

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ACT Telecommunications, Inc.)	ITC-214-20081201-00519
Termination of International Section 214)	
Authorization)	

ORDER

Adopted: January 14, 2016

Released: January 14, 2016

By the Chief, Telecommunications and Analysis Division, International Bureau:

I. INTRODUCTION

1. By this Order, we declare the international section 214 authorization granted to ACT Telecommunications, Inc. (ACT) terminated given ACT's inability to comply with the express condition for holding the authorization.¹ We also conclude that ACT failed to comply with those requirements of the Communications Act of 1934, as amended (the Act) and the Commission's rules that ensure that the Commission can contact and communicate with the authorization holder, which failures have prevented any way of addressing ACT's inability to comply with the condition of its authorization.

II. BACKGROUND

2. Section 214(a) of the Act prohibits any carrier from constructing, extending, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate of authorization from the Commission.² Under section 214(c) of the Act, the Commission "may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require."³ On October 27, 2009, the International Bureau granted ACT an international section 214 authorization to provide global or limited global facility-based service and global or limited global resale service in accordance with section 63.18(e)(1) and 63.18(e)(2) of the Commission's rules.⁴ The International Bureau granted the application on the express condition that ACT abide by the commitments and undertakings contained in its Letter of Assurance (LOA) to the Department of Justice (DOJ) and the Department of Homeland Security (DHS, and with DOJ, the

¹ The International Bureau granted ACT's authorization under File No. ITC-214-20081201-00519. *International Authorizations Granted, Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b)(4) Requests*, Report No. TEL-01393, Public Notice, 24 FCC Rcd 13364, 13364 (IB 2009) (*ACT International Section 214 Authorization*), http://licensing.fcc.gov/ibfsweb/ib.page.FetchPN?report_key=773296.

² 47 U.S.C. § 214(a); 47 CFR § 63.18 (stating any carrier seeking section 214 authority "for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application"). The Commission granted "blanket" section 214 authority to carriers providing domestic service but did not extend this authority to international services. *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, AAD File No. 98-43, Report and Order, Second Memorandum Opinion and Order, 14 FCC Rcd 11364, 11365-66, para. 2 & n.8 (1999).

³ 47 U.S.C. § 214(c).

⁴ *ACT International Section 214 Authorization*, 24 FCC Rcd at 13364; 47 CFR § 63.18(e).

Executive Branch Agencies) dated October 20, 2009.⁵ Relevant to this Order, in the LOA, ACT agreed to submit a yearly certification due by October 20th of each year reaffirming its commitments, describing any violations of such commitments, and describing its technical capabilities for complying with Communications Assistance for Law Enforcement Act (CALEA).⁶ ACT also agreed to establish and maintain one or more points of contacts (POC) within the United States and “keep such information current by notifying DOJ and DHS in writing of any change to such information within ten days of such change.”⁷

3. On May 9, 2014, the Executive Branch Agencies notified the Commission of ACT’s non-compliance with the conditions of its authorization and requested that the Commission terminate, and declare null and void and no longer in effect, the international section 214 authorization issued to ACT.⁸ The Executive Branch Agencies indicate that ACT did not submit either its 2012 or 2013 yearly certification, and 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.”⁹ Additionally, the Executive Branch Agencies stated that ACT’s previously designated POC and one-time legal counsel, Mr. Eric Fishman, in a September 23, 2013, e-mail message, indicated, “in September 2013 he had attempted, and failed, to communicate with ACT.”¹⁰ According to the Executive Branch Agencies, Mr. Fishman also indicated he moved to another law firm, but had not been re-engaged as ACT’s attorney.¹¹ Mr. Fishman recommended that the Executive Branch Agencies “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.”¹² As a result, the Executive Branch Agencies stated that ACT has “failed to comply with the LOA 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

⁵ Petition of DHS and DOJ to Adopt Conditions to Authorizations and Licenses, File No. ITC-214-20081201-00519 (filed Oct. 27, 2009) (Petition to Adopt Conditions); Letter from Salomon Doumith, Director, ACT Telecommunications, Inc. to Assistant Attorney General National Security Division, DOJ, Assistant Secretary for Policy, DHS (Oct. 20, 2009), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-156783&f_number=ITC2142008120100519.

⁶ LOA at 2; *id.* (“ACT agrees that, in the event the commitments set forth in this letter are breached, in addition to any other remedy available at law or equity, DOJ or DHS may 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.”).

