



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON SECTION 889 OF JOHN S. MCCAIN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019

WC Docket 18-89

Comment Date: November 16, 2018
Reply Comment Date: December 7, 2018

With this Public Notice, we seek comment on the applicability of provisions in the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (*2019 NDAA*) to the Commission's *Protecting Against National Security Threats to the Communications Supply Chain* rulemaking and to the programs the Commission oversees.¹

On April 18, 2018, the Commission adopted the *Protecting Against National Security Threats to the Communications Supply Chain NPRM*, which proposed and sought comment on a rule to prohibit the use of Universal Service Fund (USF) support to purchase equipment or services from any company identified as posing a national security risk to communications networks or the communications supply chain.² The Commission also sought comment on how to identify companies that pose a national security threat to the integrity of communications networks or the communications supply chain for purposes of the proposed rule.³

On August 13, 2018, the *2019 NDAA* was signed into law.⁴ Section 889(b)(1) of the *2019 NDAA* prohibits the head of an executive agency from obligating or expending "loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems" "that use[] covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system."⁵ The *2019 NDAA* generally defines "covered telecommunications equipment or services" as (1) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation or any subsidiary or affiliate of such entities, (2) video surveillance and telecommunications

¹ John S. McCain National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong., PL 115-232, 132 Stat. 1636 (2018) (*2019 NDAA*).

² *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket 18-89, Notice of Proposed Rulemaking, FCC 18-42 (Apr. 17, 2018) (*Protecting Against National Security Threats to the Communications Supply Chain NPRM* or *NPRM*).

³ *See id.*, FCC 18-42 at 7, para. 19. One of the potential methods proposed in the *NPRM* to identify covered companies was to use the annual National Defense Authorization Act (NDAA) list of companies prohibited from providing certain equipment or services to federal agencies. *See id.* at 8, para. 21.

⁴ *See* Press Release, Department of Defense, President Signs Fiscal 2019 Defense Authorization Act at Fort Drum Ceremony (Aug. 13, 2018), <https://dod.defense.gov/News/Article/Article/1601016/president-signs-fiscal-2019-defense-authorization-act-at-fort-drum-ceremony/>.

⁵ *2019 NDAA*, Sec. 889(a), (b), 132 Stat. at 1917.

equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company or any subsidiary or affiliate of such entities, (3) telecommunications or video surveillance services provided by such entities or using such equipment, or (4) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.⁶ Section 889(b)(1) takes effect two years after the date of enactment of the 2019 NDAA.⁷

We seek comment on section 889(b)(1) and on its relevance, if any, to the *Protecting Against National Security Threats to the Communications Supply Chain* rulemaking.⁸ Does the prohibition in section 889(b)(1) apply to support provided by the Universal Service Fund (USF)? To the extent the provision is intended to apply to USF, what obligation might it impose upon the Commission? Would the Commission's proposed rule in the *Protecting Against National Security Threats to the Communications Supply Chain NPRM* satisfy the intent of section 889(b)(1)? Likewise, does section 889(b)(1), standing alone or in conjunction with the rest of section 889, support or otherwise authorize the Commission to adopt the proposed rule or any of the proposed alternatives presented in the *Protecting Against National Security Threats to the Communications Supply Chain NPRM*? Should the list of companies in section 889(f)(3)(A)-(B) and any potential additions to the list pursuant to section 889(f)(3)(D) of the 2019 NDAA serve as a basis for determining which entities pose "a national security threat to the integrity of communications networks or the communications supply chain"?⁹ Does section 889(b)(1) apply to other Commission funding programs, in particular, the Telecommunications Relay Service (TRS) Fund? We seek comment on these and any other relevant issues related to section 889(b)(1).

We note that section 889(b)(2) provides that heads of executive agencies administering "loan, grant, or subsidy programs," specifically naming the head of the Federal Communications Commission, shall, "[i]n implementing the prohibition in paragraph (1)," prioritize available funding and technical support to assist entities affected by the prohibition in section 889(b)(1). How should we interpret the prohibition in section 889(b)(1) in light of section 889(b)(2)?

Finally, we seek comment on section 889(b)(3), which states that nothing in section 889(b) prohibits the head of an executive agency from procuring with an entity to provide a service that "connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements,"¹⁰ or covers "telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles."¹¹ To the extent that the prohibition in section 889(b)(1) might apply to support provided by the USF, we seek comment on how to implement this provision.

Interested parties are invited to file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

⁶ *Id.* at Sec. 889(f)(3), 132 Stat. at 1918. "Covered foreign country" is defined as the People's Republic of China. *Id.* at Sec. 889(f)(2).

⁷ *See* Sec. 889(c).

⁸ *See Protecting Against National Security Threats to the Communications Supply Chain NPRM*, FCC 18-42 (Apr. 17, 2018).

⁹ *See id.* at Appendix A.

¹⁰ 2019 NDAA, Sec. 889(b)(3)(A).

¹¹ 2019 NDAA, Sec. 889(b)(3)(B).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

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Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).¹³ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information, contact Aaron Garza of the Wireline Competition Bureau, at (202) 418-1175 or Aaron.Garza@fcc.gov.

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¹² See 47 CFR §§ 1.1200 *et seq.*

¹³ *Id.* § 1.1206(b).