Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	GN Docket 20-110;
	)	ITC-214-20020728-00361;
China Unicom (Americas) Operations Limited	)	ITC-214-20020724-00427
	)	

RESPONSE TO ORDER TO SHOW CAUSE

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EXECUTIVE SUMMARY

China Unicom (Americas) Operations Limited ("CUA") respectfully submits, as its detailed Response demonstrates, that the Order To Show Cause ("Order") provides no valid grounds for initiating a proceeding to revoke its long-standing section 214 authorizations to provide domestic and international services in the United States. Since it was deemed qualified to do so nearly two decades ago, CUA has a record of complying with Commission regulations, and providing high-quality services to its U.S. customers. CUA's qualifications to hold section 214 authorizations remain intact. To threaten to oust this successful company from the U.S. marketplace, to the detriment of the U.S. employees who work there, the U.S. investors who have bought interests in CUA's publicly-traded parent company, and the U.S. customers who rely upon and benefit from CUA's services, without credible or verifiable justification is contrary to the Communications Act of 1934, as amended ("Act") and fundamental notions of justice and fairness.

The only basis the Order offers to initiate revocation proceedings is generalized suggestions of national security concerns driven by CUA's ownership structure. Yet, CUA cannot fairly respond to these suggestions, because the Order does not discuss any activity that the Bureaus who launched the inquiry fear CUA might engage in to endanger national security. Instead, CUA shows in this Response that it would be improper to initiate a proceeding to revoke its section 214 authorizations simply because of the partial and indirect ownership of a bare majority of the company.

First, national security is not the sole, or even the primary, consideration under section 214; preserving healthy competition in the market and protecting consumers from unnecessary costs are the main goals.

Second, revocation of a section 214 authorization is a punitive sanction. The Commission bears a high burden in proceedings to impose such punishment. The agency's authority to revoke and its practice in revocations is limited to use as an enforcement remedy, generally reserved for the

most serious cases of repeated and willful violations of the Commission's rules. If the Commission were to open a proceeding to revoke CUA's section 214 authorizations, the agency would have the burden to prove CUA has engaged in wrongdoing that warrants revocation. The Order shows no sign that the Commission can meet that burden.

Third, the partial and indirect ownership of CUA is not a sufficient basis to conclude that CUA presents a national security risk. Its ongoing qualifications must be measured against its own record. CUA is a domestic corporation subject to U.S. corporate laws, with a two-decade track record as a valuable contributor to U.S. telecommunications markets, a good record of compliance with its FCC regulatory obligations, and a demonstrated willingness to cooperate with U.S. law enforcement agencies when asked. Against that record, and in the absence of complaints that CUA has done anything untoward with respect to national security, it is inadequate and unfair to initiate a revocation proceeding based on speculation about what CUA might do in the future. Rather than speculating on how CUA might behave at some future time, the Commission must consider CUA's actual track record and operating history. The National Telecommunications and Information Administration has said that past conduct raising concerns should be a factor in a decision to deny a section 214 authorization. Rationally, the absence of troublesome conduct should be at least as important, and really even more so, in a decision whether to revoke an authorization.

Fourth, even if there arguably were potential legitimate national security concerns, there are alternatives to the draconian remedy of revocation that never have been broached with CUA. CUA would be willing to engage in such discussions.

For all the foregoing reasons, as laid out in detail in CUA's Response, the Commission should not further consider revocation of CUA's section 214 authorizations. Nonetheless, if the Commission decides that there still are grounds for questioning CUA's ongoing qualifications to hold its section 214 authorizations, there must be an additional proceeding before the Commission

takes any revocation action. While not specifying the nature of such a proceeding, the Order reflects an intent to conduct one and CUA has presented its arguments with that understanding. Were the Commission to impose revocation solely on the basis of the Order and CUA's Response, such a rush to judgment would be unfairly prejudicial.

Further, any such proceeding would need to involve a hearing under subpart B of the Commission's General Rules of Practice and Procedure before revoking CUA's authorizations. The Commission has previously afforded targets of potential section 214 revocations the opportunity to respond to allegations in an evidentiary hearing before an Administrative Law Judge. There is no sound justification for departing from that practice and procedure in this matter. Furthermore, CUA respectfully submits that it has constitutionally protected property and liberty interests that entitle it to a hearing before the Commission can summarily strip CUA of its section 214 authorizations.

Prior to any such hearing, the Commission must provide CUA with more specific information about the alleged risks and concerns associated with CUA's retention of its long-standing section 214 authorizations. As things stand, the Order provides CUA with precious little information. CUA must defend itself against conclusory assertions, unsupported by any reference to events or facts, and is asked to prove, against speculation, a negative proposition about how it will conduct itself in the future. That is not a fair process. Further, CUA must be provided adequate time to prepare to respond to these assertions.

CUA has responded in good faith to each of the Order's sixteen inquiries. As permitted by the Order and the Commission's rules, CUA seeks confidential treatment for certain personally identifying and commercially sensitive information. In sum, CUA submits that the Response shows cause why no proceeding to revoke its section 214 authorizations is justified or should be initiated.

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To: International Bureau, Enforcement Bureau and Wireline Competition Bureau

RESPONSE TO ORDER TO SHOW CAUSE

China Unicom (Americas) Operations Limited ("CUA"), in accordance with the Order To Show Cause ("Order") released by the International, Enforcement, and Wireline Competition Bureaus (collectively, "Bureaus"),[1] hereby respectfully submits this response showing cause why the Commission should not initiate any proceedings to revoke CUA's authorizations under section 214 of the Communications Act of 1934, as amended (the "Act")[2] to provide domestic and international common-carrier operations or reclaim CUA's International Signalling Point Codes ("ISPCs").

I. Introduction and Overview.

Revocation of section 214 authorizations is a major penalty, heretofore reserved for the most serious cases of repeated and willful violations of the Commission's rules. What the Bureaus propose is the opposite: without any suggestion that CUA has engaged in any material violations, the Bureaus question the ongoing qualifications of CUA to hold these authorizations that other U.S. companies enjoy, on the basis only of generalized assertions of national security concerns and CUA's possible future conduct. CUA has operated in the United States for nearly two decades, complied with Commission regulations, and provided high-quality service to its U.S. customers. To

[1] *In re China Unicom (Americas) Operations Limited,* GN Docket No. 20-110, ITC-214-20020728-00361, ITC-214-20020724-00427, Order to Show Cause, DA 20-449 (IB, WCB, EB rel. Apr. 24, 2020) ("Order"). This response is timely filed in accordance with the extension of time granted by the Commission on May 19, 2020 (DA 20-531).
[2] 47 U.S.C. § 214.

threaten to oust this successful company from the U.S. marketplace, to the detriment of the U.S. employees who work there, the U.S. investors who have bought interests in CUA's publicly-traded parent company, and the U.S. carriers and other customers who rely upon and benefit from CUA's services, without credible or verifiable justification is contrary to the Act and fundamental notions of justice and fairness.

The Commission should neither revoke CUA's section 214 authorizations nor initiate proceedings to do so, because nothing in the Order suggests that CUA has engaged in misconduct that could even conceivably warrant such a penalty. Likewise, CUA's ISPCs should not be reclaimed. CUA cannot fairly respond to the Bureaus' generalized suggestions of national security concern, because the Order does not discuss any specific activity that the Bureaus fear CUA might engage in to endanger national security. Instead, CUA shows in this response that it would be improper to initiate a proceeding to revoke a section 214 authorization simply because of the partial and indirect ownership of the company.

CUA is providing a detailed response to the Bureaus' questions, but it stresses that those questions are not the only matters relevant for any decision on whether to initiate a proceeding to revoke the section 214 authorizations. In a revocation proceeding, the Bureaus would have the burden to prove that the authorizations should be revoked. Neither the Order nor the information it requested from CUA would begin to meet that burden.

II. Section 214 Is Primarily About Competition and Universal Coverage.

The Commission's attempt to begin a preceding to revoke CUA's domestic and international section 214 authorizations and restrict its access to the U.S. telecommunications market without a sound basis or justification is contrary to the objective of section 214 and decades of Commission actions. Section 214 was initially enacted in an effort "to avoid economic waste and insure overall

service continuity."[3] The Commission itself has long recognized that section 214 was enacted simply "to ensure the provision of nation-wide service and to stem inflated rate bases resulting from imprudent or wasteful duplication of facilities."[4] After modernization of the telecommunications markets rendered concerns about duplication obsolete, Congress enacted the Telecommunications Act of 1996 ("1996 Act") to deregulate the industry and increase competition to accelerate the development of new products and services and reduce prices.[5] This included Congress directing the Commission to permit a common carrier to be exempt from section 214 "for the extension of any line."[6] Congress further mandated that the Commission forbear from applying any provision of the Act, including section 214, if enforcement is "not necessary to ensure" a carrier's prices and terms are "just and reasonable and not . . . discriminatory," if enforcement is "not necessary for the protection of consumers," and "forbearance . . . is consistent with the public interest."[7]

In raising the specter of revoking CUA's authorizations, the Order also stands in stark contrast to the Commission's repeated actions to enhance the ability of foreign carriers to access the U.S. telecommunications market. Again and again, the Commission has eliminated and streamlined the section 214 authorization process to increase foreign access to the U.S. market in ways that were not inconsistent with national security. Even before the 1996 Act, the Commission streamlined the

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[3] Communications Act of 1934, Section 214, Legislative Background at 1, U.S. House Committee on Interstate and Foreign Commerce (1979).

