

Before the
United States Department of Commerce
Bureau of Industry and Security
Washington, D.C.

In re Release of “Technology” to
Certain Entities on the Entity List in
the Context of Standards Organizations

Docket No. BIS 2020–0017

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, Bureau of Industry and Security (BIS) Interim Final Rule “Release of ‘Technology’ to Certain Entities on the Entity List in the Context of Standards Organizations” (Interim Final Rule).¹ ATIS welcomes the opportunity to provide these comments, which are intended to ensure that the Final Rule issued by BIS enables U.S.-based standards development organizations (SDOs) and their members to participate fully and effectively, and maintain U.S. technological leadership, in global standards development.

I. BACKGROUND

ATIS is a leading developer of standards and other technical deliverables for Information and Communications Technology (ICT) and Services (ICTS) companies. ATIS develops standards on a broad range of important issues, including 5G and the Internet of Things (IoT). ATIS members include both U.S.- and foreign-based companies and organizations, representing all industry sectors, including wireless and wireline service providers/network operators, cable operators, equipment manufacturers and suppliers, and content and applications providers. ATIS

¹ 85 Fed. Reg. 36719.

members 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 SDOs,² and provides their member companies with a stable environment to produce technical specifications for continuously evolving generations of mobile telecommunications standards, including the 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 in their respective regions.

ATIS is also a partner in oneM2M,³ 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.

² 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>.

³ 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/>.

ATIS standards, including those transposed from 3GPP and oneM2M specifications, provide a vital foundation for the U.S. ICTS industry and innovation economy by diffusing state-of-the-art technical ICTS solutions 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 solutions critical to U.S. competitiveness.

II. COMMENTS

On June 18, 2020, BIS issued its Interim Final Rule, which authorizes the release of certain technology to Huawei and its affiliates on the Entity List without a license if such release is made for the purpose of contributing to the revision or development of a standard in an SDO.⁴ ATIS believes that the Interim Final Rule offers greater clarity regarding the addition of Huawei and certain of its affiliates to the Commerce Department's Entity List and helps to lessen the significant uncertainty that U.S.-based SDOs and their members face over whether participation in standards development activities – including as part of international partnership projects such as 3GPP and oneM2M – exposes them to a risk of unintentionally violating the Export Administration Regulations (EAR) where Huawei or one of its listed affiliates also participates in those activities.

While ATIS believes that the Interim Final Rule resolves some of the uncertainty created by the addition of Huawei and certain of its affiliates to the Entity List, some uncertainty remains. ATIS joins with others in the standards community to urge BIS to incorporate three modifications and clarifications in the Final Rule, each of which will facilitate efficient and effective standards development activities consistent with the principles already stated in the Interim Final Rule. These are:

⁴ 85 Fed. Reg. 36719.

- (1) Expand the scope of the Final Rule to permit authorized releases to all entities on the Entity List that participate in standards activities (not just to Huawei and its listed affiliates);
- (2) Clarify that the Final Rule permits the release of both “technology” and “software” that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only; and
- (3) Confirm that the scope of standards development activities permitted by the Final Rule includes any action taken by an SDO for the purpose of developing, promulgating, revising, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, including standard conformity testing and assessment activities.

These proposed modifications would eliminate uncertainties and allow ATIS and its members to participate in U.S. and global standards development processes with assurance that they are doing so in full compliance with applicable regulations. And this will permit ATIS to maintain and advance U.S. leadership in the development of critical technical standards.

1. Expand the Scope of the Final Rule to All Entries on the Entity List.

The Interim Final Rule modifies “the existing ninety-three entries for Huawei and its 114 non-U.S. affiliates [on the EAR Entity List] by changing the text in the Licensing Requirement column for these entries” to permit the release of certain “technology subject to the EAR when released to members of a “standards organization” for the purpose of contributing to the revision or development of a “standard.”⁵ The Interim Final Rule thus largely resolves the uncertainty caused by the addition of Huawei and certain of its affiliates to the Entity List. It leaves open, however, the question of how SDOs like ATIS should address continuing uncertainties caused by participation of non-Huawei entities already designated on or who are later added to the Entity List in standards development activities.

⁵ 85 Fed. Reg. 36719.

This issue is concrete. There are at least three non-Huawei 3GPP individual members, participating through their membership in the Chinese 3GPP Organizational Partner (CCSA), that are currently on the Entity List.⁶ As a result, the Interim Final Rule leaves open the uncertainty of standards development involving these entities. Expanding the Final Rule to encompass any entity on the Entity List would remove this uncertainty and allow U.S. companies to participate in critical standards development activities without the need to address export compliance issues on an entity-by-entity basis, including as new entries may be added to the Entity List.

