

No. 20-2365

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

CHINA TELECOM (AMERICAS) CORPORATION,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

On Petition for Review of an Order of
the Federal Communications Commission

RESPONDENTS' MOTION TO DISMISS

Respondents—the Federal Communications Commission and the United States of America—respectfully move to dismiss Petitioner China Telecom’s petition for review. The Court lacks jurisdiction over China Telecom’s challenges because the underlying administrative proceeding is still ongoing and the interlocutory *Order* challenged here¹ is not final agency action subject to review at this time.

¹ *In re China Telecom (Ams.) Corp.*, 35 FCC Rcd. 15006 (2020) (*Order*).

China Telecom is authorized by the Commission under Section 214(a) of the Communications Act, 47 U.S.C. § 214(a), to provide domestic and international communications service within the United States. In April 2020, several Executive Branch agencies recommended that the Commission revoke China Telecom’s authorizations due in part to “substantial and unacceptable national security and law enforcement risks associated with [China Telecom’s] continued access to U.S. telecommunications infrastructure.” *Order* ¶ 9. The agency then issued an Order to Show Cause directing China Telecom to demonstrate why the Commission should not institute a revocation proceeding. *Id.* ¶ 11. China Telecom filed a lengthy response, and it requested that portions of its response be redacted from the public record to protect confidential business information. *Ibid.*

In the *Order* under review, the Commission found that “sufficient cause exists to initiate a proceeding on whether to revoke and terminate China Telecom Americas’ domestic and international section 214 authority,” and therefore initiated a revocation proceeding. *Order* ¶¶ 15–16; *see id.* ¶¶ 15–61. To inform that proceeding, the Commission invited the Executive Branch agencies and any other interested parties to submit comments on China Telecom’s response to the Order to Show Cause, to

be followed by an opportunity for China Telecom to reply. *Id.* ¶¶ 1, 71. The Commission also directed that the Executive Branch agencies be provided with an unredacted copy of certain materials that China Telecom included in its response to the Order to Show Cause. *Id.* ¶¶ 62–70.

Upon petitioning for review of the *Order* in this Court, China Telecom moved to stay the disclosure of the unredacted material to the Executive Branch agencies. A panel of this Court denied that stay request on January 13, and the Commission then provided the unredacted material to the requesting agencies. As a result, any challenge to that aspect of the *Order* is now moot.

The Court also lacks jurisdiction to review the remainder of the *Order*, in which the Commission found sufficient cause to institute a revocation proceeding and initiated such a proceeding, because an order that merely initiates or governs further proceedings is not final agency action subject to review at this time. *See FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232 (1980); *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 680 F.2d 810 (D.C. Cir. 1982) (*NRDC*).

China Telecom's docketing statement indicates that it wishes to challenge the Commission's decision to conduct the revocation proceeding through a paper hearing relying primarily on written submissions rather

than through formal adjudication procedures. But the decision whether and how to bring a proceeding is not final agency action, so China Telecom must wait until the Commission issues a final order resolving the revocation proceeding before it may raise this and any other challenges to the Commission's decisions in this matter. Because there has been no final agency action in the underlying administrative proceeding, China Telecom's petition for review in this case is premature and must be dismissed.

BACKGROUND

A. Statutory And Regulatory Background

Congress established the Federal Communications Commission in 1934 to oversee and safeguard the Nation's communications networks. In doing so, Congress directed the Commission to use its regulatory authority to serve "the purpose of the national defense" and "the purpose of promoting safety of life and property," among other things. 47 U.S.C. § 151. The Commission accordingly treats the "[p]romotion of national security" as "an integral part of the Commission's public interest responsibility" and "one of the core purposes for which Congress created the Commission." *Order* ¶ 2.

Under Section 214 of the Communications Act, any party seeking to operate a transmission line used for interstate or foreign communications must obtain authorization from the Commission. 47 U.S.C. § 214(a). The Commission has granted blanket authorization for any telecommunications carrier to construct or operate domestic transmission lines, *see* 47 C.F.R. § 63.01(a), but may revoke that authorization from any carrier if doing so is warranted to protect the public interest. *Order* ¶¶ 3 & nn.8–9, 8 n.28. Carriers seeking to construct or operate international transmission lines must obtain express authorization from the Commission, *see* 47 C.F.R. § 63.18, and the Commission is authorized to revoke any carrier’s international Section 214 authorization when warranted to protect the public interest. *Order* ¶ 3 & n.10. Carriers must also obtain Commission authorization in order to transfer control of any domestic or international transmission lines. 47 C.F.R. §§ 63.04, 63.24.

