

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

In the Matter of)	
)	ITC-214-20080825-00405
WX Communications Ltd.)	(Terminated)
Termination of International Section 214)	
Authorization)	

ORDER

Adopted: February 28, 2019

Released: February 28, 2019

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

I. INTRODUCTION

1. By this Order, we declare the international Section 214 authorization granted to WX Communications Ltd. (WX Communications) terminated because of WX Communications' inability to comply with an express condition for holding the authorization.¹ We also conclude that WX Communications 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 WX Communications is still providing service. These failures have prevented any way of addressing WX Communications' 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

3. On June 9, 2009, the International Bureau (Bureau) granted WX Communications an international Section 214 authorization to provide international global or limited global facilities-based and resale service, in accordance with Section 63.18(e)(1),(2) of the Commission's rules.⁴ The Bureau granted the application on the express condition that WX Communications abide by the commitments and

¹ The International Bureau granted WX Communications' authorization under File No. ITC-214-20080825-00405. *International Authorizations Granted, Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b)(4) Requests*, Report No. TEL-01368, Public Notice, 24 FCC Rcd 8161 (IB 2009) (*WX Communications Authorization*) (granting resale authority and granting an amendment to also include facilities-based service).

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 *WX Communications Authorization*, 24 FCC Rcd 8161; 47 CFR § 63.18(e)(1),(2).

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undertakings contained in its March 16, 2009 Letter of Assurance (LOA) to the U.S. Department of Justice (DOJ) and U.S. Department of Homeland Security (DHS).⁵ The LOA outlines commitments made by WX Communications to address national security, law enforcement, and public safety concerns.⁶

4. On July 23, 2018, DHS, with the concurrence of DOJ (collectively, the “Executive Branch Agencies”) notified the Commission of WX Communications’ non-compliance with the conditions of its authorization and requested that the Commission terminate, declare null and void, and no longer in effect, and/or revoke, the international Section 214 authorization issued to WX Communications.⁷ The Executive Branch Agencies contend that WX Communications is no longer in business and therefore is unable to comply with the requirements of the LOA, a condition of its authorization. The Executive Branch Agencies made several attempts to contact WX Communications.⁸ The Executive Branch Agencies state that on July 2, 2012, DHS contacted Raul Magallenes, the previous point of contact for WX Communications, and he informed DHS that he no longer serves as the point of contact and that he has been unable to contact WX Communications in the last couple of years.⁹ DHS also sent a certified letter to the last known address found on file in WX Communications’ international Section 214 application, but United Parcel Service (UPS) “made several attempts to deliver the letter via mailing address, phone and email but received no response and so were unable to deliver the letter.”¹⁰ In addition, the Executive Branch Agencies state that WX Communications has not filed any of its international traffic and revenue reports with the Commission.¹¹ For these reasons, the Executive Branch Agencies conclude that WX Communications is no longer providing services pursuant to its authorization.¹²

5. The Commission has made significant efforts to communicate with WX Communications, but has also been unable to do so. On August 28, 2018, the Bureau’s Telecommunications and Analysis Division sent WX Communications a letter requesting that WX Communications respond to the July 23, 2018 DHS Letter by September 27, 2018.¹³ WX Communications did not respond. Since that time, the Bureau has provided WX Communications with an additional opportunity to respond to these allegations.¹⁴ The Bureau stated that failure to respond would

⁵ *WX Communications Authorization*, 24 FCC Rcd 8161; WX Communications Ltd., Petition to Adopt Conditions to Authorizations and Licenses, File Nos. ITC-214-20080825-00405, ITC-AMD-20081231-00553 (filed Apr. 1, 2009); Letter from Ray Usher, Authorized Representative, WX Communications Ltd., to Assistant Attorney General, National Security Division, U.S. Department of Justice, and Assistant Secretary for Policy, U.S. Department of Homeland Security (Mar. 16, 2009).

⁶ LOA at 1-2.

⁷ Letter from Phil Ludvigson, Director, Foreign Investment Risk Management, Office of Policy, U.S. Department of Homeland Security, to Marlene H. Dortch, Secretary, FCC (July 23, 2018) (DHS Letter).

⁸ *Id.* at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Letter from Denise Coca, Division Chief, Telecommunications and Analysis Division, International Bureau, FCC to Ray Usher, WX Communications Ltd. (Aug. 28, 2018) (*WX Communications Letter*). The Bureau staff mailed the *WX Communications Letter* via certified mail, return receipt to Ray Usher and to Jan Maarten Bogaerts, the contacts listed on the international Section 214 application (35 Barrack Rd., Belize, BLZ), but both mailings were undeliverable and returned to sender.

