



**FILED VIA ECFS**

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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20510

Brian Hendricks  
Government Relations  
Nokia

Address:  
1100 New York Avenue, NW  
Suite 705 West  
Washington, DC 20005

Email:  
brian.hendricks@nokia.com

Re: *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89

Dear Ms. Dortch:

Nokia submits this letter in support of the draft Notice of Proposed Rulemaking (“Draft NPRM”) issued in the above-captioned proceeding and asks that the Commission consider Nokia’s suggestions in the final adopted text of the NPRM, which it believes would help the Commission achieve its goals while avoiding uncertainty in the U.S. market.

Through this proceeding, the Commission is taking an important step toward securing our Nation’s communications infrastructure. We agree that it is an appropriate action well within the Commission’s province to restrict the use of Federal funds to acquire “equipment or services produced or provided by a company posing a national security threat to the integrity of communications networks or the communications supply chain.”<sup>1</sup> Nokia is concerned, however, with the reaction in the marketplace to the draft NPRM. As written, the draft has allowed certain parties to deliberately misconstrue the potential scope of the Commission’s approach both to engender opposition to the proposal, and to sow doubt about the long-term eligibility of certain vendors under an eventual rule, in order to win short term business from Universal Service Fund (USF) eligible entities.

Specifically, there are parties that are promoting a narrative that the Commission is seeking to cast a wide net, to indiscriminately bar vendors that have a presence in, or manufacture in, certain geographies, such as China. Of course, essentially all major information technology and communications companies have global supply chains, many of which include sourcing of components

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<sup>1</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, WC Docket No. 18-89 (as circulated for tentative consideration, March 27, 2018).

from China and elsewhere. Those who are against the Commission's proposed action to secure our Nation's infrastructure are using the fact that many companies share common countries of origin in their supply chains as a basis to suggest the draft order would therefore have sweeping effect and greatly limit equipment supplier options for carriers seeking USF support. It is the clear intention of such entities to create opposition to the Draft NPRM by raising unsubstantiated fears about a broadly applied restriction. Nokia believes that the Commission's approach has less to do with country of origin as a basis of risk assessment and more to do with supplier trustworthiness. Therefore, the risk of an overly broad application of the rules is minimal. Nevertheless, given the criticality of the issue and the early efforts to misconstrue the Commission's intent, Nokia seeks clarifications in the Draft NPRM that would quell these concerns.

Nokia agrees with the Draft NPRM's focus on "*companies* that pose a national security threat."<sup>2</sup> Indeed, the Background section of the Draft NPRM focuses on instances where the U.S. government took the extraordinary step of barring companies from government procurements based on security concerns. To that end, the Commission correctly focuses on specific factors that could disqualify a company from being used by USF recipients, such as findings by other government agencies or by Congress indicating there are risks associated with the company that necessitate restrictions on the use of its equipment. Nokia respectfully requests that the Commission make clear that identifying a company as a prohibited provider is an extraordinary act that the Commission expects would be used sparingly, and based on a review that takes into account the totality of the circumstances.

Nokia further recommends that the Commission include in its NPRM factors that may indicate a company is a trusted vendor using a totality-of-the-circumstances approach. While non-conformity to any one of these items should not be a sufficient basis for a finding of risk, in their totality, along with the inputs of U.S. security and intelligence agencies, they provide an objective and predictable basis for assessing which suppliers pose risks. Predictable criteria can also help meet the Commission's goals of securing U.S. communications networks without creating market uncertainty, or uncertainty for small USF eligible entities that want to have comfort in selecting their suppliers that there will not be subsequent disruption. Examples of factors that might be appropriate for the Commission to consider include:

- Whether the company is publicly traded on one or more exchanges. Public companies are subject to heightened ownership, financial disclosure, risk reporting, and other transparency requirements. Public companies are also subject to fiduciary responsibilities to shareholders that would make cooperation with any government or state sponsored actor in deliberate cyber espionage, monitoring, manipulation, or attack much less likely. The additional threat of significant civil liability from shareholders of these companies is a substantial commercial deterrent.
- Whether the company is in good standing with the Committee on Foreign Investment in the United States (CFIUS), which reviews transactions that could result in control of a U.S. business by a foreign person in order to determine the effect of such transactions on national security, that may have resulted in a national security agreement (NSA). Many companies that have made major investments in the United States, such as Nokia, have undergone an intensive review by U.S. security agencies as part of the CFIUS process. The Commission could consider the existence of an NSA, or other comprehensive supply chain focused agreement

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<sup>2</sup> *Id.* ¶ 19 (emphasis added).

between the U.S. and a supplier as one indicator of a supplier's trustworthiness and suitability, since such agreements involve substantial transparency and cooperation between the supplier and the U.S. government. An inquiry regarding the existence of such an agreement would need to be kept confidential and should only be considered if the Commission is considering a limitation on a supplier's eligibility.

- Whether the company is a C-TPAT verified (Customs-Trade Partnership against Terrorism) provider? This is the U.S. version of the AEO (Authorized Economic Operator) applied in the European Union, China and elsewhere. This program is predominantly focused on supply-chain security, and managed by U.S. Customs and Boarder Protection.
- Whether the company has a history of complying with United States laws and regulations, including laws and regulations pertaining to sanctions and export controls.

None of these criteria should be considered dispositive on its own, but should be considered along with multiple other factors, including the inputs of security and intelligence agencies, in reviewing the trustworthiness and suitability of a supplier.

In sum, Nokia supports the Commission's goals in securing our Nation's infrastructure, but the NPRM is being misconstrued to cast a shadow on all vendors that have a global supply chain. Nokia therefore requests that the Commission target its NPRM to disallow "companies that pose a national security threat" from participating in USF-funded project, while clarifying the document to give comfort to USF-recipients to continue using longstanding, trusted vendors to the U.S. government and service providers. Please contact the undersigned with any questions in connection with this submission.

Respectfully submitted,

*/s/ Brian Hendricks*

Brian Hendricks, Head of Policy and Government  
Relations, Americas Region  
Jeffrey Marks, Senior Counsel, Policy and Regulatory