[4] *In re Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 91 F.C.C.2d 59, 71 (1982).

[5] *See, e.g.*, *Conference Report Submitted in the Senate*, 104 Cong. R. S 686 (Feb. 1, 1996) Telecommunications Act was "to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."); *see also In re Implementation of the Telecommunications Act of 1996*, 63 Fed. Reg. 990 (1998) (noting the "1996 Act's goals of full and fair competition in all telecommunications markets. Such widespread competition will ensure that the American public derives the full benefit of such competition through new and better products and services at affordable rates.").

[6] Telecommunications Act of 1996 § 402(b)(2), Pub. L. No. 104-104, 110 Stat. 56 (1996).

[7] 47 U.S.C. § 160(a). Neither the 1934 nor the 1996 Act mentioned national security, despite government-wide concern regarding foreign espionage long before the 1996 Act. This is because Congress has never considered national security to be the primary concern of section 214 and has instead addressed national security for telecommunications in other statutes, such as the Stored Communications Act and the USA PATRIOT Act.

application and discontinuance procedures given "the emergence of a more competitive marketplace."[8] Right after the 1996 Act was passed, the Commission eliminated "country-specific" 214 authorizations in favor of "global international Section 214 authorizations" in order to "facilitate entrance into the international telecommunications market and expansion of international services."[9] In 1999, the Commission concluded that blanket authorization of all domestic carriers under section 214(a) "is clearly warranted and in the public interest" simply because of its "de-regulatory, pro-competitive effect."[10] In none of these decisions did the Commission express any concern that increased foreign carrier access to the U.S. market would raise national security concerns.

Indeed, if foreign access to the U.S. market raised significant national security concerns, the Commission would have been far more circumspect in adopting both the 1996 and 1999 rules. Country-specific international authorizations would obviously give the Commission greater ability to scrutinize any particular connection for national security purposes, but in 1996 the Commission allowed non-specific, general-purpose authorizations without considering that factor. Similarly, in the 1999 rule, the Commission allowed any company of any sort to operate as a domestic common carrier. By operation of the Commission's 1999 rule, any company in the United States, foreign-owned or not, is entitled to a domestic section 214 authorization that could enable the same sort of misconduct, without any prior assessment of whether the company is owned by a foreign government or otherwise presents national security concerns. This is not a defect in the 1999 rule; it

[8] *See, e.g.*, *In re Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 91 F.C.C.2d 59, 71 (1982) ("[T]he application of certification and discontinuance procedures to firms without dominance in the marketplace [is] unnecessary to achieve these purposes.").

[9] *In re Streamlining International Section 214 Authorization Process*, 11 FCC Rcd. 12884, 12885 (1996).

[10] *In re Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, 14 FCC Rcd. 11364, ¶ 13 (1999). The Commission reserved the ability to revoke section 214 certification if a carrier engaged in extreme abuse of consumers; "[b]ecause of this assured consumer protection we are confident that blanket authority for dominant carriers as well as non-dominant carriers is in the public interest." *Id.* ¶ 15. The Commission clearly considered consumer protection the only relevant countervailing interest; it did not so much as mention national security as a relevant concern.

is an illustration of the express intention of Congress and the Commission in enacting and implementing section 214.

For these reasons, it is no surprise that prior to the Order, the Commission has not focused extensively on national security matters in its rulemaking or enforcement decisions regarding domestic section 214 authorizations. And even when the Commission has mentioned national security in the context of international section 214 authorizations, it has emphasized that it is "to be raised only in very rare circumstances."[11] The objectives of "promoting competition in the U.S. market, and of achieving a more competitive global market for all basic telecommunications services" are the express focus of section 214 and remain the primary concerns of international section 214 authorizations.[12]

Even for international section 214 authorizations, generalized security concerns cannot be the only or the most important consideration regarding certificates that CUA has held for nearly two decades. Competition and the health of telecommunications markets is the primary concern of section 214.[13] CUA's continued operation is important for the public interest, and retention of its domestic and international section 214 authorizations will continue to serve the public convenience and necessity. CUA provides high-quality telecommunications services for U.S. operators and corporate customers, and contributes to healthy competition on the communication routes it serves. Indeed, at this moment, and despite the already public nature of the Order, major U.S. telecommunications companies are benefiting from or seeking bids for CUA's services,

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[11] *In re Rules and Policies for Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, 23901–02 (1997).
[12] *Id.* Section 214(b)—which requires notice to the Secretaries of Defense and State about certain section 214 applications—confirms how small a role national security is supposed to play. Section 214(b) does not require the Commission to actually consult with these secretaries before acting on an application, a requirement Congress routinely imposes in other statutes to address national security. *See, e.g.*, 21 U.S.C. § 350i; 42 U.S.C. § 2160c; 50 U.S.C. § 4823. And this notice provision was merely a "technical change[]" to "conform with" the addition of section 222 to the Act in 1943, which required the Commission provide notice and an opportunity to be heard to certain cabinet secretaries before the FCC approved the merger of domestic telegraph carriers. 89 Cong. Rec. 328, 340 (1943).
[13] *United States v. AT&T Co.*, 427 F. Supp. 57, 62 (D.D.C. 1976) ("[C]ompetition is, without a doubt, a factor to be weighed in determining where the public interest lies.").

demonstrating the competitive pricing, exceptional service, and value in the market that CUA provides for its customers. The Commission must take account of these facts, which are the most significant ones under section 214.

III. The Commission Has Reserved Section 214 Revocations for Serious Misconduct and Has Failed to Allege any Violation or Pattern of Conduct Justifying Revocation of the Section 214 Authorizations.

The Commission bears a high burden in a section 214 authorization revocation proceeding and the Commission has reserved the ability to revoke section 214 authorizations only as an enforcement sanction in response to serious misconduct. Unlike every other section 214 authorization revocation proceeding that the Commission has initiated, in this proceeding the Commission has failed to allege any specific violation or pattern of unlawful or fraudulent conduct that would justify revocation of CUA's section 214 authorizations.

As an initial matter, any attempt to revoke the Company's authorizations would contravene longstanding FCC regulations and precedent limiting license revocations to the most serious violations of Commission rules. As the 1999 rule explained, revocation is "an enforcement tool against abusive practices . . . necessary for consumer protection."[14] The rule also said the Commission might revoke a domestic certification "when warranted in the relatively rare instances in which carriers may abuse their market power or their common carrier obligations."[15] Even for international traffic, section 214 authorizations state that they are subject to general and specific conditions of authorization, and that failure to comply "could result in fines and forfeitures"[16]– which are enforcement penalties reserved for "willful" and "repeated" violations.[17]

[14] *In re Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, 14 FCC Rcd. 11364, ¶¶ 14–15 (1999).
[15] *Id.* ¶ 16.
[16] *See* Public Notice DA 02-2500 (Oct. 3, 2002); Public Notice DA 02-2234 (Sept. 12, 2002).
[17] 47 C.F.R. § 1.80(a).

