

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Ocean Technology Limited) ITC-214-20121210-00323
Termination of International Section 214)
Authorization)

ORDER

Adopted: January 29, 2016

Released: January 29, 2016

By the Chief, Telecommunications and Analysis Division, International Bureau:

I. INTRODUCTION

1. By this Order, we declare the international section 214 authorization granted to Ocean Technology Limited (Ocean) terminated given Ocean's inability to comply with the express condition for holding the authorization.¹ We also conclude that Ocean failed to comply with those requirements of the Communications Act of 1934, as amended (the Act) and the Commission's rules that ensure that the Commission can contact and communicate with the authorization holder and verify Ocean is still providing service, which failures have prevented any way of addressing Ocean's inability to comply with the condition of its authorization.

II. BACKGROUND

2. Section 214(a) of the Act prohibits any carrier from constructing, extending, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate of authorization from the Commission.² Under section 214(c) of the Act, the Commission "may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require."³ On July 17, 2013, the International Bureau granted Ocean an international section 214 authorization to provide global or limited global facility-based service and global or limited global resale service in accordance with section 63.18(e)(1) and 63.18(e)(2) of the Commission's rules.⁴ The International Bureau granted the application on the express condition that Ocean abide by the commitments and undertakings contained in its Letter of Assurance (LOA) to the Department of Justice (DOJ), the Federal Bureau of Investigation, the Drug Enforcement Agency, and the

¹ The International Bureau granted Ocean's authorization under File No. ITC-214-20121210-00323. *International Authorizations Granted, Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b)(4) Requests*, Report No. TEL-01628, Public Notice, 28 FCC Rcd 10916, 10917 (IB 2013) (*Ocean International Section 214 Authorization*).

² 47 U.S.C. § 214(a); 47 CFR § 63.18 (stating any carrier seeking section 214 authority "for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application"). The Commission granted "blanket" section 214 authority to carriers providing domestic service but did not extend this authority to international services. *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, AAD File No. 98-43, Report and Order, Second Memorandum Opinion and Order, 14 FCC Rcd 11364, 11365-66, para. 2 & n 8 (1999).

³ 47 U.S.C. § 214(c).

⁴ *Ocean International Section 214 Authorization*, 28 FCC Rcd at 10917; 47 CFR § 63.18(e).

U.S. Marshals Service (collectively, the Executive Branch Agencies) dated July 16, 2013.⁵ The LOA outlines a number of commitments made by Ocean to address national security, law enforcement, and public safety concerns.⁶ Under the LOA, Ocean's designated law enforcement point of contact would ensure, for example, that Ocean responds to a lawful request "promptly, and in any event no later than five business days subsequent to the service of a lawful request."⁷

3. On July 1, 2015, the Executive Branch Agencies notified the Commission of Ocean's non-compliance with the conditions of its authorization and requested that the Commission terminate, and declare null and void and no longer in effect, the international section 214 authorization issued to Ocean.⁸ The Executive Branch Agencies indicated that open-source searches suggest that Ocean was still in operation and providing services, however, "every attempt by the DOJ to communicate with Ocean regarding its LOA compliance has resulted in failure."⁹ The Executive Branch Agencies added that Ocean's former legal counsel has not been in contact with Ocean since July 2014 and was also unable to contact Ocean.¹⁰ Based on this, the Executive Branch Agencies stated that they are "wholly unable to evaluate Ocean's compliance with the LOA, and must consider Ocean to be non-compliant."¹¹

4. The Commission has made significant efforts to communicate with Ocean, but has also been unable to do so. On August 25, 2015, the International Bureau sent Ocean a letter to the last addresses of record requesting that Ocean respond to the *July 1, 2015 Executive Branch Letter* within 30 days of the letter, by September 24, 2015.¹² Ocean did not respond. Since that time, the International Bureau has provided Ocean with additional opportunities to respond to these allegations.¹³ The

⁵ Petition to Adopt Conditions to Authorizations and Licenses, File No. ITC-214-20121210-00323 (filed July 16,, 2013) (Petition to Adopt Conditions); Letter from Sagar Uptry, Ocean Technology Limited, to John Carlin, Acting Assistant Attorney General, National Security Division, DOJ (July 9, 2013).

