

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

VTA Telecom Corporation

1551 Mccarthy Blvd.,
Suite 210
Milpitas, CA 95035

Respondent

ORDER RELATING TO
VTA TELECOM CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified VTA Telecom Corporation, of Milpitas, California, (“VTA”), of its intention to initiate an administrative proceeding against VTA pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ through the issuance of a Proposed Charging Letter to VTA that alleges that VTA committed six violations of the Regulations.² Specifically, the charges are:

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violations occurred in 2015 -2016. The Regulations governing the

Charge 1 15 C.F.R. § 764.2(e) - Evasion

1. Beginning in July 2015, and continuing through October 2016, VTA evaded the provisions of the EAR in furtherance of acts that constitute violations of the Regulations, namely: unlawfully exporting items subject to the EAR from the United States, and providing false information, either directly or indirectly, to BIS and officials of other United States agencies for the purpose of or in connection with effecting an export subject to the EAR.
2. VTA was established in 2013 as a subsidiary of a state-owned telecommunications company based in Hanoi, Vietnam (the “Parent Company”).
3. In or around 2015, VTA began procuring and exporting items from the United States to the Parent Company in Vietnam. VTA, through its now-former executive officers, was aware that some of its exports were intended to support a defense program.
4. Notwithstanding its knowledge of the defense purposes of some of its exports, VTA, on several occasions as described below, provided false information to BIS and other U.S. government agencies in connection with export license applications and other export activities to conceal such defense purposes, in an unlawful effort to facilitate exports from the United States. Specifically, VTA would provide plausible false civil end-uses for the products, which were in reality intended for defense-related end-uses, to disguise and conceal from the U.S. government the true purpose of VTA’s exports.

Charges 2-4 15 C.F.R. § 764.2(g) - False Statements to BIS and/or another U.S. Government Agency and on Export Control Documentation

5. On at least two occasions between on or about April 21, 2016, and on or about August 22, 2016, VTA made false statements to BIS and other U.S. government agencies as described above, including on its export license application to BIS and other export control documentation, in connection with the export of certain power amplifiers/JFET transistors, which were controlled under ECCN 3A001.b.3.b for National Security (NS), Regional Stability (RS), and Anti-Terrorism (AT) reasons, and required a license to export to Vietnam. On the basis of VTA’s application to BIS containing false statements regarding the items’ end-use, BIS granted VTA a license to export 100 transistors and 2 development tools worth \$59,100 to Vietnam. The BIS license was granted only for the end-use listed in the application. Prior to export of 12 of the transistors and two development tools worth at least \$8,860 on or about July 20, 2016, U.S. Customs and Border Protection (CBP) placed a hold on the shipment and requested end-

- user statements from VTA. On August 22, 2016, VTA provided the same false end-user statements referenced above to CBP, and CBP released the hold on the items, resulting in their export on or about September 16, 2016. In providing false statements to BIS and other U.S. government agencies, Respondent violated Section 764.2(g) of the Regulations.
6. On at least two occasions between on or about May 24, 2016, and on or about September 7, 2016, VTA made false statements to BIS and other U.S. government agencies as described above, including on export control documentation, in connection with the attempted export of certain actuators valued at \$235,000, which were controlled under ECCN 9A610.x for NS, RS, Missile Technology (MT) and AT reasons, and required a license to export to Vietnam. Specifically, VTA provided a U.S. vendor with an end-user statement and other information containing false statements as to the end-use of the items, which the vendor transmitted to BIS. In doing so, Respondent violated Section 764.2(g) of the Regulations.
 7. On at least three occasions between on or about August 18, 2016, and on or about October 20, 2016, VTA made false statements to BIS and other U.S. government agencies, including on export control documentation, in connection with the attempted export of a mass properties instrument and related equipment valued at \$624,373, which were controlled under ECCN 9B604.c for NS, RS, AT, and United Nations Embargo (UN) reasons, and required a license to export to Vietnam. Specifically, VTA provided a U.S. vendor false statements regarding the items' end-use, upon which the vendor relied to submit an export license application to BIS. In doing so, Respondent violated Section 764.2(g) of the Regulations.

