



Federal Communications Commission
Washington, D.C. 20554

March 24, 2020

Sanchitha Jayaram
Chief, Foreign Investment Review Section
National Security Division
United States Department of Justice
175 N Street, NE
Washington, DC 20002
Sanchitha.Jayaram@usdoj.gov

Re: Executive Branch Agencies Letter Regarding VTA Telecom Corporation's Application for International Section 214 Authority, File No. ITC-214-20130718-00195

Dear Ms. Jayaram:

We respond to a letter filed by the Department of Justice (DOJ) with the concurrence of the Department of Homeland Security (DHS) and the Department of Defense (DOD) (collectively the "Agencies")¹ informing the Commission that the Agencies are no longer actively reviewing VTA Telecom Corporation's (VTA Telecom) pending international section 214 application (Application).² The Agencies returned the Application to the Commission for further review under the Commission's rules, regulations, and character policy statements, citing a felony guilty plea by Bui Quang Huy (Mr. Bui), who signed the Application as VTA's President in 2013.³ In light of Commission precedent and the mitigating factors in this case, it does not appear—based on the record before us—that Mr. Bui's felony conviction should disqualify VTA Telecom from obtaining an international section 214 authorization.⁴ With this assessment in mind, we plan to take action on the Application on or about April 7, 2020. If the Agencies want to conduct further review of the Application for any national security, law enforcement, and public safety issues, they should file a public deferral request consistent with current practice.

¹ Letter from Sanchitha Jayaram, Chief, Foreign Investment Review Section, National Security Division, United States Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 3, 2018) (Executive Branch Letter) (filing unredacted and redacted letters); *id.* at 1 ("On August 14, 2013, DOJ on behalf of the Agencies, requested the removal from streamline of the above-referenced application so that the Agencies could conduct a review for national security, law enforcement, and public safety issues.") (Executive Branch Deferral Letter).

² Viettel America Corporation, International Section 214 Application, FCC, ITC-214-20130718-00195 (filed July 17, 2013) (Application); *see* Letter from Kent Bressie, Counsel for VTA Telecom Corporation, Wiltshire & Grannis LLP, to Marlene H. Dortch, Secretary, FCC (filed Jan. 5, 2014) (Name Change Notification) (stating Viettel America Corporation changed its name to VTA Telecom Corporation); Letter from Patricia Paoletta, Counsel, Wiltshire & Grannis LLP, to Marlene H. Dortch, Secretary, FCC (filed Dec. 20, 2016) (notifying the Commission that the law firm withdrew as VTA Telecom's counsel).

³ Executive Branch Letter at 1-3.

⁴ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 F.C.C.2d 1179 (1986) (1986 Character Policy Statement), modified, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (1990 Character Policy Statement), recon. granted in part, Memorandum Opinion and Order, 6 FCC Rcd 3488 (1991), modified in part, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992); *see, e.g., Applications of LightSquared Subsidiary LLC DIP, and LightSquared Subsidiary LLC, For Consent to Assign and Transfer Licenses and Other Authorizations*, Order, 34 FCC Rcd 296, 297, para. 4 (IB 2019) (*Ligado Order*).

Background. On July 17, 2013, VTA Telecom—which is ultimately owned by the government of Vietnam—filed an Application seeking to provide international facilities-based and resale service pursuant to section 214 of the Communications Act of 1934, as amended (the, “Act”) and section 63.18(e) of the Commission’s rules.⁵ On August 2, 2013, the International Bureau placed the Application on streamlined processing.⁶ On August 14, 2013, the Agencies asked the Commission to defer action on the Application pending their review for any national security, law enforcement, and public safety issues.⁷ During their review, the Agencies became aware that on October 25, 2016, Mr. Bui was charged in a two-count indictment in the District of New Mexico with illegally attempting to export rocket engines to Vietnam.⁸ On June 6, 2017, Mr. Bui “entered into a plea agreement and pleaded guilty to one count of violating 18 U.S.C. § 554 (Smuggling Goods from the United States) and consented to removal from the United States to Vietnam.”⁹

