

No. 22-70029

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

CHINA UNICOM (AMERICAS) OPERATIONS LIMITED,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

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

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BRIEF FOR RESPONDENTS

INTRODUCTION

After extensive administrative proceedings, including multiple rounds of notice and comment, the Federal Communications Commission revoked the authorizations of China Unicom (Americas) Operations Limited (“China Unicom”) to provide domestic and international telecommunications service in the United States. *China Unicom (Ams.) Ops. Ltd.*, 37 FCC Rcd ---, 2022 WL 354622 (rel. Feb. 2, 2022) (1-ER-2) (*Revocation Order*). “[G]iven the changed national security environment

with respect to China” in the decades since 2002 when the FCC first granted the company authority to operate, the FCC found that the company’s “ties to the Chinese government” currently pose a substantial threat to the security of the United States. *Id.* ¶2 (1-ER-3). Separately, the FCC found that China Unicom’s conduct and representations in the proceeding demonstrated a lack of trustworthiness and reliability. *Id.*

China Unicom raises procedural and substantive objections to the FCC’s decision, but as we show, these are belied by the record and the multiple opportunities in which the company failed to respond satisfactorily to the Commission’s concerns.

The company also argues that the FCC lacks authority to revoke its authorizations to provide telecommunications service, at least under these circumstances. But the 75-year old case upon which it relies, *United States v. Seatrain Lines, Inc.*, 329 U.S. 424 (1947), says nothing about a case like this, where the facts have changed dramatically in the several decades since the Commission authorized service. And the text, structure, and purpose of the Communications Act show that the FCC has the authority to revoke the telecommunications authority of companies controlled by foreign governments where necessary to further

the Act’s goals of “promoting safety of life and property” and safeguarding the “national defense.” 47 U.S.C. §151.

JURISDICTIONAL STATEMENT

The Federal Communications Commission had jurisdiction over this matter under 47 U.S.C. §§151 and 214. The FCC released the order on review on February 2, 2022. *See Revocation Order* (1-ER-2). This Court has jurisdiction under 28 U.S.C. §2342(1) and 47 U.S.C. §402(a). China Unicom filed a timely petition for review on February 24, 2022. *See* 28 U.S.C. §2344.

STATEMENT OF THE ISSUES

1. Whether the FCC reasonably revoked China Unicom’s authority to provide domestic and international telecommunications based on the agency’s determination that the company poses a substantial and unacceptable threat to the security of the United States, and that the company had demonstrated a lack of trustworthiness and reliability.

2. Whether the agency has the authority to revoke a carrier’s authority under 47 U.S.C. §214 to provide domestic and international telecommunications services.

3. Whether the revocation proceeding, which lasted 11 months and allowed for multiple rounds of notice and briefing, provided the process required by the agency's rules.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are set forth in the statutory addendum bound with this brief.

STATEMENT OF THE CASE

A. Statutory And Regulatory Background

1. Section 214 authorization and revocation

Congress established the Federal Communications Commission to regulate “interstate and foreign commerce in communication by wire and radio” in order to, among other things, “promot[e] safety of life and property” and to serve “the national defense.” 47 U.S.C. §151. The promotion of national security is thus “an integral part of the Commission’s public interest responsibility” and “one of the core purposes for which Congress created the Commission.” *Revocation Order* ¶3 (1-ER-3); see *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 439–40, 443–44 (5th Cir. 2021) (upholding the FCC’s authority to address communications-related national security threats).

Under section 214 of the Communications Act, any carrier seeking to use or operate a transmission line for interstate or foreign communications must obtain authorization from the Commission that “the present or future public convenience and necessity require or will require” that action. 47 U.S.C. §214(a) & (c). In granting a certificate of authorization, the agency “may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require.” *Id.* §214(c). The FCC has interpreted its authority to grant and condition section 214 authority to include the power to revoke a carrier’s section 214 authority where necessary to protect these public interests. *See Revocation Order* ¶4 & n.10 (1-ER-5) (collecting examples).

In 1999, rather than continuing to pass on each authorization individually, the Commission granted blanket authority for any carrier to operate or transmit over domestic transmission lines. *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, 14 FCC Rcd 11364, 11365-66, ¶2 (1999) (*Blanket Authority Order*); 47 C.F.R. §63.01(a). The agency chose this method, as opposed to simply forbearing from the certification requirement, in order to preserve its

ability “to revoke a carrier’s section 214 authority when warranted.” *Id.* ¶16.

This blanket authority applies only to domestic transmission lines. If a carrier seeks to operate or transmit over international lines, it must still obtain specific authorization from the Commission. *See* 47 C.F.R. §63.18. The Commission has likewise found it may revoke that authorization if warranted to protect the public interest. *Revocation Order* ¶4 & n.9 (1-ER-4).

2. Foreign-owned telecommunications companies

For much of the FCC’s history, most telecommunications service in the United States was provided by a domestic monopoly, the Bell Telephone System. *See generally Verizon Commc’ns, Inc. v. FCC*, 535 U.S. 467, 475 (2002). After the break-up of that monopoly and a World Trade Organization agreement on telecommunications, however, the FCC in 1997 issued an order adopting a default “open entry standard” for foreign-owned telecommunications companies. *Rules & Policies on Foreign Participation in the U.S. Telecomms. Mkt.*, 12 FCC Rcd 23891, 23893 ¶2 (1997) (*Foreign Participation Order*). In adopting that standard, the agency observed that “foreign participation in the U.S. telecommunications market may implicate significant national security or

law enforcement issues.” *Id.* ¶62. Therefore, in deciding whether the public interest favors a section 214 authorization to a foreign-owned carrier, the FCC made clear that it would consider whether the carrier’s provision of telecommunications service in the United States would raise national security, law enforcement, or foreign policy concerns due to the carrier’s foreign ownership. *Id.* ¶61 (discussing these factors); *id.* ¶19 (emphasizing authority to enforce safeguards through, *inter alia*, “revocation of authorizations”); *see Revocation Order* ¶5 (1-ER-4). The relevance of national security to section 214 authorizations is also echoed in the Communications Act, which requires the FCC to notify, among others, the Secretaries of Defense and State of any applications for section 214 authority. *See* 47 U.S.C. §214(b).

In assessing national security, law enforcement, and other concerns arising from a carrier’s foreign ownership, the Commission has long sought “the expertise of the relevant Executive Branch agencies,” including the Department of Justice, the Department of Homeland Security, and the Department of Defense. *Revocation Order* ¶5 (1-ER-4) (citing *Foreign Participation Order* ¶¶62–63). In 2020, the President issued an Executive Order formalizing this process, and the FCC issued new conforming rules. *See* Executive Order No. 13913, *Establishing the*

Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643 (Apr. 4, 2020); *Process Reform for Executive Branch Review of Certain FCC Appls. & Pets. Involving Foreign Ownership*, 35 FCC Rcd 10927 (2020).

B. Factual Background and Proceedings Below

1. Order to Show Cause

China Unicom is a California corporation ultimately owned and controlled by the Chinese government. *Revocation Order* ¶7 & n.22 (1-ER-6–7).¹ Until the *Order*, the company was authorized to provide domestic interstate telecommunications service pursuant to blanket section 214 authority, and held two international section 214 authorizations, originally granted in 2002. *Id.* ¶6 (1-ER-6); see section 214 certificates (ER-322–27).

In April 2020, several FCC bureaus directed China Unicom to show why the FCC should not initiate a proceeding to revoke the company's

¹ China Unicom is wholly owned by the Hong Kong entity China Unicom Global Limited, which is wholly owned by China Unicom (Hong Kong) Limited. *Revocation Order* ¶7 (1-ER-7). The latter is indirectly controlled by China United Network Communications Group Company Limited, an entity incorporated in the People's Republic of China and wholly owned by an arm of the Chinese government. *Id.*; see *id.* n.22 (1-ER-7) (setting out specifics of ownership and control).

domestic and international section 214 authorizations. *Revocation Order* ¶11 (1-ER-9); see *Order to Show Cause*, 2-ER-304. The bureaus explained that the FCC had recently denied the application by a subsidiary of another Chinese state-owned entity for section 214 authority, finding that that entity was vulnerable to exploitation, influence, and control by the Chinese government. *Revocation Order* ¶11 (citing *China Mobile International (USA) Inc.*, 34 FCC Rcd 3361 (2019))(1-ER-9). The *Order to Show Cause* asked China Unicom “questions concerning its ownership, operations, and other related matters,” and asked it to provide “a description of the extent to which [the company] is or is not otherwise subject to the exploitation, influence and control of the Chinese government.” *Id.* ¶12 (1-ER-10) (quoting *Order to Show Cause*).

In June 2020, China Unicom filed a 33-page response in response to the *Order to Show Cause*, accompanied by several exhibits, arguing that its authorizations should not be revoked. (2-ER-262).

2. *Executive Branch Letter*

In October 2020, the FCC’s International Bureau issued a letter to the Department of Justice, as representative of the Committee established under Executive Order 13913, requesting a response to China Unicom’s arguments. 2-ER-249.