**Charge 5 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation:
Unlicensed Export**

8. The allegations in Paragraphs 3-5 are incorporated by reference.
9. At all times pertinent hereto, Section 742.4 of the Regulations imposed a BIS license requirement on the export of items controlled for NS reasons to Vietnam, and Section 742.6 of the Regulations imposed a BIS license requirement on the export of items controlled for RS reasons to Vietnam.
10. On September 16, 2016, by knowingly exporting the above-described 12 transistors and two development tools to Vietnam, as set forth in Paragraph 5, to Vietnam for a defense end-use without a license to export such items for that purpose, VTA violated Section 764.2(e) of the Regulations.

Charge 6 **15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct:
Unlicensed Export**

11. On or about July 2015, VTA exported twenty (20) computer processor chips, classified as 5A002.a.1 and controlled for NS, AT, and Encryption Item (EI) reasons, to the Parent Company in Vietnam with a stated intended use for a civil telecommunications project in Vietnam without the required BIS license. The items were collectively worth \$3,930.
12. At all times pertinent hereto, Section 742.4 of the Regulations imposed a BIS license requirement on the export of items controlled for NS reasons to Vietnam. In addition, no Electronic Export Information (EEI) was filed for these transactions as required by 15 C.F.R. § 758.1(b)(5) for transactions valued at \$2,500 or more.
13. In exporting these items to Vietnam without the required BIS license, VTA violated Section 764.2(a) of the Regulations.

WHEREAS, BIS and VTA have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, VTA shall be assessed a civil penalty in the amount of \$1,869,372. The payment of \$1,669,372 shall be made to the U.S. Department of Commerce as follows: payment of \$100,000 shall be made not later than seven (7) calendar days from the date of this Order; and payment of the remaining \$1,569,372 shall be made not later than March 1, 2022. Payment of the remaining \$200,000 shall be suspended for a period of two years from the date of the Order, and shall be waived upon the first to occur of the following: (1) VTA has dissolved or ceased its business operations, with written certification of such corporate dissolution or cessation provided to BIS; or (2) VTA completes the two-year payment probationary period under this Order without having

committed a violation of the Export Control Reform Act of 2018 (“ECRA”),³ the Regulations, or any order, license, or authorization issued under ECRA or the Regulations, has made full and timely payment of \$1,669,372 as set forth above, and completed the additional compliance requirements set forth in the THIRD paragraph below. Failure to make full and timely payment as set forth above may result in the entire amount of \$1,869,372 becoming due and owing immediately. Payment shall be made in the manner specified in the attached instructions.

SECOND, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due dates specified herein, VTA will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, VTA shall expend \$25,000 on additional ongoing export control compliance efforts within twelve months from the date of this Order. VTA shall also retain a Director of Trade Compliance to oversee VTA’s export activities for two years from the date of the Order, unless VTA has dissolved or ceased its business operations, with written certification of such corporate dissolution or cessation provided to BIS, in which case this requirement shall be waived. No later than one month after VTA expends \$25,000 on its compliance efforts, VTA shall submit a certification of such expenditure to the Office of Export Enforcement, 21711 N. 7th Street, Phoenix, AZ 85024. In addition, unless VTA has dissolved or ceased its business operations, VTA shall

³ See note 1, *supra*.

certify on a yearly basis for the next two years that it has retained a Director of Trade Compliance and submit the certification to the aforementioned address.

FOURTH, compliance with the terms of the Settlement Agreement and the Order, including the full and timely payment of the civil penalty in accordance with the payment schedule set forth above, the expenditure of \$25,000 on additional/ongoing export control compliance efforts, and the retention of a Director of Trade Compliance to oversee VTA's export activities as set forth above, are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to VTA. Accordingly, if VTA should fail to pay the civil penalty in a full and timely manner, fail to expend \$25,000 on additional/ongoing export control compliance efforts, or fail to retain a Director of Trade Compliance to oversee VTA's export activities (unless VTA has dissolved or ceased its business operations), the undersigned may issue an order denying all of VTA's export privileges under the Regulations for a period of two years from the date of failure to make such payment.