¹⁴ On November 15, 2018, the Bureau released a Public Notice affording WX Communications its “final notice and opportunity to respond” and stating that WX Communications must do so no later than 15 days of the date of the Public Notice. *Final Notice of Intent to Declare the International Section 214 Authorization of WX Communications Ltd. Terminated*, File No. ITC-214-20080825-00405, Public Notice, DA 18-1161 (IB Nov. 15, 2018) (WX

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result in termination of WX Communications' international Section 214 authorization for failure to comply with the condition of its authorization.¹⁵ To date, WX Communications has not responded to any of the Bureau's or the Executive Branch Agencies' multiple requests to resolve this matter.

III. DISCUSSION

6. We determine that WX Communications' international Section 214 authorization to provide services issued under File No. ITC-214-20080825-00405 has terminated due to WX Communications' inability to comply with an express condition for holding the international Section 214 authorization. The Bureau provided WX Communications with notice and opportunity to respond to the allegations in the July 23, 2018 DHS Letter concerning WX Communications' non-compliance with the condition of the grant. WX Communications has not responded to any of our multiple requests or requests from the Executive Branch Agencies. We find that WX Communications' failure to respond to our requests demonstrates that it is unable to satisfy the LOA commitments, upon which the Executive Branch Agencies relied in providing their non-objection to the grant of the authorization to WX Communications, and compliance with which is a condition of the grant of its international Section 214 authorization.

7. Furthermore, after having received an international Section 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."¹⁶ WX Communications has failed to inform the Commission of any changes in its business status of providing international telecommunications services, as required by the rules.¹⁷ Finally, as part of its authorization, WX Communications was required to file an annual international telecommunications traffic and revenue report, as required by Section 43.62 of the Commission's rules, which was in effect until April 2018.¹⁸ Section 43.62(b) stated 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."¹⁹ Our records indicate that WX Communications failed to file annual international telecommunications traffic and revenue reports indicating whether or not WX Communications provided services in 2014 and 2015,

Communications Public Notice). Since the mailings for the *WX Communications Letter* were undeliverable, the Bureau staff did not mail the *WX Communications Public Notice* to the same address of record but did send the 2018 *WX Communications Public Notice* to the applicant's last known email address at wxa@gxm.com. The Bureau staff received an automatic electronic reply stating that delivery to recipient was complete, but no delivery notification was sent by the destination server.

¹⁵ *WX Communications Public Notice*.

¹⁶ 47 CFR § 63.21(a).

¹⁷ *Id.* In addition, there is no indication that WX Communications is currently providing service to customers pursuant to its international Section 214 authorization. If WX Communications has discontinued service, it is also in violation of the Commission's rules requiring prior notification for such a discontinuance. 47 CFR § 63.19.

¹⁸ 47 CFR § 43.62(b). 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). On October 24, 2017, the Commission eliminated the annual traffic and revenue reporting requirement. *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket Nos. 17-55 and 16-131, Report and Order, 32 FCC Rcd 8115, 8119, paras. 8-23 (2017); *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, 83 Fed. Reg. 17931 (Apr. 25, 2018).

¹⁹ 47 CFR § 43.62(b) (emphasis added).

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as required by section 43.62(b) of the Commission's rules.²⁰ WX Communications' failure to adhere to the Commission's rules designed to ensure its ability to communicate with the holder of the authorization and to verify if the holder is still providing service also warrants termination, wholly apart from WX Communications' non-compliance with the condition of its international Section 214 authorization.

IV. ORDERING CLAUSES

8. 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 Section 214 authorization issued under File No. ITC-214-20080825-00405 IS HEREBY TERMINATED AND DECLARED NULL AND VOID.

9. IT IS FURTHER ORDERED that the request of the U.S. Department of Homeland Security with the concurrence of the U.S. Department of Justice IS HEREBY GRANTED to the extent set forth in this Order.

10. IT IS FURTHER ORDERED that this Order shall be posted in the Commission's Office of the Secretary.²¹

11. This Order is issued on delegated authority under 47 CFR §§ 0.51, 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 CFR § 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 CFR § 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 *Id.*

²¹ 47 CFR § 1.47(h).