One of the critical public-interest factors the Commission considers under Section 214 is whether a carrier’s operation of domestic or international transmission lines raises national security, law enforcement, or foreign policy concerns related to the carrier’s foreign ownership. *Order* ¶ 4. The Commission’s longstanding practice has been to seek “the

expertise of the relevant Executive Branch agencies”—including the Department of Justice, the Department of Homeland Security, and the Department of Defense—to help assess national security and other concerns arising from a carrier’s foreign ownership. *Id.* ¶ 5; *see also Rules & Policies on Foreign Participation in the U.S. Telecomms. Mkt.*, 12 FCC Rcd. 23891, 23919–20 ¶¶ 62–63 (1997) (recognizing that “foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch”).

To advise the Commission on these critical matters, the Executive Branch may at any time “review existing [authorizations] to identify any additional or new risks to national security or law enforcement interests.” *Process Reform for Executive Branch Review of Certain FCC App’ns & Pets. Involving Foreign Ownership*, 35 FCC Rcd. 10927, 10962–63 ¶ 90 (2020) (quoting Executive Order No. 13913 § 6(a), 85 Fed. Reg. 19643, 19645 (Apr. 4, 2020)). If that review identifies unacceptable risks to national security or law enforcement, the Executive Branch may recommend that the Commission modify an authorization to require additional mitigation measures or, if the risks cannot reasonably be mitigated, it may recommend that the Commission revoke the

authorization. *Ibid.* (citing Executive Order No. 13913 § 9(b), 85 Fed. Reg. at 19646). If the Executive Branch recommends that an authorization be revoked, the Commission will conduct a proceeding to “provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances.” *Id.* at 10964 ¶ 92.

B. Factual And Procedural Background

Petitioner China Telecom (Americas) Corporation (“China Telecom”) provides communications service under the Commission’s blanket authorization for domestic transmission lines and under two international Section 214 authorizations granted by the Commission. *Order* ¶ 8. China Telecom is a wholly owned subsidiary of China Telecom Corporation Limited, which is incorporated in the People’s Republic of China. *Id.* ¶ 6. Approximately 70.89% of China Telecom Corporation Limited’s stock is owned by China Telecommunications Corporation, a Chinese company that is wholly owned by an arm of the Chinese government, and another 11.96% of its stock is held by other entities registered or organized under Chinese law. *Ibid.* Because of China Telecom’s significant foreign ownership and other concerns, the company’s international Section 214 authorizations were conditioned on its compliance with several

commitments made in a 2007 Letter of Assurances to the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security. *Id.* ¶ 8 & n.26.

In April 2020, several Executive Branch agencies—the Department of Justice, the Department of Homeland Security, the Department of Defense, the State Department, the Department of Commerce, and the United States Trade Representative—jointly recommended that the Commission revoke and terminate China Telecom’s international Section 214 authorizations. *Order* ¶ 9. The Executive Branch agencies warned of “substantial and unacceptable national security and law enforcement risks associated with [China Telecom’s] continued access to U.S. telecommunications infrastructure.” *Ibid.* Among other things, the Executive Branch agencies pointed to:

- China Telecom’s ownership and control by the Chinese government, which the Executive Branch agencies believe has engaged in malicious cyber activities in the United States and could seek to use China Telecom’s U.S. operations to disrupt or misroute U.S. communications traffic or for economic espionage;
- China Telecom’s failure to comply with the terms of its Letter of Assurances, including its failure to take all practicable measures

to prevent unauthorized access to U.S. records, and its failure to timely respond to requests for evidence of compliance; and

- China Telecom’s misrepresentations about its cybersecurity practices and its apparent failure to comply with federal and state cybersecurity and privacy laws.

