

Before the
United States Department of Commerce
Washington, D.C.

In re Securing the Information and
Communications Technology and
Services Supply Chain

Docket No. DOC-2019-0005

COMMENTS OF THE
ALLIANCE FOR TELECOMMUNICATIONS INDUSTRY SOLUTIONS

The Alliance for Telecommunications Industry Solutions (ATIS) submits these comments in response to the Department of Commerce’s proposed rule “Securing the Information and Communications Technology and Services Supply Chain” (Proposed Rule) (84 Fed. Reg. 65316) (proposed Nov. 27, 2019), issued pursuant to Executive Order 13873 of May 15, 2019 (84 Fed. Reg. 22689), titled the same. ATIS offers these comments to explain the challenges of the Proposed Rule’s case-by-case approach for global standards development. As discussed more fully in these comments, the case-by-case approach could give rise to particular issues in connection with ATIS’ standards development activities related to the global development of 5G and Internet of Things (IoT) standards, including as the result of ATIS’ U.S. leadership in such efforts and its role as the North American representative to the Third Generation Partnership Project (3GPP) and oneM2M global partnership forum (oneM2M). ATIS therefore recommends changes to the proposed rule to avoid injecting unnecessary uncertainty into U.S. and global standards development processes.

I. BACKGROUND

ATIS is the leading U.S. organization involved in the development of telecommunications standards and other technical deliverables, including with respect to 5G and the IoT. Through its efforts, ATIS plays a leadership role for the U.S. information and communications technology and services (ICTS) industry in connection with 5G and IoT innovation.

ATIS member companies are both U.S.- and foreign-based, and represent all industry sectors, including wireless and wireline service providers/network operators, cable operators, equipment manufacturers and suppliers, and content and applications providers. ATIS' member companies collaborate and innovate through participation in ATIS' committees and forums to develop much-needed technological solutions to address key industry challenges. Among the projects on which ATIS members are working are smart cities, unmanned aerial vehicles, artificial intelligence-enabled networks, and 5G wireless networks.

ATIS members also participate in global standardization efforts through ATIS. ATIS is the North American Organizational Partner in 3GPP, a global project that unites ATIS and six other regional and national telecommunications standards development organizations (SDOs),¹ and provides their member companies with a stable environment to produce technical specifications and standards for continuously evolving generations of mobile technology, including 5G standards now being developed. Technical specifications developed in 3GPP are transposed by the Organizational Partners, including ATIS for North America, into national/regional standards for their respective regions.

¹ In addition to ATIS, the other 3GPP Organizational Partners are the Association of Radio Industries and Businesses (ARIB) (Japan); the China Communications Standards Association (CCSA) (China); the European Telecommunications Standards Institute (ETSI) (Europe); the Telecommunications Standards Development Society, India (TSDSI) (India); the Telecommunications Technology Association (TTA) (Korea); and the Telecommunication Technology Committee (TTC) (Japan). *See* <http://www.3gpp.org>.

ATIS is also a partner in oneM2M,² which is a global forum for the development of technical specifications that concern a common machine-to-machine service layer that can be readily embedded within various hardware and software to connect myriad IoT devices. Like 3GPP, technical specifications developed in oneM2M by individual member companies are converted into national/regional standards by the oneM2M partners, including ATIS, through their normal processes.

Technical specifications are developed in 3GPP and oneM2M through a technology-driven and consensus-based process that is open to all participating member companies. Individual member companies from around the globe propose technologies to be included in technical specifications by submitting technical documents called “contributions.” Contributions are discussed in technical working groups, which meet four to six times a year, and are incorporated into technical specifications through a fast-paced, collaborative and iterative consensus-based process, in accordance with 3GPP and oneM2M working procedures. Because the process is iterative, it is often difficult to determine the extent to which technology included in a specific contribution has been incorporated into a final technical specification.

ATIS standards, including those transposed from 3GPP and oneM2M specifications, provide a vital foundation for the U.S. ICTS industry and innovation economy by making state-of-the-art technical ICTS solutions widely available and promoting rapid commercialization of new products and services based on those solutions. This has allowed the U.S. to assume and maintain a leading role in the development of new global 5G and IoT ICTS solutions critical to U.S. competitiveness.

² The other SDO partners in oneM2M are the Organizational Partners of 3GPP plus the Telecommunications Industry Association (TIA) (U.S.). See <http://www.onem2m.org/>.

II. COMMENTS

The Proposed Rule would implement a “case-by-case, fact-specific approach to determine those transactions that meet the requirements set forth in the Executive Order, and which would be prohibited or require mitigation.” (84 Fed. Reg. at 65317). According to the Proposed Rule, this approach is intended to “ensure that the Department does not inadvertently preclude innovation or access to technology in the United States.” (*Id.*). ATIS is concerned that a case-by-case approach would, in fact, have such unintended effects in connection with ATIS’ efforts to develop 5G standards and IoT specifications, with a resulting outcome of lessened U.S. leadership in 5G and IoT.

