

USF National Security

February 2019

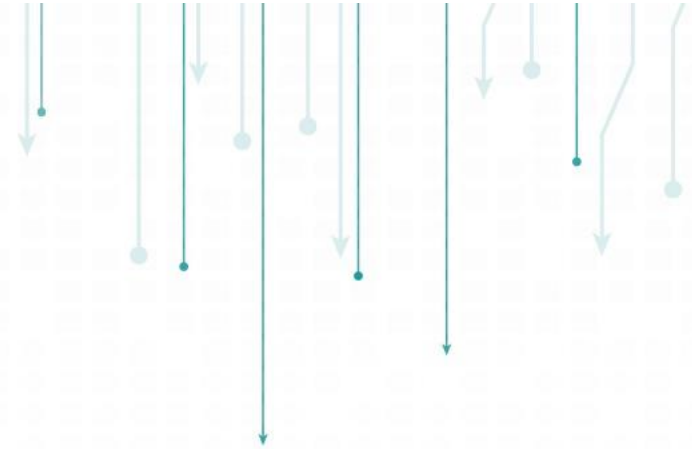


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Overview

- The Case for Immediate Action
- A Narrowly-Tailored Approach
- TIA's Proposal
- Mitigating the Costs
- Legal Authority
- The FCC's Role in Context
- Procedural Issues



The Case for Immediate Action

- Congress has recognized a serious national security concern regarding certain suppliers
 - FY19 NDAA Section 889 established **August 2020** deadline
- Record provides details about specific concerns
 - TIA has explained why Huawei, ZTE, and Kaspersky Lab differ from others (TIA Comments at 10-18; TIA Reply Comments at 44-70)
- Marketplace needs certainty as 5G is being rolled out in earnest
 - Mitigation must happen in parallel, and on deadline (TIA PN Reply Comm at 22-23)
- U.S. Allies are taking action

A Narrowly-Tailored Approach

- FCC USF Proceeding Should Focus on Specific Suppliers of Concern
- General Supply Chain Risk Management is Being Addressed By Interagency Processes
 - Active work is underway at DHS and elsewhere to improve supply chain risk management in which TIA and our member companies are participating
 - Latest version of NIST Framework addresses supply chain security
 - Product testing is not a viable alternative path (TIA Comments at 35-39; Reply Comm. 17-21)
- Determinations of Prohibited Suppliers Should Derive from Expert Agencies and/or Congress
 - FCC should rely on determinations made by expert agencies such as DoD, DNI, DHS (example: DHS directive on Kaspersky) or by Congress (example: Section 889) regarding which suppliers should be prohibited
 - FCC should not make independent national security determinations

TIA's Proposal

- TIA has suggested possible rule text (TIA Comments at 88-89)
- Rule should describe the triggering actions by Congress or other agencies that result in a company being added to the FCC's list (TIA Comments at 54-58)
- Focus on logic-enabled components from suppliers of concern (TIA Comments at 47-53)
 - Congress took a very similar approach in Section 889
- Use attestations (with options) to enforce compliance (TIA Comments at 62-63)
 - Option A – no logic-enabled components from Company X are in our products
 - Option B – zero-percent attestation, i.e., no components (at all) from Company X

Mitigating the Costs

- Congress recognized in Sec. 889(b)(2) that there would be costs, but directed agencies to proceed notwithstanding the costs
 - FCC can consider mitigation assistance per requirements of the statute
- Equipment market is robustly competitive
 - TIA Comments at 71-77; TIA Reply Comments at 31-41
- Benefits of the rule
 - National security
 - Promoting consumer confidence, reducing potential for data breaches

Legal Authority

- FCC has sufficient authority under Section 254(b)
 - But identify a limiting principle when construing “public interest”
 - National security provisions in Communications Act suggest a limiting principle of deferring to expert agencies (and Congress) regarding which suppliers
- FY19 NDAA Section 889 provides additional authority
 - Statute applies to USF (TIA PN Comments at 4-14; PN Reply Comm at 3-13)
 - Fully consistent with TIA proposal (TIA PN Comments at 14-21)
 - Should not restrict use of non-Federal dollars (TIA PN Comments at 23-25)

The FCC's Role in Context

- Congress
 - Section 889 took action re: Huawei & ZTE, earlier statute addressed Kaspersky
 - Statutes leave it to FCC and agencies to implement, including USF prohibition
- DHS – task force underway with broader focus on ICT supply chain security
- NIST (and CSRIC) – standards, process management, best practices
- DoD & GSA – implementation guidance will focus on federal agency procurements under 889(a)
- Commerce & DOJ – export controls, etc.
- **FCC – USF & other funding programs**
 - Implementation of grants/loans prohibition under 889(b)
 - Work with DoD and other agencies collaboratively (TIA PN Comments at 25-28)

Procedural Issues

- FCC Has Provided Adequate Notice
 - TIA Reply Comments at 88-90 (NPRM); TIA PN Reply Comments at 26-33 (Sec. 889)
- Rule Would Not Violate Due Process
 - Certain suppliers are distinguishable from others (TIA Reply Comments at 44-70)
 - FCC may rely on determinations by Congress etc. (TIA Reply Comments at 81-85)
 - An individualized hearing is not required (TIA Reply Comments at 91-96)
- Section 889 Does Not Limit the FCC's Pre-existing Authority to Act
 - TIA PN Reply Comments at 18-19

Q&A