Ibid.; see also *id.* ¶¶ 20–61.²

After receiving the Executive Branch recommendation, FCC staff issued an Order to Show Cause directing China Telecom to demonstrate why the Commission should not initiate a proceeding to consider revoking its domestic and international Section 214 authorizations. *Order* ¶ 11. China Telecom filed a lengthy response, along with a request that portions of its response be redacted from the public record to protect confidential business information. *Ibid.*

C. The *Order* Under Review

In the *Order* challenged here, the Commission found that “sufficient cause exists to initiate a proceeding on whether to revoke and terminate China Telecom[’s] domestic and international section 214 authority,” and

² The Executive Branch agencies also filed a separate classified appendix with additional information relevant to the recommendation, but represented that “the unclassified information alone is sufficient” to support revocation of the authorizations. *Order* ¶ 9.

therefore instituted a full revocation proceeding. *Order* ¶¶ 15–16; *see id.* ¶¶ 15–61. The Commission observed that the full proceeding will “afford[] China Telecom Americas additional * * * opportunity” to explain “why the Commission should not revoke and/or terminate its domestic and international section 214 authority” and to “respond to this Order and to any additional evidence or arguments that may be submitted.” *Id.* ¶¶ 16–17.

To inform that proceeding, the Commission set a pleading cycle and invited the Executive Branch agencies and any other interested parties to submit comments on China Telecom’s response to the Order to Show Cause, to be followed by an opportunity for China Telecom to reply. *Order* ¶¶ 1, 71. The Commission also directed that the Executive Branch agencies be provided with an unredacted copy of certain materials filed by China Telecom, so that those expert agencies may address those materials in their comments and help the Commission fully evaluate the information and arguments that China Telecom has put forward. *Id.* ¶¶ 62–70.

The *Order* “establish[ed] procedures for the submission of additional filings” to ensure that all issues are thoroughly briefed and considered in a paper hearing before the Commission. *Order* ¶¶ 16–17.

It rejected suggestions by China Telecom that any revocation proceeding must be conducted through formal adjudication or first referred to an administrative law judge, reasoning that the issues here do not warrant such treatment and that nothing in the Administrative Procedure Act or the Due Process Clause requires it. *Id.* ¶ 17. In the Commission’s judgment, and consistent with the Commission’s “authority to ‘conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice,’” an informal paper hearing before the Commission based on full written submissions will be “sufficient to ascertain whether revocation and/or termination would be consistent with the public interest, convenience, and necessity.” *Id.* ¶ 16; *see also id.* ¶ 16 n.51 (discussing agencies’ broad discretion to fashion appropriate rules of procedure tailored to the tasks before them). But the Commission postponed any decision, and requested further comment, on what standard of proof governs any decisions made in the revocation proceeding. *Id.* ¶ 15 n.49.

Comments from the Executive Branch and others were due by January 19, and China Telecom may file any reply by March 1. *Order* ¶¶ 1, 71. Once that pleading cycle has concluded, the Commission will review the full record and issue a final decision resolving all matters in

this proceeding.

ARGUMENT

Upon petitioning for review of the *Order*, China Telecom moved to stay the disclosure of the unredacted material to the Executive Branch agencies. A panel of this Court denied that stay request on January 13, and the Commission then provided the unredacted material to the requesting agencies. As a result, any challenge to that aspect of the *Order* is now moot.

The Court also lacks jurisdiction to review the remainder of the *Order*, in which the Commission found sufficient cause to institute a full revocation proceeding and initiated such a proceeding. An order that merely initiates or governs further proceedings, and neither marks the consummation of the agency's decisionmaking process nor has any conclusive legal consequences, is not final agency action subject to review at this time. *See FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232 (1980); *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 680 F.2d 810 (D.C. Cir. 1982) (*NRDC*). Because the Commission has not yet completed its proceeding or taken any final agency action, any challenge to the Commission's decision whether and how to bring a revocation proceeding is premature and must be dismissed.

1. Congress has provided for judicial review only of “final order[s]” of the FCC. 28 U.S.C. §§ 2342(1), 2344. That language incorporates the Administrative Procedure Act’s “final agency action” requirement. *U.S. West Commc’ns, Inc. v. Hamilton*, 224 F.3d 1049, 1054–55 (9th Cir. 2000); *cf. Howard Cnty. v. FAA*, 970 F.3d 441, 448 (4th Cir. 2020) (“final order” means final agency action). Congress has required that judicial review be sought only after final agency action because allowing interlocutory review of agency proceedings “would tend to interfere with the proper functioning of the agency,” “burden the courts,” and “lead to piecemeal review which at least is inefficient, and may be unnecessary.” *Eastman Kodak Co. v. Mossinghoff*, 704 F.2d 1319, 1325 (4th Cir. 1983) (citing *Standard Oil*, 449 U.S. at 242, 244 n.11); *see also Carefirst of Md., Inc. v. Carefirst Urgent Care Ctr., LLC*, 305 F.3d 253, 260–61 (4th Cir. 2002) (discussing the strong federal policy against interlocutory appeals).