Prior enforcement actions further illustrate the limited and extreme circumstances that justify revocation. For example, the Commission has revoked section 214 authorizations in cases where common carriers have "apparently willfully and repeatedly violated multiple Commission rules and provisions" by slamming, cramming, breaching consent decrees, lack of candor to the Commission during investigations, engaging in "a pervasive pattern of questionable business and marketing practices," and even unlawfully obtaining $6 million from the Commission through a fraudulent scheme.[18] Besides these enforcement actions, the only other revocation decisions by the Commission involve situations where common carriers have abandoned their authorizations and ceased providing service without notifying the Commission, a violation of section 214.[19] Indeed, even in the face of serious misconduct by common carriers–like "improperly billing consumers for unauthorized charges and fees" and engaging in "unjust, unreasonable, and deceptive practices"–the Commission has resorted to forfeiture first, reserving revocation for where the carrier continues to engage in misconduct.[20]

The Order makes no substantive allegations against CUA that would come close to warranting revocation under the Commission's precedents. The only incident suggested in the Order

[18] *See, e.g.*, *In re CCN, Inc., et al.*, 12 FCC Rcd. 8547, 8548 (1997) (order to show cause following slamming investigation of numerous customer complaints that revealed "a pervasive pattern of questionable business and marketing practices under the Commission's rules"); *In re Publix Network Corp.*, 17 FCC Rcd. 11487, 11503 (2002) (order to show cause where common carrier "unlawfully obtained over six million dollars in payments from the TRS Fund by means of a scheme to create the appearance that they were operating a legitimate telecommunications relay service"); *In re NOS Comm'cns, Inc.*, 18 FCC Rcd. 6952, 6954 (2003) (order to show cause where carrier "may have willfully or repeated violated" the 1934 Act "by conducting a misleading marketing campaign" by "threaten[ing] their former customers with loss of service unless they agreed to retain [the carrier's] services"); *In re Business Options, Inc.*, 18 FCC Rcd. 6881, 6881-82 (2003) (order to show cause following allegations that entity engaged in misrepresentation in responses submitted to Commission during a slamming investigation); *In re Kurtis J. Kintzel*, 22 FCC Rcd. 17197 (2007) (commencing evidentiary hearing before an administrative law judge to revoke 214 authorization after carrier "apparently willfully and repeatedly violated multiple Commission rules and provisions of the Act" by failing to make payments required by a consent decree, unlawfully discontinuing service, and engaging in slamming or cramming).

[19] *See, e.g.*, *In re Angel Americas, LLC*, 2019 FCC LEXIS 3494 (Nov. 7, 2019); *In re StarVox Communs., Inc.*, 34 FCC Rcd. 2056 (2019).

[20] *See In re Net One Int'l, Inc.*, 2016 FCC LEXIS 852 (Mar. 9, 2016) ($1.6M forfeiture decision for cramming–"improperly billing consumers for unauthorized charges and fees"–and noting "[i]n the future we may also seek to revoke a carrier's authorization."); *In re Cent. Telecom Long Distance, Inc.*, 29 FCC Rcd. 5517 (May 5, 2014) (proposing $4 million forfeiture for "apparently engaging in a variety of unjust, unreasonable, and deceptive practices regarding consumers' long distance telephone services" and noting "[i]n the future we may also seek to revoke a carrier's authorization").

is a notification oversight regarding a post-consummation notice of an internal reorganization. The base forfeiture for such a violation is a mere $1,000, the lowest base forfeiture for any violation, which is the penalty most often imposed by the Commission for such minor violations.[21] Even unauthorized *substantial* transfers of control are usually subject to just an $8,000 forfeiture.[22] To initiate a proceeding to revoke CUA's authorizations because of such an alleged, pro forma violation would be contrary to FCC practice and regulations. Beyond this, the Order does not suggest CUA has violated any other regulation, any U.S. law, any condition of its section 214 authorizations, or any agreement with the Commission.[23] Nor does the Order suggest that CUA has violated laws related to espionage,[24] data privacy and cyber security,[25] or laws regarding cooperation with law enforcement and national security investigations.

If the Commission were to open a proceeding to revoke CUA's section 214 authorizations, the Bureaus would have the burden to prove CUA has engaged in wrongdoing that warrants revocation.[26] The Order shows no sign that they can meet that burden, nor does it provide verifiable claims or substantive allegations against CUA to justify revocation of its authorizations.

Finally, the Order creates the false appearance that the Commission has no other choice to protect U.S. national security than to revoke CUA's authorizations. Even if the Commission were to conclude that CUA's continued participation in the U.S. telecommunications market presented

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[21] *See* 47 C.F.R. § 1.80 n. to ¶(B)(8); *see also* Notice of Apparent Liability for Forfeiture ¶ 13, *In re StanaCard, LLC*, No. EB-12-IH-0076 (Jan. 24, 2013) ("we find that StanaCard is apparently liable for a forfeiture of one thousand dollars ($1,000) for its willful or repeated failure to timely notify the Commission of one *pro forma* international section 214 transfers of control.").

[22] *See* 47 C.F.R. § 1.80 n. to ¶(B)(8) ($8,000 base forfeiture for unauthorized substantial transfers of control); *see also* Order ¶ 1, *In re Missouri Network Alliance, LLC*, No. EB-IHD-19-00029224 (Mar. 30, 2020) (adopting consent decree imposing $8,000 forfeiture for an unauthorized substantial transfer of control).

[23] The Order's discussion of whether CUA notified the Commission of a corporate reorganization as relevant to the company's ISPC's is beside the point. No Commission regulation or license condition required CUA to provide that notification.

[24] *See* 18 U.S.C. § 1831.

[25] *See* 18 U.S.C. § 1030(a)(1).

[26] *See Maryland v. EPA*, No. 18-1285, slip op. at 19 (D.C. Cir. May 19, 2020) ("As a general default rule, the burden of proof falls upon the party seeking relief.").

substantive national security concerns–a conclusion with which CUA strongly disagrees–the Commission has other available measures to mitigate such concerns. For more than two decades the Commission has imposed conditions on numerous section 214 authorizations of foreign-owned carriers to address similar concerns. These conditions have resolved a variety of national security concerns associated with these authorizations, including foreign government ownership of FCC licensed entities. The Order does not contain even a passing reference, much less any analysis, as to why the Commission's national security concerns cannot be resolved through imposition of such conditions. As noted below, CUA would be willing to engage in discussions with the Commission and the other U.S. government agencies regarding the terms or arrangements that would be acceptable to resolve any national security concerns. The Commission cannot proceed with any revocation of CUA's authorizations without a detailed assessment of these issues or consideration of the mitigation terms that could resolve its national security concerns.

IV. The Ownership Structure of CUA Is Not a Sufficient Reason to Revoke Section 214 Authorizations.

In the absence of any verifiable claim or substantive allegation of wrongdoing, the Order essentially speculates that the Commission must revoke CUA's authorizations because of its ownership structure. In the Commission's view, this partial and indirect ownership creates the possibility that CUA is vulnerable to the exploitation, or the influence or control, by the Chinese government. To revoke CUA's section 214 authorizations, however, the Bureaus would have the burden to prove that this partial and indirect ownership interest would cause CUA to violate U.S. laws. That proof, and the Commission's decision, would have to take seriously the restrictions in the governance rules applicable to CUA and the policies and procedures of CUA and its corporate parent.

In fact, CUA is a separate entity, headquartered in northern Virginia. The vast majority of its employees are U.S. citizens and permanent residents working in the United States. CUA and its

employees are subject to the jurisdiction of the U.S. government. U.S. laws prohibit essentially all the conduct that the Bureaus have hinted could present national security concerns.[27] The Bureaus hypothesize that CUA will violate the U.S. laws to which it and its employees are subject because the Chinese government might order it to do so.

This unfounded assertion also disregards CUA's lengthy history of operating in the United States in accordance with all applicable laws and regulations. CUA has been operating in U.S. domestic and international telecommunications markets for nearly two decades. It has never been accused of any criminal conduct or charged with a violation of FCC regulations (aside from the notification oversight after internal reorganization). CUA has been operating pursuant to its international section 214 authorizations since 2002, and to date CUA is unaware of any allegations suggesting that the Chinese government improperly influenced CUA or took advantage of CUA's authorizations. Rather than speculating on how CUA might behave at some time in the future, the Commission must consider CUA's actual track record and operating history. The National Telecommunications and Information Administration ("NTIA") has said that past conduct raising concerns should be a factor in a decision to deny a section 214 authorization.[28] Rationally, the absence of troublesome conduct should be at least as important, and really even more so, in a decision whether to revoke an authorization.

The Commission recently addressed and rejected another company's application for a section 214 authorization. While the Order attempts to link the reasoning underlying denial of the authorization in that case with revocation of CUA's existing section 214 authorization the circumstances are entirely different. That case involved an applicant requesting an international

[27] *See, e.g.*, 18 U.S.C. § 1831 (Economic Espionage Act, prohibiting trade secret theft for the benefit of a foreign government, foreign instrumentality, or foreign agent); 18 U.S.C. § 1030(a)(1) (prohibiting unauthorized computer access to obtain information that "could be used to the injury of the United States, or to the advantage of any foreign nation").
[28] *In re China Telecom (Americas) Corporation*, Exec. Br. Rec. at p. 1.

authorization, and the Commission held that the applicant had, and failed to meet, the burden of proof to show its operations would be consistent with public convenience and necessity.[29] That other case also involved a company that was recently formed in the United States and seeking a section 214 authorization for the first time.[30] In contrast, CUA has held its domestic and international section 214 authorizations, and has been operating in the U.S., for nearly two decades. In that time it has contributed significantly to the domestic economy, paid federal and state taxes, provided valuable telecommunications services, and complied faithfully with domestic laws.