Under the Proposed Rule, technical contributions that are a necessary and ordinary part of global standards development activities could come within the scope of the Proposed Rule and be subject to evaluation and potential prohibition on a case-by-case basis. For example, if a foreign company participating in 3GPP makes a contribution to a 5G technical specification, that contribution could be evaluated under the Proposed Rule as a “transfer” or “use of” ICTS.³ If the Secretary determines based on such an evaluation that the technology included in that contribution is “owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary”⁴ and

³ The Proposed Rule defines ICTS broadly as “any hardware, software, or other product or service primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means, including through transmission, storage, or display,” which is broad enough to cover many, if not most, technical contributions made to 3GPP and oneM2M (84 Fed. Reg. at 65320).

⁴ If the Proposed Rule is adopted, the determination whether ICTS is “owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary,” would also be made on a case-by-case basis based on a number of factors, including but not limited to “the law and practices of the foreign adversary; equity interest, access rights, seats on a board of directors or other governing body, contractual arrangements, voting rights, and control over design plans, operations, hiring decisions, or business plan development.” (84 Fed. Reg. at 65321).

poses an unacceptable risk to U.S. national security, the contribution itself would meet the “requirements set forth in the Executive Order,” and be subject to the available remedies. (84 Fed. Reg. at 65317).

This possible outcome greatly increases uncertainty in global standardization efforts for a number of reasons. *First, there may be no way to identify and avoid contributions that may be subject to the Executive Order.* Neither ATIS nor its member companies participating in global standards development can predict with any certainty which of the thousands of technical contributions submitted to 3GPP and oneM2M might be ultimately included in a 3GPP or oneM2M specification that is later transposed by ATIS for use in the U.S. Accordingly, substantial effort may be expended in ATIS to develop 5G or IoT standards that may contain ICTS that the Department later concludes is within the prohibitions of the Executive Order. At a minimum, significant inefficiencies could arise if 5G and IoT products and services had to support incompatible standards in the U.S. to those in the rest of the world. Indeed, even the possibility that a consensus-based standard could be overturned under the Executive Order at any time would diminish, the incentive of firms to continue making the substantial investments necessary to develop U.S. 5G and IoT standards. This could have a direct impact on U.S. leadership in 5G and IoT technologies.

Second, there is no way to know when a determination may be made that a contribution is subject to the Executive Order. The case-by-case approach contemplated by the Proposed Rule could result in an *ex post* determination by the Secretary that prohibited conduct has occurred. As a result, extensive efforts to develop U.S. 5G and IoT standards could be placed at risk; undertaking development of U.S. versions of 3GPP and oneM2M specifications will be inherently uncertain with respect to whether such development involves conduct that is or could be in the future found

to be prohibited under the Executive Order. And, even after an ATIS developed 5G or IoT standard is adopted, mitigation as contemplated by the Proposed Rule could require that the standard be revised to exclude the prohibited ICTS.

The risk of such potential outcomes exists also because, as contemplated by the Proposed Rule, an evaluation of possible violations of the Executive Order could be instituted by the Department *sua sponte*, or based upon information submitted by private parties. (84 Fed. Reg. at 65321). Thus, ATIS' 5G and IoT standards development activities could become the subject of inquiry at any time during the development timeline, even after significant time and resources have been invested to develop consensus around a technical solution that is later found to be prohibited under the Executive Order.

This also creates the possibility that the process contemplated by the Proposed Rule could be used opportunistically by parties that do not support the consensus position of including a specific technology in an ATIS standard (or perhaps who opposed including the technology in the 3GPP or oneM2M specification in the first instance). That party could use the case-by-case approach contemplated by the Proposed Rule to have the Department commence an inquiry, which, even if no prohibited transaction is ultimately found, could hinder ATIS' effective standards development efforts, and ultimately hinder the adoption of U.S. 5G and IoT standards that are aligned with global 5G and IoT standards because the U.S. standard could not include technology that supports such standards throughout the rest of the world.

Recommended Changes to the Proposed Rule. For at least the reasons stated, and given the pace and nature of efforts involved, ATIS respectfully submits that the proposed case-by-case approach is infeasible for the global standards development efforts in which ATIS is currently engaged related to 5G and IoT. ATIS therefore urges the Commission to consider modifying its

Proposed Rule so that it does not create, or at least mitigate, the risks that ATIS believes now exist with respect to such standards development activities based on the Proposed Rule’s case-by-case approach. ATIS specifically recommends the Commission:

- (1) Establish a mechanism by which ATIS and the industry may proactively seek guidance regarding specific work programs and participants involved in those efforts; and
- (2) Provide clearer guidance regarding the timely identification of foreign governments and foreign non-government persons that may be considered “foreign adversaries” subject to the Executive Order.

II. CONCLUSION

ATIS appreciates the opportunity to submit these comments with respect to the Proposed Rule and urges the Secretary to consider the issues raised.

Respectfully submitted,

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