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MEMORANDUM

To: General Counsel
From: Audrey Glenn, Head of Legal, Enforcement, Assessment & Development
Date: March 26, 2026
Re: Section 214 Authorization; legal and operational implications of surrender in connection with proposed transaction

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PRIVILEGED AND CONFIDENTIAL — ATTORNEY-CLIENT COMMUNICATION

I. Introduction

The company is negotiating a transaction agreement that would require it to discontinue the provision of International Common Carrier Services, and surrender its International Section 214 Authorizations issued under Section 214 of the Communications Act of 1934, as amended.[1] External Counsel has advised that Section 214 authority is legally required only for traditional circuit-switched international telecommunications services and that the company's interconnected Voice over Internet Protocol ("VoIP") services fall outside that requirement. Internal stakeholders have raised concerns about the practical consequences of surrendering Section 214 authority, particularly with respect to the company's ability to exchange international traffic with carrier partners and to sustain its interconnected VoIP offering for customers who place and receive international calls.

This memorandum analyzes the statutory and regulatory framework governing Section 214 authority as it applies to interconnected VoIP services, surveys the current FCC regulatory environment (including recent national-security-driven enforcement activity), and evaluates the operational risks associated with surrendering Section 214 authority while continuing to carry international traffic.

The memorandum concludes with a clear recommendation grounded in risk management principles:

> Even if Section 214 is not legally required for interconnected VoIP, surrendering it while continuing to carry international traffic creates material operational, regulatory, and commercial risks.

II. Legal Framework and Ambiguity

A. Section 214 Requirements

Section 214 of the Communications Act requires that any carrier seeking to construct, acquire, or operate a line for the purpose of providing international telecommunications service first obtain authorization from the FCC.[2] The FCC has implemented this requirement through its international Section 214 authorization framework, which requires carriers to obtain either a specific authorization (for certain

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[1] 47 U.S.C. § 214.

[2] *See* 47 U.S.C. § 214(a).

routes or services) or a blanket authorization (for routine international common carrier services) before providing international telecommunications services.[3]

The threshold question — whether Section 214 applies to interconnected VoIP — turns on two subsidiary issues: (1) whether interconnected VoIP constitutes a "telecommunications service" subject to Title II of the Communications Act; and (2) whether the company's provision of interconnected VoIP over its own international transmission facilities constitutes the operation of a "line" within the meaning of Section 214.

B. VoIP Classification Issue

The FCC has never definitively classified interconnected VoIP as a "telecommunications service" subject to Title II. In the *2004 Vonage Order*, the FCC preempted state regulation of VoIP but expressly declined to resolve the Title II classification question.[4] The *2015 Open Internet Order* reclassified broadband internet access service as a telecommunications service under Title II, but it did not reclassify interconnected VoIP.[5] The subsequent *2017 Restoring Internet Freedom Order* reversed that reclassification for broadband, further complicating the regulatory landscape.[6]

Most recently, the FCC's 2024 *Safeguarding and Securing the Open Internet Order*,[7] which reclassified broadband as a Title II telecommunications service, was vacated by the U.S. Court of Appeals for the Sixth Circuit in January 2025.[8] The consolidated industry challenge resulted in the court holding that broadband is an "information service" and that the FCC lacked statutory authority for Title II reclassification. The Sixth Circuit vacated the FCC's order, rejected the FCC's statutory interpretation, and created a new post-Chevron interpretive baseline. However, the decision binds only one circuit, leaves statutory ambiguity unresolved, and does not foreclose future agency action.

The Sixth Circuit's decision reinforces that the FCC's classification framework remains unsettled and that the agency's authority to impose Title II obligations is now more constrained. While the ruling confirms that broadband transport alone does not trigger Section 214, it does not resolve whether interconnected VoIP offered by a carrier over its own facilities constitutes a telecommunications service or the operation of a "line" within the meaning of Section 214. As a result, the decision increases legal ambiguity and

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[3] *See* 47 C.F.R. §§ 63.18–63.22; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997).

[4] *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, 19 FCC Rcd 22404 (2004). The FCC's subsequent IP-Enabled Services proceeding similarly left the classification question open. *In the Matter of IP-Enabled Services*, WC Docket No. 04-26, Notice of Proposed Rulemaking, FCC 04-28, FCC 19 FCC Rcd 4863 (2004).

[5] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 30 FCC Rcd 5601 (2015).

[6] *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, FCC 17-166, 33 FCC Rcd 311 (2018).

[7] *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52, 89 Fed. Reg. 45404 (May 22, 2024).