In sum, a generalized suggestion that CUA might in the future do something that would risk national security is not enough, on its face, to question CUA's ongoing qualifications to hold and consider revoking a section 214 authorization. Even if it were, national security would only be one consideration. Competition and the health of telecommunications markets is surely the primary concern of section 214.[31] CUA's continued operation is important for the public interest, and retention of its domestic and international section 214 authorizations will continue to serve the public convenience and necessity. CUA provides high-quality telecommunications services for U.S. corporate customers and carriers, and contributes to healthy competition on the communication routes it serves. The Commission would need to weigh these valuable market services against the hypothetical national security issues before now depriving CUA of authority to serve the common-carrier market.

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[29] *In the Matter of China Mobile Int'l (USA) Inc.*, ITC-214-20110901-00289, 34 FCC Rcd. 3361 ¶ 11 (May 10, 2019). The Commission issued its order denying the application over seven years after the application was accepted for filing.

[30] China Mobile became a U.S. company just a few months before applying for section 214 authorization. *See id.* ¶ 4 ("On September 1, 2011, China Mobile USA filed an application requesting authority under section 214 . . . ."); *see also* California Secretary of State, *Registration Statement for China Mobile International (USA) Inc.*, C3384283 (May 25, 2011) (certifying China Mobile USA was incorporated in Delaware on May 19, 2011), *available at* https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=03384283-13838975.

[31] *United States v. AT&T Co.*, 427 F. Supp. 57, 62 (D.D.C. 1976) ("[C]ompetition is, without a doubt, a factor to be weighed in determining where the public interest lies.").

V. A Revocation Proceeding Would Have to Include a Full Hearing.

While CUA believes that there are no grounds for initiating any further proceedings, CUA seeks to clarify what procedure the Commission would use if it did initiate a proceeding. *First*, CUA notes that the Order asked CUA only to show cause why there should not be a proceeding. The Order explicitly directs CUA "to explain why the Commission should not ***initiate a proceeding*** to revoke" CUA's authorizations.[32] Accordingly, although not clearly articulated by the Commission, CUA interprets the Order to mean that the Commission will not revoke the domestic and international section 214 authorizations unless and until it has undertaken a further proceeding.[33] Accordingly, CUA herein presents its arguments with that understanding; were the Commission to revoke the section 214 authorizations solely on the basis of the Order and this filing, without initiating a further proceeding, that outcome would be unfairly prejudicial.

Second, CUA notes that before the Commission could revoke the section 214 authorizations, such a proceeding would need to involve a hearing under subpart B of the Commission's General Rules of Practice and Procedure before revoking CUA's authorizations.[34] The Commission has previously afforded targets of potential section 214 revocations the opportunity to respond to allegations in an evidentiary hearing before an Administrative Law Judge ("ALJ").[35] There is no

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[32] Order, ¶¶ 1, 8 (emphasis added).

[33] In the past, in proceedings that result in actual revocation, the show-cause orders have provided clear warning by explicitly initiating revocation processes. *See, e.g.*, Order to Show Cause and Notice of Opportunity for Hearing, *In re Kurtis J. Kintzel, et al.*, 22 FCC Rcd. 17197 ¶ 1 (2007) ("In this Order to Show Cause and Notice of Opportunity for Hearing, we commence an evidentiary hearing before an administrative law judge to determine . . . whether the authority granted to Kurtis J. Kintzel . . . to operate as common carriers, pursuant to Section 214 . . . , should be revoked"); Order to Pay or to Show Cause, *In re Cox Broadcast Grp.*, Inc., DA 19-1097, at 1 (Oct. 28, 2019) ("By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the license held by Cox Broadcast Group, Inc. . . ."); Revocation Order, *In re Cox Broadcast Grp., Inc.*, 35 FCC Rcd. 574 (2020).

[34] 47 C.F.R. § 1.201 *et seq*.

[35] *See, e.g.*, *In re CCN, Inc.*, et al., 12 FCC Rcd. 8547, 8548 (1997); *In re Publix Network Corp.*, 17 FCC Rcd. 11487, 11503 (2002); *In re Business Options, Inc.*, 18 FCC Rcd. 6881, 6893 (2003); *In re NOS Comm'cns, Inc., et al.*, 18 FCC Rcd. 6952, 6954 (2003) (in each case requiring an evidentiary hearing to determine whether it should revoke operating authority); *In re Kurtis J. Kintzel*, 22 FCC Rcd. 17197 (2007) (notice of opportunity for evidentiary hearing before an administrative law judge to determine if section 214 authority should be revoked); *see also In re AT&T Acquisition of ITT Commc'ns Serv. Subsidiaries*, 2 FCC Rcd. 3948, 3952, at ¶24 (1987) ("the Commission has provided an opportunity for oral argument or a trial-type hearing in circumstances involving a conflict over material questions of fact where witness credibility is critical to resolving the controversy.").

sound justification for departing from that practice and procedure in this matter. While the Commission recently has terminated a number of section 214 authorizations without a hearing, those cases almost always involved licensees that had gone out of business (and with whom the Commission was unable to make contact) or licensees that had repeated and uncured violations of certain national security or law enforcement conditions placed on their licenses.[36] Neither of these circumstances is present in this case as CUA currently provides telecommunications services to U.S. customers and has operated in compliance with its authorization conditions and obligations.

A hearing is particularly required given the Bureaus' serious suggestion that CUA may be subject to the control of the Chinese government in a way that threatens the national security of the United States. The matter is a serious and complex issue with significant financial and operational ramifications for CUA and its U.S. customers. CUA thus is entitled to due process, including a hearing before an independent and neutral arbiter if and before the Commission should decide to revoke its authorizations.

Indeed, CUA has a constitutional right to a hearing, because it has constitutionally-protected property and liberty interests in its section 214 authorizations.[37] CUA has a property interest in its section 214 authorizations because they are government permits, granted pursuant to certain conditions, that allow CUA to conduct its business.[38] Indeed, the authorizations themselves confirm that the Commission granted CUA's authorizations subject to "forfeitures" only in the event CUA "[f]ail[s] to comply with general or specific conditions of an authorization, or with other relevant Commission rules and policies."[39] Indeed, nothing in section 214 even authorizes the Commission

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[36] *See, e.g.*, *In re Angel Americas, LLC and Angel Mobile, Inc.,* DA 19-1150 (Nov. 7, 2019).
[37] *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).
[38] *Barry v. Barchi*, 443 U.S. 55, 64 (1979) ("it is clear that Barchi had a property interest in his [horse trainer] license sufficient to invoke the protection of the Due Process Clause."); *Pro's Sports v. City of Country*, 589 F.3d 865, 872–73 (7th Cir. 2009) (affirming preliminary injunction granted to bar in a due process claim seeking damages against the city for enforcing restricted hours on the bar's liquor license without a pre-deprivation hearing); *Spinelli v. City of New York*, 579 F.3d 160, 169 (2d Cir. 2009) (quoting *Arnett v. Kennedy*, 416 U.S. 134, 167 (1974)).
[39] File Nos. ITC-214-20020724-00427; ITC-214-20020728-00361.

to revoke section 214 authorizations, which is why the Commission has historically relied on violations of its own rules or other laws before initiating revocation proceedings.[40]

CUA additionally has a constitutionally-protected liberty interest in its section 214 authorizations. Section 214 authorizations are necessary to CUA's continued provision of common carrier telecommunications services. The Commission is raising the prospect of initiating proceedings to revoke all of CUA's section 214 authorizations, which would prevent CUA from offering common carrier telecommunications services, having the "broad effect of largely precluding" CUA from that business."[41]

These property and liberty interests entitle CUA to due process before the Commission could strip it of its section 214 authorizations.[42] The process must include, at a minimum, real notice of the charges against CUA, an opportunity to see the evidence against it, the right to present evidence in its defense including oral testimony, and the right to a neutral decision maker.[43]

Third, if there is to be any proceeding, the Bureaus must provide CUA more specific information about the alleged risks and concerns associated with CUA's retention of its long-standing section 214 authorizations. As things stand, the Order provides CUA with precious little information. CUA must defend itself against conclusory assertions, unsupported by any reference to

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[40] *See* 47 U.S.C. § 214(a); *see also In re Kurtis J. Kintzel, et al.*, 22 FCC Rcd. 17197 ¶ 1 (Sept. 10, 2007) (commencing evidentiary hearing to show cause why section 214 authorizations should not be revoked in light of respondents who had "apparently willfully and repeatedly violated multiple Commission rules and provisions of the Act relating to the provision of interstate common carrier services.").

[41] *PDK Labs Inc. v. Reno*, 134 F. Supp. 2d 24, 33 (D.D.C. 2001) (quoting *Kartseva v. Dep't of State*, 37 F.3d 1524, 1528 (D.C. Cir. 1994)).