In November 2020, the National Telecommunications and Information Administration (NTIA), on behalf of the Executive Branch, responded by letter (the “Executive Branch Letter”) to the International Bureau’s request. (2-ER-210). Given in part “the limited time allotted,” the response was not offered as an official recommendation by the Committee that the FCC take any particular action. *Id.* Instead, the letter offered the views of “interested Executive Branch agencies,” including the Departments of Justice, Homeland Security, Defense, Commerce, Treasury, and State. *Id.*

In the letter, the Executive Branch agencies concluded that “[i]n the current environment,...changes in [Chinese] law have resulted in [Chinese government]-owned and -controlled companies presenting significant national security and law enforcement risks that are difficult to mitigate.” *Id.* at 2 (2-ER-211). The letter observed that “[t]he national security environment has changed significantly since 2002,” when China Unicom’s international section 214 authorizations were granted, and when the United States’ primary security concerns were seen to be non-state terrorist entities. *Ibid.* Now, by contrast, the letter emphasized, China represents one of the nation’s foremost security threats, as documented by statements from several U.S. government entities:

- A 2019 “Worldwide Threat Assessment” from the Office of the Director of National Intelligence stated that “cyber issues, not terrorism” present the most pressing threats, and highlighted China “for its persistent economic espionage and growing threat to core military and critical infrastructure systems”;
- In 2018, the Director of the FBI stated that “China, from a counterintelligence perspective, in many ways represents the broadest, most challenging, most significant threat we face as a country”;
- In 2018, the Department of Defense warned Congress that “China uses its cyber capabilities to support intelligence collection against U.S....defense industrial base sectors”; and
- In 2018, the Department of Homeland Security warned Congress that “[n]ation-state actors such as China...have used cyber intrusions to steal private sector proprietary information and sabotage military and critical infrastructure,” and predicted that “China will continue to use cyber espionage and bolster cyber-attack capabilities to support its national security priorities.”

Id. at 3-4 (2-ER-212–13).

The letter also described various Congressional actions and legislation, including a 2012 report from the House Permanent Select Committee on Intelligence that warned “the United States should view with suspicion the continued penetration of the U.S. telecommunications market by Chinese telecommunications companies,” *id.* at 7 (1-ER-216), and recently enacted federal legislation that prohibits the spending of loans or grants on telecommunications equipment from, among others, entities connected with the People’s Republic of China, *id.* at 8 (citing Pub. L. 115-91, Sec. 1656, 131 Stat. 1283, 1762 (2017)) (1-ER-217).

The letter next introduced evidence that “members of [the Chinese Communist Party] run both” of China Unicom’s corporate parents, and that this influence makes the company “vulnerable to direct exploitation.” *Id.* at 22–23 (2-ER-231–32). The “potential for [Chinese Communist Party] influence,” the letter went on to state, “is not theoretical.” *Id.* at 25–26 (2-ER-234–35)]. China Unicom’s parent company had demonstrated “support of the [Chinese Communist Party] agenda” by “fund[ing] and staff[ing] units to visit, surveil, and indoctrinate minority villagers in” the Xinjiang province, where the Chinese government is conducting a campaign against certain ethnic

minorities, and had also suspended mobile phone service to some residents at the request of the government. *Ibid.*

The letter also introduced evidence that “[d]ue to its ownership, [China Unicom] will have to comply with [Chinese] government requests without sufficient legal procedures subject to independent judicial oversight.” *Id.* at 27–30 (2-ER-236–39). The letter discussed two recent Chinese laws, “[t]he 2017 Cybersecurity Law and the 2017 National Intelligence Law,” that “impose affirmative legal responsibilities on Chinese and foreign citizens, companies, and organizations operating in China to provide access, cooperation, and support for Beijing’s intelligence gathering activities.” *Id.* at 27–28 (2-ER-236–37). China Unicom’s corporate parents “have acknowledged being subject to [Chinese] cyber and national security laws.” *Id.* at 29–30 (2-ER-238–39).

The letter then explained at length that China Unicom’s “U.S. operations provide opportunities for [Chinese government] state actors to engage in economic espionage, to collect, disrupt, or misroute U.S. communications, and to access U.S. customer data.” *Id.* at 31–36 (2-ER-240–45).

China Unicom filed a response to the Executive Branch Letter, contending that the letter offered only broad, policy-based views which

could not be used as the basis for a revocation proceeding absent specific conduct warranting such an action. *Revocation Order* ¶17 (1-ER-12).

3. *Institution Order*

In March 2021, the FCC issued an order instituting proceedings on whether to revoke China Unicom’s section 214 domestic and international authorizations. *Institution Order* (2-ER-155). The Commission stated the company had “not yet adequately demonstrated that it is not susceptible to the exploitation, influence, or control of the Chinese government.” *Id.* ¶26 (2-ER-171). The FCC also noted that China Unicom’s “representations to the Commission and to other U.S. government agencies raise significant concerns” because the company “omitted crucial information in this proceeding” that it had disclosed in a separate Congressional investigation,² “and failed to fully respond to several questions posed by the *Order to Show Cause.*” *Id.* ¶49 (2-ER-189).

² A Senate investigative subcommittee gathered evidence from entities including China Unicom and issued a report. *See* Staff Report of Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, 116th Congress, Threats to U.S. Networks: Oversight of Chinese Government-Owned Carriers (June 9, 2020) (*available at* <https://go.usa.gov/xeUZZ>). The Report found that the Chinese government “exercises control over China’s telecommunications industry and carriers,” “engages in cyber and economic espionage efforts against the United States[,] and may

In April 2021, China Unicom filed a 49-page response to the *Institution Order*, again advancing legal and factual arguments as to why its authorizations ought not to be revoked. 2-ER-99–154.

4. ***Revocation Order***

In the *Order* on review, the FCC revoked China Unicom’s section 214 authorizations. *Revocation Order* ¶2 (1-ER-2). The Commission explained that China Unicom presented risks to national security and law enforcement, that it was not sufficiently trustworthy and reliable, and that mitigation was not possible.

Risks to National Security and Law Enforcement—The Commission first found that the record “overwhelmingly shows that [China Unicom] is not separate and independent from its parent entities,” and that the company therefore “is indirectly and ultimately owned and controlled by the government of the People’s Republic of China.” *Id.* ¶50 (1-ER-31). Indeed, the Commission noted, China Unicom itself stated (in a 2017 filing with the Commission) that “the [People’s Republic of China] government continues to maintain ownership and control over [China Unicom] and will continue to do so.” *Id.* ¶52 (1-ER-32). And the record

use telecommunications carriers operating in the United States to further these efforts.” *Id.* at 8.

demonstrated that the “Chinese government has the ability to influence [China Unicom] through the significant and irrefutable ties of its corporate leadership and that of its parent entities with the Chinese Communist Party.” *Id.* ¶62 (1-ER-42). The FCC found that this control, “in addition to Chinese intelligence and cybersecurity laws, ‘raise significant concerns that [China Unicom] will be forced to comply with [Chinese] government requests, including requests for communications intercepts, without the ability to challenge such request.’” *Id.* ¶64 (1-ER-43) (quoting Executive Branch Letter at 27 (2-ER-236)); *see id.* ¶¶65–72 (1-ER-44-52) (discussing China’s 2017 National Intelligence Law and Cybersecurity Law and 2019 Cryptography law).

Given this control and “the changed national security environment” since the FCC granted China Unicom international section 214 authorizations in 2002, the Commission determined that the company’s continued operation pursuant to section 214 today would present “significant national security and law enforcement risks” “that pose a clear and imminent threat to the security of the United States.” *Id.* ¶74 (1-ER-52). Quoting the Executive Branch Letter, the Commission explained that “as an international Section 214 authorization holder,” China Unicom “is connected to the domestic telecommunications

networks of the United States and has direct access to the telephone lines, fiber-optic cables, cellular networks, and communication satellites that constitute those networks.” *Id.* ¶78 (1-ER-56) (quoting Executive Branch Letter at 31). These “connections and access can provide a strategic capability to target, collect, alter, block, and re-route network traffic.” *Ibid.* China Unicom’s U.S. operations therefore “provide opportunities for [Chinese] government-sponsored actors to engage in espionage, theft of trade secrets and other confidential business information, and to collect, disrupt, or misroute U.S. communications.” *Ibid.*

Specifically, the Commission pointed to evidence demonstrating risks that China Unicom may:

- Combine phone customers’ call records and personal information to reveal significant details, “providing opportunities for Chinese government-sponsored actors to engage in information collection activities or espionage of U.S. targets,” *id.* ¶83 (1-ER-61);
- Use its 11 Points of Presence (“PoPs”) in the United States—physical locations where a network service provider interconnects with Internet-related services—to access,

monitor, store, disrupt, or misroute communications, a particularly pressing concern because, “due to least-cost routing, the communications of U.S. government agencies to any international destinations may conceivably pass through [China Unicom’s] network during transit, even if the agencies are not actual [China Unicom] customers,” *id.* ¶102 (1-ER-73);

- “[M]aliciously or accidentally redirect to China [Voice over Internet Protocol] data traffic from [a mobile operator] by mounting a [Border Gateway Protocol] route attack originated at or through one of its 11 U.S. [Points of Presence]” *id.* ¶97 (1-ER-69); *see id.* ¶78 & n.368 (1-ER-7) (describing Boarder Gateway Protocol attacks); and
- Use standard internet routing protocols to “redirect the traffic through China rather than having that traffic remain in the United States,...provid[ing] another opportunity for this traffic to be readily captured, examined, and/or altered,” *Id.* ¶98 (1-ER-70).