FIFTH, VTA shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or this Order or take any position contrary thereto in any public statement. The foregoing does not affect VTA's testimonial obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

SIXTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

**KEVIN
KURLAND** Digitally signed by
KEVIN KURLAND
Date: 2021.10.12
09:09:13 -04'00'

Kevin J. Kurland
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 12th day of October, 2021.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

VTA Telecom Corporation

1551 McCarthy Blvd.,
Suite 210
Milpitas, CA 95035

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between VTA Telecom Corporation, of Milpitas, CA, (“VTA”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”).¹

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

WHEREAS, BIS has notified VTA of its intentions to initiate an administrative proceeding against VTA, pursuant to the Regulations;²

WHEREAS, BIS has issued a Proposed Charging Letter to VTA that alleges that VTA committed six violations of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(e) - Evasion

1. Beginning in July 2015, and continuing through October 2016, VTA evaded the provisions of the EAR in furtherance of acts that constitute violations of the Regulations, namely: unlawfully exporting items subject to the EAR from the United States, and providing false information, either directly or indirectly, to BIS and officials of other United States agencies for the purpose of or in connection with effecting an export subject to the EAR.
2. VTA was established in 2013 as a subsidiary of a state-owned telecommunications company based in Hanoi, Vietnam (the “Parent Company”).
3. In or around 2015, VTA began procuring and exporting items from the United States to the Parent Company in Vietnam. VTA, through its now-former executive officers, was aware that some of its exports were intended to support a defense program.
4. Notwithstanding its knowledge of the defense purposes of some of its exports, VTA, on several occasions as described below, provided false information to BIS and other U.S. government agencies in connection with export license applications and other export activities to conceal such defense purposes, in an unlawful effort to facilitate exports from the United States. Specifically, VTA would provide plausible false civil end-uses for the products, which were in reality intended for defense-related end-uses, to disguise and conceal from the U.S. government the true purpose of VTA’s exports.

Charges 2-4 15 C.F.R. § 764.2(g) - False Statements to BIS and/or another U.S. Government Agency and on Export Control Documentation

5. On at least two occasions between on or about April 21, 2016, and on or about August 22, 2016, VTA made false statements to BIS and other U.S. government agencies as described above, including on its export license application to BIS

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violations occurred in 2015 - 2016. The Regulations governing the violations at issue are found in the 2015-2016 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2021 Regulations set forth the procedures that apply to this matter.

and other export control documentation, in connection with the export of certain power amplifiers/JFET transistors, which were controlled under ECCN 3A001.b.3.b for National Security (NS), Regional Stability (RS), and Anti-Terrorism (AT) reasons, and required a license to export to Vietnam. On the basis of VTA's application to BIS containing false statements regarding the items' end-use, BIS granted VTA a license to export 100 transistors and 2 development tools worth \$59,100 to Vietnam. The BIS license was granted only for the end-use listed in the application. Prior to export of 12 of the transistors and two development tools worth at least \$8,860 on or about July 20, 2016, U.S. Customs and Border Protection (CBP) placed a hold on the shipment and requested end-user statements from VTA. On August 22, 2016, VTA provided the same false end-user statements referenced above to CBP, and CBP released the hold on the items, resulting in their export on or about September 16, 2016. In providing false statements to BIS and other U.S. government agencies, Respondent violated Section 764.2(g) of the Regulations.

6. On at least two occasions between on or about May 24, 2016, and on or about September 7, 2016, VTA made false statements to BIS and other U.S. government agencies as described above, including on export control documentation, in connection with the attempted export of certain actuators valued at \$235,000, which were controlled under ECCN 9A610.x for NS, RS, Missile Technology (MT) and AT reasons, and required a license to export to Vietnam. Specifically, VTA provided a U.S. vendor with an end-user statement and other information containing false statements as to the end-use of the items, which the vendor transmitted to BIS. In doing so, Respondent violated Section 764.2(g) of the Regulations.
7. On at least three occasions between on or about August 18, 2016, and on or about October 20, 2016, VTA made false statements to BIS and other U.S. government agencies, including on export control documentation, in connection with the attempted export of a mass properties instrument and related equipment valued at \$624,373, which were controlled under ECCN 9B604.c for NS, RS, AT, and United Nations Embargo (UN) reasons, and required a license to export to Vietnam. Specifically, VTA provided a U.S. vendor false statements regarding the items' end-use, upon which the vendor relied to submit an export license application to BIS. In doing so, Respondent violated Section 764.2(g) of the Regulations.