[42] 5 U.S.C. §§ 554, 556; *Koniag, Inc. v. Andrus*, 580 F.2d 601, 609 (D.C. Cir. 1978) ("we are guided by [the Administrative Procedures Act's ("APA's")] requirements in a case such as this which entails due process rights").

[43] *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 325 n.4 (1976) ("the pretermination hearing must include the following elements: (1) timely and adequate notice detailing the reasons for a proposed termination; (2) an effective opportunity [for the recipient] to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally; (3) retained counsel, if desired; (4) an impartial decisionmaker; (5) a decision resting solely on the legal rules and evidence adduced at the hearing; (6) a statement of reasons for the decision and the evidence relied on."); *see also* 5 U.S.C. § 556; *Greene v. Babbitt*, 64 F.3d 1266, 1275 (9th Cir. 1995) (APA provides "an appropriate model" for protecting due process rights; "Informal decision-making, behind closed doors and with an undisclosed record, is not an appropriate process for the determination of matters of such gravity").

actual events or facts, and is asked to prove, against speculation, a negative proposition about how it will conduct itself in the future. That is not a fair process.

Fourth, CUA objects to the short time it has been allowed to provide this response. The Bureaus originally allowed CUA just 30 days, to respond to extensive questions and provide a basic defense on a complex matter that is central to the company's business. That compressed timeframe was not calculated to allow a full and fair response, or to gather the information needed for sound agency decision making. CUA then asked for an additional 30 days, and it gave good reasons for the request. The Bureaus allowed CUA just one more week—not long enough, and a shorter extension than the Bureaus allowed one of CUA's main competitors just a few days previously. CUA has done its best in the short time it has been given. But it stresses that it has not had a full opportunity to present its arguments and evidence, and it reserves whatever rights may be available to raise additional issues and provide additional relevant materials.

Finally, fundamental fairness dictates that the Commission should explore less drastic measures prior to any revocation. For example, a letter of assurance, national security agreement, or similar mitigation agreement could address the Commission's concerns. CUA would be willing to engage in discussions with the Commission and the other relevant U.S. government agencies regarding such an agreement that would be acceptable to resolve any national security concerns. Details of mitigation measures proposal is set forth in Exhibit 1.[44]

Therefore, for all the foregoing reasons, CUA respectfully requests that if the Commission determines that the extensive information provided by CUA in response to the Bureaus' Show

[44] In addition to the actions CUA has already taken, it is willing to discuss further mitigation actions to help resolve any specifically-identified, legitimate national security or law enforcement concerns. These could include the actions identified in Exhibit 1, which is competitively sensitive and is not generally made publicly available. CUA requests confidential treatment for this information pursuant to and in accordance with Section 0.459 of the Commission's Rules and is separately submitting such a request.

Cause Order has not alleviated its concerns, CUA should be notified of the evidence it relied upon in reaching such a determination and the Bureaus' specific allegations. Upon receipt of that notification, CUA should be permitted to respond in writing and in-person at a meeting with staff to attempt to resolve any outstanding concerns. CUA welcomes the opportunity to discuss reasonable and fair measures that CUA can take to reassure the Commission that it will continue to operate according to U.S. laws and regulations. Should these concerns still not be resolved, then the Commission should schedule a hearing pursuant to 47 C.F.R. part 1 subpart B with all of the substantive and procedural rights afforded under the Commission's rules governing the conduct of such hearings.

VI. Responses to the Bureaus' Inquiries.

In further support of the preceding reasons for not initiating a proceeding to revoke CUA's authorizations, the company provides the attached Exhibits and specific responses to each of the inquiries in the Order.

Inquiry No. 1: A detailed description of the current ownership and control (direct and indirect) of the company and the place of organization of each entity in the ownership structure.

Response No. 1: A current diagram of the ownership structure of CUA is set forth in Exhibit 2. Specific information as to the place of organization of each organization in that structure and other relevant information about such entities is provided below:

1. CUA was formed as a limited liability company in California on May 24, 2002, and converted into a corporation on April 17, 2003. On August 31 2009, China Netcom (USA) Operations Limited was merged into China Unicom USA Corporation and the latter changed its name to CUA. CUA is 100% owned by China Unicom Global Limited ("CUG").

2. CUG was registered and established in Hong Kong on May 29, 2015. Its primary office address is 28/F, Gateway Tower, 25 Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong. CUG is 100% owned by China Unicom (Hong Kong) Limited ("CU HK").

3. CU HK was incorporated in Hong Kong in February 2000. Its primary office address is 75th Floor, The Center, 99 Queen's Road Central, Hong Kong. CU HK has been dually listed on the New York Stock Exchange ("NYSE") and Hong Kong Stock Exchange ("HKSE") since June 21, 2000 and June 22, 2000, respectively. CU HK's shareholders are: (i) China Unicom Group Corporation (BVI) Limited ("CUG BVI") - 26.4%; (ii) China Unicom (BVI) Limited ("CU BVI") - 53.5%; and (iii) public shareholders - 20.1%.

4. CUG BVI was incorporated in the British Virgin Islands on September 2, 1999, and its equity is 100% held by China United Network Communications Group Company Ltd. ("Unicom Group"). Its primary office is located at Commerce House, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, British Virgin Islands.

5. CU BVI was incorporated in the British Virgin Islands on January 31, 2000. Its registered office is located at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands. 17.9% of CU BVI's equity is held by the Unicom Group, and the rest by China United Network Communications Limited ("CU A-Share").

6. CU A-Share was incorporated in Shanghai on December 31, 2001 and changed its registry to Beijing in 2018. It is a public company listed on the Shanghai Stock Exchange. Its shareholders are: (i) the Unicom Group - 36.7%; (ii) a group of strategic investors ("Strategic Investors") - 35.2%; (iii) public shareholders - 25.5%; and (iv) employee restricted incentive shares - 2.6%. In August 2017, CU A-Share announced a sale of shares to 14 Strategic Investors, including Hangzhou Ali Venture Capital Co., Ltd., Shenzhen Tencent Cinda Limited Partnership, Ningbo

Meishan Free Trade Port Area Baidu Peng Huan Investment LLP, Suqian Jingdong Sanhong Management Limited Partnership, and China Life Insurance Company Limited.

7. Unicom Group was incorporated in Beijing on June 18, 1994. 98.45% of its shares are held by the State-owned Asset Supervision and Administration Commission of the State Council. Unicom Group through its ownership in CU A-Share, CU BVI, and CUG BVI has an effective interest of approximately 52.1% of CU HK's equity.

Inquiry No. 2: A detailed description of its corporate governance.

Response No. 2: The following detailed description of CUA's corporate governance mechanisms demonstrates that under U.S. and Hong Kong laws there are meaningful protections, in particular in light of private and public shareholders, against improper exercise of control by the Chinese government over CUA's U.S. business activities undertaken pursuant to its section 214 authorizations.

1. U.S. Corporate Governance. CUA is governed by its articles of incorporation, the most recently effective of which were adopted on February 17, 2010. CUA's articles of incorporation authorize the company to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California.

Under the California Corporations Code ("Code"),[45] the board of directors of a California corporation manage the corporation's business and affairs, and all corporate powers must be exercised by or under the direction of the board. In addition, the board of directors delegates the day-to-day business of the corporation to a person or management of the company as long as the corporation's business and affairs are managed under the ultimate direction of the board. Shareholders of the corporation do not have the authority to exercise corporate powers of the

[45] Cal. Corp. Code, § 1 *et seq.*

Company. The Bylaws of CUA provide more detailed provisions of corporate governance, and are typical in form and content for a California corporation. The Bylaws provide for three levels of authority and management for the Corporation, the shareholders, the board of directors, and the officers.

The officers of CUA consist of a President (Chief Executive Officer), Secretary, and Treasurer (Chief Financial Officer), all of which are required offices for California corporations. Other titles are established from time to time for individual employees by the President of the Corporation. The President is the chief executive officer of the Corporation, the Secretary keeps the corporate records (resolutions of shareholder and board of directors, and the stock records), and the Treasurer maintains accounts of the property and transactions of the Corporation, and supervises disbursements and records of accounts.

Under CUA's Bylaws, the number of directors is 5 to 9, as fixed from time to time by the shareholder. CUA presently has 5 directors, one of whom is also the Chief Executive Officer of the Corporation. The board of directors is to meet at least annually, on the same date as the annual shareholder meeting, with special meetings to occur on an as-needed basis, called either by shareholders, one or more directors, or the President. A majority of the authorized number of directors constitutes a quorum for board meetings, and a majority of a quorum may make decisions of the board of directors (unless a greater vote is required by law). The board of directors may conduct meetings telephonically or otherwise remotely, so long as they can hear each other during the meeting. The board of directors is authorized to establish committees of the board of directors, and such committees may exercise a broad range of powers, subject to limits set forth in the Corporations Code (which are also provided in the Bylaws themselves).

