data, as well as foreign ownership, have increased with changes in markets and technology, and the scope of subjects to be scrutinized from a national security perspective has expanded. CFIUS and Team Telecom are intended to regulate foreign companies. The increased need to regulate a wide range of subjects, regardless of whether they are foreign-owned, has not only increased the need to reform CFIUS and Team Telecom but also the way

the FCC, which oversees US companies, is regulated. Awareness of these issues emerged in Congress during the Obama administration, and bipartisan action by the Trump administration likely led to increased regulation of telecommunications businesses for security purposes.

This study's analysis suggests the need to take seriously the fact that Team Telecom was gradually gaining recognition, support, and benefits from Congress. Existing studies have contrasted Team Telecom with CFIUS and viewed the former as a group of technocrats with no connection to Congress. However, Congress recognized the existence of Team Telecom under the Obama administration and is supporting the FCC reform by urging the formalization of Team Telecom with the release of the report and without deliberating on amendments to the Communications Act. This move suggests that an informal bureaucratic mechanism was gradually gaining congressional support. Security enhancements to telecommunications regulation are matters of high political risk, reminiscent of telecommunications interception, and are unlikely to be supported by their own constituents. In the realm of telecommunications, Congress is likely to have pursued an approach that avoids making policy decisions on security matters and instead leaves such matters to the interpretation of the Executive Branch.

6. Conclusion: Team Telecom and the FCC's Dual Security Approach

This study analyzed FCC records on U.S.–China relations spanning more than two decades. In so doing, the study discussed the transformation of the Executive Branch's involvement before and after Executive Order 13913 was introduced. From a historical institutionalist approach, this paper has examined how Team Telecom, through its formalization—against the backdrop of China's global rise—has gained increased authority to overcome the difficulties of the existing review process. Because the administrative agency review that began with Team Telecom originated with CFIUS, new license applications, including those from Chinese companies, were not scrutinized in the early 2000s. This inability to revoke licenses became an issue within the government in the 2010s as Congress became concerned about Chinese companies and China Mobile received new applications. Then, with Team Telecom's officialization in 2020, the U.S. government was able to revoke the licenses of Chinese companies from a security perspective.

A key contribution of this paper is the finding the FCC's move to actively determine security perspectives traditionally left to administrative agencies. Team Telecom and the FCC will likely be involved in telecom security operations at their discretion in the future. Although formalized, Team Telecom only advised the FCC; in effect, however, the former became more active in pressuring companies toward voluntary surrender. The FCC is using the revocation of Chinese companies' licenses as an opportunity to reinterpret itself as an agency established for

security purposes. In essence, the revocation of Chinese company licenses afforded the FCC an opportunity to broaden the scope of security policy autonomously, without explicit Executive Branch recommendation.

Through formalizing Team Telecom, the FCC could annul licenses of Chinese entities without amending the Communications Act, thus establishing a precedent for license revocation sans Executive Branch recommendation. Leveraging this precedent, the FCC has embraced the trend of strategically broadening its interpretation of the foundational purpose of Article I of the Communications Act, “for the purpose of national defense” and “for the purpose of promoting safety of life and property,” commencing security determinations.

In fact, the FCC's review of submarine cable landing licenses and the imposition of fines on licenses held by Russian companies, which subjects have been the focus of recent research, can be understood as efforts promoted at the FCC initiative based on the track record of license revocations of Chinese companies. Given the implications of the license revocations for Chinese companies identified in the study, the strengthening of Team Telecom and the FCC's security authority is likely to lead to increased regulation of FCC policy as a whole, not just its policy toward China and Section 214 license review. This study allows policy makers in each country to recognize the FCC's increasingly proactive approach to national security issues and to gain careful insight into the future regulatory landscape in the U.S. for their own policy insights.

This analysis points to the possibility that Team Telecom's formalization may have implications beyond other studies' consideration that the formalization was part of the U.S. policy toward China. Needless to say, the results of this study's analysis do not refute the view that Team Telecom was formalized because of growing concerns about China and that the FCC's increase in license revocations was merely due to similar precautions against China. This study recognizes multiple factors relating to formalization, and these factors leave room for a variety of interpretations. Therefore, in view of the findings of the present study, future research should adopt multiple perspectives to expand the scope of this analysis.

In the future, the FCC may seek additional opportunities to become a national security regulator. Therefore, a worthwhile approach for future research is to analyze the direction of the FCC's regulations. There is a need to look more broadly at the FCC's policies after the Team Telecom formula—not just in license review.

In the context of the trend toward strengthening the U.S. regulatory framework against the backdrop of the U.S.–China conflict, it will be important to examine this event of Team Telecom's formalization from a broader perspective. To this end, it would be useful to analyze the relationship between CFIUS's move to strengthen regulations under FIRRMA and other

sector's regulations in other areas. It may also be possible to determine whether the relationship between the new Team Telecom and FCC governance is specific to the telecommunications sector or applicable to other sectors by comparing said relationship to regulatory models in other sectors, such as electric power and transportation.

A worthwhile focal point for future research is the nature of congressional involvement in the Team Telecom formulation captured by this study. While Congress asked the FCC to take security action, it did not amend the Telecommunications Act. This study noted that Team Telecom was recognized by Congress during the Obama administration and formalized by the Trump administration, and that a bipartisan group of legislators may have been aware of Executive Order 13913's announcement in advance and actively supported stripping the Chinese company's license.

Congressional desires were behind the FCC's review of all Section 214 licenses, even without an explicit recommendation to Team Telecom. Thus, it is possible that Congress will continue to require the FCC to take security measures without amending the Communications Act. In the future, as research continues to relate congressional requests to the FCC regarding security to FCC policy trends, it will be possible to evaluate whether Team Telecom's formalization was meaningful to the U.S. government beyond measures against China.

¹ Committee on Energy and Commerce. Subcommittee on Communications and Technology (2019, December 5). *Accountability and Oversight of the Federal Communications Commission: hearing before the Subcommittee on Communications and Technology of the Committee on Energy and Commerce*, [One Hundred Sixteenth Congress, first session]. U.S. Government Publishing Office.

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⁴ *Huawei Technologies v. FCC & USA*, 2 F.4th 421 (5th Cir. 2021).

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⁶ Exec. Order No. 13913, 85 F.R. 19643, *Establishing the committee for the assessment of foreign participation in the United States telecommunications services sector* (2020).

⁷ FCC. (2020). *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership* (Report and Order, FCC 20-133). U.S. Federal Communications Commission.

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