In sum, the FCC found China Unicom’s section 214 authorization presented opportunities for the company “as well as its parent entities, to engage in espionage and other harmful activities through its

operations in the United States,” creating “especially significant threats to the security of the U.S. telecommunications infrastructure, the information that is carried on this infrastructure, and the individuals and companies that use the services offered by [China Unicom].” *Id.* ¶80 (1-ER-59).

Lack of trustworthiness, and reliability— “[I]ndependent of [these] separate concerns,” the agency also found that China Unicom’s “past representations to the Commission and Congress require[d the FCC] to find...that the public interest, convenience, and necessity is not served by [China Unicom’s] retention of its section 214 authority.” *Id.* ¶111 (1-ER-77).

The Commission explained that a carrier’s “transparency and truthfulness with the Commission and other U.S. government agencies, as well as its ability to comply with the Commission’s rules, are essential characteristics to demonstrate that [the carrier’s] retention of its section 214 authority continues to serve the public interest, convenience, and necessity.” *Id.* ¶111 (1-ER-78). “This trust is paramount” because “carriers sit at a privileged position to provide critical telecommunications services in the United States.” *Ibid.* The Commission found that China Unicom fell short of this high standard in several ways,

including by failing to disclose information about its direct corporate parent's role in management and operations, failing to provide a full and accurate description of its indirect controlling interest holders, and failing to comply with the Commission's rules. *Id.* ¶¶112–22 (1-ER-77–83).

Taken together, the Commission found, these actions provided evidence that China Unicom “cannot be trusted.” *Id.* ¶123 (1-ER-84). As a result, “independent” of the Commission's national security concerns, the agency separately revoked the company's section 214 authority for lack of trustworthiness and reliability. *Ibid.*

Mitigation not possible—Finally, the agency found “that mitigation would not address the significant national security and law enforcement concerns present in this case.” *Id.* ¶124 (1-ER-85). China Unicom “fail[ed] to persuasively explain how the substantial and unacceptable concerns surrounding” its ownership and “vulnerability to exploitation, influence, and control by the Chinese government could be ameliorated.” *Id.* ¶127 (1-ER-87). This was especially so “given the evidence in the record demonstrating [China Unicom's] lack of transparency and reliability in its dealings with the Commission,” which indicate China Unicom “is not likely to cooperate and be fully transparent with the Executive Branch

agencies in such a way that would allow a mitigation agreement to be effective.” *Id.* ¶129 (1-ER-87).

C. Subsequent Developments

After filing its petition for review of the *Revocation Order*, China Unicom filed an emergency request for temporary stay and a motion to stay. Docket Entry Nos 11-2 & 12. This Court denied both the request and the motion on March 4, 2022. Docket Entry No. 17.

STANDARD OF REVIEW

Under the Administrative Procedure Act, a court may not overturn agency action unless it is arbitrary, capricious, or otherwise contrary to law. *See* 5 U.S.C. §706(2). Under this deferential standard, “[a] court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.” *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). A court “presumes the agency’s action is valid” and affirms “so long as the agency considered the relevant factors and articulated a rational connection between the facts found and the choices made.” *Audubon Soc’y of Portland v. Haaland*, 40 F.4th 967, 979 (9th Cir. 2022) (quotation marks and citations omitted). Findings of fact

are upheld when supported by substantial evidence on the record as a whole. *Ibid.*

The Commission's interpretation of statutes it administers, such as section 214, is reviewed under the principles set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under *Chevron*, "if the statute is silent or ambiguous with respect to [a] specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. If so, the Court must "accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation." *Nat'l Cable & Telecomms. Ass'n v. Brand X*, 545 U.S. 967, 980 (2005).

Finally, as to agency procedures, the "established principle" is that "administrative agencies 'should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'" *FCC v. Schreiber*, 381 U.S. 279, 290 (1965) (quoting *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 143 (1940)); see 47 U.S.C. §154(j) ("The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."). Courts give "substantial

deference to an agency's interpretation of its own regulations." *Fones4All Corp. v. FCC*, 550 F.3d 811, 820 (9th Cir. 2008) (quoting *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994)).

SUMMARY OF THE ARGUMENT

I. The FCC's revocation of China Unicom's section 214 authorizations was reasonable and well-supported. The company does not dispute that the Chinese government indirectly owns a controlling share in China Unicom, *Revocation Order* ¶¶50–73 (1-ER-31–51); that the Chinese government has used and will likely continue to use cyber espionage to undermine U.S. interests and security, *Id.* ¶76 (1-ER-53); or that the company's role as a U.S. telecommunications provider presents significant opportunities to access and misroute U.S. communications and to facilitate espionage, *Id.* ¶77–110 (1-ER-55–77). That uncontested evidence is sufficient to support the FCC's revocation of China Unicom's section 214 authority.

The company disputes that it is directly subject to certain Chinese laws which amplify the Chinese government's control and opportunities for espionage, but it does not dispute that its corporate parents are subject to those laws. China Unicom also argues that the FCC may not revoke its authorizations based on risk, only on past wrongdoings. But

the law is clear that the government can act to prevent threats to national security; it need not wait for those vulnerabilities to be exploited.

The Commission also independently concluded that China Unicom was unreliable based on incomplete and misleading responses to the *Order to Show Cause*, as well as noncompliance with certain FCC rules. *Revocation Order* ¶111 (1-ER-77). China Unicom argues that its responses were appropriate given the wording of the agency's inquiries, but the agency reasonably found that the responses were evasive, incomplete, and misleading.

II.A China Unicom primarily argues that the FCC lacks the power to revoke section 214 authorizations, at least in cases like this one, because the Communications Act does not explicitly address that authority. But the FCC's determination that it has the power to revoke an authorization under the same circumstances that would merit denying that authorization in the first place accords with the text, structure, and purpose of the Act. By contrast, China Unicom's contention that the agency is powerless to withdraw an authorization once granted—no matter the circumstances or how grave the threat to national security—is flatly inconsistent with the Commission's obligation to provide for “the national defense.” 47 U.S.C. §151.

II.B The FCC’s power to revoke is even clearer in this case because China Unicom’s authorizations were granted subject to the agency’s reservation of the power to later revoke them. The agency granted “blanket” section 214 authority for all carriers to provide service domestically with the explicit understanding that it will later be able to revoke that authority when warranted. *Blanket Authority Order* ¶16. Likewise, when the FCC adopted an “open entry standard” for foreign-owned carriers like China Unicom to operate in the U.S., it made clear that it retains authority to revoke and highlighted the national security and foreign policy concerns inherent in authorizing foreign-owned carriers. *Foreign Participation Order* ¶¶19 & 61. China Unicom received its authorizations subject to this power of revocation, *see* 47 U.S.C. §214(c) (authorizing the Commission to impose “such terms and conditions as in its judgment the public convenience and necessity may require”), and would not have received them otherwise.

II.C China Unicom relies primarily on *United States v. Seatrains Lines, Inc.*, 329 U.S. 424 (1947), to argue that the FCC cannot revoke section 214 authorizations based on changes in policy. But this case is very different from *Seatrains*. Here, it is the facts that have changed in the nearly 20 years since the company was granted authority, and

Chinese control now presents demonstrated national security risks. In addition, *Seatrain* was at least partially motivated by doubt (not present here) that the agency could have denied authority in the first instance. Similarly, the two subsequent cases on which China Unicom relies stand for the limited proposition that an agency cannot rely on inherent powers to revoke as a means to avoid explicit statutory or regulatory restrictions. There are no such restrictions here.

III. Finally, in revoking China Unicom’s authorizations, the FCC provided the company with more than sufficient process. The FCC has authority to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” 47 U.S.C. §154(j). Here, the procedure that the Commission followed—including two detailed notices and several rounds of written submissions—provided ample opportunity for China Unicom to make the case that its authorizations should not be revoked.

China Unicom argues that the FCC was required to use the procedures set forth in part 1, subpart B of its rules (47 C.F.R. §§1.201–.377). Even if China Unicom had not waived this argument by failing to raise it below, it fails by its own terms. The subpart B rules are required for revocations of a “station license or construction permit”—terms of art

that refer only to Title III broadcast licenses, not Title II section 214 wireline authorizations, like those at issue here.

China Unicom also argues that the FCC was required to conduct a subpart B hearing here because it has often done so before. But the agency has not always done so. And even if its past practice had established a policy that such procedures were appropriate, the FCC determined that they were not appropriate here. *Revocation Order* ¶40 (1-ER-25). In any event, China Unicom has not shown that it was prejudiced by the Commission’s decision not to adopt subpart B procedures, since the company fails to describe what evidence different procedure might have revealed, or to proffer evidence it was unable to introduce under the ample procedures it was afforded.