⁶ LOA at 1-2.

⁷ *Id.* at 2. Ocean agreed that "in the event the commitments set forth in its LOA are breached, in addition to any other remedy available at law or equity, DOJ may request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization granted by the FCC to Ocean or any successors-in-interest." *Id.*

⁸ Letter from Richard Sofield, Director, Foreign Investment Review Staff, National Security Division, DOJ to Marlene H. Dortch, Secretary, FCC at 1 (filed July 1, 2015) (*July 1, 2015 Executive Branch Letter*).

⁹ *Id.* at 2 ("On February 10, 2015, the DOJ contacted Mr. Thomas Lynch, Ocean's former legal counsel, to inquire as to whether he was still a point of contact of Ocean. Mr. Lynch responded immediately and indicated that he would need to check with Ocean. On February 23, 2015, the DOJ again contacted Mr. Lynch, who responded that he has not received any response from Ocean. On February 24, 2015, the DOJ sent an email message to Suman Khadka, the individual who executed the LOA on behalf of Ocean and requested information regarding Ocean's compliance with the LOA no later than March 17, 2015. The DOJ received no response to that message. On May 8, 2015, the DOJ again communicated with Mr. Lynch to ask for his point of contact at Ocean, and Mr. Lynch responded that Mr. Khadka was his only contact. The DOJ then again requested a compliance verification from Mr. Khadka, who, as of July, 1, 2015, has not responded to the DOJ's inquiries.").

¹⁰ *Id.*

¹¹ *Id.*

¹² Letter from Denise Coca, Chief, Policy Division, FCC International Bureau to Suman Khadka, Ocean Technology Limited (August 25, 2015) (*Ocean Aug. 2015 Letter*), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.fts?f_key=-249581&f_number=ITC2142012121000323.

¹³ First, on November 3, 2015, the Bureau released a Public Notice affording Ocean its "final notice and opportunity to respond" and stating that Ocean must do so no later than 15 days after publication of notice in the Federal Register. *Notice of Intent to Declare the International Section 214 of Ocean Technology Limited Terminated*, File No. ITC-214-20121210-00323, Public Notice, 28 FCC Rcd 12821 (IB 2015) (*2015 Ocean Public Notice*),

International Bureau stated that failure to respond would result in termination of Ocean's international section 214 authorization for failure to comply with conditions of its authorization.¹⁴ In Ocean's 2012 application, Ocean stated it was incorporated in Delaware,¹⁵ and according to the Delaware Secretary of State, the service of process received for Ocean cannot be forwarded because "the party served is not qualified to do business in the jurisdiction served."¹⁶ To date, Ocean has not responded to any of the International Bureau or the Executive Branch Agencies' multiple requests to resolve this matter.

III. DISCUSSION

5. We determine that Ocean's international section 214 authorization to provide international services issued under File No. ITC-214-20121210-00323 has terminated for inability to comply with an express condition for holding the section 214 international authorization. The International Bureau has provided Ocean with notice and opportunity to respond to the allegations in the *July 1, 2015 Executive Branch Letter* concerning Ocean's non-compliance with the condition of the grant. Ocean has not responded to any of our multiple requests or requests from the Executive Branch Agencies. We find that Ocean's failure to respond to our multiple requests demonstrates that it is unable to satisfy the LOA conditions, upon which the Executive Branch Agencies gave their non-objection to the grant of the authorization to Ocean, and which is a condition of the grant of its section 214 authorization.

