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FCC Orders Chinese Government-Controlled Telecommunications Entities to Explain Why Authorizations to Provide Service Should Not Be Revoked

On April 24, 2020, the Federal Communications Commission (FCC) issued Orders to Show Cause (Show Cause Orders) against four companies that provide domestic and international telecommunications services pursuant to FCC authorizations. Each of those companies is ultimately owned and controlled by the government of the People's Republic of China (Chinese government). This unusual proactive review by the FCC marks another lever the Trump administration can bring to bear relative to Chinese (particularly state-owned enterprises) influence and access in U.S. industry. It follows the Trump administration's increased scrutiny in the national security space of Chinese involvement in telecommunications, semiconductor, sensitive data, and critical infrastructure sectors in particular, and appears consistent with the recent increased scrutiny by the Committee on Foreign Investment in the United States (CFIUS), even post-closing, of foreign investment transactions in the United States.

The Show Cause Order directs the companies – China Telecom (Americas) Corporation (China Telecom), China Unicom (Americas) Operations Limited, Pacific Networks Corp., and ComNet (USA) LLC (collectively, China-owned Companies) – to explain why the FCC should not commence proceedings to

revoke their domestic and international Section 214 authorizations.¹ Revocation of these authorizations would significantly impact businesses that purchase telecommunications services directly from the China-owned Companies, as well as businesses that rely on communications networks that utilize the China-owned Companies' services.

Background

Although the FCC rarely has exercised its authority to revoke Section 214 authorizations, the FCC's issuance of the Show Cause Orders was not unexpected. In May 2019, the FCC denied an application by China Mobile International (USA) Inc. (China Mobile), a United States subsidiary of a Chinese government-owned entity, to provide international telecommunications services between the United States and foreign destinations.² The FCC referred the application to an intergovernmental group of Executive Branch agencies known as Team Telecom that assists the FCC in reviewing applications filed by foreign-owned entities.³ The Executive Branch recommended that the FCC "deny China Mobile USA's application due to substantial national security and law enforcement risks that cannot be resolved through a voluntary mitigation agreement."⁴ The FCC denied China Mobile's application based on its determination that China Mobile would "be highly likely to succumb to exploitation, influence, and control by the Chinese government" if it was granted authority to provide international telecommunications services.⁵

The Executive Branch has continued to have concerns about telecommunications companies owned by the Chinese government. On April 9, 2020, the National Telecommunications and Information Administration (part of the Department of Commerce), on behalf of the Executive Branch, filed a recommendation with the FCC requesting that it revoke international authorizations held by China Telecom. The Executive Branch's recommendation was based on several factors including changed circumstances in the national security environment, an increased concern about the Chinese government's malicious cyber activities, and the fact that a Chinese government-controlled telecommunications company could enable Chinese state-sponsored actors to engage in economic espionage and disrupt communications. The FCC cited to this Executive Branch recommendation as a basis for issuing the Orders to Show Cause against China Telecom and the three other China-owned Companies.

FCC Revocation Process

The FCC's Show Cause Orders direct the companies to respond to a series of questions about their ownership, management, operations, facilities, customers, and the extent to which they are subject to exploitation, influence and control by the Chinese government. The Chinese-owned Companies must respond within 30 days (i.e., by May 26, 2020). The response must demonstrate why the FCC should not

¹ Pursuant to Section 214(a) of the Communications Act of 1934, as amended (Communications Act) (47 U.S.C. § 214(a)), an entity may only provide international telecommunications service (service between the U.S. and foreign locations) if it has been authorized to do so by the FCC. Section 214(a) grants telecommunications carriers blanket authority to offer domestic interstate telecommunications services. Although no application is required for domestic Section 214 authority, such authority is subject to revocation.

² *China Mobile International (USA) Inc.; Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 34 FCC Rcd 3361 (2019) (*China Mobile Order*).

³ On April 4, 2020, President Trump issued an Executive Order establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Sector. This Executive Order formalizes and modifies the review process that had been performed by Team Telecom. (See *GT Alert*, "[Executive Order Establishes Committee to Assist FCC in Review of Foreign Participation in the Telecommunications Industry](#)").

⁴ *China Mobile Order*, at 3365, ¶ 6.

⁵ See *id.*, at 3371, ¶ 19.

commence a proceeding to revoke the companies' authorizations to provide both domestic and international telecommunications service.

Although the FCC's rules require evidentiary hearings prior to revocation of "station licenses" that authorize use of the radiofrequency spectrum,⁶ Section 214 authorizations are not station licenses subject to a hearing requirement. Nevertheless, the FCC has had a practice of conducting evidentiary hearings when considering whether to revoke Section 214 authorizations.⁷ The FCC does not reference a hearing in the Show Cause Orders and only states that the "Order affords China Telecom Americas notice and an opportunity to respond to the Executive Branch Recommendation to Revoke."⁸

The Chinese-owned Companies may file responses to the Show Cause Orders and deny allegations that they are influenced or controlled by the Chinese government. Furthermore, the Chinese-owned Companies may request an evidentiary hearing (as indicated by counsel for China Telecom in an April 13, 2020, letter to the FCC) and challenge a decision to revoke their Section 214 authorizations. Whether the FCC will comply with its prior practice of conducting a hearing when the FCC is considering revocation of a Section 214 authorization remains to be seen.

Authors

This GT Alert was prepared by:

- [Mitchell F. Brecher](#) | +1 202.331.3152 | brecherm@gtlaw.com
- [Debra McGuire Mercer](#) | +1 202.331.3194 | mercerdm@gtlaw.com
- [Kara M. Bombach](#) | +1 202.533.2334 | bombachk@gtlaw.com

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⁶ See 47 C.F.R. § 1.91; see also 47 U.S.C. § 312(c). Station licenses are issued pursuant to Title III of the Communications Act (47 U.S.C. 301 et seq.).

⁷ See, e.g., *NOS Communications, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6952 (2003) (ordering an evidentiary hearing to determine whether a carrier's domestic Section 214 authority should be revoked based upon a misleading marketing campaign in violation of 47 U.S.C. § 201(b)); *Publix Network Corporation, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487 (2002) (ordering an evidentiary hearing to determine whether a carrier's domestic Section 214 authority should be revoked based upon unlawful receipt of payments from the Telecommunications Relay Services Fund).

⁸ *China Telecom (Americas) Corporation*, Order to Show Cause, GN Docket 20-109, DA 20-448 (Apr. 24, 2020), ¶ 11 & n.44.