ARGUMENT

I. THE FCC’S REVOCATION OF CHINA UNICOM’S SECTION 214 AUTHORIZATIONS WAS REASONABLE AND WELL-SUPPORTED.

A. The Chinese Government Indirectly Owns And Controls China Unicom.

The agency reasonably concluded that the Chinese government ultimately owns and controls China Unicom. *Revocation Order* ¶¶50–73 (1-ER-31–51). As the FCC explained, the “record evidence overwhelmingly show[ed] that [China Unicom] is not separate and

independent from its parent entities,” and the facts firmly supported the Executive Branch agencies’ assessment that “[China Unicom] is indirectly majority-owned and -controlled by the [Chinese] government and therefore is vulnerable to exploitation, influence, and control by that government.” *Id.* ¶50 (1-ER-30). For example, China Unicom (Hong Kong) Limited, the indirect whole owner of Petitioner China Unicom, stated in an SEC filing that its ultimate parent entity, which is wholly owned by the Chinese government, controlled a 79.9% share of its share capital, allowing that parent entity “to control [China Unicom (Hong Kong)]’s] management, policies and business by controlling the composition of [its] board of directors....” *Id.* n.216 (1-ER-32). And Petitioner China Unicom stated in a separate 2017 statement to the FCC that the government of China “continues to maintain ownership and control over [China Unicom] and will continue to do so.” *Id.* ¶52 (1-ER-32).

The record showed that China Unicom’s parent entity, which is controlled by the Chinese Government, “oversees important matters” at the company, has access to U.S. customer records, and controls and manages important aspects of the company’s network operations, including consulting on where to establish network nodes, monitoring

network operations, and retaining the ability to remotely configure China Unicom’s network equipment. *Id.* ¶55 (1-ER-35); *see id.* ¶57 (1-ER-36) (parent entity provides “shared services” to China Unicom, including “product development, technical solutions, network monitoring and planning, order implementation, project management, and customer services”).

The FCC also considered several aspects of Chinese law that shape and amplify this control. For example, under the Constitution of the Chinese Communist Party, that Party may “establish its branches in companies to carry out activities” of the Party, and a company “shall provide necessary conditions to facilitate the activities of the Party.” *Id.* ¶61 (1-ER-41). This and other evidence bolstered the Executive Branch’s conclusion that China Unicom’s corporate parents are “likely beholden to the [Chinese Communist Party] and appear capable of influencing [China Unicom] in ways that would satisfy the [Party’s] agenda.” *Id.* ¶60 (1-ER-39) (quoting Executive Branch Letter at 25 (2-ER-234)).

The FCC also considered the relevance of China’s 2017 Cybersecurity Law and 2017 National Intelligence Law, which the Executive Branch agencies stated “impose affirmative legal responsibilities on Chinese and foreign citizens, companies, and

organizations operating in China to provide access, cooperation, and support for Beijing’s intelligence gathering activities.” *Id.* ¶64 (1-ER-44). In doing so, the FCC credited the Office of the Secretary of Defense’s assessment that “[t]he 2017 National Intelligence Law requires Chinese companies...to support, provide assistance, and cooperate in China’s national intelligence work, wherever they operate.” *Id.* ¶70 & n.323 (1-ER-50) (quoting *Executive Branch Letter* at 22, n.131 (quoting Office of the Sec’y of Def. Ann. Rep. to Cong., *Military and Security Developments Involving the People’s Republic of China 2019*, at 101) (2-ER-231)).

China Unicom argues that the FCC’s “statements about [the company’s] obligations under Chinese laws” were unwarranted because China Unicom is a U.S. company subject to U.S. law. Br. 54–57. But China Unicom does not dispute that it is owned and controlled by corporate parents that are subject to Chinese law. Here and before the agency it “offer[ed] no argument that [those parents] could not influence or control their subsidiaries to take action based on this law.” *Id.* ¶68 (1-ER-48); *see id.* n.322 (China Unicom does not dispute that parent entities are subject to 2017 Cybersecurity Law and “offers no argument that [its parent entities] could not influence or control their subsidiaries to take action based on this law”). As the Executive Branch Letter stated, China

Unicom’s ultimate parent entity “does not treat its foreign subsidiaries, including [China Unicom], as independent entities; it treats them as ‘branches’ that focus on sales and customer service and controls them through the Hong Kong entity that directly owns [China Unicom] and all [of the ultimate parent’s] overseas subsidiaries.” *Id.* ¶68 (1-ER-48).

B. China Unicom’s Retention Of 214 Authorizations Posed A Substantial and Unacceptable Threat To National Security.

Given the close control that the Chinese government can exercise over China Unicom, it was reasonable for the FCC to conclude “that there are significant national security and law enforcement risks associated with [China Unicom’s] retention of its section 214 authority that pose a clear and imminent threat to the security of the United States.” *Revocation Order* ¶74 (1-ER-52). The services that China Unicom offered provided the company “with access to U.S. telecommunications infrastructure and U.S. customer records,” which in turn provided the company, “its controlling parent entities, and therefore, the Chinese government, with opportunities to access, monitor, store, disrupt, and/or misroute U.S. communications, and the opportunity to facilitate espionage and other activities harmful to the interests of the United States.” *Id.* ¶77 (1-ER-55).

The FCC described at length the specific services that the company offered and the risks posed. *See* ¶¶77–110 (1-ER-55–77); *supra* xx–xx. China Unicom does not dispute that its facilities could be used to facilitate surveillance by the Chinese government. Instead, it argues that the agency lacked substantial evidence to show that the company would do so. Br. 57-60. But the Commission explained at length that “no country poses a broader, more severe intelligence collection threat than China,” and “the [Chinese] government uses its firms and companies as extensions of its apparatus.” *Id.* ¶76 (1-ER-53). The agency therefore found “serious and unacceptable concerns that the Chinese government can, for example, direct or otherwise influence [China Unicom] to act on opportunities presented by its access to U.S. telecommunications infrastructure and U.S. customer information.” *Id.* ¶74 (1-ER-52).

China Unicom contends that the FCC had no basis to take action against it absent evidence that the company has actually engaged in unlawful surveillance or obstruction. Br. 58. But it would make little sense to require the government to wait until known vulnerabilities have been exploited before it can protect against such threats. *See Connick v. Myers*, 461 U.S. 138, 151–52 (1983) (When “fulfilling public responsibilities,” public officials need not “allow events to unfold to the

extent that the disruption...is manifest before taking action.”); *MacWade v. Kelly*, 460 F.3d 260, 271–72 (2d Cir. 2006) (citing *Bd. of Educ. v. Earls*, 536 U.S. 822, 835–36 (2002)). That is especially so because espionage is, by its nature, difficult to detect. Instead, on issues of national security where the government must “confront evolving threats in an area where information can be difficult to obtain,” *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34–36 (2010), courts should not “second-guess” an agency’s predictive judgment that a situation poses unacceptable risks. *See Olivares v. TSA*, 819 F.3d 454, 466 (D.C. Cir. 2016). Here, there was extensive evidence that China Unicom, controlled by China, poses a substantial security threat to U.S. networks and customers. Nothing more is required.

C. Independently, China Unicom Demonstrated A Lack Of Trustworthiness And Reliability.

The FCC also separately determined that China Unicom’s section 214 authorizations should be revoked because the company’s statements to the agency and Congress demonstrated a lack of the transparency and reliability necessary to comply with Commission rules, to cooperate with the FCC or Executive Branch agencies, and to assist with the FCC’s obligations to act “for the purpose of the national defense [and] for the

purpose of promoting safety of life and property.” *Revocation Order* ¶111 (1-ER-78). This determination was based on several findings, and China Unicom’s responses to each are unpersuasive.

Management and operations—The *Order to Show Cause* directed China Unicom to provide evidence that it “is not...subject to the exploitation, influence, and control of the Chinese government,” and more specifically required China Unicom to provide “a detailed description of [its] current ownership and control (direct and indirect)” and to provide “a detailed description of its corporate governance.” *Order to Show Cause* ¶¶8–9 (2-ER-308). In its response, the company described its bylaws and stated that its immediate Hong Kong-based corporate parent, “like the common practices of other multinational companies alike, appoints the board members and management team, and approves the annual business plan and budget of” China Unicom. *Show Cause Response* at 20 (2-ER-286). It provided no other meaningful description of control by the parent entities.

This scant response “omitted crucial information that [China Unicom] provided to the Senate Subcommittee regarding [the parent entities’] role in and control over the management and operations of” China Unicom, including managing and storing customer records,

monitoring network operations, and providing technical support, as well as an important confidentiality agreement with a parent that governs access to U.S. records. *Revocation Order* ¶114–116 (1-ER-79–81).