6. Furthermore, after having received an international 214 authorization, a carrier "is responsible for the continuing accuracy of the certifications made in its application" and must promptly correct information no longer accurate, "and in any event, within thirty (30) days."¹⁷ Ocean has failed to inform the Commission of any changes in its business status of providing international telecommunications services, as required by the rules.¹⁸ Nor is there any record of Ocean having complied with section 413 of the Act and the Commission's rules requiring it to designate an agent for service after receiving its authorization on July 17, 2013.¹⁹ Finally, as part of its authorization, Ocean

https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1242A1_Rcd.pdf. On November 27, 2015, the Public Notice was published in the Federal Register and Ocean was required to respond within 15 days of publication, by December 14, 2015. Notice of Intent to Terminate 214 Authorization, Federal Register, 80 Fed. Reg. 74104 (Nov. 27, 2015) (*2015 Ocean Fed. Reg. Notice*). Third, on December 1, 2015, the Bureau mailed the notices to Mr. Suman Khadka, the applicant for Ocean, to its Tokyo, Japan address listed in its 2013 application via UPS (1ZA43F580493462074), which were delivered on December 7, 2015. On December 2, 2015, the Bureau also mailed the notices to another Japan address for the applicant provided by UPS when delivering the *Ocean Aug. 2015 Letter* (1ZA43F580492909129), which were also delivered on December 7, 2015. On December 2, 2015, the Bureau sent the notices via UPS (1ZA43F580293736559) to Mr. Thomas Lynch, the contact in Ocean's 2012 application, which were delivered on December 3, 2015.

¹⁴ *2015 Ocean Public Notice* at 1.

¹⁵ On October 14, 2015, the Bureau also mailed the notices to Corporation America, Inc. and the Secretary of State of Delaware, which were both delivered on October 16, 2015 and October 19, 2015, respectively.

¹⁶ See Letter from Corporation Service Company to Cara Grayer, Attorney, Policy Division, International Bureau (Nov. 10, 2015); see also State of Delaware, Division of Corporations, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last visited Jan. 15, 2016) (search under "Ocean Technology" or by file number "4840130").

¹⁷ 47 CFR § 63.21(a).

¹⁸ *Id.* In addition, there is no indication that Ocean is currently providing service pursuant to its section 214 authorization. If Ocean has discontinued service, it is also in violation of the Commission's rules requiring prior notification for such a discontinuance. 47 C.F.R. § 63.19.

¹⁹ Section 413 of the Act requires every carrier to designate an agent for service. 47 U.S.C. § 413. See also 47 CFR §§ 1.47(h), 64.1195.

“must file annual international telecommunications traffic and revenue as required by § 43.62.”²⁰ Section 43.62(b) states that “[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report whether it provided international telecommunications services during the preceding calendar year.”²¹ Our records indicate that Ocean failed to file an annual international telecommunications traffic and revenue report indicating whether or not Ocean provided services in 2014, as required by section 43.62(b) of the Commission’s rules.²² In these circumstances, and in light of Ocean’s failure to respond to the Commission’s rules designed to ensure its ability to communicate with the holder of the authorization also warrants termination wholly apart from demonstrating Ocean’s inability to satisfy the LOA conditions of its authorization.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 214, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 413, and sections 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), and 64.1195 of the Commission’s rules, 47 CFR §§ 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), 64.1195, that the international 214 authorization issued under File No. ITC-214-20121210-00323 IS HEREBY TERMINATED AND DECLARED NULL AND VOID.

8. IT IS FURTHER ORDERED that the request of the U.S. Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Agency, and the U.S. Marshals Service, IS HEREBY GRANTED, to the extent set forth in this Order.

9. IT IS FURTHER ORDERED that a copy of this Order shall be sent by return receipt requested to Ocean Technology Limited at its last known addresses.

10. IT IS FURTHER ORDERED that a copy of this Order, or a summary thereof, shall be published in the Federal Register.

11. This Order is issued on delegated authority under 47 C.F.R. §§ 0.51, 0.261, and is effective upon release. Petitions for reconsideration under section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, or applications for review under section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, may be filed within 30 days of the date of the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Denise Coca
Chief, Telecommunications and Analysis Division
International Bureau

²⁰ 47 CFR § 63.21(d).

²¹ 47 CFR § 43.62(b) (emphasis added). In 2013, the Commission adopted section 43.62(b) of its rules, which went into effect on February 11, 2015. *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission’s Rules*, IB Docket No. 04-112, Second Report and Order, 28 FCC Rcd 575 (2013); Reporting Requirements for U.S. Providers of International Telecommunications Services, 80 Fed. Reg. 7547 (Feb. 11, 2015).

²² 47 CFR § 43.62(b).