

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Protecting Against National Security Threats to the) WC Docket No. 18-89
Communications Supply Chain Through FCC)
Programs)

To: The Commission

COMMENTS OF SAGEBRUSH CELLULAR, INC.

Sagebrush Cellular, Inc. (“Sagebrush”), by its attorneys, hereby submits these Comments in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹ Sagebrush opposes the rule proposed in the NPRM that would prohibit the use of Universal Service Fund (“USF”) funds to purchase equipment or services from certain entities deemed to pose a national security risk to the communications supply chain.

I. Introduction

Sagebrush, a wholly owned subsidiary of Nemont Telephone Cooperative, Inc., is a commercial mobile radio service (“CMRS”) provider offering service in northeast and south central Montana, as well as portions of northwest North Dakota. Sagebrush covers over 17,000 square miles, the vast majority of which is rural and remote in nature, including the Crow and Fort Peck Indian Reservations.

¹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, WC Docket No. 18-89, rel. April 18, 2018.

In 2010, Sagebrush upgraded its wireless network from 1x to 3G, selecting Huawei as its equipment vendor. Sagebrush selected Huawei over competing vendors Ericsson and Lucent, based largely on substantial cost savings in initial deployment and ongoing support services, and after completing due diligence on the quality of Huawei equipment, its support services, and the potential impact on national security. In part, Sagebrush relied on the classification of Huawei as an approved vendor by the United States Department of Agriculture's Rural Utilities Service and a conclusion conveyed by Montana Senator Jon Tester's office that at that time there was no reason for Sagebrush not to engage with Huawei. Since contracting with Huawei, Sagebrush has experienced reliable service and no network outages, cyber attacks, or other network security issues. Over the years, Sagebrush has continued to deploy Huawei equipment and has also deployed a Huawei LTE network.

II. The FCC's Proposal Imposes Substantial Costs on Rural Carriers and the Public Without Any Corresponding Benefits.

A. The NPRM's Proposal Will Harm Small Rural Carriers, Consumers, and the Public

The NPRM's proposal to prohibit the use of USF funds to purchase equipment or services from certain entities deemed to pose a national security risk to the communications supply chain will cause substantial harm to a small rural carrier like Sagebrush without any corresponding benefits. Being forced to replace its 3G/LTE Huawei network would require Sagebrush to purchase a far more expensive network. When Sagebrush solicited bids in 2010 for its network, it found the cost of Lucent equipment to be *twice* the cost of Huawei equipment and the cost of Ericsson equipment to be *nearly four times* the cost of Huawei equipment. Were Sagebrush to lose USF funding as a result of the proposed rule, it estimates the cost of replacing its network at around \$57 million. For a small rural carrier such as Sagebrush, such replacement

is cost prohibitive without replacement funding to do so. If only relying on the same USF funding that it currently receives annually (which could eventually be ratcheted down to zero under the FCC's Mobility Fund Phase II plan) would prevent Sagebrush from replicating the coverage of its current network. Instead, if Huawei is deemed ineligible to be supported, Sagebrush would be forced to substantially reduce its coverage. Sagebrush projects that with current funding, and the increased costs of a replacement network, its network would be reduced by almost two-thirds, shrinking from 161 to 55 cell sites, while the size of its coverage area would be reduced by over two-thirds, a loss of 11,700 square miles of coverage.

The harm flowing from the inability of Sagebrush to use USF funding for Huawei equipment would extend to Sagebrush's subscribers and any member of the public residing in, working in, or travelling through Sagebrush's expansive Montana and North Dakota service area. Anyone reliant on Sagebrush's current network, including its subscribers and roamers, may find themselves without wireless coverage in areas where they were formerly able to receive Sagebrush mobile wireless service. Not only would Sagebrush lose 11,700 square miles of coverage, most of this area is not replicated by competing carriers.² For example, Sagebrush currently has 83 active cell sites in northeast Montana, compared with 12 for T-Mobile and 3 for Verizon. This loss of coverage would have severe public safety implications. In some areas where Sagebrush is the only wireless carrier, 911 service as well as voice and mobile broadband service will be lost.³ In addition, Sagebrush covers 173 miles of the U.S.-Canadian border and

² Even in areas where there are competing carriers, the public is harmed by the loss of competition. Going from three carriers to two carriers and two carriers to one carrier is a significant difference, and may well result in increased prices and reduced service quality.

³ Over the past twelve months, Sagebrush has delivered over 27,000 911 calls to public safety answering points.

provides service to more than 75 Border Patrol and U.S. Customs agents.⁴ Ironically, a measure intended to preserve national security would instead jeopardize it by depriving these important border security personnel of critical wireless service.

