



Federal Communications Commission
Washington, D.C. 20554

July 15, 2020

DA 20-738

Andrew D. Lipman
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BY ELECTRONIC MAIL

**Re: In the Matter of China Telecom (Americas) Corporation
GN Docket No. 20-109; File Nos. ITC-214-20010613-00346; ITC-214-20020716-00371; ITC-
T/C-20070725-00285**

Dear Mr. Lipman:

On July 8, 2020, the Department of Justice (DOJ) filed, on behalf of the Attorney General as the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee),¹ a letter requesting disclosure of certain information in this matter for which China Telecom (Americas) Corporation (China Telecom Americas) requested confidential treatment.² Specifically, DOJ, on behalf of itself and the Committee Members and Advisors, requests access to confidential Exhibit 16 of China Telecom Americas' Response to the Order to Show Cause and the following confidential exhibits incorporated by reference:

- Exhibit 3 – cited in Exhibit 16 at 45 n. 104, 47 n. 108;
- Exhibit 6 – cited in Exhibit 16 at 3 n.3, 17, 18;
- Exhibit 8 – cited in Exhibit 16 at 44;
- Exhibit 8-1 – cited in Exhibit 16 at 44; and
- Exhibit 9 – cited in Exhibit 16 at 69.

DOJ, on behalf of itself and the Committee Members and Advisors,³ requests such information so that the Committee Members and Advisors may evaluate and respond fully to China Telecom Americas' arguments in this matter.⁴

¹ Exec. Order No. 13913, 85 Fed. Reg. 19643, 19643-44 § 3 (Apr. 4, 2020).

² Letter from Sanchitha Jayaram, Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Denise Coca, Chief, Telecommunications and Analysis Division, FCC International Bureau (July 8, 2020) (on file in GN Docket No. 20-109, File Nos. ITC-214-20010613-00346; ITC-214-20020716-00371; ITC-T/C-20070725-00285) (Department of Justice July 8, 2020 Letter).

³ Exec. Order No. 13913, 85 Fed. Reg. 19643, 19643-44 § 3 (Apr. 4, 2020).

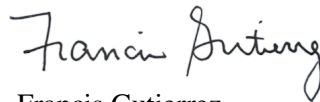
⁴ Department of Justice July 8, 2020 Letter at 2.

Pursuant to section 0.442(d)(1) of the Commission's rules, we are notifying China Telecom Americas of this request.⁵ As set forth in its request and as required by the Commission's rules, DOJ and the Committee Members and Advisors will protect the confidentiality of the information as specified by both our regulations and theirs.⁶

Please respond within ten calendar days if you oppose the request. If you do not submit an opposition within ten calendar days, the Commission will disclose the information to DOJ and the Committee Members and Advisors subject to the foregoing conditions.

Should you have any questions, please contact me at Francis.Gutierrez@fcc.gov or (202) 418-7370.

Sincerely,



Francis Gutierrez
Deputy Chief
Telecommunications and Analysis Division
International Bureau

cc:

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⁵ 47 CFR § 0.442(d)(1).

⁶ Department of Justice July 8, 2020 Letter at 3.

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U.S. Department of Justice

National Security Division

Foreign Investment Review Section

Washington, D.C. 20530

July 8, 2020

By E-File

Ms. Denise Coca
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Request to Access Confidential Exhibit 16 to China Telecom Americas' June 8 Response to FCC Order to Show Cause, GN Docket 20-109; ITC-214-20010613-00346; ITC-214-20020716-00371; ITC-T/C-20070725-00285

Dear Ms. Coca:

The Department of Justice (DOJ) submits this request under 47 C.F.R. § 0.442 on behalf of the Attorney General as the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee).¹

DOJ requests access to confidential materials filed in the above-referenced proceedings. Specifically, DOJ requests access to confidential Exhibit 16 of China Telecom (Americas) Corp.'s (China Telecom Americas) Response to the Order to Show Cause and following confidential exhibits incorporated by reference:

- Exhibit 3—cited in Exhibit 16 at 45 n. 104, 47 n. 108;
- Exhibit 6 – cited in Exhibit 16 at 3 n.3, 17, 18;
- Exhibit 8 – cited in Exhibit 16 at 44;
- Exhibit 8-1– cited in Exhibit 16 at 44; and
- Exhibit 9 – cited in Exhibit 16 at 69.