Directors of California corporations have certain duties of loyalty, which require a director to perform the director's duties as a board member and as a member of any board committees in

good faith and in a manner the director believes to be in the best interests of the corporation and its shareholders. In addition to liability for breaches of the duties of loyalty and care, directors are also subject to liability for breaches of certain other duties by statute. Specifically, directors, officers, employees, and agents of a corporation are personally liable for damages if they knowingly make materially false statements or entries in: books, minutes, records, or accounts of the corporation; or any prospectus, report, circular, certificate, financial statement, balance sheet, public notice, or document regarding the corporation or its shares, assets, liabilities, capital, dividends, business, earnings, or accounts.[46] Directors are also subject to criminal penalties for: (i) knowingly concurring in making or publishing any written report, exhibit, or statement containing a material false statement;[47] (ii) knowingly concurring in making or publishing any untrue or willfully or fraudulently exaggerated report, account, or other document;[48] and (iii) refusing to make any book entry or post any notice required by law in the manner required by law.[49]

CUG, CUA's parent company, just 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 CUA. Under CUA's Bylaws, the shareholder of CUA is to meet on an annual basis, on or about April 30 of each year, for the purpose of electing directors, considering reports of corporate activities, and other matters that would come up. The Bylaws contain detailed procedures for notice of shareholder meetings (both annual and special meetings), determining shareholders of record for voting, voting, elections of directors, quorum of shareholders, conduct of meetings, and adjourning the meetings, but, since there is only one shareholder, the shareholder

[46] Cal. Corp. Code § 1507.
[47] Cal. Corp. Code § 2254(a)(1).
[48] Cal. Corp. Code § 2254(a)(2).
[49] Cal. Corp. Code § 2254(b).

meetings of CUA are always conducted by written consent, which is contemplated under the Bylaws. In summary, the governance documents of CUA are typical for California corporations.

2. Hong Kong Corporate Governance. It is a principle of the Corporate Governance Code of the Hong Kong listing rules that the board of directors of CU HK (the "Board") is responsible for evaluating and determining the nature and extent of the risks it is willing to take in achieving the issuer's strategic objectives, and ensuring that the issuer establishes and maintains appropriate and effective risk management and internal control systems. The Board should oversee management in the design, implementation, and monitoring of the risk management and internal control systems, and management should provide a confirmation to the Board on the effectiveness of these systems. The risk management and internal control systems include CUG's and CUA's internal control systems.

Pursuant to the Corporate Governance Code of the Hong Kong listing rules, the Board should oversee the issuer's risk management and internal control systems on an ongoing basis, ensure that a review of the effectiveness of CU HK's and its subsidiaries' risk management and internal control systems has been conducted at least annually and reported to shareholders that it has done so in its Corporate Governance Report. The review should cover all material controls, including financial, operational and compliance controls. Although these are not mandatory rules, CU HK is expected to comply with these provisions or it needs to explain why deviations from these code provisions are acceptable.

Furthermore, there is nothing that indicates that CUG, CUA, and their respective directors have not been, or will not be, law-abiding. Unless the FCC can show evidence of material non-compliance in the past, the only inference one can draw is that the internal control systems of CUG and CUA are effective insofar as compliance is concerned and CUG and CUA will continue to be law-abiding. CUG and CUA should not be presumed to be at risk of becoming not law abiding

solely due to the fact that certain directors of CUG are Chinese Communist Party ("CCP") members. If they are so presumed, that is simple discrimination based on political affiliation. Even if all Mainland directors of CUG are members of CCP, it does not necessarily follow that CUA will not comply with U.S. laws.

Inquiry No. 3: An identification of CUA's officers, directors, and senior management officials, their employment history (including prior employment with the Chinese government), and their affiliations with the CCP and the Chinese government.

Response No. 3: Attached as Exhibit 3 is the requested information, all of which is personally identifying information subject to a request for confidential treatment in accordance with the instruction in Paragraph 10 of the Order.

Inquiry No. 4: An identification of all officers, directors, and other senior management of entities that hold ten percent or greater ownership interest in CUA, their employment history (including prior employment with the Chinese government), and their affiliations with the CCP and the Chinese government.

Response No. 4: Attached as Exhibit 4 is the requested information, all of which is personally identifying information subject to a request for confidential treatment in accordance the instruction in Paragraph 10 of the Order.

Inquiry No. 5: A description of the services that CUA provides in the United States and the specific services provided using the domestic and international section 214 authorizations as well as services it provides in the United States that do not require section 214 authority.

Response No. 5: A summary of CUA's services is provided below:

- International Private Leased Circuit ("IPLC") provides cross-border and cross-region customers with real-time transmission application designated for level-1 international data with the globally-covered Synchronous Digital Hierarchy (SDH) and Wavelength Division Multiplex (WDM) transmission network. The service is a fully transparent end-to-end private line service with a strict bandwidth guarantee and dedicated customer bandwidth.
- International Ethernet Private Line ("IEPL") provides customers with flexible bandwidth adjustment, from 2 Mbps to 10 Gbps, and Ethernet access capacity based on the multi-service transmission platform technology ("MSTP") relying on CUA's platform to access the global transmission network of CUG. It is a fully transparent point-to-point and point-to-multipoint private line service with strict bandwidth guarantee and dedicated customer bandwidth.
- Multi-protocol Label Switching Virtual Private Network ("MPLS VPN") services use MPLS to provide secure data communications such as internal data, audio, images, and videos between a customer's multiple locations. MPLS VPN services provide the customer with point-to-point and point-to-multipoint internal dedicated network communications.
- Smart Video Network ("SVN") services provide customers with IP-based, global video media services, including the real-time transmission, storage, and forwarding of audio, video, and other large media files.
- Mobile Virtual Network Operator ("MVNO") services are mobile pre-paid services marketed to Chinese-speaking customers in the U.S., including visiting tourists. The services are provided by leasing network capacity from a U.S. domestic network

operator, and include: local, interstate, and international voice; short message services ("SMS"); and mobile Internet access services.

- IP Transit services: AS4837/AS10099/AS19174 network platform is used to integrate with customers via a border gateway protocol (BGP) to provide global Internet penetration service for the customers' own IP address, as well as exclusive bandwidth to access content on the Internet.
- Dedicated Internet Access ("DIA") provides customers with various speeds of specific Internet access ports with guaranteed bandwidth, as well as access to CUA's Internet network.
- Data Center ("IDC") services provide customers with carrier-grade colocation space with high speed Internet access for the installation and operation of the customer's equipment. Services include physical colocation space, Internet access, electricity, and IP address leasing.
- Cloud Computing provides customers with a resold third-party cloud computing platform and application services, that includes virtual computing, data storage, and Internet access.
- CUA also resells dark fiber, data center services, and system integration offered by its local partners ("Resold Services").

A section 214 authorization is required by any company that provides telecommunications services on a common carrier basis.[50] Telecommunications services offered by CUA include:

[50] 47 U.S.C. § 214. The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50). The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153(53). The term "common carrier" or "carrier" means "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy . . . ." 47 U.S.C. § 153(11).

MVNO, IPLC, and IEPL. The "information" or other non-telecommunications services offered by CUA include: MPLS VPN, IP Transit, SVN, DIA, IDC, Cloud Services, and the Resold Services. To the extent that CUA provides telecommunications services on a common carrier basis it would require section 214 authority.[51]

Inquiry No. 6: An identification of the equipment used to provide telecommunications service, including the manufacturer, and the location of the equipment.

Response No. 6: Attached as Exhibit 5 is the requested information. Information about the equipment CUA uses in the provision of its services is competitively sensitive and is not generally made publicly available. CUA requests confidential treatment for this information pursuant to Section 0.459 of the Commission's Rules and is separately submitting such a request.

Inquiry No. 7: A description and listing of CUA's subscribers and other customers for domestic and international services.

Response No. 7: Attached as Exhibit 6 is the requested information. The identity of CUA's subscribers and other customers is competitively sensitive and is not generally made publicly available. CUA requests confidential treatment for this information pursuant to and in accordance with Section 0.459 of the Commission's Rules and is separately submitting such a request.
CUA provides services to three main categories of customers: (i) enterprise customers; (ii) U.S. carriers; and (iii) individuals requiring MVNO services.

[51] There is no bright line test for whether a carrier is operating on a common carrier basis, as opposed to providing services on a private carrier basis. In general, however, a service provider is considered a "common carrier" if it makes its services widely available to all customers on standard terms and conditions. On the other hand, a "private carrier," which does not require a section 214 authorization, offers its services only to a small number of customers, enters into individualized contracts with them and does not hold itself out as providing services to all on standard terms and conditions. Other than its MVNO services, CUA provides all of its other telecommunication services pursuant to individually negotiated contracts.