Charge 5 **15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation:
Unlicensed Export**

8. The allegations in Paragraphs 3-5 are incorporated by reference.
9. At all times pertinent hereto, Section 742.4 of the Regulations imposed a BIS license requirement on the export of items controlled for NS reasons to Vietnam,

and Section 742.6 of the Regulations imposed a BIS license requirement on the export of items controlled for RS reasons to Vietnam.

10. On September 16, 2016, by knowingly exporting the above-described 12 transistors and two development tools to Vietnam, as set forth in Paragraph 5, for a defense end-use without a license to export such items for that purpose, VTA violated Section 764.2(e) of the Regulations.

**Charge 6 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct:
Unlicensed Export**

11. On or about July 2015, VTA exported twenty (20) computer processor chips, classified as 5A002.a.1 and controlled for NS, AT, and Encryption Item (EI) reasons, to the Parent Company in Vietnam with a stated intended use for a civil telecommunications project in Vietnam without the required BIS license. The items were collectively worth \$3,930.
12. At all times pertinent hereto, Section 742.4 of the Regulations imposed a BIS license requirement on the export of items controlled for NS reasons to Vietnam. In addition, no Electronic Export Information (EEI) was filed for these transactions as required by 15 C.F.R. § 758.1(b)(5) for transactions valued at \$2,500 or more.
13. In exporting these items to Vietnam without the required BIS license, VTA violated Section 764.2(a) of the Regulations.

WHEREAS, VTA has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, VTA fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, VTA enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, VTA states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, VTA neither admits nor denies the allegations contained in the Proposed Charging Letter; and

WHEREAS, VTA agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over VTA, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanctions shall be imposed against VTA:

a. VTA shall be assessed a civil penalty in the amount of \$1,869,372.

Payment shall be made in the manner specified in the attached instructions. The payment of \$1,669,372 shall be made to the U.S. Department of Commerce as follows: payment of \$100,000 shall be made not later than seven (7) calendar days from the date of this Order; and payment of the remaining \$1,569,372 shall be made not later than March 1, 2022. Payment of the remaining \$200,000 shall be suspended for a period of two years from the date of the Order, if approved, and shall be waived upon the first to occur of the following: (1) VTA has dissolved or ceased its business operations, with written certification of such corporate dissolution or cessation provided to BIS; or (2) VTA completes the two-year payment probationary period under the Order, if approved, without having committed a violation of the Export Control Reform Act of 2018 (“ECRA”),³ the Regulations, or any order, license, or authorization issued under ECRA or the

³ See note 1, *supra*.

Regulations, has made full and timely payment of \$1,669,372 as set forth above, and completed the additional compliance requirements set forth in paragraph 2.b below.

b. VTA shall expend \$25,000 on additional ongoing export control compliance efforts within twelve months from the date of this Order. VTA shall also retain a Director of Trade Compliance to oversee VTA's export activities for two years from the date of the Order, unless VTA has dissolved or ceased its business operations, in which case this requirement shall be waived. No later than one month after VTA expends \$25,000 on its compliance efforts, VTA shall submit a certification of such expenditure to the Office of Export Enforcement, 21711 N. 7th Street, Phoenix, AZ 85024. In addition, unless VTA has dissolved or ceased its business operations, VTA shall certify on a yearly basis for the next two years that it has retained a Director of Trade Compliance and submit the certification to the aforementioned address.

c. Compliance with the terms of this Agreement and the Order, including full and timely payment of the civil penalty in accordance with the payment schedule set forth above in paragraph 2.a, and the expenditure of \$25,000 on additional/ongoing export control compliance efforts and successful retention of a Director of Trade Compliance as set forth in paragraph 2.b, are hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to VTA. Accordingly, if VTA should fail to pay the civil penalty in a full and timely manner, fail to expend \$25,000 on additional/ongoing export control compliance efforts, or fail to retain a Director of Trade Compliance (unless VTA has

dissolved or ceased its business operations), the undersigned may issue an order denying all of VTA's export privileges under the Regulations for a period of two years from the date of failure to make such payment, the failure to make the expenditure of \$25,000 on additional/ongoing export control compliance efforts, or failure to retain a Director of Trade Compliance.

d. Failure to make full and timely payment as set forth above may result in the entire amount of \$1,869,372 becoming due and owing immediately.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, VTA hereby waives all rights to further procedural steps in this matter (except the procedural steps set forth in Sections 766.17(c) and 766.18(c) of the Regulations with respect to the possible activation of suspended sanctions due to a violation of this Agreement or the Order, if issued), including, without limitation, any right to: (a) receive an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. VTA also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until VTA pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement, completes the expenditures on additional/ongoing export control compliance efforts agreed to in Paragraph 2.b of this

Agreement, and successfully retains a Director of Trade Compliance as agreed to in Paragraph 2.b of this Agreement.

