



U.S. Department of Justice

National Security Division

Foreign Investment Review Staff

Washington, D.C. 20530

May 9, 2014

By Electronic Filing

Ms. Marlene H. Dortch
Secretary of the Federal Communications Commission
Federal Communications Commission
445 12th St. SW, Room TW-B204
Washington, DC 20554

Re: **ACT Telecommunications, Inc., File No. ITC-214-20081201-00519 (DA No. 09-2331 (October 27, 2009))**

Dear Ms. Dortch:

The Department of Justice, with the concurrence of the Department of Homeland Security (collectively, the "Agencies"), hereby notifies the Federal Communications Commission (FCC) of the non-compliance of ACT Telecommunications, Inc. (ACT) with the FCC's terms in granting an international telecommunications certificate on October 27, 2009 (authorization file number **ITC-214-20081201-00519**) (DA No. 09-2331). Given such failure, the Agencies request that the FCC terminate, declare null and void and no longer in effect, and/or revoke ACT's current authorization, file number **ITC-214-20081201-00519**.

Prior to ACT receiving the above-identified certificate, the Agencies expressly conditioned their non-objection to ACT receiving any correlating authorities on "the [FCC] condition[ing] its approval on the assurance of [ACT] to abide by the commitments and undertakings set forth in [an] October 29, 2009, Letter of Assurances," which was attached to the Agencies' petition. (*See* Attachment 1 (Pet. To Adopt Cond. To Auth. and Licenses at 1 (Oct. 27, 2009) (including LOA)).) As stated in the public notice disclosing the grant of the above-referenced certificate (DA No. 09-2331), the FCC concurred with the Agencies' request and conditioned ACT's authority to provide facilities-based service in accordance with Section 63.18(e)(1) of the FCC's rules, and also to provide resale service in accordance with Section 63.18(e)(2) of the FCC's rules, on ACT "abiding by the commitments and undertakings set forth in [an] October 20, 2009 Letter of Assurances (LOA)." (*See* Attachment 2 at 1 (Public Notice, DA No. 09-2331) (Oct. 29, 2009).)

In that LOA, ACT agreed to submit to the Agencies a yearly certification, due by October 20th of each year, reaffirming the commitments in the LOA and describing any violation of such commitments and ACT's technical capabilities for complying with the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, *et. seq.* ACT has failed to submit either

its 2012 or 2013 certifications to the Agencies, and ACT has failed to respond to all attempts by the Agencies (telephone and electronic mail (e-mail)) to inquire as to the status of those certifications.

Further, in the LOA ACT also agreed to establish and maintain one or more points of contact (POCs) within the United States with the authority and responsibility for accepting and overseeing compliance with judicial orders authorizing U.S. law enforcement collection, as well as subpoenas or other lawful demands by U.S. law enforcement authorities for the content of communications or U.S. Records. Upon the POC changing, ACT was to notify the Agencies within ten days of such change. In a September 23, 2013, e-mail message, Mr. Eric Fishman, ACT's previously designated POC (and one-time legal counsel), advised the Agencies that in September 2013 he had attempted, and failed, to communicate with ACT. Mr. Fishman also advised that he had moved to a new law firm and had not been re-engaged as ACT's attorney following that move. Mr. Fishman further informed the Agencies that they would need to communicate with ACT directly, thus implying that his legal relationship with ACT was over and that he no longer could serve as ACT's designated POC for purposes of the LOA. Mr. Fishman also copied his September 23, 2013, e-mail message to an ACT representative. Although more than 228 days have passed since the Agencies received Mr. Fishman's e-mail message, the Agencies have not received a new POC designation from ACT.

ACT has therefore failed to comply with the LOA's terms in the following material ways: (1) ACT failed to submit its yearly certification in 2012; (2) ACT failed to submit its yearly certification in 2013; (3) ACT failed to maintain a current designated POC; and (4) ACT failed to provide timely notice of a change in ACT's POC status.

In the LOA, ACT agreed that, in the event the commitments set forth therein were breached, the Agencies could request that the FCC modify, condition, revoke, cancel, or render null and void any relevant license, permit, or other authorization granted by the FCC to the Company.

Since ACT has failed to comply with the LOA, and given that such compliance was an express condition of both the Agencies' non-objection to the granting of authority and of the FCC's grant of authority to ACT, the Agencies request that the FCC terminate, declare null and void and no longer in effect, and/or revoke the international telecommunications certificate issued to ACT, authorization file number **ITC-214-20081201-00519**.

Thank you for your consideration.

Sincerely,

____s/Richard Sofield_____
Richard Sofield
Director, Foreign Investment Review Staff
National Security Division
U.S. Department of Justice

cc: James Ball
Chief, Policy Division,
International Bureau, FCC
james.ball@fcc.gov

David Krech
Associate Chief, Policy Division
International Bureau, FCC
david.krech@fcc.gov

Richard Hagar
Deputy Director - Foreign Investment Risk Management
Office of Policy, U.S. Department of Homeland Security
richard.hagar@hq.dhs.gov

DHS Foreign Investment Risk Management
IP-FCC@hq.dhs.gov

Kristin A. Taylor
Attorney
Foreign Investment Review Staff, National Security Division
U.S. Department of Justice
kristin.taylor@usdoj.gov