

23 May 2016

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

*Re: IB Docket No. 16-155*

Dear Ms. Dortch:

In response to a proposal from certain Executive Branch agencies to modify the Team Telecom review process, China Mobile International (USA), Inc. (“CMIUSA”), urges the Commission to adopt a procedure from resolving long-pending applications for international Section 214 authority, foreign ownership rulings, and/or cable landing licenses. CMIUSA believes that that the Commission should adopt specific timeframes for resolving such long-pending applications, in addition to new ones, in order to avoid a situation in which an application may languish for years due to inaction by the Executive Branch. Such inaction on the license application of a foreign service supplier is inconsistent with U.S. trade obligations and deters new foreign investment in the U.S. market.

CMIUSA bears the unwelcome distinction of having the longest-pending application for international Section 214 authority of those currently before the Commission. CMIUSA filed its application on September 1, 2011. Since that time, CMIUSA and its counsel have filed extensive questionnaire responses and updates with Team Telecom. In response to a letter from the Department of Justice (“DOJ”) on May 14, 2015, listing “illustrative” factors considered by the Team Telecom agencies, CMIUSA submitted a formal response and mitigation terms sheet on June 12, 2015. The review does not appear to have progressed since that time, and no negotiations over mitigation have taken place.

U.S. World Trade Organization commitments in basic telecommunications obligate the United States to permit market entry for the provision of voice, packet- and circuit-switched data, and private leased circuits for modes of supply including cross-border supply and commercial presence.<sup>1</sup> Those commitments also obligate the United States to ensure a transparent licensing

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<sup>1</sup> United States, Schedule of Specific Commitments, Supp. 2. Fourth Protocol to the General Agreement on Trade in Services, GATS/SC/90/Suppl.2 (Apr. 11, 1997).

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process. The United States adopted the Reference Paper as part of its schedule of specific commitments in basic telecommunications under the General Agreement on Trade in Services,<sup>2</sup> which provides that where a license is required, the United States will make publicly available “all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence.”<sup>3</sup> No such criteria or timeframes with respect to the national security component of Commission licensing reviews were identified at the time CMIUSA filed its application, and none have been identified since then. This lack of transparency is inconsistent with U.S. GATS obligations

To remedy the problem of long-pending applications, CMIUSA urges the Commission to adopt the following procedure requiring that for any application or petition already pending for more than one year as of the effective date of new Commission rules:

- Team Telecom must provide on the record within 30 days thereof a statement of reasons for the continuing pendency of the national security review and a justification for an additional 30 days for review.
- Team Telecom may seek further extensions, for a total of 90 days of review time beyond the effective date of the Commission’s new rules, so long as it requests extensions on the record with a statement of reasons.
- For long-pending applications (as well as new applications), the Commission should require definitive resolution— either with clearance, conditional clearance with mitigation, or denial—as in the process for the Committee on Foreign Investment in the United States (“CFIUS”) under Section 721 of the Defense Production Act of 1950, as amended.

If Team Telecom recommends denial of a license, foreign ownership ruling, or transaction consent, the applicant should have the opportunity to review any non-classified evidence on which Team Telecom relies and an opportunity to rebut such evidence before the Commission may act to deny an application.<sup>4</sup>

The overall process should not last more than 90 days. CFIUS—which includes three of the Team Telecom agencies—is statutorily required to complete reviews of complex transactions

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *See Ralls Corp. v. Committee on Foreign Investment in the United States*, 758 F.3d 296 (D.C. Cir. 2014) (finding in the case of a Presidential divestment order following CFIUS review that “due process requires, at the least, that an affected party be informed of the official action, be given access to the unclassified evidence on which the official actor relied and be afforded an opportunity to rebut that evidence”).

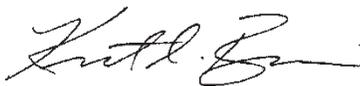
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within a 90-day timeframe. CMIUSA believes that Team Telecom should be able to complete its review of a much narrower license application within a similar timeframe.

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Please contact me with any questions or requests for additional information. I can be reached by telephone at +1 202 730 1337 and by e-mail at kbressie@hwglaw.com.

Respectfully submitted,



Kent Bressie  
*Counsel for China Mobile International (USA), Inc.*