China Unicom argues that this significant discrepancy between the information it provided the FCC and the real state of affairs is actually evidence of its candor because it provided an accurate description of its parent companies' roles to the Senate subcommittee. Br. 47. But China Unicom had a duty of candor to the Commission, and it nonetheless selectively omitted relevant information in its response to the agency. China Unicom also contends that it failed to provide the additional information to the FCC because the agency did not ask for it specifically and it was not germane to the company's "corporate governance." Br. 47-48. But those facts were certainly relevant to the issues, identified in the *Order to Show Cause*, of "control (direct and indirect)" by China Unicom's parents, *Order to Show Cause* ¶9(1) (2-ER-308), and whether China Unicom is "subject to the exploitation, influence, and control of the Chinese government," *id.* ¶8 (2-ER-308). The FCC thus reasonably concluded that China Unicom's narrow response was insufficient and misleading. *Revocation Order* ¶114 (1-ER-79).

Indirect Controlling Interest Holders—In addition, China Unicom’s response to the *Order to Show Cause* stated that its ultimate corporate parent controlled by a Chinese government entity “has an effective interest of approximately 52.1%” of a Hong Kong entity that indirectly wholly owns China Unicom.³ *Response to Order to Show Cause* 18 (2-ER-284). But the *Executive Branch Letter* pointed out that the Hong Kong entity’s 2020 SEC filing showed that the ultimate parent “indirectly controlled an aggregate of approximately 79.9% of [China Unicom’s] issued share capital,” not 52.1%. *Revocation Order* ¶119 (1-ER-82). Even when the agency flagged this issue in the *Institution Order*, *see id.* ¶50 (2-ER-189), China Unicom’s response still did not clarify the issue, *see Revocation Order* ¶120 (1-ER-82); *Response to Institution Order* 31–32 (2-ER-136–37).

China Unicom claims that its response to the FCC was not misleading because it also included a chart that showed two entities owned 26.4% and 53.5%, or a combined 79.9%, of China Unicom’s Hong Kong parent, and that it is “readily apparent” that the ultimate corporate

³ The specific company names and ownership percentages are set out at *Revocation Order* ¶7 & n.22 (1-ER-6–7). A schematic appears in the *Show Cause Response* Ex. 2 (2-ER-302).

parent controls both these entities. Br. 49; see *Show Cause Response* Ex. 2 (2-ER-302). In fact, that is not “readily apparent,” because the chart shows intermediate steps of ownership that are not clearly identified as controlled by the ultimate corporate parent. See *Revocation Order* ¶119 (1-ER-82) (response “did not identify whether any entity held a controlling interest in CU A-Share, a public company within CUHK’s chain of ownership”). China Unicom also argues that its response was not misleading because its FCC response set out an “interest” percentage and its SEC filing showed a “control” percentage. Br. 49. But the company offered its FCC response in response to a question about “ownership and *control* (direct or indirect),” so the response gave the impression that the “interest” percentage also represented a “control” percentage. *Order to Show Cause Response* at 16, 18 (emphasis added) (2-ER-282 & 284). Here too, it was reasonable for the FCC to conclude the response showed a lack of trustworthiness and reliability.

Board of Directors—The *Order to Show Cause* asked China Unicom to identify its officers and directors, and then separately to identify “all officers, directors, and other senior management of entities that hold ten percent or greater ownership interest in” the company. 2-ER-308. China Unicom, however, listed only the officers, directors, and senior managers

of its direct corporate parent, omitting the officers, directors, and senior managers of all the entities that have indirect interests. 2-ER-288; *see Revocation Order* ¶119 (1-ER-82).

China Unicom argues it reasonably understood the initial question to be about only its direct owner (Br. 50-51), but that reading makes little sense given that the Commission was investigating the degree to which the Chinese government might control the company, especially since the FCC made other inquiries about the company’s “ownership and control (direct and indirect).” *Order to Show Cause* ¶9(1) (2-ER-308). It was again reasonable for the Commission to consider this cramped response, among many others, as evidence of a general pattern to tell less than the full truth.

Failure to Comply with FCC Rules—China Unicom concedes that it failed to comply with FCC rules when it did not notify the Commission of a pro forma transfer of corporate control in 2011, but argues this “does not indicate dishonesty.” Br. 51–52; *see Revocation Order* ¶122 (1-ER-83). China Unicom omits that it failed to correct the error for nearly a year and a half after FCC staff pointed it out. *Revocation Order* ¶122 (1-ER-83). Moreover, the FCC cited this not as evidence of an intent to deceive, but rather a “disregard for Commission requirements” and as “additional

evidence” the company “cannot be relied upon to comply with Commission rules.” *Id.* That was a reasonable finding.

The Commission found further evidence of China Unicom’s failure to adhere to regulatory requirements in China Unicom’s “disregard[]” of “its responsibilities to the Commission as a holder of ISPCs”—International Signaling Point Codes, a “scare resource” used to route voice traffic—when it failed to notify the Commission of transfers of control of the codes, and later that the codes were no longer in use. *Id.* n.38, ¶121 (1-ER-9, 1-ER-83).⁴ China Unicom denies that it violated any FCC rule (Br. 53), but as the Commission explained, the company failed to comply with International Telecommunications Union guidelines. *Id.* ¶121 (1-ER-83); *ISPC Reclamation Letter 2* (2-ER-205).

The FCC assigns ISPCs in its role as U.S. Administrator under the International Telecommunications Union Recommendation Q.708. *ISPC Reclamation Letter 2* (2-ER-205); *see* 2003 ISPC assignment letter (2-ER-320) (referencing ITY-T Recommendation Q.708, and asking “that all

⁴ International Signaling Point Codes are used by the worldwide telephone control system to interconnect and route traffic across international providers, and carriers seeking or holding ISPC assignments must comply with numerous requirements. *Revocation Order* ¶121 & n.548 (1-ER-83).

requests for ISPC assignments be limited to those that strictly fit the guidelines and that ‘warehousing’ of ISPC assignments be avoided”). Those ITU guidelines require the “operator” to advise the administrator of any transfer of control, and state that an administrator may withdraw an unused ISPC. *ISPC Reclamation Letter 2* (2-ER-205).⁵ It was reasonable to find that China Unicom’s disregard of the conditions of its ISPC assignment was further “evidence that [the company] cannot be trusted.” *Revocation Order* ¶123 (1-ER-84).

* * *

In sum, the FCC reasonably concluded that, in addition to the threat the company’s operations posed to national security, the company had—in multiple ways—failed to demonstrate the trustworthiness and reliability necessary to hold its domestic and international telecommunications authorizations.

II. THE FCC HAD THE AUTHORITY TO REVOKE CHINA UNICOM’S SECTION 214 AUTHORIZATIONS.

In the face of this extensive record supporting revocation of the company’s section 214 authorizations, China Unicom’s primary

⁵ ITU-T Recommendation Q.708 is available at <https://www.itu.int/rec/T-REC-Q.708-199903-I/en>.

argument is that the FCC lacks the authority to revoke them. That argument is, as we show, unsupported by the text, structure and purpose of section 214 and the Communications Act, which authorizes such telecommunications service “as the present or future public convenience and necessity...will require.” 47 U.S.C. §214(a). It is also inconsistent with FCC orders governing domestic and international section 214 authorizations, which reserve the Commission’s right to revoke if the public interest requires. And, finally, to conclude that the Commission lacks the right to revoke a section 214 authorization in these circumstances makes no sense. It would mean that once the FCC has granted a foreign-owned telecommunications carrier authorization to operate under section 214, it must allow the carrier to continue to operate indefinitely, no matter how substantially circumstances may change and how powerful the evidence that the carrier’s operations now poses a threat to national security or are otherwise no longer in the public interest.

A. The FCC Has The Power To Revoke Section 214 Authorizations Where The Public Convenience And Necessity Requires.

Statutory text and structure—Section 214 provides that no person may operate a telecommunications transmission line without an

authorization from the FCC that “the construction, or operation, or construction and operation” of the line is required by the “present or future public convenience and necessity.” 47 U.S.C. §214(a); *see Revocation Order* ¶4 (1-ER-4). Thus, the Commission is required to ensure that not only the “construction” of the line, but also its “operation,” is required by the public convenience and necessity. 47 U.S.C. §214(a). And the Commission is required to ensure not only the “present” public convenience and necessity at the time of the grant, but also the “future” public convenience and necessity in light of later circumstances. *Ibid.* Under section 214, the Commission is therefore obliged to assure itself that not only the present, but the future operations of a telecommunications carrier granted authority to provide service under section 214 further the public convenience and necessity.

It follows from these obligations that if the public convenience and necessity is no longer served by the carrier’s operations—such as in this case, where the Commission has found that the carrier poses a substantial threat to the national security—the Commission has the power to revoke the authorization. Otherwise, the carrier would be operating in the absence of a determination that the public convenience and necessity so requires—indeed, it would be providing service in the

face of a Commission determination that the public convenience and necessity is disserved by its operations.

