



U.S. Department of Justice

National Security Division

Foreign Investment Review Section

Washington, D.C. 20002

April 30, 2020

By E-File

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

Re: ITC-T/C-20170705-00120 (ITC-214-20150320-00075)
CBCCOM Americas Inc. transfer of international Section 214 authorization to
Sinocomm Limited

Dear Ms. Dortch:

The U.S. Department of Justice ("DOJ"), with the concurrence of the U.S. Department of Homeland Security and the U.S. Department of Defense (collectively, "the Agencies"), hereby informs the Federal Communications Commission ("FCC" or "Commission") that for the reasons stated below, the Agencies are no longer conducting an active review of the pending application of CBCCOM Americas Inc. ("CBCCOM Americas"), ITC-T/C-20170705-00120, to transfer control of an international Section 214 authorization¹ to Sinocomm Ltd. ("Sinocomm"). The Agencies therefore return this application for further review under the Commission's rules, regulations, and policy statements.² Despite multiple

¹ *International Authorizations Granted*, Public Notice, Report No. TEL-01727, DA No. 15-460 at 3 (Apr. 16, 2015), https://licensing.fcc.gov/ibfswweb/ib.page.FetchPN?report_key=1083607 (CBCCOM Americas' Section 214 Certificate, FCC File No. ITC-214-2 0150320-00075). PUBLIC EXHIBIT 1 at CBCCOM-PUBLIC-001.

² See, e.g., 47 C.F.R. § 63.51(a), (b) (stating that an applicant must provide additional information if the Commission requests so, and that the Commission may dismiss an application without prejudice if the applicant does not respond); 47 C.F.R. § 63.24 ("[A]n international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party . . . only upon application to and prior approval by the Commission."); *Policy Regarding Character Qualifications in Broadcast Licensing; Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (*Character Policy Statement*); Policy Statement and Order, 5 FCC Rcd 3252 (1990), as modified, and pertinent precedent; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on

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Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

inquiries, the Agencies have not heard from the Applicants since October 30, 2019, and information vital to the review of the application has not been provided. Additionally, the Agencies are concerned that CBCCOM Americas' international Section 214 authorization may have been abandoned or *de facto* transferred without FCC approval.

On April 10, 2015, the FCC granted CBCCOM Americas' application for an international Section 214 authorization.³ On July 5, 2017, CBCCOM Americas and Sinocomm Ltd., a Hong Kong company, filed the above-captioned application for permission to transfer control of CBCCOM Americas' international Section 214 authorization to Sinocomm.⁴ On February 8, 2018, the Commission sent the Agencies a Cover Letter, Reference EB 2018-04. On February 16, 2018, the Agencies requested the removal of the above-referenced application from streamline so that the Agencies could conduct a review to identify any national security, law enforcement, or public safety concerns. During the review of the application, the Agencies engaged in several rounds of communication with CBCCOM Americas regarding its application to transfer control of its international Section 214 authorization to Sinocomm.

According to information in the application submitted to the FCC, Steve Li, a U.S. citizen, was the sole owner of CBCCOM Americas, a company incorporated in Texas.⁵ The application further stated that Steve Li was planning to sell his company to Hong Kong company Sinocomm Ltd., which is wholly owned by Yan "Richard" Fung, a citizen of Hong Kong⁶ who also owns 34 percent of China Broadband Communications (HK) Co. Ltd., a Hong Kong company; 100 percent of CBC Co. Ltd., a Taiwanese entity; and part of China Broadband Communications Ltd., a Singaporean company.⁷ Richard Fung is also the CEO of

Reconsideration, 12 FCC Rcd 23891, 23915, para. 53 & n.90 (1997).

³ *International Authorizations Granted*, Public Notice, Report No. TEL-01727, DA No. 15-460 at 3 (Apr. 16, 2015), https://licensing.fcc.gov/ibfsweb/ib.page.FetchPN?report_key=1083607. PUBLIC EXHIBIT 1 at CBCCOM-PUBLIC-001.

⁴ FCC Form 214TC, Transfer of Control Application, FCC File No. ITC-T/C-20170705-00120 (July 5, 2017), https://licensing.fcc.gov/myibfs/download.do?attachment_key=1245049 (hereinafter FCC Transfer of Control Application). PUBLIC EXHIBIT 2 at CBCCOM-PUBLIC-008.

