



U.S. Department of Justice

National Security Division

Foreign Investment Review Section

Washington, D.C. 20530

September 8, 2021

By E-File

Ms. Marlene H. Dortch
Federal Communications Commission
45 L St. N.E.
Washington, D.C. 20554

Re: Edge Cable Holdings USA, LLC; China Mobile International Limited; and Amazon Data Services, Inc. (“CAP-1 Cable”), FCC File Nos. SCL-LIC-20200910-00044 (TT 20-075) and SCL-STA-20210310-00017 (TT 21-015)

Dear Ms. Dortch:

The Commission is notified that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (“Committee”) is returning the above-referenced original cable landing license application, FCC File No. SCL-LIC-20200910-00044, to the Commission. On August 9, 2021, Applicants filed an amended and restated application (“Amendment”)¹ that significantly alters the ownership of the proposed CAP-1 Cable System, necessitating that the Committee undertake a new initial review to satisfy its obligations under Executive Order (“E.O.”) 13913. The Committee also returns the related request to extend special temporary authority (“STA”), FCC File No. SCL-STA-20210310-00017,² for the same reasons. Accordingly, the Committee will await the Commission’s referral of the Amendment and any related and amended STA request.

¹ *In the Matter of Edge Cable Holdings USA, LLC and Amazon Data Services, Inc.*, FCC File No. SCL-AMD-20210809-00032, Amended and Restated Application, 2 (Aug. 9, 2021) [hereinafter, “Amendment”].

² *See also In the Matter of Edge Cable Holdings USA, LLC et al.*, FCC File Nos. SCL-LIC-20200910-00044; SCL-STA-20200910-00045.

1) Withdrawal of April 26, 2021 Certification that Applicants' Responses are Complete ("120-Day Certification")

The Committee Chair withdraws³ the April 26, 2021 certification ("120-Day Certification")⁴ that the CAP-1 Cable applicants have provided complete responses to the Committee's requests for information for FCC File No. SCL-LIC-20200910-00044 (TT 20-075). The Amendment reflects a material change that significantly impacts the national security and law enforcement assessment the Committee must conduct under E.O. 13913. Accordingly, the Committee has terminated the initial review of the original application and now plans to review the new, amended application. The Committee will await a new referral of the Amendment before conducting a review for national security and law enforcement concerns consistent with E.O. 13913. Under the E.O., after the Commission refers the Amendment to the Committee, the Committee will notify the Commission when the Chair has determined that the Applicants' responses are complete for the August 9, 2021 Amendment and a new 120-day initial review period can begin.⁵

2) The Amendment, filed 105 days after the Committee began its 120-day initial review for the original application, warrants a new initial review

The Amendment was filed 105 days after the Committee began its initial review of the original application on April 26, 2021.⁶ The Amendment removes former applicant China Mobile International Limited ("China Mobile") from the license application. According to the Amendment, China Mobile has agreed to exit from participation in the construction, ownership, and operation of the CAP-1 cable system.⁷ Applicants state that China Mobile will transfer to the Applicants all interests in the CAP-1 facilities between Grover Beach, California, and "a point off the coast of the Philippines."⁸ Applicants also state that "[a]fter the transfer is effected," China Mobile will hold no voting or participation rights in the CAP-1 system.⁹ The Applicants did not provide an expected date by which the transfer of China Mobile's interests in CAP-1 will be completed.¹⁰

³ See attached withdrawal by the Chair.

⁴ See *In the Matter of Edge Cable Holdings USA, LLC et al.*, FCC File No. SCL-LIC-20200910-00044, Letter from Department of Justice ("DOJ") to Federal Communications Commission ("FCC") (Apr. 26, 2021), https://licensing.fcc.gov/myibfs/download.do?attachment_key=6542789.

⁵ See Exec. Order 13913 § 5(b)(iii) (providing that the 120-day initial review period begins on "on the date the Chair determines that the applicant's responses to any questions and information requests from the Committee are complete").

⁶ See April 26, 2021 Letter from DOJ to FCC.

