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Via Email (publiccomments@bis.doc.gov)

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce, Room 2099B
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

ATTN: Brian Baker, Director, Electronics & Materials Division
Office of National Security and Technology Transfer Controls

Subject: RIN 0694-AF64 (Rulemaking Identification No. BIS-2012-0045); Comments Regarding Proposed Rulemaking Relating to Control of Military Electronic Equipment and Related Items

Dear Mr. Baker:

On behalf of our client, Verizon Communications Inc. and its subsidiaries ("Verizon"), we are submitting these comments on the proposed rulemaking relating to the control of military electronic equipment and related items that no longer warrant control under the U.S. Munitions List ("USML"). Verizon supports the Administration's overall approach to transfer from the USML to the Export Administration Regulations ("EAR") military items that no longer warrant control under the International Traffic in Arms Regulations.

Verizon is a telecommunications company providing voice, data and video communications services to homes, businesses and governments. Its operations include the design, installation, operation and maintenance of voice, data and video communications networks.

Verizon offers the following comments relating to the proposed rulemaking:

- ECCN 3A611.a should be revised to clarify that it does not control routine telecommunications or computer networks used by a military end-user for administrative functions, where such networks utilize only equipment and software that are not enumerated in a USML Category or controlled by a "600 series" ECCN where such networks that do not contain, and are not

designed or configured to contain, types of security as described in USML Category XIII(b).

- ECCN 3E611.a should be revised to clarify that it does not control the operation, installation, maintenance, or repair of non-600 series items – for example, switches, routers and other equipment or software classified as ECCNs 4x994, 5x001, 5x002, 5x991, and EAR99 – that might be included in "systems" controlled by ECCN 3A611.a.

I. Proposed ECCN 3A611.a Should be Revised to Exclude Routine Communications Networks Used by a Military

Military end-users may use telecommunication and computer networks for routine communications (*e.g.*, calls and emails to family and friends, ordering of supplies, etc.) as well as for command and control purposes. Often military end-users maintain separate networks, or segregate portions of a single network, for routine communications and for command and control purposes. In either instance, networks that are used for administrative purposes have no higher level of security than similar networks used by a business or even a residential end-user – whereas command and control networks typically use special encryption devices controlled under USML Category XIII(b) to maintain a higher level of security.

Routine communications networks typically contain hardware, such as switches and routers, and software that are classified as ECCN 4x994, 5x001, 5x002, 5x991, and EAR99. These items may be connected though wires/cables, wireless devices or satellite communications. A routine communications network typically is designed for the specific end-user, based on factors such as the number of users on the system, the end-user's location(s), etc. Equipment and software on the network are configured, within their normal operating parameters, according to the system design.

We are concerned that, as proposed, ECCN 3A611.a may be construed to control routine communications systems and networks, consisting entirely of non-600 series and non-USML items, that are designed and configured for a military end-user for administrative uses. As proposed, ECCN 3A611.a would control "systems" that are "specially designed" for military use that are not enumerated in either a USML category or another "600 series" ECCN. A "system" is defined to include:

> a combination of "end-items" … or software that are designed … to operate together to perform a specialized 'function.'

Applying this definition, a system would appear to include telecommunications or computer networks consisting of end-items and software that are combined for voice, data or video communications. It is ambiguous, however, whether a routine communications system used for administrative purposes that

does not contain, and was not designed or configured, to contain USML Category XIII(b) levels of security between such end-items, would be considered "specially designed" for military use.

