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April 13, 2020

VIA ELECTRONIC MAIL & IBFS

Hon. Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: China Telecom (Americas) Corporation, File Nos. ITC-214-20010613-00346; ITC-214-20020716-00371; ITC-T/C-20070725-00285

Dear Chairman Pai:

This firm represents China Telecom (Americas) Corporation ("CTA") in connection with the above-referenced authorizations. As you know, on Thursday, April 8, the National Telecommunications and Information Administration filed a document in each of these three files entitled "Executive Branch Recommendation to the Federal Communications Commission to Revoke and Terminate China Telecom's International Section 214 Common Carrier Authorizations" (the "Recommendation").

Press reports have suggested that the Commission "may move soon" in response to the Recommendation.¹ At least one Commissioner has publicly urged a "quick ... decision" on the proposed revocation.²

I ask you to confirm that any process undertaken by the Commission in response to the Recommendation will include notice to CTA and an opportunity to respond to the allegations against it before any decision is made, including an opportunity for a hearing before an Administrative Law Judge with respect to any disputed issues. This is the procedure that the Commission has used in past proceedings in which the revocation of Section 214 authorization was proposed, including the following:

¹ *Communications Daily*, April 13, 2020, page 1.

² Commissioner O'Rielly on Twitter,
<https://twitter.com/mikeofcc/status/1248351442987036685>, April 9, 2020.

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- *CCN, Inc., et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 12 FCC Rcd 8547 (1997) (ordering an evidentiary hearing to determine, among other things, whether carriers' operating authority should be revoked due to "egregious" slamming practices and other allegations);
- *Publix Network Corporation, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487 (2002) (ordering an evidentiary hearing to determine, among other things, whether to revoke carriers' domestic Section 214 authorization based on alleged fraud on the Telecommunications Relay Service Fund);
- *Business Options, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881 (2003) (ordering an evidentiary hearing to determine, among other things, whether companies' authorization pursuant to Section 214 of the Act to operate as common carriers should be revoked based upon a misleading and continuous telemarketing campaign in apparent violation of Section 201(b)); and
- *NOS Communications, Inc., et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6952 (2003) (ordering an evidentiary hearing to determine, among other things, whether companies' authorization pursuant to Section 214 of the Act to operate as common carriers should be revoked based upon a misleading and continuous telemarketing campaign in apparent violation of Section 201(b)).

An opportunity for an evidentiary hearing is required by the Commission's own rules, 47 C.F.R. § 1.91; by the Communications Act, 47 U.S.C. § 312(c); and by the Constitutional requirement for due process. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). To revoke CTA's license without a hearing would deprive CTA of its constitutionally protected liberties, including the liberty to "sell [its] wares in the market" and to "practice [its] chosen profession." *See, e.g., Trifax Corp. v. District of Columbia*, 314 F.3d 641, 644 (D.C. Cir. 2003) (finding that the government must provide notice and a meaningful hearing before taking action that "broadly precludes individuals or corporations from a chosen trade or business."). Moreover, a revocation of CTA's license would also deprive it of liberty by imposing a "stigma" that would impact CTA's "status in a tangible way" and cause "injury to reputation." *Orange v. District of Columbia*, 59 F.3d 1267, 1274 (D.C. Cir. 1995); *see also Paul v. Davis*, 424 U.S. 693, 708 (1976). The Commission cannot deprive CTA of its due process rights "to be heard" without "a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." *Hamdi v. Rumsfeld*, 542 U.S. 507, 535 (2004). "When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets at least currently prevailing standards of impartiality." *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49 (1950).

Accordingly, I ask you to confirm that no adverse action will be taken against CTA before the company has been given notice of the allegations against it and an opportunity to present its response at an evidentiary hearing.

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Very truly yours,

s/ Andrew D. Lipman

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c: Tom Sullivan, Chief, International Bureau
Thomas M. Johnson, Jr., General Counsel