



October 9, 2019

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication: WC Docket No. 18-89

Dear Ms. Dortch:

On October 7, 2019, the undersigned of ITTA met with Trent Harkrader, Justin Faulb, Aaron Garza, and John Visclosky of the Wireline Competition Bureau (Bureau) to discuss the status of the Commission's supply chain proceeding.¹

During the meeting, I reiterated ITTA's position that the *Supply Chain NPRM's* underlying goals are commendable, but addressing them should be left to other federal government entities with expertise on national security matters.² This position is bolstered by the Commission's dubious, if not altogether spurious, authority over cybersecurity matters,³ as well as the reality that matters of foreign trade policy, decidedly beyond the Commission's ken, are inextricably intertwined with the *Supply Chain NPRM's* proposal.⁴ Regardless of whether the scope of any contemplated Commission action is limited to the *NPRM's* proposal or could drift into a mandate to "rip and replace" problematic equipment, it is beyond the Commission's statutory authority under Section 254 of the Communications Act of 1934, as amended,⁵ as well as Section 889 of the *2019 NDAA*,⁶ no matter how well intentioned.

Moreover, Section 889(b)(2)'s call for the Commission to prioritize "available funding" to assist entities required to replace the subject problematic equipment should not include Universal Service Fund (USF) resources. There is no "available" USF funding to devote to this endeavor, whether it's replacement constructively necessitated by adoption and implementation of the *NPRM's* proposal, or more directly mandated replacement. Forcing ratepayers to fund

¹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, 33 FCC Rcd 4058 (2018) (*Supply Chain NPRM*); *Wireline Competition Bureau Seeks Comment on Section 889 of John S. McCain National Defense Authorization Act for Fiscal Year 2019*, Public Notice, 33 FCC 10183 (WCB 2018) (*2019 NDAA PN*).

² See Comments of ITTA on *Supply Chain NPRM*, WC Docket No. 18-89, at 2 (June 1, 2018) (*Supply Chain NPRM Comments*); Comments of ITTA on *2019 NDAA PN*, WC Docket No. 18-89, at 2 (Nov. 16, 2018) (*2019 NDAA PN Comments*).

³ See *2019 NDAA PN Comments* at 2 (citing, *inter alia*, *Supply Chain NPRM Comments* at 1-3).

⁴ See *Supply Chain NPRM Comments* at 3-4.

⁵ See *id.* at 7-9.

⁶ See *2019 NDAA PN Comments* at 4-6.

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replacement of covered equipment and associated support services contracts via USF contributions, or requiring providers to fund such replacements without any support where USF support had been used to purchase such equipment or services, would be tantamount to an unfunded mandate and, in any event, untenable.⁷ Therefore, the Commission should build into future Congressional budget requests funding to assist with such replacement, or rely on one of the other agencies enumerated in Section 889(b)(2) to devote available funding to the endeavor.⁸

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Trent Harkrader
Justin Faulb
Aaron Garza
John Visclosky

⁷ See *id.* at 7-8.

⁸ See *id.* at 8.