

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, ITC-214-20110901-00289*

Those who follow FCC proceedings may notice that I often start or finish meeting item statements by saying that I am pleased to support or approve this or that order, NPRM, or public notice under consideration. While I will vote in favor of today's item, I do not derive any joy from doing so due to the weighty nature of this issue. As a fierce supporter of promoting competition, permitting foreign ownership, and facilitating open markets, I nonetheless find the situation confronting us to be extremely serious, and the action we take today to block China Mobile from accessing the U.S. telecommunications market to be a necessary step, drastic though it may be. Being a fervent free trader, I strongly believe that participating in open markets comes with corresponding obligations to comport within established norms. That principle applies to all countries and providers, irrespective of their domestic form of government.

As I read it, our action today is consistent with a speech I gave two weeks ago discussing the many fundamental concerns I have about Chinese government attempts to monopolize 5G development and deployment. One basic reality should go undisputed: there is nearly zero daylight between the communist government of China and its "companies." They use unfair advantages in an effort to take a dominant position in 5G and expand the reach of their networks and equipment. By providing improper government subsidies, throwing cheap labor at service projects, and stealing intellectual property, among other unsavory and illegal tactics, China effectively offers competitive products and services below cost, allowing wireless providers and manufacturers to gain market share not only in China but internationally. Further, the pervasive presence of Chinese equipment and providers in a nation's communications marketplace places these countries' national security at risk.

Today's order sets forth a convincing case for why permitting China Mobile to provide telecommunications services between the U.S and foreign locations is not in the public interest. The item details why China Mobile is "vulnerable to exploitation, influence, and control" by the Chinese government, which could seriously jeopardize U.S. national security and law enforcement interests.¹ Providing China Mobile with greater access to U.S. telephone lines, fiber-optic cable, and wireless networks will give China – with its track record of computer intrusions, economic espionage and other ongoing intelligence activities – access to information carried over these networks and the ability to disrupt communications. In fact, Chinese law requires organizations "to support, assist in, and cooperate in China's national intelligence work,"² "wherever they operate."³

As part of our general process, the Commission sought input from the national security, law enforcement, and foreign and trade policy experts that comprise what is known as "Team Telecom." Team Telecom found substantial national security and law enforcement risks that could not be mitigated and requested that the Commission deny the application. While the Commission performs its own review, I acknowledge the expertise of these Executive Branch agencies when it comes to national security issues, recognize the value of their review, and agree with their conclusion. I appreciate the collective insight they provided into this important matter.

¹ *Supra* ¶ 8; *see also supra* ¶ 14.

² National Intelligence Law of the P.R.C. (2017), Article 7; *see also supra* ¶ 17.

³ Office of the Secretary of Defense, Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2019, at 101 (May 2, 2019), https://media.defense.gov/2019/May/02/2002127082/-1/-1/1/2019_CHINA_MILITARY_POWER_REPORT.pdf.

At the same time, there is little dispute that Team Telecom must improve the transparency and timeliness of their decisions. By way of background, this particular application was filed on September 1, 2011, and NTIA didn't file the recommendation to deny it, on behalf of Team Telecom, until July 2018. I understand that these issues are complex, but all applicants deserve timely responses, and this decision, while inevitable, was far from timely. Luckily, those on the inside of Team Telecom are finally recognizing some of the deficiencies in this process. Recently, a leading figure within the Department of Justice's National Security Division, which is a key member of Team Telecom, stated publicly that "we must reform the ad hoc process by which the Executive Branch advises on FCC licenses" in order to "explore ways to make this process more efficient and expedient, so that the Executive Branch never again takes nearly seven years to make a recommendation."⁴ Of note, I have been calling for Team Telecom reform since 2015 and worked closely with former Chairman Wheeler on a proceeding to adopt deadlines and enhance transparency, only to have him inexplicably pull the plug a day or two after the 2016 election. I strongly believe in codifying the structure of Team Telecom and streamlining its procedures, and this can be done without jeopardizing our national security or undermining our ability to protect U.S. interests. I look forward to further action on this matter, whether internally at the FCC or by the Administration itself.

Finally, certain perpetual critics have taken today's item as an opportunity to suggest that, while it is nice for the Commission to take this step to ensure our national security, it has not done enough to impose strict network security regulations on the provision of 5G wireless services. Some may even go further and demand that today's order affirmatively mandate new burdens to address general issues regarding 5G security. That is an intentional attempt to conflate issues and mangle the situation. Today's order considers the national security implications raised by China Mobile's international 214 *application*. This is not a rulemaking of general applicability, but a fact-specific adjudication raised by one individual entity's request. In other words, a particular application may have significant implications for national security, but it does not form the basis for taking far-reaching action. A consideration of national security implications is certainly within the Commission's authority when considering licensees with significant foreign investment, and it is consistent with the FCC's section 214 review process, but the question of how to secure the nation's communications networks is a broader matter, distinct from the issues we consider today.

Separately, I would note that American wireless providers have been working hard to ensure robust security as part of their 5G offerings, including through the standards process. These entities appreciate that security is critical to consumers' and end users' comfort and willingness to use their underlying networks. Thanks to competition, providers have the incentive to provide the most secure network possible.

Moreover, Congress has time and again decided that network security issues are to be led and handled by other federal agencies, particularly the Department of Homeland Security. Shoehorning network security into the Commission's jurisdiction amounts to a misreading of the statute and ignores congressional intent. If, in the future, Congress decides that the Commission should have this authority, I will be more than happy to take up this issue.

In the end, the action we take today is justified. If circumstances change substantially, I am sure the Commission will have the opportunity to revisit the matter, as appropriate.

⁴ Deputy Assistant Attorney General Adam S. Hickey, National Security Division, Department of Justice, Remarks at the Fifth National Conference on CFIUS and Team Telecom (Apr. 24, 2019), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-adam-s-hickey-national-security-division-delivers-0>.