On April 9, 2020, the National Telecommunications and Information Administration (NTIA) filed on behalf of interested Executive Branch agencies a recommendation to revoke and terminate China Telecom Americas international Section 214 authorizations. On April 24, 2020, the Federal Communications Commission (Commission) issued an Order to Show Cause in the

¹ See Exec. Order No. 13913, 85 Fed. Reg. 19643, 19643-44 § 3 (Apr. 4, 2020).

above-referenced proceedings directing China Telecom Americas to respond to the allegations in the April 9 Executive Branch recommendation and to provide other requested information.

On June 8, 2020, China Telecom Americas filed a Response to the Order to Show Cause attaching an Exhibit 16 containing a detailed response to the allegations raised in the Executive Branch's April 9th recommendation. The publicly filed version of Exhibit 16 contained significant redactions. China Telecom Americas did not serve Exhibit 16 on NTIA or on DOJ.

On June 25, 2020, at the direction of DOJ, NTIA emailed China Telecom Americas to request access to the confidential version of Exhibit 16 as well as any confidential exhibit incorporated by reference. China Telecom Americas did not provide the requested information.²

Accordingly, pursuant to 47 C.F.R. § 0.442, DOJ requests disclosure of confidential Exhibit 16 attached to China Telecom Americas' June 8th Response to the Order to Show Cause, and any confidential materials incorporated by reference therein as noted above. DOJ intends to share the requested information with the members and advisors to the Committee.³

The Commission's Rules permit the Commission to disclose the requested information to the Committee Members and Advisors provided that:

- (1) specific Commission assurances against such disclosure have not been given; and
- (2) the other agencies have established a legitimate need for the information.⁴

DOJ is not aware that any such specific Commission assurances against such disclosure have been given. The Committee Members and Advisors have a legitimate need for the requested information as they will need to evaluate China Telecom Americas' response to the Executive Branch's recommendation and respond fully to the arguments raised by China Telecom Americas. Moreover, as stated in the recommendation, China Telecom's continued access to U.S. telecommunications infrastructure pursuant to its international Section 214 authorizations reflects a substantial and unacceptable national security and law enforcement risk. Thus, the Committee requires access to the requested information.

Executive Order No. 13913 requires the Committee to "monitor any mitigation measures imposed by the FCC as a condition on a license."⁵ The requested confidential information appears to address China Telecom Americas' compliance with the conditions of its international Section 214 authorizations resulting from obligations under its July 17, 2007 Letter of Assurances (LOA), which the Commission required compliance with as a condition for granting its authorizations. China Telecom Americas has had a long-standing practice of providing such

² Exhibit 1, Email from Morgan Lewis to NTIA (June 26, 2020).

³ Exec. Order No. 13913, 85 Fed. Reg. at 19643-44 § 3.

⁴ 47 C.F.R. § 0.442(b)(1), (2).

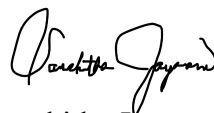
⁵ Exec. Order No. 13913, 85 Fed. Reg. at 19648 ¶ 10(e).

confidential information upon request from Committee Members, including the Departments of Justice and Homeland Security, as part of its compliance obligations under the LOA.

DOJ further states that the disclosures will be subject to 44 U.S.C. § 3510(b), and believes that the confidential information is not prohibited by the Privacy Act or other provisions of law.⁶ Much of the redacted information in Exhibit 16 appears to have been previously provided to Committee Members, including the Departments of Justice and Homeland Security. China Telecom Americas has had a long-standing practice of providing such confidential information upon request as needed to assess China Telecom Americas' compliance with the conditions of its Section 214 authorizations. DOJ and the Committee Members and Advisors assert that they will protect the confidentiality of the requested information as specified by Commission regulations as well as their own agency regulations.