Section 4(i) of the Act provides further support for the Commission’s revocation authority. Section 4(i) grants to the FCC the power to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.” 47 U.S.C. §154(i). Congress enacted this provision and “declined to ‘stereotyp(e) the powers of the Commission to specific details’ “precisely” because “the administrative process (must) possess sufficient flexibility to adjust itself’ to the ‘dynamic aspects’” of the telecommunications market. *United States v. Sw. Cable Co.*, 392 U.S. 157, 180 (1968) (quoting *Pottsville Broadcasting Co.*, 309 U.S. at 138). The Commission has long found that section 4(i) “supports revocation authority, as reasonably ancillary to the Commission’s authority to authorize common carrier service in the first instance.” *Revocation Order* ¶22 (1-ER-15) (citing *CCN, Inc. et al.*, 13 FCC Rcd 13599, 13607 ¶12 (1998)). As the agency explained, the power to revoke “is necessary to ensure not only compliance with the Commission’s rules and its requirements for truthfulness, but also that circumstances with serious national security and law enforcement consequences that would have

been relevant in determining whether to authorize service remain relevant in light of significant developments since the time of such authorization.” *Revocation Order* ¶22 (1-ER-15). Thus, contrary to China Unicom’s argument (Br. 22-24), the authority to revoke a section 214 authorization is “reasonably ancillary” to the performance of the Commission’s responsibilities under section 214 to ensure that a carrier’s operations remain consonant with the “public convenience and necessity.” 47 U.S.C. §214(a); see *Motion Picture Ass’n of Am., Inc. v. FCC*, 309 F.3d 796, 806 (D.C. Cir. 2002).

China Unicom makes several observations about the language and structure of the Act in support of its position, but none are persuasive. Sections 214(a) and (c) describe the certification process: a carrier must “first have...obtained from the Commission a certificate” of authorization, and “[a]fter issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate” proceed with construction or operations. 47 U.S.C. §214(a), (c). China Unicom argues (Br. 25-26) that this expresses a “clear temporal order” and that once certification occurs, the language “leaves no room” for the FCC to withdraw the revocation. But these provisions simply make clear that a carrier can begin service once a certificate is issued; they say

nothing about revocation of that certificate. China Unicom also notes (Br. 27) that section 214(c) allows “any party at interest,” including the FCC, to bring a suit to enjoin any construction or operations “contrary to the provisions of this section.” 47 U.S.C. §214(c). There is no indication that, in providing this mechanism to enjoin *unauthorized* service, Congress intended *sub silentio* to withhold from the FCC the power to revoke authority where necessary.

China Unicom also highlights the fact that there are specific grounds for revocation of licenses for radio communication under Title III of the Act, *see* 47 U.S.C. §312, but the Act does not speak expressly to revocation of Title II telecommunications carrier authorizations. China Unicom contends that this indicates section 214 authorizations, unlike Title III licenses, cannot be revoked. Br. 28.

But that inference is unwarranted. If anything, as the Commission noted, the fact that Title III licenses may be revoked for, among other things, “conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application,” supports the determination that the “same principle” should apply to section 214 authorizations. *Revocation Order* ¶28 (1-ER-18).

Moreover, Congress's failure to specify grounds for section 214 revocations just as reasonably indicates that Congress left the grounds for revocation of such authorizations to the Commission's broader judgment to determine the public convenience and necessity. *See Revocation Order* ¶¶28 & 41(1-ER-18 & 26). Notably, a Title III radio license is granted for a term of eight years and must be renewed, 47 U.S.C. §307(c), but section 214 authorizations do not expire. There is no reason to think that Congress intended to grant the Commission the power to revoke a Title III license that will expire in time, but withhold the power to revoke a Title II authorization that by default would continue in force indefinitely. Instead, it is more likely that Congress saw the need to limit the grounds on which the agency could revoke a Title III license during its limited term.

Statutory purpose—The FCC's interpretation that it may revoke section 214 authorizations also aligns far better with the statute's purpose to grant such authorizations only if the public convenience and necessity requires. It would make little sense for Congress to have specified that a section 214 authorization can be granted only upon a determination by the FCC that the public convenience and necessity requires it, but then rendered the agency powerless to revoke the

authority later if continued operation would disserve that same interest. “As there is no real distinction between refusing and revoking a license, the same body which may be vested with power to grant, or refuse to grant, a license may also be vested with the power to revoke it.” *Yoshizawa v. Hewitt*, 52 F.2d 411, 414 (9th Cir. 1931); see *Newhouse v. Robert’s Ilima Tours, Inc.*, 708 F.2d 436, 440 n.7 (9th Cir. 1983) (“The Secretary was given the power to regulate all motor carriers in interstate commerce with respect to maximum hours and qualifications of drivers....The power to revoke exemptions is inherent in that broad congressional mandate.”).

China Unicom does not appear to dispute that the FCC could deny a new section 214 application on the grounds that the grant of the application would endanger national security. It would be just as inconsistent with the statute’s purpose of advancing the public convenience and necessity to prevent the agency from revoking an existing authorization if, decades later, circumstances have changed to create such a threat.

Finally, even if the matter were less clear, the Commission’s reading of its powers under section 214 is at least reasonable, and is therefore entitled to deference under *Chevron*. See, e.g., *Tulelake*

Irrigation Dist. v. U.S. Fish & Wildlife Serv., 40 F.4th 930, 935 (9th Cir. 2022); *New Edge Network, Inc. v. FCC*, 461 F.3d 1105, 1110 (9th Cir. 2006).

B. The FCC Conditioned China Unicom’s Section 214 Authorizations On The Agency’s Power To Revoke.

In addition, and apart from the Commission’s general power to revoke section 214 authorizations, China Unicom received its authorizations with notice that the Commission reserved the right to revoke them if the public convenience and necessity warranted.

Section 214(c) permits the FCC to “attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require.” 47 U.S.C. §214(c). When China Unicom received authority to operate domestically and internationally, it did so subject to the agency’s reserved power to revoke those authorizations if later circumstances warrant.

First, in 1999, the agency granted “blanket” section 214 authority for all carriers to provide service domestically, with the explicit understanding that it “will still to be able to revoke a carrier’s section 214 authority when warranted.” *Blanket Authority Order* ¶16. Indeed, the FCC explained it would not have granted blanket authority without the

power to revoke. *Ibid.* (“[W]e adopt blanket section 214 authority, rather than completely forbear, so as to provide the primary deregulatory benefits of forbearance while, at the same time, ensuring that we can take enforcement actions as necessary to protect consumers.”). *See Revocation Order* ¶¶4, 24 (1-ER-4, 16).

Likewise, when the FCC adopted an “open entry standard” for foreign-owned carriers to operate in the United States, it retained the authority to “enforce [its] safeguards through fines, conditional grants of authority and the revocation of authorizations,” and it stated that it considers “national security” and “foreign policy” concerns when granting authorizations under section 214. *Foreign Participation Order* ¶¶19 & 61; *see Revocation Order* ¶¶4, 24 (1-ER-4, 16). A 2000 reconsideration order on foreign participation again emphasized the agency’s power to revoke section 214 authorizations when necessary. *Foreign Participation in the U.S. Telecommunications Market*, 15 FCC Rcd 18158, 18176 & 18172 ¶¶28 & 35 (2000) (*Foreign Participation Reconsideration Order*).

China Unicom argues that its section 214 certificates “had no specific conditions or limitations; they were subject only to the general conditions that FCC regulations imposed on all international certificates.” Br. 8. But as explained above, those general conditions

imposed on international certificates included the reservation of the power to revoke as well as the statement that the agency would consider national security concerns. *See Foreign Participation Order* ¶¶19 & 61; *China Unicom Certificate* 2-ER-322 (citing *Foreign Participation Reconsideration Order*). China Unicom also argues that the Commission in the past has claimed only the authority to revoke licenses for reasons related to competition or adjudicated misconduct, not for a “current public-interest consideration.” Br. 32-33. To be sure, the agency has emphasized that it may revoke licenses because of risks to competition or because of wrongdoing. *See Foreign Participation Order* ¶19, *Blanket Authority Order* ¶16. But the FCC has never suggested that it lacked authority to revoke based on national security threats. *See Revocation Order* ¶24 (1-ER-16) (list of competition-related concerns was “non-exhaustive”). And unlike *Marpin Telecoms & Broad. Co. v. Cable & Wireless, Inc.*, 18 FCC Rcd 508, 515 ¶18 (2003) (Br. 33, 35, 58), the risk here is presented by China Unicom itself, and not an affiliate, by reason of its Chinese-government ownership and control.

In sum, China Unicom received section 214 authority subject to the agency’s power to revoke, would not have received that authority otherwise, and cannot complain now that the agency lacks that authority.

C. The Revocation Does Not Conflict With *Seatrain*.

China Unicom’s argument that the FCC cannot revoke authority once granted relies primarily on *United States v. Seatrains Lines, Inc.*, 329 U.S. 424 (1947) (Br. 16-21). But that case was very different.