⁷ See Amendment, 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *id.* (noting that "[s]uch transfer will be effected upon agreement with the system supplier . . . with whom the Applicants and CMI have already *commenced* discussions" but not indicating when the transfer will actually take effect) (emphasis added).

(a) The Committee will be required to conduct a new risk assessment, including requesting a new threat analysis from the Director of National Intelligence

Recommendations by the Committee must be based on a written risk-based analysis.¹¹ The proposed change reflected in the Amendment is a significant alteration of the ownership of the proposed cable. It will remove the CAP-1 Cable system's largest owner, China Mobile, with a 50 percent equity interest, at some point in the future.¹² The government of the People's Republic of China ultimately owns and controls China Mobile. Removal of China Mobile as an owner and applicant will require the Committee to conduct an entirely new written risk-based analysis. The Committee may also be required to request a new national security threat assessment from the Director of National Intelligence, with input from the Intelligence Community, a process that ordinarily takes 30 days.¹³

(b) The Committee will need to review whether previous information is still accurate

Applicants filed the Amendment after significant engagement between the Committee and the Applicants, including former applicant China Mobile. The Committee has received extensive responses to initial triage questions and four rounds of follow-up questions (responses to over 90 follow-up questions in all). Given the Amendment's significance, the Committee will need to review whether information previously provided is still accurate. Additionally, the Applicants will need time to update their triage responses to reflect the new ownership structure for the cable.

(c) The Committee will need to review new information

The Amendment indicates that China Mobile's exit from the CAP-1 system has not yet been completed and depends on a number of future agreements going into effect. That exit may be complicated given China Mobile's 50 percent equity ownership in the CAP-1 system.

3) A new initial review is consistent with E.O. 13913 and the Commission's deference to the Executive Branch

A new initial review is consistent with E.O. 13913, which sets the Committee's core function of conducting thorough national security and law enforcement reviews based on complete responses from Applicants, written threat analyses, and risk-based analyses. This is particularly so with respect to a review involving China Mobile. A new initial review is consistent with other national security reviews conducted by Executive Branch agencies,¹⁴ and with the Commission's long-standing policy of according deference to the expertise of Executive

¹¹ See Exec. Order 13913, § 9(c).

¹² See Amendment, 2; see also *In the Matter of Edge Cable Holdings USA, LLC et al.*, FCC File No. SCL-LIC-20200910-00044, Joint Application for Cable Landing License, 6 (Sept. 10, 2020).

¹³ See Exec. Order 13913, § 7.

¹⁴ See, e.g., 31 C.F.R. § 800.504(a)(2)(i) (2021) (noting that for national security reviews conducted by the Committee on Foreign Investment in the United States ("CFIUS"), the Committee, acting through the Staff Chairperson, may reject a pending CFIUS notice if there is a "material change in the transaction as to which notification has been made").

Branch agencies in their reviews of risks to national security and law enforcement. Each of the Committee Member agencies supports undertaking a new initial review.

The Committee will await a new referral of the Amendment and any related and amended STA request in order to conduct a review for national security and law enforcement concerns consistent with E.O. 13913.

Thank you for your consideration.

Sincerely,

/s/ Alice Suh Jou

Alice Suh Jou

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Edge Cable Holdings USA, LLC; China Mobile International Limited; and Amazon Data Services, Inc. (“CAP-1 Cable”), FCC File Nos. SCL-LIC-20200910-00044 (TT 20-075) and SCL-STA-20210310-00017 (TT 21-015)

Pursuant to Executive Order 13913 (Apr. 4, 2020), the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (“Committee”) withdraws its April 26, 2021 certification of the determination that responses to the Committee’s initial requests for information are complete for FCC File No. SCL-LIC-20200910-00044 (TT 20-075) and returns the application to the Commission.

Pursuant to Executive Order 13913, the Chair of the Committee also returns the related request to extend special temporary authority, FCC File No. SCL-STA-20210310-00017 (TT 21-015), to the Commission for further review under the Commission’s rules and regulations.

9/8/2021

X 

Adam S. Hickey
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Signed by: ADAM HICKEY

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