B. The NPRM’s Proposal Does not Protect Against Threats to National Security

The FCC’s proposed rule is based on the premise that the use of telecommunications equipment or services provided by certain Chinese companies (i.e., Huawei and ZTE) pose a heightened threat to national security. However, there has been no finding that either of these companies or their equipment poses any kind of threat to national security. The NPRM cites only to examples of “Congressional concern” about “possible risks” associated with certain foreign communications equipment providers (i.e., Huawei and ZTE) to undermine national security.⁵ While a 2012⁶ House Committee report “encouraged” private entities to seek out non-Chinese vendors and a 2017 letter signed by a group of 18 Senators and Representatives expressed concerns and suspicions about Chinese telecom companies, they made no finding that these companies pose a threat to national security.⁷ Sagebrush has spent extensive time trying to find one shred of evidence that demonstrates any wrongdoing by Huawei and, to date, has been unable to uncover any hard fact. Should such evidence be presented, Sagebrush would be the first to look for an alternative vendor and financing to begin to replace Huawei.

⁴ While Border control agents rely on Sagebrush service only on the U.S. side of the border, Sagebrush notes that Canadian carriers on the Canadian side of the border (SaskTel Mobility, Telus Mobility, and Bell Mobility (Bell Canada)) use Huawei equipment. The U.S. Border Patrol roams on these Huawei networks more often than not.

⁵ NPRM at par. 4.

⁶ From a timing perspective, this occurred after Sagebrush signed its 2010 contract with Hauawei.

⁷ *See Id.* at par. 5.

While Sagebrush recognizes that certain members of Congress may continue to harbor concerns about Huawei and ZTE, the NPRM's proposal does not ensure security. Should evidence be produced to show that Huawei equipment is a threat to national security, limiting the scope of the proposed rule to entities receiving USF funding fails to address the much broader problem of Huawei equipment utilized in the U.S. telecommunications infrastructure. If Huawei equipment is a national security threat, imposing restrictions on a subset of carriers using such equipment does nothing to reduce the threat by the exact same equipment being used by the many carriers which do not rely on USF funding. Moreover, it does not address the threat posed by the use of Huawei equipment by Canadian telecom carriers that U.S. citizens and our own Customs and Border Patrol use when roaming day in and day out between Canada and Montana and North Dakota. Nor does it address the threat posed by the use of Huawei handsets (both those purchased domestically and those brought into the U.S. by international roamers). Such handsets are deemed by some experts to pose a much greater national security threat than the network equipment that is the subject of the NPRM.⁸

Sagebrush has found its Huawei equipment to be cost effective and demonstrably secure and reliable. As noted above, since it installed its Huawei equipment, Sagebrush has experienced no network outages or cyber attacks. Based on its experience, Sagebrush believes that Huawei equipment benefits the public, particularly in its service territory where the affordability of the equipment has allowed Sagebrush to expand its service territory to include previously unserved areas.

⁸ See, e.g., *Are Huawei and ZTE a Real Threat?*, *Wall Street Journal*, May 30, 2018, at p. R6.

III. The FCC Should Defer to Congress and Expert Agencies on Matters of National Security

The FCC is not an expert agency with respect to matters of national security and should not be making determinations as to national security. The NPRM asks whether Section 201(b) and 254 of the Communications Act of 1934, as amended (“the Act”), give the Commission requisite legal authority to adopt the proposed rule. These provisions do not provide the requisite legal authority for the proposed action. Section 201 gives the FCC the authority to prescribe rules “as may be necessary in the public interest to carry out the provisions of this Act.” The FCC has not made a public interest showing that using Huawei equipment harms the public interest and this proceeding is not likely to produce this evidence given that no evidence has been produced by Congress, the Administration or the National Security Agency. Section 254 requires that USF recipients use support only for facilities and services for which the support is intended. The CMRS service provided by Sagebrush is service for which the support is intended and the specific equipment that Sagebrush uses to provide such service does not change the fact. The FCC must weigh the harm that will befall the public as a result of a loss of the coverage versus the mere speculation concerning Huawei equipment. The very real harm that would result from adoption of the FCC’s proposal clearly outweighs speculative harm.

IV. Sagebrush Should Be Given Ten Years to Come Into Compliance with Any Rules Adopted in this Proceeding

Should the Commission adopt the proposed requirement, it needs to give Sagebrush sufficient time to come into compliance. Given the financial constraints and limited resources of small carriers like Sagebrush, Sagebrush should be afforded additional time to complete the transition beyond any such time granted to larger carriers. Given the substantial investment in its

network and the time required to transition, Sagebrush should be afforded at least ten years to come into compliance. For Sagebrush, transitioning to a new network will require approximately two years of planning, including research and negotiation with vendors, network planning, and developing a financial plan to pay for the new network. Once a new vendor is chosen, the buildout, core turn up, configuration of the new network, and optimization are all likely to take at least an additional eight years.

V. Conclusion

The costs to Sagebrush and other small rural carriers, their subscribers, and the public far outweighs any perceived and unproven benefits of restricting access to wireless network equipment manufactured by Chinese telecommunications companies. The rule proposed in the NPRM would impose substantial costs on Sagebrush and other small carriers, reduce coverage to unserved and underserved areas and populations, and undermine border security, while achieving at best only de minimis gains in security, and accordingly should not be adopted.

Respectfully submitted,

SAGEBRUSH CELLULAR, INC.

By:

/s/ Michael R. Bennet

Michael R. Bennet

Womble Bond Dickinson (US) LLP
1200 19th Street NW
Suite 500
Washington, DC 20036
(202) 857-4442
Its Attorney

June 1, 2018