In *Seatrains*, the Interstate Commerce Commission (ICC) granted a certificate that allowed a carrier to transport all types of goods by water, including loaded and unloaded train cars, but the agency soon after attempted to revise the certification, preventing the carrier from its “chief business” of transporting loaded and unloaded train cars. 329 U.S. at 428. No facts had changed, and the carrier’s business was the same as when it had applied for authority. *Ibid.* All that had changed was the ICC’s policy—one and a half years after granting the certificate, the agency had decided that transporting loaded and unloaded train cars would be defined as “car ferry service,” even though the agency had explicitly rejected that classification for *Seatrains* when it issued its original certificate. *Id.* at 429. In rejecting the argument that the ICC had an implicit power to change course so rapidly and arbitrarily, the Supreme Court expressed doubt that the ICC could have placed a restriction of this type even in a new certificate. *Id.* at 431 (“Whether the Commission could, under this authority, have imposed a restriction in an original

certificate as to the type of service a water carrier could utilize to serve its shippers best is by no means free from doubt.”). For this reason, several later decisions have read *Seatrain* as limited to situations in which the agency could not have imposed the restriction on which revocation rested in the first place.⁶

This case is quite different. Contrary to China Unicom’s arguments, the FCC has not changed policy. The agency has consistently noted that foreign ownership raises concerns about national security. What has changed are the facts: “Circumstances have changed dramatically since 2002, when the Commission first authorized [China Unicom] to provide telecommunications services in the United States.” *Revocation Order* ¶76 (1-ER-53). At that time, “China’s campaign of economic espionage, illicit acquisition of U.S. sensitive technology and sensitive data, and cyber-enabled espionage were not contemplated as imminent or serious

⁶ See *Civil Aeronautics Bd. v. Delta Airlines, Inc.*, 367 U.S. 316, 333 n.15 (1961) (*Seatrain*’s “holding may rest on an alternate ground—viz.: that the Commission had no power to impose the conditions it did in the first instance”); *Murphy Oil Corp. v. FERC*, 589 F.2d 944, 947 (8th Cir. 1978) (*Seatrain* “rested heavily on the Court’s doubt that the ICC would have had, in the first instance, statutory authority to take the action it did.” (quoting *Distrigas Corp. v. Fed. Power Comm’n*, 495 F.2d 1057, 1064-65 (D.C. Cir. 1974))).

threats.” *Ibid.* Now, by contrast, the record amply shows that “no country poses a broader, more severe intelligence collection threat than China.” *Ibid.* A revocation under these circumstances is not a change in policy, but instead the application of a consistent policy that takes into account national security concerns in connection with section 214 authorizations.

Moreover, in *Seatrain*, the ICC “seems specifically to have requested the Congress to include no power to revoke a certificate,” because while such a provision was “essential for motor carriers,” who were numerous, it “was not necessary to use such sanctions in the regulation of water carriers.” 329 U.S. 424 at 430 & n.4. There was no such testimony before section 214 of the Act was adopted, and the reasons for the distinction likewise do not apply. Moreover, the ICC had previously held before *Seatrain* that it had no revocation powers other than those explicitly enumerated. *Id.* The FCC, by contrast has never so held, and indeed has consistently found it has the power to revoke. *See Revocation Order* ¶4 & n.10 (1-ER-5). Finally, the *Seatrain* Court noted that Congress had implemented a grandfather clause to protect existing carriers, and *Seatrain* had already been in its line of business when the statute passed. 329 U.S. at 426. The ICC’s revision of the certificate in

Seatrain ran counter to that statutory protection, but there is no similar protection at issue here.

China Unicom cites two later decisions that apply *Seatrain* (Br. 19-21), but neither is apposite. In *Civil Aeronautics Bd. v. Delta Airlines, Inc.*, 367 U.S. 316 (1961), the agency purported to alter a certificate of convenience and necessity “without notice or hearing,” and counter to a “comprehensive” statutory process for revocation. *Id.* at 321-23. As *Delta Airlines* explains, “[t]he force of the *Seatrain* decision” is that “commissions and boards must follow scrupulously the statutory procedures before they can alter existing operations.” 367 U.S. at n.15. That is far afield from this case, where the FCC afforded extensive process and did not act counter to any statutory limitations. And in *Delta Airlines*, the agency purported to reserve the right to amend certificates in a manner that would “nullify[] an express provision of the Act.” 367 U.S. at 328. Not so here, where revocation does not contravene any express statutory limit.

Similarly, in *Hirschey v. FERC*, 701 F.2d 215 (D.C. Cir. 1983) (Br. 21), an agency attempted to revoke without process a certification that had already become effective, directly counter to specific agency rules on revocation. *See id.* at 218 (“To imply such authority from section 309

would make a sham of the carefully crafted license exemption regulations and render superfluous the specific revocation procedures set forth in 18 C.F.R. §4.106.”). The case therefore stands for the unexceptional proposition that an agency must follow its own rules.

In short, the Commission’s revocation of China Unicom’s section 214 authorizations does not conflict with the very different situation confronted by the Court in *Seatrain*. In this case, the FCC, responding to changed factual circumstances, revoked China Unicom’s authorization to provide domestic and international telecommunications services in order to carry out its section 214 obligations to protect the public convenience and necessity against the demonstrated risk that the Chinese government-owned carrier posed to the nation’s security.

III. THE FCC PROVIDED CHINA UNICOM WITH AMPLE PROCESS

Finally, the Commission provided China Unicom with a full and complete opportunity to persuade the Commission why its section 214 authorizations should not be revoked.

Congress has granted the Commission authority to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” 47 U.S.C. §154(j). This discretion embodies “the established principle that administrative agencies ‘should

be free to fashion their own rules of procedure and to pursue methods...capable of permitting them to discharge their multitudinous duties.” *Schreiber*, 381 U.S. at 290 (quoting *Pottsville Broad. Co.*, 309 U.S. at 143); see *Revocation Order* ¶38 & n.148 (1-ER-23). Here, the Commission reasonably determined that the procedure it followed—including two detailed notices and several rounds of lengthy written submissions—was “consistent with principles of due process and applicable law and provided [China Unicom] with sufficient notice and several opportunities to be heard.” *Id.* ¶29 (1-ER-19).

A. The Subpart B Rules By Their Terms Do Not Apply

China Unicom argues (Br. 38) that 47 C.F.R. §1.91 required the Commission to apply the procedures set forth in part 1, subpart B of its rules (47 C.F.R. §§1.201–.377). China Unicom did not raise this argument before the FCC, and indeed acknowledged then that “the Commission’s rules do not specifically reference the procedures for revocation of section 214 authorizations.” Response to Institution Order at 13 (2-ER-118). The company therefore waived the argument and cannot raise it now. See 47 U.S.C. §405(a); *Fones4All Corp. v. FCC*, 550 F.3d 811, 817 (9th Cir. 2008). In any case, the argument is meritless.

Section 1.91(a) states that if it appears a “station license or construction permit” should be revoked, the FCC will issue an order to show cause why a revocation order should not issue. 47 C.F.R. §1.91(a). Section 1.91(d) then states that “[h]earing proceedings on the matters specified in such orders to show cause shall accord with the practice and procedure prescribed in this subpart and subpart B of this part.” *Id.* at §1.91(d). “[S]tation license” and “construction permit” are terms of art that refer to radio licenses under Title III of the Communications Act, as opposed to section 214 authorizations under Title II of the Act to engage in telecommunications by wire. *Revocation Order* ¶41 & n.169 (1-ER-26). Thus, the rule by its terms does not apply to section 214 revocations.

China Unicom (Br. 40) argues that section 1.91(b), which sets out parameters for a revocation notice and hearing, refers to any type of revocation, including a section 214 revocation like this one, because the rule does not repeat the terms “station license or construction permit,” 47 C.F.R. §1.91(b). The FCC disagreed, *Revocation Order* ¶41 (1-ER-26), and courts give “substantial deference to an agency’s interpretation of its own regulations,” *Fones4All Corp.*, 550 F.3d at 820 (quoting *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994)).

In any case, the argument is meritless. First, it is more reasonable to assume that subsection (b) refers to revocation of the same type of permits as those identified in subsection (a), which it immediately follows. Second, subsection (b) does not require the subpart B procedures—that requirement is set out in subsection (d). 47 C.F.R. §1.91(d). Subsection (d) in turn refers to the “[h]earing proceedings on the matters specified in *such orders*,” *id.* (emphasis added), which most naturally refers to the orders required by subsection 1.91(a), the subsection which sets out the requirement for a show cause order, and which again applies only to Title III licenses.

B. No Commission Policy Required Subpart B Procedures.

China Unicom also argues that the FCC was required to conduct a subpart B hearing here because it “has always” done so before. Br. 38. In fact, although the Commission has elected to use Subpart B procedures for section 214 proceedings in several cases, it has not always done so. *Revocation Order* ¶39 (1-ER-24).⁷ As the *Revocation Order* explained, the

⁷ China Unicom argues (Br. 39) that in one example of a revocation without a hearing cited by the *Revocation Order*, the party waived subpart B procedures, but the order in question never states that. *LDC Telecommunications, Inc.*, 31 FCC Rcd 11,661 (2016). China Unicom also argues (Br. 39-40) that the other two instances involve

discretionary use of these procedures in some instances “simply reflect[s] the tailoring of procedures according to the circumstances of each case, and...the exercise of the Commission’s broad procedural discretion under section [154(j)].” *Revocation Order* ¶39 (1-ER-25). The instances cited by China Unicom of section 214 revocation under subpart B procedures also predate the Commission’s rulemaking to streamline many administrative hearings, in which the agency reiterated that the “hearing rights for common carriers under section 214 are comparatively limited.” *Ibid.* (quoting *Procedural Streamlining of Administrative Hearings*, 34 FCC Rcd 8341, 8343 ¶4 (2019)).⁸

“termination” as opposed to “revocation,” but both terms refer to withdrawal of section 214 authority. The FCC uses the term *termination* to refer to withdrawal of authority based on noncompliance with an agreement between an international carrier and Executive agencies, while *revocation* refers to withdrawal for other reasons. *See, e.g., Wypoint Telecom, Inc.*, 30 FCC Rcd 13,431, 13,433 ¶5 (2015).