⁷ *Id.* at 1 (ACT agreed “that it will establish and maintain one or more points of contact within the United States with the authority and responsibility for accepting and overseeing compliance with judicial orders authorizing U.S. law enforcement to conduct electronic surveillance under 18 U.S.C. § 2510 et seq., and Pen Register and Trap and Trace devices under 18 U.S.C. § 3121 et seq., as well as subpoenas or other lawful demands by U.S. law enforcement authorities for the content of communications or U.S. Records.”).

⁸ Letter from Richard Sofield, Director, Foreign Investment Review Staff, National Security Division, DOJ to Marlene H. Dortch, Secretary, FCC at 1 (filed May 9, 2014) (*May 9, 2014 Executive Branch Letter*), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-156783&f_number=ITC2142008120100519.

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* The Executive Branch Agencies added that Mr. Fishman copied his September 23, 2013 e-mail message to ACT and “[a]lthough 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.” *Id.* To date, ACT has not designated another POC to the Executive Branch Agencies.

POC; and (4) ACT failed to provide timely notice of a change in ACT's POC status."¹³

4. The Commission has made significant efforts to communicate with ACT, but has also been unable to do so. On May 14, 2014, the International Bureau sent ACT a letter to the last address of record requesting that ACT respond to the *May 9, 2014 Executive Branch Letter* within 30 days of the letter, by June 13, 2014.¹⁴ ACT did not respond. Since that time, the International Bureau has provided ACT with additional opportunities to respond to these allegations.¹⁵ The International Bureau stated that failure to respond would result in termination of ACT's international section 214 authorization for failure to comply with conditions of its authorization.¹⁶ On November 18, 2015, the International Bureau sent copies of the foregoing Commission notices to ACT at the St. John's, Antigua and Barbuda address listed in its 2008 application, through UPS, return receipt, which was successfully delivered on November 20, 2015.¹⁷ In ACT's 2008 application, ACT stated it was incorporated in Delaware, and according to the Delaware Secretary of State, ACT is no longer in "good standing."¹⁸ To date, ACT has not responded to any of the International Bureau or the Executive Branch Agencies' multiple requests to resolve this matter.

¹³ *Id.*

¹⁴ Letter from James L. Ball, Chief, Policy Division, FCC International Bureau to Mr. Salomon Doumith (May 14, 2014), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-156783&f_number=ITC2142008120100519.

¹⁵ First, on June 27, 2014, the International Bureau issued a Public Notice providing ACT with the further opportunity to respond to the allegations in the *May 9, 2014 Executive Branch Letter* and describing any steps it was taking or would take to resolve the Executive Branch Agencies' concerns. *ACT Telecommunications, Inc. Required to Respond to Request to Terminate its International Section 214 Authorization*, File No. ITC-214-20081201-00519, Public Notice, 29 FCC Rcd 7802 (IB 2014). Second, on January 14, 2015, the Bureau released a Public Notice affording ACT its "final notice and opportunity to respond" and stating that ACT must do so no later than 15 days after publication of notice in the Federal Register. *Notice of Intent to Declare the International Section 214 of ACT Telecommunications, Inc. Terminated*, File No. ITC-214-20081201-00519, 30 FCC Rcd 174 (2015) (*2015 ACT Public Notice*). Third, on January 14, 2015, the Bureau mailed the *2015 ACT Public Notice* to ACT at the St. John's, Antigua and Barbuda address listed in its 2008 application and to Mr. Robert Strange Jr. in Houston, Texas, at the address used in a 2007 filing of FCC Form 499 on behalf of a company named "ACT Telecom, Inc." Letter from Howard Griboff, Acting Chief, Policy Division, International Bureau, FCC to Mr. Salomon Doumith and Mr. Robert Strange Jr. (IB Jan. 14, 2014); see also FCC, Form 499, Filer Database, <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=821518>. Fourth, on January 27, 2015, the Public Notice was published in the Federal Register and ACT was required to respond within 15 days of publication, *i.e.* by February 11, 2015. *Notice of Intent to Terminate 214 Authorization*, Federal Register, 80 Fed. Reg. 4264 (Jan. 27, 2015).

¹⁶ *2015 ACT Public Notice*, 30 FCC Rcd at 174.