Based on this information, on August 3, 2018, the Agencies returned the Application to the Commission for further review under its rules, regulations, and character policy statements citing Mr. Bui’s felony conviction.¹⁰ In particular, the Agencies asked the Commission to consider “the allegations that [Mr. Bui] was acting at the direction” of VTA Telecom based on a statement made by Mr. Bui in his sentencing memorandum.¹¹ On August 10, 2018, the International Bureau’s Telecommunications and Analysis Division sent a Letter of Inquiry to Mr. Bui and VTA Telecom notifying them of the Agencies’ letter and asking them for further information related to the felony.¹² On September 10, 2018, counsel for VTA Telecom filed a response stating that, “Mr. Bui’s conduct was clearly serious in that it resulted in a guilty plea to a single felony count; however, the actions he engaged in were outside the expected scope of his employment.”¹³ Among other actions, after an investigation, VTA Telecom stated that “it was determined that Mr. Bui was the only officer involved in the alleged violations of U.S. Export law, and his employment was terminated, along with the employment of a subordinate employee who apparently assisted him.”¹⁴

⁵ Application; Name Change Notification.

⁶ *Streamlined International Applications Accepted for Filing; Section 214 Applications (47 C.F.R. § 63.18); Section 310(b)(4) Requests*, Report No. TEL-01629S, Public Notice, 2013 WL 4400824 (IB Aug. 2, 2013).

⁷ Executive Branch Deferral Letter.

⁸ Executive Branch Letter at 2.

⁹ *Id.* (“[o]n October 5, 2017, ‘Quang Huy Bui’ was sentenced to an imprisonment of 12 months and a day and three years of unsupervised release that would convert to supervised release if the defendant were allowed to reenter or remain in the United States”); Plea Agreement (Document 53), *United States v. Quang Huy Bui*, Cr. No. 16-4134 (D.N.M.) (June 6, 2017), <https://www.courtlistener.com/recap/gov.uscourts.nmd.353264/gov.uscourts.nmd.353264.53.0.pdf> (Bui Plea Agreement).

¹⁰ Executive Branch Letter at 1.

¹¹ *Id.* at 3 (the Agencies point to the sentencing memorandum submitted by Mr. Bui stating that “he was working at the direction of his employer. Viettel requested that he acquire the engine and have it sent to Vietnam”).

¹² Letter from Denise Coca, Division Chief, Telecommunications and Analysis Division, FCC International Bureau, to Bui Quang Huy, President, VTA Telecom Corporation (Aug 10, 2018) (Letter of Inquiry).

¹³ Letter from Stephen E. Coran and David S. Keir, Counsel to VTA Telecom, to Veronica Garcia-Ulloa, Telecommunications and Analysis Division, FCC International Bureau at 4 (Sept. 10, 2018) (VTA’s Response).

¹⁴ *Id.*

Discussion. A Commission licensee or a party controlling or with significant ownership of such a licensee must possess a character sufficient to demonstrate that it will deal truthfully with the Commission and comply with its rules and policies.¹⁵ When evaluating the character qualifications of an applicant, such as VTA Telecom, we focus on “misconduct which demonstrates the proclivity . . . to deal truthfully with the Commission and to comply with our rules and policies.”¹⁶ We consider certain violations of the Act or of the Commission’s rules or policies, as well as certain types of adjudicated, non-Commission-related misconduct, including felony convictions and violations of antitrust laws.¹⁷ Where misconduct calls into question an applicant’s character qualifications, we also consider certain “mitigating factors.”¹⁸ These mitigating factors include the frequency of the misconduct; the nature of the participation, if any, of the managers and owners; any remedial action taken to curb the conduct and/or dismiss the perpetrator; and the applicant’s past record of compliance with Commission rules and policies.¹⁹

Based on the information before us, it appears that Mr. Bui’s felony conviction would not disqualify VTA Telecom from obtaining an international section 214 authorization.²⁰ While Mr. Bui alleges in his sentencing memorandum that VTA Telecom, the Applicant, directed his actions in committing the felony to which he pled guilty, this allegation lacks any specificity, is wholly conclusory, and was made not in this proceeding but in an effort to secure a shorter prison sentence. VTA Telecom has specifically denied this allegation in sworn statements to the Commission,²¹ and neither it nor any other employee has been charged with any wrongdoing or a felony, or is subject to any legal proceedings concerning Mr. Bui’s actions.²² In these circumstances, we conclude there is no substantial issue of fact before the Commission concerning the question of the Applicant’s participation in Mr. Bui’s misconduct.

