



Federal Communications Commission
Washington, DC 20554

October 15, 2020

DA 20-1216

Sanchitha Jayaram
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VIA CERTIFIED FIRST-CLASS MAIL – RETURN RECEIPT REQUESTED AND E-MAIL

Re: In the Matter of Pacific Networks Corp. and ComNet (USA) LLC
GN Docket No. 20-111; File Nos. ITC-214-20090105-00006; ITC-214-20090424-00199

Dear Ms. Jayaram:

By this letter, the International Bureau of the Federal Communications Commission (Commission) requests that the Department of Justice, on behalf of the Attorney General as Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) under Executive Order 13913,¹ address the arguments made by Pacific Networks Corp. (Pacific Networks) and ComNet (USA) LLC (ComNet) in their response to an *Order to Show Cause* issued against Pacific Networks and ComNet.² We ask the Committee to provide a response and any supporting documentation by November 16, 2020.

On April 24, 2020, the International Bureau, Wireline Competition Bureau, and Enforcement Bureau (the Bureaus) issued the *Order to Show Cause* directing Pacific Networks and ComNet, subsidiaries of a Chinese state-owned entity,³ to demonstrate why the Commission should not initiate a proceeding to revoke and terminate their domestic and international section 214 authorizations issued pursuant to section 214 of the Communications Act of 1934, as amended, and to explain why the Commission should not reclaim ComNet's International Signaling Point Codes (ISPCs).⁴ The *Order to Show Cause* also directed Pacific Networks and ComNet to respond to certain questions concerning their ownership, operations, and other related matters, and to provide "a description of the extent to which

¹ Exec. Order No. 13913, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643, 19644-45 §§ 3(c), 4(b) (Apr. 8, 2020); *see also Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, FCC 20-133, at 6, para. 11 (Oct. 1, 2020) (*Executive Branch Order*).

² *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111; File Nos. ITC-214-20090105-00006; ITC-214-20090424-00199, Order to Show Cause, 35 FCC Red 3733 (IB, WCB, EB 2020) (*Order to Show Cause*).

³ *Id.* at 3734-36, paras. 4, 6.

⁴ *Id.* at 3733, 3737, paras. 1, 8-9.

Pacific Networks and ComNet are or are not otherwise subject to the exploitation, influence and control of the Chinese government.”⁵ Pacific Networks and ComNet were granted an extension to respond to the *Order to Show Cause* to June 1, 2020⁶ and submitted their response on June 1, 2020.⁷

In their response, Pacific Networks and ComNet contend that “neither Company has been asked by the Chinese government or the Chinese Communist Party to take any action that would ‘jeopardize the national security and law enforcement interests of the United States’ or would suggest that the Companies are vulnerable ‘to the exploitation, influence, and control of the Chinese government.’”⁸ Pacific Networks and ComNet argue that “[s]ince receiving their initial authorizations, both Companies have been exemplary regulatory actors” and “[t]he Companies have consistently responded in a timely and comprehensive manner to all Team Telecom information requests even as recently as 2018.”⁹ Pacific Networks and ComNet also argue that “[t]he sole basis for the [*Order to Show Cause*] appears to be the Chinese government’s majority ownership in the Companies and China’s 2017 National Intelligence Law” and that “the [*Order to Show Cause*] does not explain the basis for believing that this law would apply equally to relatively small, independently-operated, U.S. domiciled companies that are not wholly-owned by the Chinese government, when the implementation of any such request would expose U.S. personnel of the Companies to considerable risk of prosecution.”¹⁰ Pacific Networks and ComNet add that “[g]oing forward, to the extent it is appropriate, the Companies are willing to provide additional ongoing assurances through a binding mitigation agreement to supplement or replace the existing Letter of Assurance”¹¹ that the companies currently have in place with the Department of Homeland Security and the Department of Justice.¹²

The Commission has sought the expertise of the relevant Executive Branch agencies for over 20 years, and has accorded deference to their expertise as to whether an application or an existing authorization raises national security, law enforcement, foreign policy, or trade policy concerns.¹³ Accordingly, we

⁵ *Id.* at 3737-38, para. 9. The *Order to Show Cause* also requested, among other things, descriptions of Pacific Networks’ and ComNet’s ownership structure and corporate governance and an identification of officers, directors, and senior management officials and their employment history and affiliation with the Chinese Communist Party and the Chinese government. *Id.*

⁶ Letter from Denise Coca, Chief, Telecommunications and Analysis Division, FCC International Bureau, to Jeffrey J. Carlisle, Counsel to Pacific Networks Corp. and ComNet (USA) LLC, Lerman Senter PLLC, DA 20-534 (May 20, 2020) (on file in GN Docket No. 20-111; File Nos. ITC-214-20090105-00006; ITC-214-20090424-00199).

⁷ Pacific Networks Corp. and ComNet (USA) LLC, Response to Order to Show Cause, GN Docket No. 20-111; File Nos. ITC-214-20090105-00006; ITC-214-20090424-00199 (filed June 1, 2020) (Response to Order to Show Cause).

⁸ *Id.* at 2 (quoting *Order to Show Cause*, 35 FCC Rcd at 3735-36, paras. 5, 6).

⁹ *Id.* at 20.

¹⁰ *Id.* at 26.

¹¹ *Id.* at 25.

¹² *Id.* at 4; *see also* Letter from Norman Yuen, Chairman, Pacific Networks Corp., and Fan Wei, Director, CM Tel (USA) LLC, to Stephen Heifetz, Deputy Assistant Secretary for Policy Development, U.S. Department of Homeland Security, and Matthew G. Olsen, Acting Assistant Attorney General, National Security Division, U.S. Department of Justice, at 1 (Mar. 3, 2009) (on file in ITC-T/C-20080913-00428; ITC-214-20090105-00006).

¹³ *Executive Branch Order* at 2-3, para. 3 (citing *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919, paras. 62-63 (1997), *recon. denied*, 15 FCC Rcd 18158 (2000)); *China Mobile International (USA) Inc.; Application for Global Facilities-Based*

request the Committee's views on Pacific Networks and ComNet's arguments concerning whether and how they are subject to the exploitation, influence, and control of the Chinese government, and the national security and law enforcement risks associated with such exploitation, influence, and control.¹⁴ We also ask the Committee to respond as to whether additional mitigation measures could address any identified concerns.

We ask the Committee to provide a response and any supporting documentation by November 16, 2020.¹⁵ Should you have any questions or need additional information, please contact me at Denise.Coca@fcc.gov or (202) 418-0574, or Jocelyn Jezierny at Jocelyn.Jezierny@fcc.gov or (202) 774-0272.

Sincerely,



Denise Coca, Chief
Telecommunications and Analysis Division
International Bureau

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, 3362-63, para. 2 (2019).

¹⁴ Response to Order to Show Cause at 18-27, 31-32.

¹⁵ Pacific Networks and ComNet submitted certain materials subject to a request for confidential treatment under sections 0.457 and 0.459 of the Commission's rules. Letter from Jeffrey Carlisle, Counsel to Pacific Networks Corp. and ComNet (USA) LLC, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 20-111; File Nos. ITC-214-20090105-00006; ITC-214-20090424-00199, Request for Confidential Treatment (filed June 1, 2020). The Department of Justice, on behalf of the Committee, may seek access to information submitted to the Commission in confidence by submitting a request to the Commission pursuant to section 0.442(b). 47 CFR § 0.442(b).

cc:

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