



Federal Communications Commission
Washington, D.C. 20554

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DA 20-887

Andrew D. Lipman
Counsel to China Telecom (Americas) Corporation
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
andrew.lipman@morganlewis.com

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:

This is to inform you that pursuant to section 0.442 of the Commission's regulations,¹ as requested by the Department of Justice (DOJ) 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),² we intend to disclose to the DOJ, and through the DOJ, to the members of and advisors to the Committee, the following information submitted to the Commission in confidence by China Telecom (Americas) Corporation (China Telecom Americas),³ subject to the provisions of 44 U.S.C. § 3510(b):

- Exhibit 16 of China Telecom Americas' Response to the Order to Show Cause
- 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.

¹ 47 CFR § 0.442.

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 According to our records, China Telecom Americas was formerly known as China Telecom (USA) Corporation. See China Telecom (Americas) Corporation, FCC Foreign Carrier Affiliations Notification, File No. FCN-NEW-20140917-00014, Attach. 1 at 1, n.1 (filed Sept. 17, 2014).

As you know, on April 9, 2020, the National Telecommunications and Information Administration, on behalf of the Executive Branch agencies, submitted a recommendation that the Commission revoke and terminate China Telecom Americas' international section 214 common carrier authorizations, arguing that there are "substantial and unacceptable national security and law enforcement risks associated with [China Telecom Americas'] continued access to U.S. telecommunications infrastructure pursuant to its international Section 214 authorizations."⁴ On April 24, 2020, the International Bureau, Wireline Competition Bureau, and Enforcement Bureau issued an Order to Show Cause as to why the Commission should not initiate a proceeding to revoke and terminate China Telecom Americas' domestic and international section 214 authorizations and to reclaim China Telecom Americas' International Signaling Point Codes given, among other things, the views of the Executive Branch.⁵

On July 8, 2020, the DOJ, on behalf of the Attorney General as the Chair of the Committee, requested disclosure of certain information that China Telecom Americas filed in response to the Order to Show Cause and for which it had requested confidential treatment.⁶ The DOJ intends on sharing the information with the members of and advisors to the Committee. China Telecom Americas was sent a copy of this request on July 15, 2020,⁷ and it responded on July 27, 2020, objecting to the disclosure.⁸

The Commission may disclose to other Federal government agencies information submitted to the Commission in confidence if: (1) specific Commission assurances against such disclosure have not been given; (2) the other Federal agencies have established a legitimate need for the information; (3) disclosure is made subject to the provisions of 44 U.S.C. § 3510(b); and (4) disclosure is not prohibited by law.⁹

These requirements are met here. The agencies constituting the Committee are all Federal government agencies. No specific assurances have been made to China Telecom Americas against disclosing its confidential information to other Federal government agencies. Disclosure is being made subject to the provisions of 44 U.S.C. § 3510(b), and the DOJ has stated, on behalf of the Committee, that the agencies will protect the confidentiality of the requested information as specified by the Commission's regulations as well as by their own agency's regulations, as section 3510(b) requires.¹⁰ The disclosure is not prohibited by law. China Telecom Americas cites section 222 of the

⁴ Executive Branch Recommendation to the Federal Communications Commission to Revoke and Terminate China Telecom Americas' International Section 214 Common Carrier Authorizations, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, at 1 (filed Apr. 9, 2020) (Recommendation to Revoke). For purposes of the filing, the Executive Branch agencies include the Departments of Justice, Homeland Security, Defense, State, Commerce, and the United States Trade Representative. *Id.*

⁵ *China Telecom (Americas) Corporation*, GN Docket No. 20-109 et al., Order to Show Cause, 35 FCC Rcd 3713 (IB, WCB, EB 2020) (Order to Show Cause).

⁶ Department of Justice July 8, 2020 Letter.

⁷ See Letter from Francis Gutierrez, Deputy Chief, Telecommunications and Analysis Division, FCC International Bureau, to Andrew D. Lipman, Counsel to China Telecom (Americas) Corporation, Morgan, Lewis & Bockius LLP, DA 20-738 (July 15, 2020).

⁸ Letter from Andrew D. Lipman, Counsel to China Telecom (Americas) Corporation, Morgan, Lewis & Bockius LLP, to Marlene Dortch, Secretary, FCC (July 27, 2020) (China Telecom Americas Response).

⁹ 47 CFR § 0.442.

¹⁰ Department of Justice July 8, 2020 Letter at 3.

Communications Act as prohibiting it from disclosing customer proprietary network and other information except as required by law.¹¹ That statute, however, does not prohibit the Commission from disclosing that information to other Federal government agencies where those agencies will continue to keep the information confidential. Nor do any other statutes prohibit the disclosure.

Finally, China Telecom Americas argues that the Committee has not established a legitimate need for the information. In particular, China Telecom Americas argues that while the Committee states that it needs the information to respond to China Telecom Americas' response to the Order to Show Cause, the Commission has not requested additional comment and, therefore, there is no need for the Committee to have the information for that purpose.¹² While the Commission has not specifically requested such a response, neither has it prohibited one. We note that not only was the Executive Branch's Recommendation to Revoke one of the precipitating factors that led the Bureaus to initiate the Order to Show Cause, but the Committee is charged by law with assisting the Commission "in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector" and with responding "to any risks presented by . . . licenses by recommending to the [Commission], as appropriate and consistent with the provisions of this order, that it . . . modify a license with a condition of compliance with mitigation measures, or revoke a license."¹³ Thus, the DOJ also stated in its letter that it seeks access to the information for the purpose of the Committee's monitoring of "any mitigation measures imposed by the FCC as a condition" on China Telecom Americas' international section 214 authorizations, as required by Executive Order No. 13913.¹⁴ We therefore find that the Committee has a legitimate need for the information.

If China Telecom Americas files an Application for Review with the Commission within ten (10) business days of the date of this letter, the International Bureau will not disclose the information to the DOJ until the Commission has ruled on the Application.¹⁵

Should you have any questions, please contact Denise.Coca@fcc.gov or (202) 418-0574.

Sincerely,

/Thomas Sullivan/

Thomas Sullivan
Chief, International Bureau

¹¹ China Telecom Americas Response at 1.

¹² China Telecom Americas Response at 2-3.

¹³ See Exec. Order No. 13913, 85 Fed. Reg. 19643, 19643-44 § 3(a).

¹⁴ Department of Justice July 8, 2020 Letter at 2.

¹⁵ Cf. 47 CFR §§ 0.459(g), 0.461(i).

cc:

Russell Blau
Counsel to China Telecom (Americas) Corporation
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
Russell.Blau@morganlewis.com

Luis Fiallo
Vice President
China Telecom (Americas) Corporation
607 Herndon Parkway, No. 201
Herndon, VA 20170
lfiallo@ctamericas.com

Jonathan Marashlian
The Compliance Group, Inc.
1300 I Street, N.W., Suite 400E
Washington, DC 20005
mail@compliancegroup.com

Kathy D. Smith
Chief Counsel
National Telecommunications and Information Administration
U.S. Department of Commerce
Room 4713
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230
ksmith@ntia.gov

Sanchitha Jayaram
Chief
Foreign Investment Review Section
National Security Division
U.S. Department of Justice
950 Pennsylvania Ave N.W.
Washington, DC 20530
sanchitha.jayaram@usdoj.gov