I trust that the above information addresses any concerns that you may have about sharing the requested information with the federal agencies that comprise the Committee and the Advisors.

Respectfully submitted,



Sanchitha Jayaram
Chief
Foreign Investment Review Section
National Security Division

cc: Andrew Lipman (Andrew.Lipman@morganlewis.com)
Russell Blau (Russell.Blau@morganlewis.com)

⁶ See 47 C.F.R. § 0.442(b)(3), (4).

From: [Blau, Russell M.](#)
To: [Brown, Milton](#)
Cc: [Smith, Kathy](#); [Lipman, Andrew D.](#); [Lamancusa, Frank G.](#)
Subject: RE: Request for Unredacted Information; In re China Telecom (Americas), GN Docket 20-109
Date: Friday, June 26, 2020 9:31:57 AM

Dear Mr. Brown:

This is in response to your email request of June 25, 2020, to Andrew D. Lipman, requesting unredacted copies of certain exhibits to China Telecom (Americas) Corporation's (CTA's) Response to the FCC's Order to Show Cause, filed on June 8, 2020.

The redacted materials include, among other things, the identities of many of CTA's customers and interconnecting carriers. CTA is under contractual and statutory obligations to these third parties not to disclose their identities, or information about their commercial transactions with CTA, except as required by law. As CTA was required by law to provide this information in response to the FCC's Order to Show Cause, it did so, but sought protection of the confidential information under 47 CFR 0.459.

If you contend that CTA is required by law to provide this confidential information to NTIA, please identify the authority under which such a requirement arises.

Also, please note that Exhibit 15, which was one of the documents you requested, does not contain any confidential information and should already be available to you in unredacted form.

Russell M. Blau

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COVID-19 Resources and Updates



From: Brown, Milton <MBrown@ntia.gov>

Sent: Thursday, June 25, 2020 2:58 PM

To: Lipman, Andrew D. <andrew.lipman@morganlewis.com>

Cc: Blau, Russell M. <russell.blau@morganlewis.com>; Smith, Kathy <KSmith@ntia.gov>

Subject: Request for Unredacted Information; In re China Telecom (Americas), GN Docket 20-109

[EXTERNAL EMAIL]

Mr. Lipman:

We spoke briefly in April when I alerted you that the National Telecommunications and Information Administration (NTIA), on behalf of the Executive Branch, submitted a Recommendation to the Federal Communications Commission (FCC) regarding the Section 214 common carrier authorization of your client, China Telecom. At that time, I worked with your colleague, Russell Blau, to provide

you a copy of the Executive Branch's un-redacted Recommendation via secured file transfer.

We understand that your client filed a Response to the FCC's Order to Show Cause on June 8, 2020. On behalf of the Executive Branch, we request a copy of portions of the unredacted version of that filing. We limit our request for confidential information only as needed to prepare a reply to China Telecom's response to the Executive Branch's Recommendation. Specifically, we request the documents identified in the list below:

-

- Exhibit 16 – Response to Ex. Br. Recommendation
- Exhibit 3—cited in Exhibit 16 at 45 n.104, 47 n.108,
- Exhibit 6 – cited in Exhibit 16 at 3 n.3, 17, 18
- Exhibit 8 – cited in Exhibit 16 at 44;
- Exhibit 8-1– cited in Exhibit 16 at 44;
- Exhibit 9 – cited in Exhibit 16 at 69
- Exhibit 15 – cited in Exhibit 16 at 47, 49

I am happy to work with Mr. Blau again to coordinate the transfer of these documents. Please note that NTIA will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act (FOIA), as amended (5 U.S.C. § 552), the Trade Secrets Act, as amended (18 U.S.C. § 1905), and the Economic Espionage Act of 1996 (18 U.S.C. § 1831 *et seq.*). Thank you.

Milton Brown
Deputy Chief Counsel
National Telecommunications and Information Administration
U. S. Department of Commerce
(202) 482-1816

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