4. VTA shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect VTA's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, completion of the expenditures on additional/ongoing export control compliance efforts, and successful retention of a Director of Trade Compliance as agreed to in Paragraph 2.b of this Agreement, BIS will not initiate any further administrative proceeding against VTA in connection with any violation of the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. This Agreement constitutes and contains the entire agreement and understanding among the parties, and the terms of this Agreement or the Order, if issued, may not be varied or otherwise altered or affected by any agreement, understanding,

representation, or interpretation not contained in this Agreement; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

10. Each signatory affirms that they have authority to enter into this Settlement Agreement and to bind the respective party to the terms and conditions set forth herein.

11. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE



John Sonderman
Director, Office of Export Enforcement

Date: 10/1/2021

VTA TELECOM CORPORATION



Long Hoang Nguyen
President and CEO

Date: 9/30/2021

Reviewed and approved by:



Sam C. Neel
McDermott Will & Emery LLP
Counsel for VTA TELECOM
CORPORATION

Date: October 1, 2021

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

VTA Telecom Corporation
1551 McCarthy Boulevard, Suite 210
Milpitas, CA 95035

Attention: Nguyen Hoang Long, President

Dear Mr. Long,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that VTA Telecom Corporation (“VTA”), of Milpitas, California, has violated the Export Administration Regulations (“the Regulations” or “the EAR”).¹ Specifically, BIS charges that VTA committed the following violations:

Charge 1 15 C.F.R. § 764.2(e) - Evasion

1. Beginning in July 2015, and continuing through October 2016, VTA evaded the provisions of the EAR in furtherance of acts that constitute violations of the Regulations, namely: unlawfully exporting items subject to the EAR from the United States, and providing false information, either directly or indirectly, to BIS

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The violations alleged occurred in 2015 and 2016. The Regulations governing the violations at issue are found in the 2015 and 2016 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2015, 2016). The 2021 Regulations govern the procedural aspects of this case.

and officials of other United States agencies for the purpose of or in connection with effecting an export subject to the EAR.

2. VTA was established in 2013 as a subsidiary of a state-owned telecommunications company based in Hanoi, Vietnam (the “Parent Company”).
3. In or around 2015, VTA began procuring and exporting items from the United States to the Parent Company in Vietnam. VTA, through its now-former executive officers, was aware that some of its exports were intended to support a defense program.
4. Notwithstanding its knowledge of the defense purposes of some of its exports, VTA, on several occasions as described below, provided false information to BIS and other U.S. government agencies in connection with export license applications and other export activities to conceal such defense purposes, in an unlawful effort to facilitate exports from the United States. Specifically, VTA would provide plausible false civil end-uses for the products, which were in reality intended for defense-related end-uses, to disguise and conceal from the U.S. government the true purpose of VTA’s exports.

Charges 2-4 15 C.F.R. § 764.2(g) - False Statements to BIS and/or another U.S. Government Agency and on Export Control Documentation

5. On at least two occasions between on or about April 21, 2016, and on or about August 22, 2016, VTA made false statements to BIS and other U.S. government agencies as described above, including on its export license application to BIS and other export control documentation, in connection with the export of certain power amplifiers/JFET transistors, which were controlled under ECCN 3A001.b.3.b for National Security (NS), Regional Stability (RS), and Anti-Terrorism (AT) reasons, and required a license to export to Vietnam. On the basis of VTA’s application to BIS containing false statements regarding the items’ end-use, BIS granted VTA a license to export 100 transistors and 2 development tools worth \$59,100 to Vietnam. The BIS license was granted only for the end-use listed in the application. Prior to export of 12 of the transistors and two development tools worth at least \$8,860 on or about July 20, 2016, U.S. Customs and Border Protection (CBP) placed a hold on the shipment and requested end-user statements from VTA. On August 22, 2016, VTA provided the same false end-user statements referenced above to CBP, and CBP released the hold on the items, resulting in their export on or about September 16, 2016. In providing false statements to BIS and other U.S. government agencies, Respondent violated Section 764.2(g) of the Regulations.
6. On at least two occasions between on or about May 24, 2016, and on or about September 7, 2016, VTA made false statements to BIS and other U.S. government