Agency action is final under this standard only when two conditions are met. “First, the action must mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citation and internal quotation marks omitted). And “second, the action must be one by which ‘rights or obligations have been determined’ or from

which ‘legal consequences will flow.’” *Id.* at 178. Both conditions must be satisfied for an agency order to be final and subject to review. *Flue-Cured Tobacco Coop. Stabilization Corp. v. U.S. EPA*, 313 F.3d 852, 858 (4th Cir. 2002) (“[A]n agency action may be considered ‘final’ only when the action signals the consummation of an agency’s decisionmaking process *and* gives rise to legal rights or consequences.”) (emphasis in original).

Under that standard, the Commission’s decision whether and how to bring a revocation proceeding is not final agency action subject to review at this time. First, the *Order* is not the consummation of the Commission’s decisionmaking process, but instead merely initiates further proceedings that will enable the Commission to decide whether to revoke China Telecom’s authorizations in a subsequent order. *Cf. Standard Oil*, 449 U.S. at 241. The “threshold determination” to institute a revocation proceeding marks the beginning of the agency’s full decisionmaking process, not the end. *Ibid.* At most, it represents only a “tentative or interlocutory” step pending further comment and full review of the record. *Bennett*, 520 U.S. at 178. That is not final agency action.

Second, the *Order* does not, standing alone, have any legal consequences or determine the rights or obligations of any party. The

Commission has not revoked China Telecom’s authorizations or altered its right to provide service in any way; that would require a further order, which would need to consider the full record developed in the ongoing revocation proceeding and the additional comments filed by China Telecom, the Executive Branch, and any other interested parties. Indeed, it is possible that the Commission may ultimately decline to revoke China Telecom’s licenses, and “the possibility that [any] challenge may be mooted in adjudication” provides “reason[] to await the termination of agency proceedings.” *Standard Oil*, 449 U.S. at 244 n.11; *accord NRDC*, 680 F.2d 816–17.

If the Commission ultimately decides to revoke China Telecom’s authorizations, China Telecom may raise any challenges by petitioning for review of the resulting order at that time, and “the availability of relief on review of a final order * * * dictates against judicial review at this time.” *NRDC*, 680 F.2d at 816; *see also id.* at 817 (“By deferring review now, the court may be able to consider all such issues in a single review proceeding,” and with “the benefit of a fully developed factual record.”). Any request for judicial review at this interlocutory stage is premature.

2. The *Order* challenged here is no different from the administrative complaint that the Supreme Court held not to be final agency action in *FTC v. Standard Oil Co. of California*, 449 U.S. 232 (1980). In *Standard Oil*, the FTC issued a complaint finding “reason to believe” that several companies were engaged in conduct that violates the FTC Act. 449 U.S. at 234. That complaint initiated further “adjudicatory proceedings” that could culminate in an order to cease and desist the challenged practices. *Id.* at 241. Though the complaint substantially burdened the companies by accusing them of wrongdoing and subjecting them to the expense and disruption of defending themselves, the Supreme Court concluded that it was not final agency action subject to judicial review because the complaint “itself [was] a determination only that adjudicatory proceedings will commence,” *id.* at 241–42, and had “no legal force or practical effect * * * other than the disruptions that accompany any major litigation,” *id.* at 243.

Like the complaint in *Standard Oil*, the *Order* challenged here “is not a definitive ruling or regulation,” but instead merely “represents a threshold determination that further inquiry is warranted and that [the agency] should initiate proceedings.” *Id.* at 241, 243. And like the complaint in *Standard Oil*, the *Order* does not determine any rights or

obligations and has no “legal force,” even though it may result in “expense and disruption.” *Id.* at 242–44. And as *Standard Oil* explains, allowing interlocutory review here would be improvident because it could “lead[] to piecemeal review” and “den[y] the agency an opportunity to correct its own mistakes and to apply its expertise.” *Id.* at 242. Just as in *Standard Oil*, the Commission’s decision whether and how to bring a revocation proceeding is not final agency action subject to review at this time.

