



U.S. Heightens National Security Surrounding Digital Infrastructure

The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, commonly known as Team Telecom, recently recommended that the Federal Communications Commission (FCC) deny an application by ARCOS-1 USA, Inc. and A.SurNet, Inc., stating that the proposal posed unacceptable risks to U.S. national security. The application was for an addition to ARCOS-1, a submarine cable system that connects 24 landing points in 15 countries, most surrounding the Caribbean Sea. The proposed addition would connect the U.S. directly to a new landing station in Cojimar, Cuba.

As submitted, the application would permit the only direct, commercial subsea cable connection between the U.S. and Cuba. There are currently two cables connecting Guantanamo Bay to the U.S. — one with Florida and one with Puerto Rico — but they are fully owned and operated by the U.S. The proposed ARCOS-1 addition raised security concerns as Cuba's state-owned telecommunications monopoly, Empresa de Telecomunicaciones de Cuba S.A. (ETECSA) would own the cable station and control the operation of the proposed addition. Though Team Telecom described its support of the Cuban people in its denial recommendation, it also stated that the Government of Cuba is recognized as authoritarian and a foreign adversary by the U.S. Further, the risks are exacerbated by the Cuban government's relationships with other foreign adversaries, including the People's Republic of China (PRC) and the Russian Federation.

Team Telecom's recommendation was based on the following factors:

- The Government of Cuba is a foreign adversary to the U.S. and, as of January 2021, is designated as a state sponsor of terrorism.
- The proposed cable would be under the exclusive control and use of ETECSA which could give the Cuban government direct access to the communications of U.S. persons and support the Cuban government's counterintelligence efforts.
- The Cuban government's relationships with the PRC and Russian Federation exacerbate risks to national security. Both countries have financial ties with Cuba; they wrote off billions of dollars of Cuba's debt within the past ten years and are significant trading partners with Cuba. Further, ETECSA's three primary technology providers include Chinese companies Huawei and ZTE, companies to which the U.S. is encouraging the development of alternatives through billions of dollars of investment and whose telecommunications equipment is banned due to their risks to national security.¹

The President of the U.S. and the FCC have broad authority to regulate cable-landing licenses. In 2020, Google and Meta abandoned a proposal to use an undersea cable to Hong Kong, controlled by Beijing, following a denial recommendation from Team Telecom. In 2021, Google and

¹ Addition of Entities to the Entity List, 84 Fed. Reg. 23437 (May 21, 2019) (codified at 15 C.F.R. pt. 744); Authorization of Certain "Items" to Entities on the Entity List in the Context of Specific Standards Activities, 87 Fed. Reg. 55241 (Sept 9, 2022) (to be codified at 15 C.F.R. pts. 744, 772); Continuation of the National Emergency With Respect to Securing the Information and Communications Technology and Services Supply Chain, 87 Fed. Reg. 29217, 29645 (May 13, 2022); FED. COMM'NS COMM'N, FCC 22-84, *IN THE MATTER OF PROTECTING AGAINST NATIONAL SECURITY THREATS TO THE COMMUNICATIONS SUPPLY CHAIN* (2022).



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Meta received approval recommendation after removing connections to Hong Kong.

IMPLICATIONS FOR U.S. DEVELOPERS OF DIGITAL INFRASTRUCTURE

- Developers should exercise caution if, or when, co-owning facilities with international parties. The FCC has broad authority to regulate cable-landing licenses, and it may review all entities with a 5% or greater ownership interest in a cable system and using the U.S. points of the cable system.
- When developing infrastructure projects, be aware of the level of control a foreign government may have over a co-owner of the project.
- While the U.S. may be more cautious surrounding international involvement in the development of digital infrastructure, developments in digital infrastructure are being encouraged through \$1.6 billion appropriated for the Public Wireless Supply Chain Innovation Fund through the the Department of Commerce's National Telecommunications and Information Administration (NTIA) and \$65 billion in investment in broadband funding included in the Infrastructure Investment and Jobs Act, also administered by NTIA.

Additional Assistance

For further assistance, please contact a member of our [Telecommunications Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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