In the April 16, 2013 Implementation Rule (78 Fed. Reg. 22660), the Bureau of Industry and Security ("BIS") set forth a definition of "specially designed." The definition, focused on end-items, and their parts, components, accessories, attachments and software, does not directly address systems that include end-items. Paragraph (a)(1) provides that an "item," which defined to include commodities (*i.e.*, articles, materials or supply), software or technology, is specially designed if it, as a result of development, has properties peculiarly responsible for achieving or exceeding the performance level, characteristics, or functions in the relevant ECCN or USML paragraph. Assuming paragraph (a)(1) applies to systems, a system would be considered specially designed if it is developed for a military use.[1]

As noted by several other commentators to the November 28, 2012 proposed rulemaking, the term "military use" can be interpreted in the broadest sense to include any item or system that is developed for end-use by a military – for example, a video system used to monitor the entrance of a building or compound housing military personnel. In the July 25, 2013 proposed rulemaking, BIS noted that "military use" is synonymous with "military application," and that "military application" is used in USML Category XI to describe the electronics subject to that category. While useful, this clarification does not assist with determining whether a routine communications system, which does not contain and is not designed or configured for any special security, that is used, for example, for administrative purposes such as ordering supplies or logistics, would be considered a "military application."

As such, to clarify that ECCN 3A611.a does not control routine communications systems that were not previously controlled under USML Category XI or another USML category, we suggest that BIS add to the proposed ECCN 3A611.a a note clarifying that:

- ECCN 3A611.a does not include a routine telecommunications or computer network that utilizes only equipment and software that are not enumerated in a USML Category or controlled by a "600 series" ECCN where the network does not contain, and is not designed or configured to contain, types of security as described in USML Category XIII(b).

[1] In the "specially designed" definition, paragraph (a)(2) applies to parts, components, accessories, attachments, or software used in or with a commodity or defense article enumerated or otherwise described on the CCL or USML, unless such parts, components, accessories, attachments or software are released under paragraph (b). As a system is not considered a part, component, accessory, attachment or software, it appears that the "release" provisions in paragraph (b) are not applicable to routine communications systems used by a military – regardless of the fact that such routine communications systems may provide the same function, performance capabilities and the same or equivalent form or fit as commercial communications systems.

II. Proposed ECCN 3E611.a Should be Revised to Exclude Operation, Installation, Maintenance and Repair of Non-"600 Series" End-Items Incorporated on an ECCN 3A611.a System

As noted above, communications networks typically are comprised of a set of hardware, such as switches and routers, and software that are classified as ECCN 4x994, 5x001, 5x002, 5x991, and EAR99, connected though wires/cables, wireless devices or satellite communications. On the network, from time to time, each discrete end-item may require maintenance, repair and/or replacement (which would include installation).

As proposed, ECCN 3E611.a would control, among other things, the operation, installation, maintenance, and repair of "commodities" controlled by ECCN 3A611. In the case of a system classified as ECCN 3A611, the proposed ECCN is ambiguous as to whether, for example, the maintenance and repair of an end-item such as a switch classified as ECCN 5A002 would be controlled by ECCN 3E611. Moreover, even if such an end-item were removed from the system for maintenance or repair, for example, and thus arguably no maintenance or repair of the system occurs, it is unclear whether the subsequent installation of the repaired item, or a replacement item, would be controlled by ECCN 3E611, particularly where the end-item may need to be configured, within its normal operating parameters, for the network.

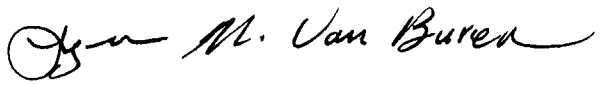
To address these ambiguities, proposed ECCN 3E611.a should be revised to include a note clarifying that it does not control the operation, installation, maintenance, or repair of end-items such as switches, routers and other equipment or software classified as ECCNs 4x994, 5x001, 5x002, 5x991, and EAR99 that are included on a network, as follows:

- ECCN 3E611.a does not control the operation, installation, maintenance, or repair of non-"600 series" items that are or are intended to be included in "systems" controlled by ECCN 3A611.a.

* * *

We appreciate BIS' consideration of these comments. Should you have any questions about these comments, please contact the undersigned at 202.508.6320 or lynn.vanburen@bryancave.com.

Sincerely,



Lynn M. Van Buren

Counsel to Verizon

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