⁵ *Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-01891S at 2 (Feb. 9, 2018), https://licensing.fcc.gov/ibfsweb/ib.page.FetchPN?report_key=1335376. PUBLIC EXHIBIT 3 at CBCCOM-PUBLIC-22.

⁶ *Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-01891S at 2 (Feb. 9, 2018), https://licensing.fcc.gov/ibfsweb/ib.page.FetchPN?report_key=1335376. PUBLIC EXHIBIT 3 at CBCCOM-PUBLIC-21.

⁷ FCC Transfer of Control Application, Supplement to Question 12 (filed Feb. 8, 2018), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-297284&f_number=ITCT/C2017070500120. PUBLIC EXHIBIT 4 at CBCCOM-PUBLIC-023.

[REDACTED FOR APPLICANTS' CONFIDENTIAL INFORMATION]

Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

China Broadband Communications Co. Ltd., a Chinese entity.⁸ In its May and June 2018 response to the Agencies' questions, CBCCOM Americas advised [REDACTED].⁹

Information provided by CBCCOM Americas, however, along with open source research, suggests that not only does CBCCOM Americas have a relationship with China Broadband Communications Co. Ltd., but also that control of CBCCOM Americas and its international Section 214 authorization may have already been effectively transferred to the entities controlled by Richard Fung. Moreover, the Agencies have not heard from either of the Applicants since October 2019.

Some of the individuals that purportedly represented CBCCOM Americas' interests in its dealing with the Agencies and FCC appear to be employees of the Beijing-based China Broadband Communications Co. Ltd. In its July 2017 transfer of control application, CBCCOM Americas advised the FCC that a "Lily Li," with a "cbccom.net" email address, was its legal counsel and another point of contact for the FCC.¹⁰ In August 2019, outside U.S. counsel for CBCCOM Americas, who had previously been the Agencies' point of contact, [REDACTED],¹¹ [REDACTED].¹² Based on open source research, it appears that the cbccom.net domain is associated with the Beijing-based China Broadband Communications Co. Ltd.¹³ Further open source research indicates that China Broadband

⁸ FCC Transfer of Control Application, Attachment 1, https://licensing.fcc.gov/myibfs/download.do?attachment_key=1245048. PUBLIC EXHIBIT 5 at CBCCOM-PUBLIC-024.

⁹ May 29, 2018 Response from Applicant to DOJ's Follow Up Questions, Question 4 (CONFIDENTIAL EXHIBIT 1002 at CBCCOM-CONFID-010); June 22, 2018 Response from Applicant to DOJ's Follow Up Questions, Question 3. CONFIDENTIAL EXHIBIT 1003 at CBCCOM-CONFID-013.

¹⁰ FCC Transfer of Control Application, Additional Information (filed July 25, 2017), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-297284&f_number=ITCT/C2017070500120. PUBLIC EXHIBIT 6 at CBCCOM-PUBLIC-026.

¹¹ August 14, 2019 email from CBCCOM Americas' outside counsel to the Agencies. CONFIDENTIAL EXHIBIT 1004 at CBCCOM-CONFID-015.

¹² See e.g., September 17, 2019 - October 30, 2019 email correspondence between CBCCOM Americas and the Agencies. CONFIDENTIAL EXHIBIT 1005 at CBCCOM-CONFID-016.

¹³ *CBCcom Partners with Viptela to Offer Managed Software-Defined Networking Service in China*, Businesswire (June 2, 2016, last viewed Mar. 31, 2020), <https://www.businesswire.com/news/home/20160602005975/en/CBCcom-Partners-Viptela-Offer-Managed-Software-Defined-Networking> (PUBLIC EXHIBIT 7 at CBCCOM-PUBLIC-027); see also *Nextana supports cloud computing for Chinese Businesses at CBCcom*, Nextana (March 8, 2016, last viewed Mar. 31, 2020), <https://nexenta.com/sites/default/files/docs/3286-Nexenta%20China%20Broadband%20Comm%20Final%20March%2y02016.pdf>. PUBLIC EXHIBIT 8 at CBCCOM-PUBLIC-029.

Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

Communications Co. Ltd. employs a Lily Li¹⁴ and [REDACTED] in Beijing.¹⁵

Steve Li, the sole owner of the extant authorization holder, CBCCOM Americas, also appears to have ceased his involvement with the company. In March and July 2018, CBCCOM Americas advised [REDACTED].¹⁶ However, in September 2019, CBCCOM Americas advised [REDACTED].¹⁷

Since October 30, 2019, CBCCOM Americas has not communicated with the Agencies and it is no longer represented by outside counsel.¹⁸ On September 17, 2019, the Agencies, through a fourth set of supplemental questions, requested additional information [REDACTED].¹⁹ The original deadline for responding to these questions was October 1, 2019; [REDACTED] two extensions until December 2, 2019. Nonetheless, [REDACTED] never provided a response. The Agencies followed up by email to outside counsel, Lily Li, and [REDACTED] three additional times in December 2019 and advised that if no response was provided the Agencies would notify the FCC of the lack of response and recommend that the application be dismissed without prejudice.²⁰ The Agencies further asked for confirmation as to whether [REDACTED] and outside counsel continued to represent either CBCCOM Americas or Sinocomm Ltd. in this matter.²¹ Only outside counsel provided a response and advised that it no longer represented the company in this matter and could

¹⁴ Lily Li Profile, LinkedIn (Last viewed Sept. 3, 2019), <https://www.linkedin.com/in/lily-li-7b8a878b/?originalSubdomain=cn> (PUBLIC EXHIBIT 9 at CBCCOM-PUBLIC-031); *see also* Photo of Lily Li on the Management Information Page of CBCCOM.cn (Last viewed Sept. 19, 2019), <https://www.cbccom.cn/common/info/management.html>. PUBLIC EXHIBIT 10 at CBCCOM-PUBLIC-033.

¹⁵ [REDACTED]. CONFIDENTIAL EXHIBIT 1006 at CBCCOM-CONFID-020.

¹⁶ March 22, 2018 Response from Applicant to DOJ's Triage Questions, Question 4 (CONFIDENTIAL EXHIBIT 1001 at CBCCOM-CONFID-001); July 25, 2018 Response from Applicant to DOJ's Follow Up Questions, Question 8. CONFIDENTIAL EXHIBIT 1007 at CBCCOM-CONFID-022.

¹⁷ September 3, 2019 Response from Applicant to DOJ's Follow Up Questions, Question 2(e). CONFIDENTIAL EXHIBIT 1008 at CBCCOM-CONFID-026.

¹⁸ *See* December 20, 2019 email from CBCCOM's outside counsel to DOJ. CONFIDENTIAL EXHIBIT 1009 at CBCCOM-CONFID-028.

¹⁹ September 17, 2019 Follow Up Questions. CONFIDENTIAL EXHIBIT 1010 at CBCCOM-CONFID-030.

²⁰ *See* December 3, 2019 email from DOJ to [REDACTED], Lily Li, [REDACTED] and outside counsel; December 6, 2019 email from DOJ to same; December 20, 2019 email from DOJ to same. CONFIDENTIAL EXHIBIT 1011 at CBCCOM-CONFID-033.

²¹ *See* December 20, 2019 email from CBCCOM's outside counsel to DOJ. CONFIDENTIAL EXHIBIT 1009 at CBCCOM-CONFID-028.

Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

provide no additional contact information for the company.²² The Agencies asked the company representatives for CBCOM Americas for updated contact information to contact the parties directly but received no response and the Agencies were not able to follow up further.

Despite multiple inquiries, the Agencies have received no responses from CBCCOM Americas since October 30, 2019, and information vital to the review of its application has not been provided. The Agencies are also concerned that CBCCOM Americas may have engaged in a *de facto* transfer of control of the international Section 214 authorization when the company was acquired by China Broadband Communications and/or Sinocomm both of which are controlled by Richard Fung. As outlined above, the bases for the Agencies' concerns include: 1) the lack of involvement with Agencies by Steve Li, the owner of CBCCOM Americas; 2) [REDACTED]; and 3) individuals who appear to be employed by China Broadband Communications presenting themselves as representatives of CBCCOM Americas, [REDACTED].²³

For the foregoing reasons, DOJ, with the concurrence of the other Agencies, returns this application to the Commission for further review under the Commission's authorities.

²² *See id.*

²³ *Assignments and transfers of control*, 47 C.F.R. § 63.24 (“an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.”).