Moreover, the mitigating factors in this case – including the multiple steps taken by VTA Telecom once it was made aware of the allegations – weigh in favor of finding that VTA Telecom is not disqualified from holding an international section 214 authorization. Although Mr. Bui engaged in a criminal act while he was employed by VTA Telecom, VTA Telecom affirmatively undertook various remedial intra-corporate measures to address prior violations and prevent future recurrence.²³ Once VTA Telecom learned of possible misconduct by Mr. Bui, it suspended Mr. Bui and investigated any violations

¹⁵ *Ligado Order*, 34 FCC Rcd at 297, para. 4.

¹⁶ *1990 Character Policy Statement*, 5 FCC Rcd at 3252, para. 3 (quoting *1986 Character Policy Statement*, 102 F.C.C.2d at 1190-91); *Ligado Order*, 34 FCC Rcd at 297, para. 6.

¹⁷ See, e.g., *Ligado Order*, 34 FCC Rcd at 297, para. 6.

¹⁸ *1990 Character Policy Statement*, 5 FCC Rcd at 3252, para. 5; *Ligado Order*, 34 FCC Rcd at 297, para. 6.

¹⁹ *Id.* at 1227-28, para. 102; *Ligado Order*, 34 FCC Rcd at 297-98, para. 6.

²⁰ In the *Ligado Order*, the International Bureau found that while JPMorgan itself was convicted of antitrust felony, under the circumstances of that case the felony conviction did not disqualify JPMorgan from exercising directly its ownership interests in Ligado Networks, LLC or from holding other Commission licenses or authorizations, including taking into account that the criminal acts did not pertain to Commission activities. *Ligado Order*, 34 FCC Rcd at 298, para. 7.

²¹ VTA’s Response at 4, 7.

²² VTA’s Response at 3 (“No current officer, manager, owner, or director of the Applicant has been convicted of or pled guilty to any felony. Mr. Bui is the sole former officer to have pleaded guilty to a felony . . .”).

²³ *Id.* at 2, 4-6.

of law.²⁴ VTA Telecom stated that immediately following Mr. Bui's arrest, it engaged legal counsel to review VTA Telecom's export activity since its incorporation in 2013.²⁵ VTA Telecom then voluntarily submitted initial notifications of possible violations of U.S. export control laws to the U.S. Department of State and U.S. Department of Commerce less than two months later.²⁶ Once the investigation revealed that Mr. Bui violated U.S. export laws, and prior to his plea deal, on May 17, 2017, VTA Telecom terminated his employment, with the stipulation that he continue cooperating with VTA Telecom's internal investigation.²⁷ We also note that Mr. Bui was convicted for a violation of U.S. Export laws, which is unrelated to Mr. Bui's or VTA Telecom's activities relating to the Commission or VTA Telecom's Application. In the absence of any specific evidence that any other officer or employee of VTA Telecom or its parent participated in Mr. Bui's misconduct, the remedial measures that VTA Telecom has undertaken demonstrate a commitment to remedy its past deficiencies, to deal truthfully with the Commission, and to comply with our rules and policies.

In light of the record before us, we do not believe that Mr. Bui's felony conviction would disqualify VTA Telecom from holding an international section 214 authorization pursuant to the Commission's characters policies. With this assessment in mind, we plan to take action on the Application by April 7, 2020. If the Agencies want to conduct further review of the Application, we ask that they file a public deferral request consistent with established current practice.²⁸ Should you have any questions please do not hesitate to contact me at Denise.Coca@fcc.gov or at (202) 418-0574 or Jocelyn Jezierny at Jocelyn.Jezierny@fcc.gov or at 202 418-0887.

Sincerely,



Denise Coca
Chief, Telecommunications and Analysis Division
International Bureau

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* VTA Telecom acknowledges that it did not have any formally established export-compliance policies prior to Mr. Bui's arrest, but contends that Mr. Bui's violation of the U.S. Export laws was a result of Mr. Bui's failure to consult outside legal counsel and other factors. *Id.* at 5.

²⁸ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000) (In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues).

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