agencies as described above, including on export control documentation, in connection with the attempted export of certain actuators valued at \$235,000, which were controlled under ECCN 9A610.x for NS, RS, Missile Technology (MT) and AT reasons, and required a license to export to Vietnam. Specifically, VTA provided a U.S. vendor with an end-user statement and other information containing false statements as to the end-use of the items, which the vendor transmitted to BIS. In doing so, Respondent violated Section 764.2(g) of the Regulations.

7. On at least three occasions between on or about August 18, 2016, and on or about October 20, 2016, VTA made false statements to BIS and other U.S. government agencies, including on export control documentation, in connection with the attempted export of a mass properties instrument and related equipment valued at \$624,373, which were controlled under ECCN 9B604.c for NS, RS, AT, and United Nations Embargo (UN) reasons, and required a license to export to Vietnam. Specifically, VTA provided a U.S. vendor false statements regarding the items' end-use, upon which the vendor relied to submit an export license application to BIS. In doing so, Respondent violated Section 764.2(g) of the Regulations.

Charge 5 **15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation:
Unlicensed Export**

8. The allegations in Paragraphs 3-5 are incorporated by reference.
9. At all times pertinent hereto, Section 742.4 of the Regulations imposed a BIS license requirement on the export of items controlled for NS reasons to Vietnam, and Section 742.6 of the Regulations imposed a BIS license requirement on the export of items controlled for RS reasons to Vietnam.
10. On September 16, 2016, by knowingly exporting the above-described 12 transistors and two development tools to Vietnam for a defense end-use without a license to export such items for that purpose, VTA violated Section 764.2(e) of the Regulations.

Charge 6 **15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct:
Unlicensed Export**

11. On or about July 2015, VTA exported twenty (20) computer processor chips, classified as 5A002.a.1 and controlled for NS, AT, and Encryption Item (EI) reasons, to the Parent Company in Vietnam with a stated intended use for a civil telecommunications project in Vietnam without the required BIS license. The items were collectively worth \$3,930.

12. At all times pertinent hereto, Section 742.4 of the Regulations imposed a BIS license requirement on the export of items controlled for NS reasons to Vietnam. In addition, no EEI was filed for these transactions as required by 15 C.F.R. § 758.1(b)(5) for transactions valued at \$2,500 or more.
13. In exporting these items to Vietnam without the required BIS license, VTA violated Section 764.2(a) of the Regulations.

* * * * *

Accordingly, VTA is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions including, but not limited to, any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$311,562 per violation,² or twice the value of the transaction that is the basis of the violation;³
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.⁴

If VTA fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If VTA defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to VTA. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

² *See* 15 C.F.R. §§ 6.3(b)(4), 6.4. This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. *See* 86 Fed. Reg. 1,764 (Jan. 10, 2021) (Adjusting for inflation the maximum civil monetary penalty under IEEPA from \$307,922 to \$311,562, effective Jan. 15, 2021); note 1, *supra*.

³ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

⁴ The alleged violations occurred prior to August 13, 2018, the date of enactment of ECRA. *See* note 1, *supra*. Consequently, the applicable potential sanctions are provided for under IEEPA, rather than ECRA. *See id.*

VTA is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. VTA is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should VTA have a proposal to settle this case, VTA should transmit it to the attorneys representing BIS named below.

VTA is further notified that under the Small Business Regulatory Enforcement Flexibility ACT, VTA may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, VTA's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of VTA's answer must be served on BIS at the following address:

Office of Chief Counsel for Industry and Security
14th Street and Constitution Avenue, N.W.
Room H-3839
Washington, D.C. 20230
Attention: Aiysha Hussain, Esq.

Aiysha Hussain is the attorney representing BIS in this case; any communications that VTA may wish to have concerning this matter should occur through them. Ms. Hussain may be contacted by email at ahussain@doc.gov or telephone at (202) 482-5301.

Sincerely,

John Sonderman
Director
Office of Export Enforcement