[8] *In re MCP No. 185*, Nos. 24-7000 et al. (6th Cir. Jan. 2, 2025) (vacating FCC 24-52).

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heightens the operational risk of surrendering Section 214 authority while continuing to carry international VoIP traffic.

C. Facilities-Based VoIP Complicates the Analysis

Even if interconnected VoIP were deemed a telecommunications service, a separate question arises as to whether a facilities-based operator that uses its own hybrid fiber-coax or fiber transport network to carry international VoIP traffic is operating a "line" for purposes of Section 214. The FCC has historically interpreted the term broadly to encompass transmission facilities used to provide international service, but it has not squarely addressed whether IP-based transmission paths used exclusively for VoIP traffic constitute a line for purposes of determining the applicability of Section 214.

D. Absence of Definitive FCC Precedent

No FCC order, declaratory ruling, or published guidance definitively resolves whether a facilities-based operator providing interconnected VoIP over its own international transmission infrastructure is required to hold a Section 214 authorization. The FCC has not issued a ruling that affirmatively exempts interconnected VoIP from Section 214, nor has it issued one that expressly subjects VoIP to Section 214. This gap is the primary source of legal ambiguity in this analysis.

A definitive answer is not possible based on existing FCC precedent. The lack of clarity stems specifically from the FCC's sustained failure to classify interconnected VoIP under Title II, which is the predicate classification that would trigger Section 214's "telecommunications service" requirement. Until the FCC resolves that classification question — either through rulemaking or adjudication — the applicability of Section 214 to interconnected VoIP remains legally unsettled.

III. Regulatory Environment and National-Security Considerations

Although the legal framework is unsettled, the FCC's recent conduct demonstrates that the agency views Section 214 authority as a central national-security oversight tool.

The FCC's revocation of China Telecom (Americas) Corporation's Section 214 authorizations in 2021,[9] established that the FCC treats Section 214 as an ongoing supervisory mechanism — not merely a one-time entry authorization. The FCC has continued to build on that framework in the 2023–2026 period.

In April 2023, the FCC issued a *Notice of Proposed Rulemaking* proposing to expand its rules governing the revocation and termination of international Section 214 authorizations and to strengthen the processes by which the FCC, in coordination with the interagency Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Team Telecom"), reviews Section 214 holders for national-security risks.[10]

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[9] *China Telecom (Americas) Corp*., GN Docket No. 20-109, FCC 23-114, Order on Revocation and Termination, 36 FCC Rcd 15966 (2021).

[10] *See Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks*, IB Docket No. 23-119, *Order and Notice of Proposed Rulemaking*, FCC 23-28 (2023 National Security NPRM).

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The 2023 NPRM proposed, among other things, to:

- require Section 214 authorization holders to provide annual certifications regarding their compliance with national-security-related conditions;
- expand the FCC's authority to initiate *sua sponte* reviews of existing Section 214 holders; and
- strengthen coordination mechanisms between the FCC and Team Telecom for ongoing monitoring of authorized carriers.

This decision weighs in favor of maintaining Section 214 authority. The *2023 National Security NPRM* reflects an FCC that is actively reinforcing Section 214 as a supervisory framework for all carriers exchanging international traffic. A company that voluntarily surrenders its Section 214 authorization while continuing to carry international traffic through its own facilities would be operating in a space the FCC is actively seeking to bring under greater oversight, not less. The regulatory direction is unmistakably toward expanded scrutiny of international traffic flows, and a company without Section 214 authority would have no formal regulatory standing within that framework. Because the FCC's broader Title II framework remains unsettled after the Sixth Circuit's decision, the agency's ability to clarify the status of interconnected VoIP is constrained, prolonging the legal ambiguity surrounding Section 214 applicability.

The FCC has also signaled, through its submarine cable landing license proceedings and its ongoing supply-chain security rulemakings, that it views the physical infrastructure used to carry international IP traffic — including fiber transport — as subject to national-security review.[11] While submarine cable licensing is governed by a separate statutory framework, the FCC's posture in these proceedings reinforces the broader point: the agency is not retreating from oversight of international traffic infrastructure, and it is increasingly treating IP-based international traffic as within its supervisory purview.

IV. Operational Realities and Practical Risks

A. The Practical Role of Section 214 Authority in Carrier-to-Carrier Traffic Exchange

Section 214 authorization is not merely a regulatory formality. In practice, it serves as a foundational credential in carrier-to-carrier commercial and operational relationships involving international traffic. Specifically:

- Interconnection agreements: Domestic and international carriers routinely require counterparties to hold valid Section 214 authorizations as a condition of entering into or maintaining interconnection agreements for international traffic. This requirement reflects both regulatory compliance obligations and risk-management practices on the part of the counterparty carrier.