2. Clarify that the Final Rule Permits the Release of “Software” that is Designated as EAR99, or Controlled on the Commerce Control List for Anti-Terrorism Reasons Only.

The Interim Final Rule authorizes certain releases of “technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only.”⁷ “Technology” is defined under the EAR as “information necessary for the ‘development,’ ‘production,’ ‘use,’ operation, installation, maintenance, repair, overhaul, or refurbishing . . . of an item.”⁸ Although this definition of “technology” may be interpreted as encompassing most information subject to the EAR that might be released during the standards development process, some standards development activities also require the release or exchange of executable software code that might be classified separately as “software” under the EAR.⁹ For example, some ATIS standards include Extensible Markup Language (XML) code that is intended to facilitate consistent implementation of the standard. ATIS’ Unified Ordering Model (UOM) Volume III – Design

⁶ Specifically, Fiberhome Technologies Group, Qihoo 360, and the University of Electronic Science and Technology of China appear on the Entity List and each participates as an Individual Member of 3GPP through CCSA. *See* 3GPP Member List, available at: <https://www.3gpp.org/about-3gpp/membership>

⁷ 85 Fed. Reg. 36719.

⁸ 15 CFR § 772.1

⁹ “Software” is defined under the EAR as a “collection of one or more ‘programs’ or ‘microprograms’ fixed in any tangible medium of expression.” 15 CFR § 772.1

Wireless Intercarrier Communications Interface Specification (WICIS) for Local Number Portability, has associated xml code that facilitates standardized ordering of communications services.¹⁰

ATIS therefore suggests clarification in the Final Rule to expressly permit the release of “software” (in addition to “technology”) subject to the EAR that is designated as EAR99 or controlled on the Commerce Control List for anti-terrorism reasons only.

3. Confirm that the Interim Final Rule Applies to All Standards Development Activities.

The Interim Final Rule permits the release of certain technology “to members of a ‘standards organization’ (see § 772.1) for the purpose of contributing to the revision or development of a ‘standard’ (see § 772.1).”¹¹ The definitions of “standard” and “standards organization” in the Interim Final Rule are adopted from Office of Management and Budget (OMB) Circular A-119,¹² but the Interim Final Rule does not clearly define the scope of activities that constitute “contributing to the revision or development” of a standard.¹³ OMB Circular A-119 itself, however, recognizes that the promulgation of effective standards requires a broad range of “standards-related activity,” as defined by the Trade Agreements Act of 1979, including “the development, adoption, or application of any standard, technical regulation, or conformity assessment procedure.”¹⁴ Similarly, the Standards Development Organization Advancement Act of 2004 (SDOAA) defines “standards development activity” as “any action taken by a standards

¹⁰ See Unified Ordering Model (UOM) Volume III – Design Wireless Intercarrier Communications Interface Specification (WICIS) for Local Number Portability (ATIS- 040900100500). This document is available from <https://www.techstreet.com/atis/>.

¹¹ 85 Fed. Reg. 36719

¹² OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities” 81 Fed. Reg. 4673 (Jan. 27, 2016).

¹³ 85 Fed. Reg. 36748.

¹⁴ Trade Agreements Act of 1979, 19 U.S.C. § 2571(14).

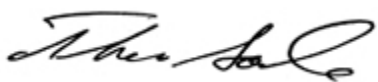
development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.”¹⁵

To ensure that the Final Rule encompasses the full scope of standards activity, ATIS submits that BIS should adopt the same broad definition of standards development activities as exists in the SDOAA, which includes all steps in the development and promulgation of technical standards, including final steps such as compliance testing and certification. This will have concrete benefits by eliminating any uncertainty that important standards development efforts are within the scope of the Final Rule.¹⁶

III. CONCLUSION

ATIS appreciates the opportunity to submit these comments with respect to the Interim Final Rule and urges BIS to consider the modifications and clarifications proposed above for incorporation in the Final Rule.

Respectfully submitted,



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August 17, 2020

¹⁵ 15 U.S.C. § 4301(a) (7).

¹⁶ ATIS initiatives include both the development of standards and their testing/validation. ATIS’ Robocalling Testbed, for example, validates the effectiveness of caller authentication standards including ATIS-SIP Forum Joint Standard on "Signature-based Handling of Asserted information using toKENS" (SHAKEN).”