¹⁷ The Bureau sent the Commission Notices to ACT at the St. John's, Antigua and Barbuda address via UPS (1ZA43F580492915363). Although the Executive Branch Agencies stated that Mr. Eric Fishman is likely no longer counsel for ACT, ACT's 2008 application lists Mr. Eric Fishman as the contact. On November 17, 2015, the Bureau also mailed the Commission notices to Mr. Eric Fishman, which were successfully delivered on November 19, 2015, but to date, he has not contacted the Bureau (1ZA43F580190847946). On November 17, 2015, the Bureau also mailed the Commission notices to Mr. Robert Strange Jr. in Houston, Texas (1ZA43F580193862352), used in a 2008 filing of FCC Form 499 on behalf of "ACT Telecom, Inc." The Commission notices were sent back as undeliverable on November 30, 2015 (1ZA43F581293862359).

¹⁸ State of Delaware, Division of Corporations, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last visited Jan. 12, 2016) (search under "Act Telecommunications" or by file number "4585950").

III. DISCUSSION

5. We determine that ACT's international section 214 authorization to provide international services issued under File No. ITC-214-20081201-00519 has terminated for inability to comply with the LOA, an express condition for holding the section 214 international authorization. The International Bureau has provided ACT with notice and opportunity to respond to the allegations in the *May 9, 2014 Executive Branch Letter* concerning ACT's non-compliance with the condition of the grant. ACT has not responded to any of our multiple requests or requests from the Executive Branch Agencies. We find that ACT's failure to respond to our multiple requests demonstrates that it is unable to satisfy the LOA conditions concerning its 2012 and 2013 certifications, maintaining a current designated POC, and providing timely notice of a change in ACT's POC status, upon which the Executive Branch Agencies gave their non-objection to the grant of the authorization to ACT, and which is a condition of the grant of its section 214 authorization.

6. Furthermore, after having received an international 214 authorization, a carrier "is responsible for the continuing accuracy of the certifications made in its application" and must promptly correct information no longer accurate, "and, in any event, within thirty (30) days."¹⁹ ACT has failed to inform the Commission of any changes in its business status of providing international telecommunications services, as required by the rules.²⁰ Nor is there any record of ACT having complied with section 413 of the Communications Act and the Commission's rules requiring it to designate an agent for service after receiving its authorization on October 27, 2009.²¹ Finally, as part of its authorization, ACT "must file annual international telecommunications traffic and revenue as required by § 43.62."²² Section 43.62(b) states that "[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report *whether* it provided international telecommunications services during the preceding calendar year."²³ Our records indicate that ACT failed to file an annual international telecommunications traffic and revenue report indicating whether or not ACT provided services in 2014, as required by section 43.62(b) of the Commission's rules.²⁴ In these circumstances, and in light of ACT's failure to respond to the Commission's rules designed to ensure its ability to communicate with the holder of the authorization also warrants termination wholly apart from demonstrating ACT's inability to satisfy the LOA conditions of its authorization.

¹⁹ 47 CFR § 63.21(a).

²⁰ *Id.* In addition, there is no indication that ACT is currently providing service pursuant to its section 214 authorization. If ACT has discontinued service, it is also in violation of the Commission's rules requiring prior notification for such a discontinuance. 47 C.F.R. § 63.19.

²¹ Section 413 of the Act requires every carrier to designate an agent for service. 47 U.S.C. § 413. *See also* 47 CFR §§ 1.47(h), 64.1195.

²² 47 CFR § 63.21(d).

²³ 47 CFR § 43.62(b) (emphasis added). In 2013, the Commission adopted section 43.62(b) of its rules, which went into effect on February 11, 2015. *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, Second Report and Order, 28 FCC Rcd 575 (2013); *Reporting Requirements for U.S. Providers of International Telecommunications Services*, 80 Fed. Reg. 7547 (Feb. 11, 2015).

²⁴ 47 CFR § 43.62(b).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 214, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 413, and sections 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), and 64.1195 of the Commission's rules, 47 CFR §§ 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), 64.1195, that the international 214 authorization issued under File No. ITC-214-20081201-00519 IS HEREBY TERMINATED AND DECLARED NULL AND VOID.

8. IT IS FURTHER ORDERED that the request of the U.S. Department of Justice, concurred in by the U.S. Department of Homeland Security, IS HEREBY GRANTED, to the extent set forth in this Order.

9. IT IS FURTHER ORDERED that a copy of this Order shall be sent by return receipt requested to ACT Telecommunications, Inc. at its last known addresses.

10. IT IS FURTHER ORDERED that a copy of this Order, or a summary thereof, shall be published in the Federal Register.

11. This Order is issued on delegated authority under 47 C.F.R. §§ 0.51, 0.261, and is effective upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, may be filed within 30 days of the date of the release of this Order

FEDERAL COMMUNICATIONS COMMISSION

Denise Coca
Chief, Telecommunications and Analysis Division
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