- International settlements and routing: The international telecommunications settlement system — including both traditional settlement arrangements and more modern IP peering and transit arrangements — presupposes that participating carriers hold the requisite regulatory authorizations in their home country. A U.S. carrier without Section 214 authority may be viewed by foreign carriers and international transit providers as operating outside its authorized scope.

[11] *See, e.g.*, *Review of Policies and Practices Concerning the International Submarine Cable Industry*, IB Docket No. 24-523, Notice of Inquiry, FCC 24-132 (Dec. 2024).

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- Regulatory standing: Section 214 authorization confers standing before the FCC in proceedings affecting international service, including complaints, waiver requests, and emergency relief. A company that has surrendered its authorization loses that standing with respect to international service matters.

B. Specific Operational Risks

Operationally, Section 214 authority functions as a credential in the international carrier ecosystem, regardless of whether it is legally required. Surrendering Section 214 authority while continuing to carry international VoIP traffic exposes the company to the following specific operational risks:

Risk Category	Description
Service Disruption	Existing carrier partners may suspend or terminate international traffic exchange arrangements upon learning that the company no longer holds Section 214 authority, citing compliance obligations or contractual conditions precedent.
International Routing Failures	Foreign carriers and international transit providers may decline to exchange traffic with a U.S. operator that cannot demonstrate valid regulatory authorization, resulting in call completion failures for customers placing or receiving international calls.
Partner Refusals	Prospective carrier partners — including those needed for new routing arrangements post-transaction — may refuse to enter into interconnection agreements with a company that lacks Section 214 authorization, limiting the company's ability to establish redundant or alternative international routing paths.
Regulatory Enforcement Exposure	If the FCC determines — in a future adjudication or enforcement action — that interconnected VoIP carried over the company's own international transmission facilities does require Section 214 authority, the company would be operating without authorization, exposing it to forfeitures and potential service cessation orders under 47 U.S.C. § 214(b).
Reputational and Commercial Risk	Enterprise and wholesale customers who rely on the company's interconnected VoIP service for international calling may view the loss of Section 214 authority as a signal of reduced regulatory standing, potentially affecting customer retention and contract renewals.
Transaction Risk	If the transaction agreement requires the company to discontinue international common carrier services, but the company continues to carry international VoIP traffic, there is a risk that the counterparty could assert a breach of the transaction agreement, creating additional legal exposure.

C. The Distinction Between Legal Authority and Operational Necessity

Even if External Counsel's legal position is correct — i.e., that Section 214 is not legally required for interconnected VoIP — the operational infrastructure of international traffic exchange does not distinguish between legal categories. Carrier partners, routing systems, and international settlement arrangements operate based on regulatory credentials, not legal theories. The practical consequence is that the absence of Section 214 authority creates operational friction regardless of whether that authority is technically required.

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V. Evaluation of External Counsel's Position

A. Legal Plausibility

External Counsel's position — that Section 214 authority is required only for traditional circuit-switched international services and not for interconnected VoIP — is legally plausible but not legally certain. The position rests on a reasonable reading of the FCC's historical application of Section 214 to circuit-switched telecommunications services and the FCC's consistent failure to classify interconnected VoIP as a Title II telecommunications service. Because Section 214 applies to "carriers" providing "telecommunications services," and because the FCC has not classified VoIP as a telecommunications service, there is a credible argument that Section 214 does not apply.

However, "legally plausible" is not the same as "legally settled." The FCC has never issued a ruling affirmatively exempting interconnected VoIP from Section 214. A facilities-based operator that uses its own transmission infrastructure to carry international VoIP traffic occupies a factual posture that is meaningfully different from a pure over-the-top VoIP provider — and the FCC could reasonably distinguish the two in a future proceeding. The company's use of its own international transmission facilities to carry VoIP traffic brings it closer to the paradigmatic Section 214 scenario (operation of a "line" for international communications) than External Counsel's analysis may fully acknowledge.

B. Adequacy of External Counsel's Analysis

External Counsel's position does not adequately account for operational risks or the current regulatory direction of the FCC for the following reasons:

- <u>Operational risks are understated</u>. The advice focuses on the legal question of whether Section 214 is required but does not address the practical consequences of operating without it. As described in Section 4, the loss of Section 214 authority creates real and immediate operational risks that exist independently of the legal question.

- <u>The regulatory trajectory is ignored</u>. The FCC's 2023 NPRM and related national-security proceedings reflect a clear regulatory direction toward expanded oversight of international traffic, not reduced oversight. External Counsel's advice does not account for the risk that the FCC could, in the near term, issue guidance or initiate an enforcement action that brings interconnected VoIP carried over owned facilities within the Section 214 framework.