Inquiry No. 8: A detailed description regarding the nature of the use of CUA's ISPCs, including sufficient detail to understand the network scope, geographic coverage, and the public switched telephone network ("PSTN") portions of the network; and the region(s) where CUA uses the ISPCs in its PSTN network.

Response No. 8: Since 2009, CUA has had only one voice switch, which is located in the One Wilshire Building at 624 South Grand Avenue, Los Angeles, CA 90017. Two ISPCs (3-195-0 and 3-194-2) were registered on that switch. During the period from 2009 until the end of August 2016, that switch, and ISPCs, had been mainly used for international wholesale voice business services, including terminating voice traffic into China or refiling traffic to other international destinations. CUA ceased its international wholesale voice business in August 2016 due to declining profit margin, fierce competition, and the proliferation of mobile Internet voice services. During the period from 2010 until March 2020, CUA also used that switch to provide a single carrier customer with a DS3 connection. Finally, from 2009 until April 2020, CUA also used that switch to provide its customers with toll-free customer support. Since May 1, 2020, that switch is not carrying any traffic and the 2 ISPCs registered on it have been reserved for future application-to-person ("A2P") services.

Inquiry No. 9: A statement regarding the physical addresses where CUA's ISPCs are located.

Response No. 9: Both ISPC 3-194-2 and 3-195-0 are registered in the voice switch located in the One Wilshire Building at 624 South Grand Avenue, Los Angeles, CA 90017. ISPC 3-199-2's has not been used since 2009. CUA does not have any records with respect to its use prior to 2009 due to personnel changes.

Inquiry No. 10: A network diagram that shows how CUA's ISPCs are used.

Response No. 10: Attached as Exhibit 7 is the requested information. Information about the CUA's network is competitively sensitive and is not generally made publicly available. CUA requests confidential treatment for this information pursuant to Section 0.459 of the Commission's Rules and is separately submitting such a request.

Inquiry No. 11: A list of all physical points of interconnection between CUA and other carriers as well as the names of each carrier with which CUA interconnects.

Response No. 11: Attached as Exhibit 8 is the requested information. The structure of and details regarding CUA's network interconnection points and a list of the carriers with which CUA interconnects is competitively sensitive information and is not generally made publicly available. CUA requests confidential treatment for this information pursuant to and in accordance with Section 0.459 of the Commission's Rules and is separately submitting such a request.

Inquiry No. 12: A list and copies of all interconnection agreements (if any) that CUA has with other carriers.

Response No. 12: Attached as Exhibit 9 is the requested information. The identity and substance of CUA's interconnection agreements is competitively sensitive information and is not generally made publicly available. CUA requests confidential treatment for this information pursuant to and in accordance with Section 0.459 of the Commission's Rules and is separately submitting such a request.

Inquiry No. 13: An explanation as to why the Commission should not reclaim CUA's ISPCs.

Response No. 13: CUA has been using the ISPCs for different purposes and they played an important role in the past. Due to the soaring development of e-commerce, financial services, transportation, and logistics industries around the world, the A2P SMS market has been booming and CUA views the U.S. as the most promising market for high growth. CUA is planning to invest in an A2P SMS platform to be located in the One Wilshire Building in Los Angeles. CUA is planning to provide A2P services to telecom operators, SMS wholesale providers, and corporate clients. The feasibility study of the project is expected to be completed before the end of this year, and if successful, CUA would expect the commercial deployment of the platform in the first half of 2021 to meet the needs of connecting with various customer platforms and SMS gateways. CUA's A2P platform will support IP-based SMPP, CMPP, HTTP, and SS7 protocols. Therefore, it is important for CUA to retain at least 2 of the existing ISPCs.

Inquiry No. 14: An explanation as to whether ISPC 3-194-2, assigned to China Netcom USA in SPC-NEW20030730-00031, was transferred to China Unicom USA and whether the Commission was notified of the transfer.

Response No. 14: ISPC 3-194-2 was internally transferred from China Netcom (USA) Operations Limited to China Unicom USA Corporation, the predecessor of CUA, in August 2009 as part of an internal reorganization. CUA did not notify FCC of the internal transfer as FCC regulations are unclear as to whether such notification is required. Without FCC rules stating the specific prohibitions applicable to internal transfers of control of ISPCs, ISPC operators are left without adequate notice of acceptable actions.

Inquiry No. 15: An explanation as to whether certain pro forma transfer of control actions occurred between 2009 and 2017 concerning the subject international section 214 authorizations and whether CUA appropriately notified the Commission, as required by Commission rules.

Response No. 15: CUA has conducted an internal investigation of any pro forma transfer of control actions that occurred between 2009 and 2017. This investigation found that a pro forma notification filing was not submitted with FCC for an internal reorganization by which internal control of CUA was transferred from CU HK to its wholly-owned subsidiary Billion Express Investments Co., Ltd. ("Billion", a BVI incorporated company) on December 30, 2011.

There was no change in the actual or ultimate control of CUA associated with this reorganization. CUA regrets that it did not notify the Commission of this internal reorganization and has implemented certain internal procedures to ensure that any future reorganizations are reviewed to determine whether they require a pro forma notification to the Commission. A pro forma filing was filed when the ownership of CUA was transferred to under CUG from Billion in 2017. Billion was dissolved on April 25, 2017.

Inquiry No. 16: A description of the extent to which CUA is or is not otherwise subject to the exploitation, influence and control of the Chinese government.

Response No. 16: The Commission's inquiry unfairly and improperly places the burden on CUA to prove a negative regarding unspecified national security concerns about "exploitation" and "influence" of the Chinese government. These vague terms are left undefined in the Order or, to CUA's knowledge, anywhere in the FCC's rules or guidance. The Order leaves CUA to guess what these terms might mean or encompass. It raises the specter of such Chinese government involvement or control without setting any specific facts or parameters to which CUA is to respond.

That vagueness aside, under the APA, the burden is on the Commission to establish that there are questions as to whether CUA, which has operated under its section 214 authorizations since 2002 without incident, retains the qualifications, under which the authorizations originally were granted, to hold them. CUA respectfully submits that the Order's broad, generalized concerns about national security and potential undue influence over CUA by the Chinese government are not grounds for initiating a revocation proceeding on those qualifications. CUA has set forth in Sections II-IV above, the fundamental reasons supporting that conclusion, further buttressed by its Reponses No. 1–15. Those reasons and Responses are incorporated herein.

As noted below, CUA is not subject to the exploitation, influence, or control of the Chinese government for a number of reasons. First, none of the company's senior management or board members was appointed by the Chinese government. Second, CUA's immediate parent entity, CUG, requires that the company operate in accordance with U.S. laws and regulations. Third, CU HK is subject to the extensive transparency, governance, and affiliated interest restrictions of each of the exchanges on which it is listed. As to the issue of national security concerns regarding Chinese government "exploitation, influence or control" of CUA, CUA highlights the following reasons why that concern is unfounded and cannot be the basis for initiating a revocation proceeding.

1. CUA is a California corporation operating in compliance with applicable U.S. laws and regulations. Currently, more than 95% of its employees are local hires as it is critical for CUA, and all other Unicom Group subsidiaries, to employ residents of the countries in which they operate. The current President of CUA was recruited by its immediate parent company CUG through a competitive and open global hiring process and was not nominated, suggested, or dictated by the Chinese government. CUA has never received, and would not accept, any instructions on regarding how to run its operations from the Chinese government. As a California corporation,

CUA has been following U.S. laws and regulations, and has never been the subject of investigation by any law enforcement agency in the past.

2. CUG, CUA's immediate parent, is a Hong Kong corporation that operates in accordance with the laws and regulations of Hong Kong. Importantly, none of CUG's senior management or members of its board of directors are affiliated with or appointed by the Chinese government. CUG's Code of Business Conduct clearly directs that all of its overseas subsidiaries must operate in compliance with the laws and regulations of the jurisdictions in which they operate. In addition, CUG's policy directs that should any requirements of internal corporate governance codes and policies conflict or be inconsistent with the local laws and regulations of the jurisdictions in which the overseas subsidiaries or members operate, they must first apply and abide by the local laws and regulations. Employees that violate this Code of Business Conduct are subject to numerous penalties, including immediate termination and dismissal from the company.