This case is also indistinguishable from *Natural Resources Defense Council, Inc. v. U.S. Nuclear Regulatory Commission*, 680 F.2d 810 (D.C. Cir. 1982) (*NRDC*). The petitioner in *NRDC* sought to challenge the agency’s decision to conduct a licensing proceeding through a “‘legislative’ type” paper hearing, rather than through formal adjudication with discovery and cross-examination, and sought judicial review while that proceeding was still ongoing. *Id.* at 812–13. The court dismissed the petition for review because the petitioner’s “arguments challeng[ing] the decision of the Commission to limit the procedures available” in the licensing proceeding “concern interlocutory actions by the Commission that are not yet subject to judicial review.” *Id.* at 812, 816; *see id.* at 815–17. “Ordinarily * * * [a]n agency’s procedural or evidentiary rulings in the course of a proceeding do not constitute a final order justifying

judicial review,” and “the availability of relief on review of a final order * * * dictates against judicial review at this time.” *Id.* at 816 (quoting *Thermal Ecology Must Be Preserved v. Atomic Energy Comm’n*, 433 F.2d 524, 526 (D.C. Cir. 1970) (per curiam)).

3. The final agency action requirement precludes interlocutory challenges to ongoing agency proceedings even when the challenger alleges that the underlying proceeding is unlawful or when a successful challenge might require the entire proceeding to be redone. *See, e.g., Bennett v. U.S. SEC*, 844 F.3d 174, 184 & n.10 (4th Cir. 2016) (parties seeking to “attack the legitimacy of the forum” must still “endure the proceeding and await possible vindication on appeal”); *Carefirst*, 305 F.3d at 260–61 (no interlocutory review of claim that a matter is proceeding in the wrong forum and will need to be relitigated); *see also Rochester Tel. Corp. v. United States*, 307 U.S. 125, 130 (1939) (agency orders “setting a case for hearing despite a challenge to its jurisdiction * * * are not reviewable”); *NRDC*, 680 F.2d at 816 (“[Although] deferring review until there has been a final agency decision may necessitate additional administrative proceedings” if the hearing procedures are later held unlawful, “[t]hat risk * * * cannot justify reviewing agency action that is otherwise interlocutory.”).

To be sure, deferring any challenges until the underlying administrative proceeding is completed may require China Telecom to bear the effort and expense of defending itself in a proceed that it believes to be unlawful. But as *Standard Oil* teaches, final agency action requires “a definitive ruling that had some immediate ‘legal force or practical effect’ * * * *other than* ‘the disruptions that accompany any major litigation.’” *Long Term Care Partners, LLC v. United States*, 516 F.3d 225, 237 n.13 (4th Cir. 2008) (emphasis added; quoting *Standard Oil*, 449 U.S. at 243). As the Supreme Court explained, “the expense and annoyance of litigation is part of the social burden of living under government” and is not a sufficient basis to allow interlocutory challenges to ongoing agency proceedings. *Standard Oil*, 449 U.S. at 244 (internal quotation marks omitted); accord *Eastman Kodak*, 704 F.2d at 1324–25. In other words, “[t]he burden of defending oneself in an [allegedly] unlawful administrative proceeding” does not excuse a party from “proceeding in the administrative forum” and awaiting a final decision before “raising [its] claims * * * in due course.” *Bennett*, 844 F.3d at 184–86. Indeed, this Court has routinely required parties to await full adjudication of a case before they can seek judicial review of challenges

to the lawfulness of the underlying proceeding.³

4. Nor can the Court exercise jurisdiction under the collateral-order doctrine. The collateral-order doctrine applies only to a “narrow class of decisions,” *Carefirst*, 305 F.3d at 255, and requires that the challenged order “[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.” *Cobra Nat. Res., LLC v. Fed. Mine Safety & Health Rev. Comm’n*, 742 F.3d 82, 86 (4th Cir. 2014) (quoting *Will v. Hallock*, 546 U.S. 345, 349 (2006)). These “requirements for collateral order jurisdiction are necessarily stringent,” and “the doctrine ‘must never be allowed to swallow the general rule that a party is entitled to a single appeal, to be

³ See, e.g., *Bennett*, 844 F.3d 174 (no interlocutory review of argument that administrative proceeding was unconstitutional because the administrative law judge’s appointment and removal protections violated the Appointments Clause); *S.C. State Bd. of Dentistry v. FTC*, 455 F.3d 436 (4th Cir. 2006) (no interlocutory review of argument that defendant was immune from suit under state-action antitrust immunity); *Long Term Care*, 516 F.3d 225 (no interlocutory review of argument that the EEOC lacked jurisdiction over the appellant); *Carefirst*, 305 F.3d 253 (no interlocutory review of argument that matter was being litigated in the wrong forum); *Carolina Power & Light Co. v. U.S. Dep’t of Labor*, 43 F.3d 912 (4th Cir. 1995) (no interlocutory review of argument that administrative law judge unlawfully rejected a private settlement).

deferred until final judgment has been entered.” *Ibid.* (quoting *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994)).