⁸ In the same rulemaking, the FCC amended its rules to allow two FCC Bureaus to revoke section 214 authorizations in instances where the agency has chosen to use subpart B proceedings, and where the carrier has waived further hearing rights. *See Procedural Streamlining of Administrative Hearings*, 35 FCC Rcd 10729, 10741 ¶33 (2020) (*Administrative Hearings Order*). Contrary to China Unicom’s argument (Br. 41, citing Federal Register publication), this does not establish that the agency is required to use those proceedings unless waived, and it is irrelevant to a proceeding like this one, where

In the alternative, even if the Commission’s past actions “were thought to represent a past policy of applying subpart B [procedures] to all section 214 revocations,” the Commission made clear in the *Revocation Order* and several other recent revocation proceedings that it “no longer believe[s] that such a policy is appropriate” and has therefore determined it should no longer be followed. *Revocation Order* ¶40 (1-ER-25). An agency may change policy if it explains “that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Here, the agency explained that a hearing under subpart B is not necessary in cases like this one, “where the pleadings addressing the relevant national security issues do not identify any need for additional procedures and the public interest warrants prompt response to legitimate concerns raised by the Executive Branch.” *Revocation Order* ¶40 (1-ER-25). The Commission therefore was not bound to continue following any alleged past practice that it reasonably determines is inappropriate here.

the Commission itself is acting, as opposed to delegating authority to a Bureau.

C. China Unicom Was Not Prejudiced By The Decision Not To Adopt Subpart B Procedures.

Finally, China Unicom fails to show that it was prejudiced by the Commission’s decision not to adopt subpart B procedures. *See* 5 U.S.C. §706 (directing courts to take “due account...of the rule of prejudicial error”); *Idaho Wool Growers Ass’n v. Vilsack*, 816 F.3d 1095, 1104 (9th Cir. 2016).

China Unicom argues that a hearing under the subpart B procedures “would have...mandated notice of the agency’s specific contentions.” Br. 38. But the agency provided ample notice of the “specific contentions” at issue: the *Show Cause Order* and *Institution Order* spelled out in great detail the agency’s concerns that the company posed a risk to national security and law enforcement and also lacked the trustworthiness and reliability required of a section 214 carrier. China Unicom does not describe what was missing from this notice that would have been provided in a subpart B proceeding—indeed the company argues elsewhere that the *Show Cause Order* actually *was* such a notice. Br. 40.

China Unicom also alleges that under the subpart B procedures, the company would have had access to “copious technical detail and other

documents” about how the company might misroute traffic. Br. 43 (citing *Revocation Order* ¶¶97–100). But both notices and the *Executive Branch Letter* described the agencies’ concerns about misrouting, see *Show Cause Order* n.21 (2-ER-307); *Executive Branch Letter* at 34–35 (2-ER-243–44); *Institution Order* ¶41 (2-ER-183). Moreover, China Unicom is familiar with the details of its own operations and was therefore in the best position to demonstrate that it does not have that capability, but it made no attempt to do so before the Commission.

China Unicom also asserts that a hearing under the subpart B procedures would have provided “the opportunity to present live testimony on disputed facts.” Br. 38. Not so. Subpart B allows hearings to be conducted either in person or “on a written record.” 47 C.F.R. §§1.370–.377; *Revocation Order* ¶38 (1-ER-24); see *Administrative Hearings Order* ¶2 (amending rules to “codify and expand the use of a process that relies on written testimony and documentary evidence in lieu of live testimony and cross-examination”). The company also refers to a lack of discovery (Br. 38), but it fails to describe evidence that it sought but was denied, or evidence a different procedure might have revealed, or to proffer specific evidence it was unable to introduce. As the FCC explained, the question of whether revocation is appropriate did not

“turn on disputed issues of fact, nor [was] the credibility of any material evidence in the record...reasonably [in] question[.]” *Revocation Order* ¶42 (1-ER-27).

China Unicom argues that procedures under subpart B were required before the Commission could make findings regarding the company’s lack of candor. Br. 43. China Unicom ignores the separate basis for revocation: that the company presents risks to national security and law enforcement because it is subject to control by the Chinese government. And even as to the separate finding that the company lacked trustworthiness and reliability, the FCC explained, “The disputes here...do not turn on witnesses testifying to their personal knowledge or observations or on individual credibility determinations, for example, but instead on facts that can be fully ascertained through written evidence....” *Id.* ¶42 (1-ER-27).

Below, China Unicom argued, as it has here, that its answers to the *Order to Show Cause* were accurate and did not show a lack of candor, and that any discrepancies resulted from the specific language of the questions that the FCC asked. *Institution Order Response* 18–21. (2-ER-123–26). Although the Commission did not find these arguments persuasive, it considered them fully. *Revocation Order* ¶118 (1-ER-81).

Here, as before the agency, China Unicom “has given...no reason ... to believe that live testimony would shed meaningful light on material facts.” *Id.* ¶35 (1-ER-22).

CONCLUSION

The petition for review should be denied.

Dated: September 27, 2022

Respectfully submitted,

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STATEMENT OF RELATED CASES

The order under review has not previously been before this Court or any other court. Two other cases pending in the D.C. Circuit raise related issues because they center on the FCC's revocation of section 214 authority for companies owned and controlled by the Chinese government. *See China Telecom (Americas) Corporation v. FCC*, D.C. Cir. No. 21-1233 (oral argument held Sep. 20, 2022); *Pacific Networks Corp. v. FCC*, D.C. Cir. No. 22-1054 (oral argument held Sep. 20, 2022).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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STATUTORY ADDENDUM

47 U.S.C. § 151

§ 151. Purposes of chapter; Federal Communications Commission created

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the “Federal Communications Commission”, which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

47 U.S.C. § 154

§ 154. Federal Communications Commission

* * *

(i) Duties and powers

The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.

(j) Conduct of proceedings; hearings

The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

47 U.S.C. § 214

§ 214. Extension of lines or discontinuance of service; certificate of public convenience and necessity

(a) Exceptions; temporary or emergency service or discontinuance of service; changes in plant, operation or equipment

No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: Provided, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 of this title: Provided further, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: Provided, however, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant,

operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

(b) Notification of Secretary of Defense, Secretary of State, and State Governor

Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, extended, acquired, or operated, or in which such discontinuance, reduction, or impairment of service is proposed, with the right to those notified to be heard; and the Commission may require such published notice as it shall determine.

(c) Approval or disapproval; injunction

The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of service covered thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) Order of Commission; hearing; penalty

The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this subsection shall forfeit to the United States \$1,200 for each day during which such refusal or neglect continues.

47 C.F.R. § 1.91

§ 1.91 Revocation and/or cease and desist proceedings; hearings

(a) If it appears that a station license or construction permit should be revoked and/or that a cease and desist order should be issued, the Commission will issue an order directing the person to show cause why an order of revocation and/or a cease and desist order, as the facts may warrant, should not be issued.

(b) An order to show cause why an order of revocation and/or a cease and desist order should not be issued will designate for hearing the matters with respect to which the Commission is inquiring and will call upon the person to whom it is directed (the respondent) to file with the Commission a written appearance stating that the respondent will present evidence upon the matters specified in the order to show cause and, if required, appear before a presiding officer at a time and place to be determined, but no earlier than thirty days after the receipt of such order. However, if safety of life or property is involved, the order to show cause may specify a deadline of less than thirty days from the receipt of such order.

(c) To avail themselves of such opportunity for a hearing, respondents, personally or by counsel, shall file with the Commission, within twenty days of the mailing of the order or such shorter period as may be specified therein, a written appearance stating that they will present evidence on the matters specified in the order and, if required, appear before the presiding officer at a time and place to be determined. The presiding officer in his or her discretion may accept a late-filed appearance. However, a written appearance tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petition for acceptance of a late-filed appearance will be granted only if the presiding officer determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(d) Hearing proceedings on the matters specified in such orders to show cause shall accord with the practice and procedure prescribed in this subpart and subpart B of this part, with the following exceptions:

(1) In all such revocation and/or cease and desist hearings, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; and

(2) The Commission may specify in a show cause order, when the circumstances of the proceeding require expedition, a time less than that prescribed in §§ 1.276 and 1.277 within which the initial decision in the proceeding shall become effective, exceptions to such initial decision must be filed, parties must file requests for oral argument, and parties must file notice of intention to participate in oral argument.

(e) Correction of or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

(f) Any order of revocation and/or cease and desist order issued after hearing pursuant to this section shall include a statement of findings and the grounds therefor, shall specify the effective date of the order, and shall be served on the person to whom such order is directed.