[REDACTED FOR APPLICANTS' CONFIDENTIAL INFORMATION]

Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

Respectfully submitted,

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Enclosure:
Index of Public and Confidential Exhibits

[REDACTED FOR APPLICANTS' CONFIDENTIAL INFORMATION]

Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

INDEX OF PUBLIC EXHIBITS

Ex. No.	Description	Start Page
001	<i>International Authorizations Granted</i> , Public Notice, Report No. TEL-01727, DA No. 15-460 (Apr. 16, 2015), https://licensing.fcc.gov/ibfsweb/ib.page.FetchPN?report_key=1083607 (CBCCOM Americas's Section 214 Certificate, FCC File No. ITC-214-20150320-00075).	CBCCOM-PUBLIC-001
002	FCC Form 214TC, Transfer of Control Application, FCC File No. ITC-T/C-20170705-00120 (July 5, 2017), https://licensing.fcc.gov/myibfs/download.do?attachment_key=1245049	CBCCOM-PUBLIC-008
003	<i>Streamlined International Applications Accepted for Filing</i> , Public Notice, Report No. TEL-01891S (Feb. 9, 2018), https://licensing.fcc.gov/ibfsweb/ib.page.FetchPN?report_key=1335376 .	CBCCOM-PUBLIC-021
004	FCC Transfer of Control Application, Supplement to Question 12 (filed Feb. 8, 2018), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.htm?fkey=-297284&f_number=ITCT/C2017070500120 .	CBCCOM-PUBLIC-023
005	FCC Form 214TC, Transfer of Control Application, Attachment 1, https://licensing.fcc.gov/myibfs/download.do?attachment_key=1245048 .	CBCCOM-PUBLIC-024
006	FCC Form 214TC, Transfer of Control Application, Additional Information (filed July 5, 2017), https://licensing.fcc.gov/myibfs/download.do?attachment_key=1251247 .	CBCCOM-PUBLIC-026
007	<i>CBCcom Partners with Viptela to Offer Managed Software-Defined Networking Service in China</i> , Businesswire (June 2, 2016, last viewed Mar. 31, 2020), https://www.businesswire.com/news/home/20160602005975/en/CBCcom-Partners-Viptela-Offer-Managed-Software-Defined-Networking .	CBCCOM-PUBLIC-027

[REDACTED FOR APPLICANTS' CONFIDENTIAL INFORMATION]

Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

Ex. No.	Description	Start Page
008	<i>Nextana supports cloud computing for Chinese Businesses at CBCcom</i> , Nextana (March 8, 2016, last viewed Mar. 31, 2020), https://nexenta.com/sites/default/files/docs/3286-Nexenta%20China%20Broadband%20Comm%20Final%20March%202016.pdf .	CBCCOM-PUBLIC-029
009	Lily Li Profile, LinkedIn (Last viewed Sept. 3, 2019), https://www.linkedin.com/in/lily-li-7b8a878b/?originalSubdomain=cn .	CBCCOM-PUBLIC-031
010	Photo of Lily Li on the Management Information Page of CBCCOM.cn (Last viewed Sept. 19, 2019), https://www.cbccom.cn/common/info/management.html .	CBCCOM-PUBLIC-033

INDEX OF CONFIDENTIAL EXHIBITS

Ex. No.	Description	Start Page
1001	Mar. 22, 2018 Response from CBCCOM Americas to DOJ's Triage Questions.	CBCCOM-CONFID-001
1002	May 29, 2018 Response from CBCCOM Americas to DOJ's Follow Up Questions.	CBCCOM-CONFID-010
1003	June 22, 2018 Response from CBCCOM Americas to DOJ's Follow Up Questions.	CBCCOM-CONFID-013
1004	August 14, 2019 email from CBCCOM Americas' outside counsel to the Agencies.	CBCCOM-CONFID-015
1005	September 17, 2019 - October 30, 2019 email correspondence between CBCCOM Americas and the Agencies.	CBCCOM-CONFID-016
1006	[REDACTED].	CBCCOM-CONFID-020
1007	July 25, 2018 Response from Applicant to DOJ's Follow Up Questions.	CBCCOM-CONFID-022
1008	September 3, 2019 Response from CBCCOM Americas to DOJ's Follow Up Questions.	CBCCOM-CONFID-026
1009	December 20, 2019 email from CBCCOM's outside counsel to DOJ.	CBCCOM-CONFID-028
1010	September 17, 2019 Follow Up Questions.	CBCCOM-CONFID-030

[REDACTED FOR APPLICANTS' CONFIDENTIAL INFORMATION]

Ms. Marlene H. Dortch
Federal Communications Commission
April 30, 2020

Ex. No.	Description	Start Page
1011	December 3, 2019 email from DOJ to [REDACTED], Lily Li, [REDACTED] and outside counsel; December 6, 2019 email from DOJ to same; December 20, 2019 email from DOJ to same.	CBCCOM-CONFID-033