As the Supreme Court explained in *Standard Oil*, the collateral-order doctrine’s requirements are not satisfied here because the challenged *Order* “is a step toward, and will merge in, the Commission’s decision on the merits,” so any legal challenges “should abide review of the final order.” 449 U.S. at 246. Accordingly, “the ‘collateral order’ exception to the finality rule does not apply” to “arguments challeng[ing] the decision of the Commission to limit the procedures available” by conducting a paper hearing rather than formal adjudication, given “the availability of relief on review of a final order.” *NRDC*, 680 F.2d at 816 & n.16. All aspects of the revocation proceeding will be fully and effectively reviewable upon petition for review of any final decision whether to revoke China Telecom’s authorizations; China Telecom need only allow the Commission to complete that proceeding before pursuing any judicial challenges. *Ibid.*; see *S.C. State Bd. of Dentistry v. FTC*, 455 F.3d 436, 445 (4th Cir. 2006) (“Although it is undoubtedly less convenient for a party * * * to have to wait until after trial to press its legal arguments, no protection * * * will be lost in the delay.”). Just as procedural and evidentiary rulings by a district court ordinarily are not

subject to interlocutory review and must await an appeal from a final judgment, *Carefirst*, 305 F.3d at 260–61 (citing *Digital Equip. Corp.*, 511 U.S. at 871–72), so too for agency adjudications.⁴

Insofar as China Telecom wishes to challenge the adequacy of the *procedures* used in the revocation proceeding, such as the Commission’s decision to proceed through an informal paper hearing based on written submissions, it will have full opportunity to raise that challenge (along with any other challenges) on appeal from any resulting order. *NRDC*, 680 F.2d at 816–17. Indeed, the Court will be better able to evaluate any such challenge at that time, because the Commission’s analysis in reaching a final determination on whether to revoke the company’s

⁴ While the availability of effective review following any final decision is itself enough to preclude the collateral-order doctrine from applying here, the first two requirements of the collateral-order doctrine also are not satisfied. The Commission has not reached any conclusive determination on the issues under consideration in this proceeding, including the applicable standard of proof and whether the record—which is not yet complete—ultimately calls for revocation of China Telecom’s authorizations. *Cf. Standard Oil*, 449 U.S. at 244 n.11 (“one of the principal reasons to await the termination of agency proceedings” is “the possibility that [any] challenge may be mooted in adjudication”); *NRDC*, 680 F.2d at 816–17 (similar); *Bennett*, 844 F.3d at 188 (similar). China Telecom’s challenges likewise are “not wholly collateral” to those issues, because its petition for review “appears to be the ‘vehicle by which [it] seeks’ to vacate” any forthcoming order that might conclude that its authorizations should be revoked. *Bennett*, 844 F.3d at 186–87.

authorizations may shed light on the appropriateness of the procedures the agency employed, the adequacy of the record it developed, and whether China Telecom was prejudiced in any way. *Cf. id.* at 817 (“waiting until the administrative proceedings have been completed” will “give the court the benefit of a fully developed factual record” to decide any issues, including “whether the limited, [paper] hearing offered * * * in fact substantially prejudiced” the petitioner). And if China Telecom were to prevail on that challenge, the Court could provide effective relief by ordering a new hearing. *Id.* at 816. But the availability of full judicial review following any final order means that China Telecom cannot raise its challenges at this interlocutory stage and improperly “turn[] prosecutor into defendant before adjudication concludes.” *Standard Oil*, 449 U.S. at 243.⁵

⁵ To the extent China Telecom might claim “economic harm” from the effort and expense of potentially needing to relitigate this proceeding if it were to prevail, such harm “pales in comparison to those interests that have been deemed sufficiently important to give rise to collateral order jurisdiction”; as this Court has admonished, “[t]he collateral order doctrine * * * requires a great deal more.” *Cobra Nat. Res.*, 742 F.3d at 92; *see also supra* Part 3 & n.3. “[I]t is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest, that counts when asking whether an order is ‘effectively’ unreviewable if review is to be left until later.” *Will*, 546 U.S. at 353.

CONCLUSION

Because the Commission has yet to take any final action in this proceeding, China Telecom's petition for review is premature and must be dismissed.

Dated: February 1, 2021

Respectfully submitted,

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