3. CU HK, CUG's parent company, is a public Hong Kong company dually listed on Hong Kong Stock Exchange and New York Stock Exchange. The Chinese government thus is restricted from influencing CU HK (if any) because the company must comply with the exchanges' high corporate governance standards governing operating transparency, financial reporting, Sarbanes-Oxley Act's internal control, and whistleblower protection. Under the Hong Kong listing rules, Directors of Hong Kong listed companies owe fiduciary duties to the listed companies.[52] In CU HK's case there are nine directors on the Board, four of which are executive directors, one of which is a non-executive director, and four of which are independent non-executive directors.[53] The

[52] HKEX, Listing Rules § 3.08, *available at* https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/h/k/HKEX4476_2064_VER41.pdf.

[53] Effective May 25, 2020, the Non-Executive Director retired from the CU HK board at the conclusion of the Annual General Meeting. CU HK has reported that there was no disagreement with the Board and there is no matter relating to his retirement that needs to be brought to the attention of the shareholders of CU HK. CU HK has not yet announced plans for the now vacant board seat. SEC Form 6-K, Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 of the Securities Exchange Act of 1934 for the Month of May 2020, May 26, 2020 (SEC File Number: 001-15028).

executive directors are outnumbered by the non-executive director and independent non-executive directors. The structure of the Board protects the interests of various shareholders, including the minority shareholders. The Hong Kong listing rules also provide safeguards against the exercise of power by the controlling shareholder. For material connected transactions proposed to be entered into by CU HK or any of its subsidiaries, which includes CUA, only independent shareholders of CU HK may vote on the transactions. This history has provided CU HK with a strong culture of independent governance. The company has been widely recognized by the capital market for its unwavering efforts on continuously improving its corporate governance. In 2019, CU HK received many prestigious awards, including "Best Managed Telecommunications Company in Asia" for the second consecutive year by Finance Asia, "Most Honored Telecommunications Company in Asia" for the fourth consecutive year by Institutional Investor, "The Best of Asia-Icon on Corporate Governance" by Corporate Governance Asia, and "Corporate Governance, Social Responsibility, and Investor Relations Gold Award" by The Asset.

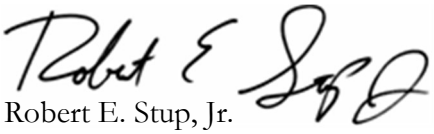
4. Unicom Group was established in 1994 as a competitive operator to compete against the incumbent carriers and has been operating always that way. In 2017 to help push Unicom Group to be a more competitive player in the market by introducing into the group more capital, investors, professional management know how, creating synergies and innovative business models riding on the latest Internet development, and expediting its transformation, Unicom Group made another milestone step on its process of further diversification of shareholding structure by introducing private strategic investors. After that, the shareholding level of Unicom Group over CU HK, the public company, was diluted to about 52.1%.

5. Even though CUA is not subject to the exploitation, influence, or control of the Chinese government, the company details certain actions that it has taken recently to strengthen its corporate governance and compliance. First, CUA recently established a Compliance Management

Committee ("CMC") under the Board, and approved the latest Compliance Manual policy. Under the new Compliance Manual, a designated Compliance Officer will take employees' report on potential violation of compliance. Second, CUA has mandated that any employees of CUA who perform or directly supervise the performance of duties that relate to CUA's respective responsibilities under the Communications Laws and other governing laws or regulations applicable to CUA (known as "Covered Employees") are required to sign a statement committing to the accuracy and completeness of any information provided to the FCC or any other U.S. government agency for compliance purposes.

Based on the foregoing, there are no grounds for the Commission to revoke CUA's section 214 authorizations. Therefore, the Commission need not initiate any "proceeding" to consider doing so and the Docket should be closed.

Respectfully submitted,



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Counsel to China Unicom (Americas) Operations Limited

Dated: June 1, 2020

Certification on Behalf of
China Unicom (Americas) Operations Limited

On behalf of China Unicom (Americas) Operations Limited ("CUA"), I hereby certify that I am authorized to make this certification on its behalf and that the foregoing RESPONSE TO ORDER TO SHOW CAUSE in GN Docket 20-110, ITC-214-20020728-00361, ITC-214-20020724-00427 ("Response") was prepared under my direction and supervision.

I further certify that the contents and certifications contained in the Response and the Exhibits thereto, regarding CUA, are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Wesley Haiqiang Liu, CFA

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日期：2020.06.01 11:39:18 -04'00'

Secretary, Associate President
China Unicom (Americas) Operations Limited

June 1, 2020

EXHIBIT 1

RESPONSE TO ORDER TO SHOW CAUSE
GN Docket 20-110, ITC-214-20020728-00361, ITC-214-20020724-00427

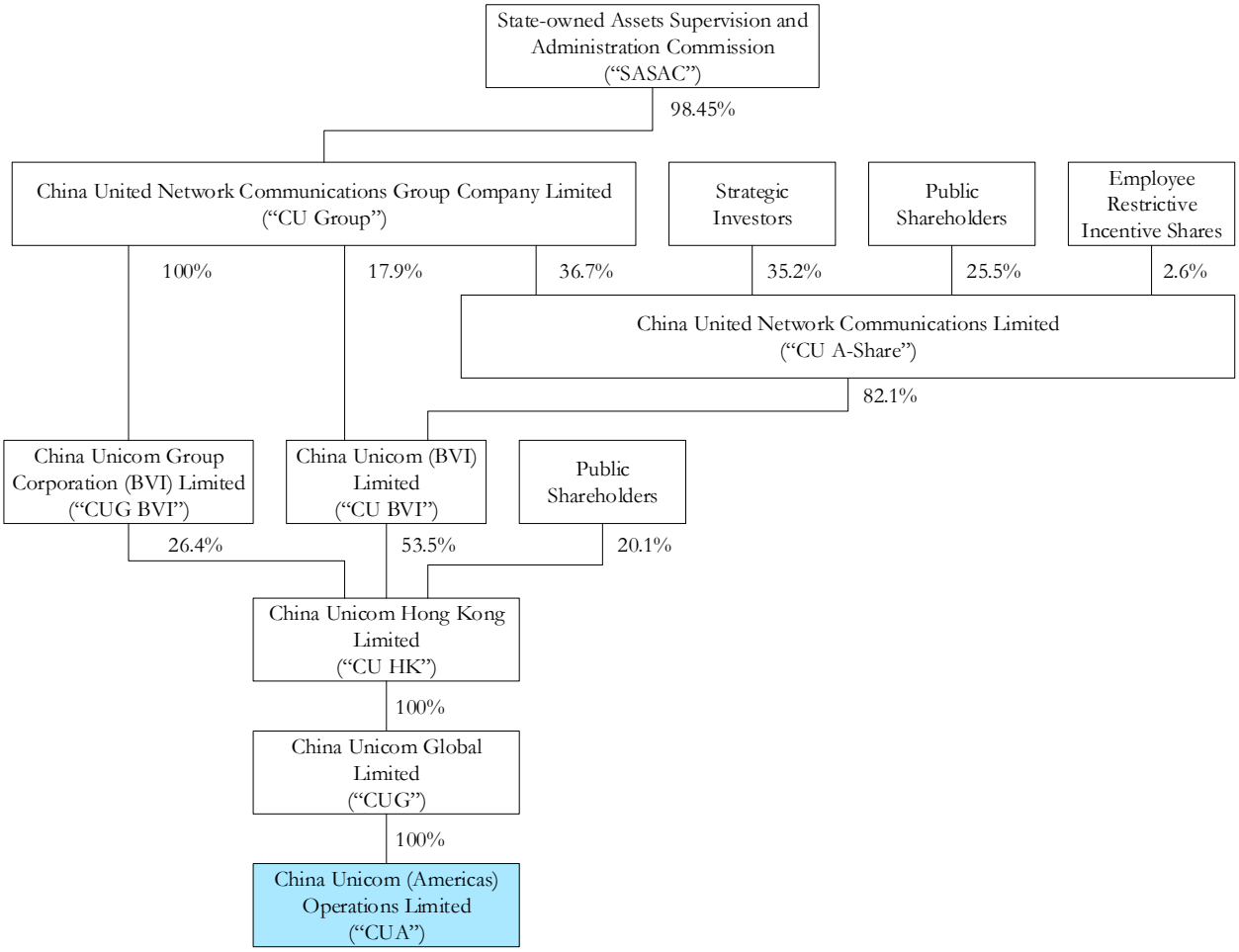
EXHIBIT 1 is **REDACTED** in its entirety as

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION

EXHIBIT 2

RESPONSE TO ORDER TO SHOW CAUSE
GN Docket 20-110, ITC-214-20020728-00361, ITC-214-20020724-00427

Ownership Chart



EXHIBITS 3 – 9

RESPONSE TO ORDER TO SHOW CAUSE
GN Docket 20-110, ITC-214-20020728-00361, ITC-214-20020724-00427

EXHIBITS 3 – 9 are each **REDACTED** in its entirety as

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION