



May 1, 2019

**BY ELECTRONIC FILING**

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

*Re: File No. ITC-214-20110901-00289, Notice of Ex Parte Presentation*

Dear Ms. Dortch:

Pursuant to 47 C.F.R § 1.1206(b), China Mobile International (USA) Inc. (“CMIUSA”) notifies the Commission of *ex parte* presentations in the above-referenced proceeding. On behalf of CMIUSA, I met separately with Umair Javed (Legal Advisor to Commissioner Jessica Rosenworcel), Erin McGrath (Legal Advisor to Commissioner Michael O’Rielly), and William Davenport (Chief of Staff and Senior Legal Adviser to Commissioner Geoffrey Starks) on April 29, 2019 and with Aaron Goldberger (Acting Wireless and International Advisor to Chairman Ajit Pai) on May 1, 2019, to discuss the above-referenced application and the draft order proposing to deny CMIUSA’s application for international Section 214 authority, which has been pending for nearly seven years.<sup>1</sup> As CMIUSA stated in its opposition to the Executive Branch petition to deny CMIUSA’s application,<sup>2</sup> CMIUSA continues to believe that this action is guided more by tensions in the bilateral U.S.-China relationship than an absence of effective mitigation options that would give meaning to the market access, transparency, and timeline elements in U.S. commitments in basic telecommunications under the General Agreement on Trade in Services.<sup>3</sup> In my meetings, I addressed the following points.

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<sup>1</sup> China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, Draft Memorandum Opinion and Order, File No. ITC-214-20110901-00289, FCC-CIRC1905-01 (circulated Apr. 18, 2019) (“Draft Order”).

<sup>2</sup> China Mobile International (USA) Inc., Opposition to Petition to Deny, File No. ITC-214-20110901-00289 (filed Aug. 20, 2018) (“CMIUSA Opposition”).

<sup>3</sup> *United States of America, Schedule of Specific Commitments*, Supp 2, Fourth Protocol to the General Agreement on Trade in Services, GATS/SC/90/Suppl.2 (Apr. 11, 1997); Reference Paper at 6.

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First, the Draft Order's analysis appears to go far beyond the Commission's longstanding policy of deferring to the Executive Branch on issues of national security and law enforcement<sup>4</sup> to suggest that that Commission conducted its own national security review and to make extensive findings on national security issues.<sup>5</sup> In doing so, the Draft Order bases its decision in part on a vague "foundation of trust" rationale<sup>6</sup> that bodes ill for the Commission's longstanding open entry policy.<sup>7</sup> In fact, the Commission and its staff did not participate in the Executive Branch national security review or the negotiations between CMIUSA and the Executive Branch regarding potential mitigation.

Second, the Draft Order's failure to cite information that is specific to CMIUSA or China Mobile reinforces the perception that the Draft Order is proposing a political decision about China in general. Nowhere does the Draft Order suggest that the Classified Supplement to the Draft Order contains such information. Instead, the Draft Order is replete with statements conflating CMIUSA with the Chinese Government<sup>8</sup> and referencing specific information pertaining to other Chinese companies.<sup>9</sup> The Draft Order also refers repeatedly to China Mobile's size but fails to explain that relevance to the Commission's conclusions or public interest analysis.<sup>10</sup>

Finally, the Draft Order fails to acknowledge the egregious delay in acting on CMIUSA's application—underscored by the fact that the Executive Branch appears to have made its decision as early as November 2016<sup>11</sup>—and how it underscores the need for reform of the Commission's process for engaging with Team Telecom.<sup>12</sup> The lack of transparency and

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<sup>4</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Rcd. 23,891, 23,920 ¶ 63 (1997) ("*Foreign Participation Order*").

<sup>5</sup> Draft Order ¶¶ 13, 17-19, 30-33,

<sup>6</sup> *Id.* ¶ 38.

<sup>7</sup> *Foreign Participation Order*, 12 FCC Rcd. at 23,903-04 ¶ 29.

<sup>8</sup> Draft Order ¶¶ 17-19.

<sup>9</sup> *Id.* ¶ 21 n.67.

<sup>10</sup> *Id.* ¶¶ 3, 19 n.61.

<sup>11</sup> CMIUSA Opposition at 4.

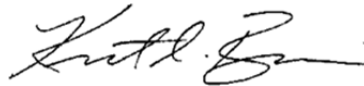
<sup>12</sup> *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Notice of Proposed Rulemaking, 31 FCC Rcd. 7456 (2016).

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timelines, although extreme in the case of CMIUSA, harms all Commission applications subject to Team Telecom reviews. Although the Executive Branch's prior opposition to timelines appears to have stalled the proceeding,<sup>13</sup> at least one agency has admitted in the context of CMIUSA's application that the process needs fixing.<sup>14</sup>

Should you have any questions, please contact me by telephone at +1 202 730 1337 or by e-mail at kbressie@hwglaw.com.

Respectfully submitted,



Kent Bressie

*Counsel for China Mobile International (USA) Inc.*

cc: William Davenport  
Aaron Goldberger  
Umair Javed  
Erin McGrath

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<sup>13</sup> Executive Branch Supplemental Comments, IB Docket No. 16-155, at 2 (filed Nov. 10, 2016).

<sup>14</sup> See *DoJ Praises Draft China Mobile Order, Pledges Speedier Reviews*, TR Daily (Apr. 24, 2019) (quoting Deputy Assistant Attorney General Adam Hickey as saying “we must explore ways to make this process more efficient and expedient, so that the Executive Branch never again takes nearly seven years to make a recommendation.”).