- <u>The facilities-based distinction is not adequately considered</u>. External Counsel's analysis appears to treat the company's interconnected VoIP service as functionally equivalent to an over-the-top VoIP provider with no owned international infrastructure. The company's ownership and operation of its own transmission facilities is a material factual distinction that could affect how the FCC characterizes the service in a future proceeding.

- <u>Transaction risk is not addressed</u>. If the transaction agreement requires the company to discontinue international common carrier services, continuing to carry international VoIP traffic after surrendering Section 214 authority creates a potential breach risk that External Counsel's advice does not appear to address.

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VI. Recommendation

A. Basis for Recommendation

The company should not continue to carry international traffic over its own facilities after surrendering its Section 214 authorization without first taking the steps described below. This recommendation is driven by a consideration of the operational and regulatory risks associated with proceeding without Section 214 authority.

The risk profile associated with continuing to carry international traffic without Section 214 authority is unfavorable:

- The downside risks are concrete and near-term. Service disruptions, partner refusals, and routing failures can occur immediately upon surrender of Section 214 authority, regardless of the legal merits of External Counsel's position. These are not hypothetical risks — they are predictable operational consequences of losing a credential that carrier partners treat as a prerequisite for international traffic exchange.

- The upside of proceeding without Section 214 authority is limited. If the transaction requires surrender of the authorization, the company presumably has a business reason for proceeding. But the business benefit of completing the transaction does not require the company to continue carrying international VoIP traffic over its own facilities. If the transaction permits the company to migrate international VoIP traffic to a third-party provider or to route it through a partner that holds Section 214 authority, the company can preserve service continuity without assuming the regulatory and operational risks of operating without authorization.

- The regulatory environment is moving toward greater oversight, not less. The FCC's 2023 NPRM and related proceedings make clear that the agency views Section 214 as an active supervisory tool. A company that voluntarily exits the Section 214 framework while continuing to carry international traffic is taking a position that runs counter to the FCC's stated regulatory direction.

- The legal uncertainty itself is a risk. Because the FCC has not definitively resolved whether Section 214 applies to interconnected VoIP carried over owned facilities, the company cannot rely on External Counsel's position as a safe harbor. If the FCC were to initiate an enforcement action or issue a declaratory ruling adverse to the company's position, the consequences — including forfeitures, service cessation orders, and reputational harm — would be severe.

B. Specific Recommended Actions

The company should take the following steps in connection with the transaction:

- Negotiate a carve-out or transition period. Before surrendering Section 214 authority, negotiate with the transaction counterparty for a transition period during which the company can migrate international VoIP traffic to a compliant routing arrangement. This may include routing international VoIP traffic through a third-party carrier that holds Section 214 authority.

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- Assess interconnection agreement obligations. Conduct an immediate audit of all carrier interconnection agreements to identify provisions that condition international traffic exchange on the company's maintenance of Section 214 authority. Develop a plan to address those provisions before surrender of the authorization.

- Seek FCC guidance if the transition period is extended. If the company anticipates a period during which it will carry international VoIP traffic without Section 214 authority, consider seeking informal guidance from FCC International Bureau staff regarding the agency's current position on the applicability of Section 214 to interconnected VoIP carried over owned facilities. This step will not eliminate legal risk but will demonstrate good-faith regulatory engagement.

- Do not rely solely on External Counsel's legal position as an operational plan. External Counsel's analysis addresses the legal question; it does not address the operational and commercial consequences of proceeding without Section 214 authority. Those consequences require independent assessment and mitigation planning.

- Evaluate whether the transaction terms require modification. If the transaction agreement requires both surrender of Section 214 authority and discontinuation of international common carrier services, but the company's interconnected VoIP customers require international calling capability, the company should evaluate whether the transaction terms can be modified to permit the company to route international VoIP traffic through a compliant third-party arrangement without triggering the discontinuation obligation.

VI. Conclusion

The legal question of whether Section 214 authority is required for interconnected VoIP carried over the company's own international transmission facilities is unsettled. External Counsel's position is legally plausible but not legally certain, and it does not adequately account for the operational risks of proceeding without Section 214 authority or the FCC's current regulatory trajectory. The company should not proceed on the assumption that surrender of Section 214 authority is operationally harmless. The recommendation is to negotiate a transition arrangement that preserves service continuity and regulatory standing during the period between surrender of the authorization and migration of international VoIP traffic to a compliant routing solution.

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