

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**WRITTEN *EX PARTE* SUBMISSION OF HUAWEI TECHNOLOGIES CO., LTD.,
AND HUAWEI TECHNOLOGIES USA, INC.**

Huawei Technologies Co., Ltd., and Huawei Technologies USA, Inc. (collectively, “Huawei”), by their undersigned counsel, submit this *ex parte* presentation to the Federal Communications Commission (“FCC” or “Commission”) to supplement the record in the above-captioned docket. Huawei seeks to address concerns raised by the Commission regarding obligations that Chinese laws purportedly impose on Chinese companies. Specifically, the Commission has stated that it understands that Chinese law permits the Chinese government to “demand that private communications sector entities cooperate with any governmental requests, which could involve revealing customer information, including network traffic information.” As support, the Commission points to Articles 7, 14, and 17 of China’s 2017 National Intelligence Law.¹

¹ See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Draft Report and Order, Order, and Further Notice of Proposed Rulemaking, WC Docket No. 18-89, FCC-CIRC1911-01, para. 44 (circulated Oct. 29, 2019) (“Draft Report and Order”); see also *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, ITC-214-20110901-00289 at para. 17 (rel. May 10, 2019)

Huawei has submitted substantial documentation into the record demonstrating that Chinese laws, including the National Intelligence Law, do not provide a mechanism through which the Chinese government can require Huawei to implant “backdoors” in its equipment or elsewhere, or otherwise assist the government with cyberespionage efforts.² Huawei has previously submitted an expert report by Dr. Hanhua Zhou, who clarified that any support, assistance, and cooperation obligations are strictly defensive and generally limited in scope by the Chinese constitution.³ In doing so, Dr. Zhou provided detailed analyses of various provisions of relevant Chinese laws, including Articles 7 and 14 of the 2017 National Intelligence Law.

Huawei now submits as **Attachment A** the supplemental expert report of Dr. Hanhua Zhou,⁴ which further analyzes obligations imposed on companies under Article 17 of China’s National Intelligence Law. Dr. Zhou explains that Article 17 does not, as the Commission alleges, “allow[] Chinese intelligence agencies to take control of an organization’s ... communications equipment.”⁵ Article 17 provides for the staff of national intelligence agencies, when necessary to their work, to “have preferential use of, or [to] lawfully requisition, transport vehicles, communications tools, premises or buildings of relevant organs, organizations, and individuals”

(stating that the Commission understands Chinese law to “require citizens and organizations ... to cooperate, assist, and support Chinese intelligence efforts wherever they are in the world”).

² See, e.g., Comments of Huawei Technologies Co., Ltd. and Huawei Technologies USA, Inc., WC Docket No. 18-89, at Exhibits D, E (filed June 1, 2018); Written Ex Parte Submission of Huawei Technologies Co., Ltd. and Huawei Technologies USA, Inc., WC Docket No. 18-89, at Exhibits A, B (filed Aug. 6, 2018); Written Ex Parte Submission of Huawei Technologies Co., Ltd. and Huawei Technologies USA, Inc., WC Docket No. 18-89 (filed May 10, 2019) (“Zhou Initial Expert Report”).

³ Zhou Initial Expert Report. Dr. Zhou is a research scientist at the Institute of Law, Chinese Academy of Social Sciences.

⁴ See Zhou Hanhua, “Expert Opinion on Article 17 of China’s National Intelligence Law,” (Oct. 31, 2019) (“Zhou Supplemental Report”).

⁵ *Supra* n.1.

and to “set up relevant work sites, equipment and facilities.”⁶ But neither clause allows an intelligence agency to take control of a company’s telecommunications infrastructure. First, under Chinese law, the term “communications tools” refers only to mobile phones or pagers, and does not include telecommunications facilities such as switches, servers, and routers.⁷ Second, the provision permitting staff to “set up relevant work sites, equipment, and facilities” does not impose any assistance obligations on third parties.⁸ And even where the law permits preferential use of certain objects, it imposes no obligation to assist in any interception or monitoring of information.⁹ In addition, Dr. Zhou clarifies that Article 17 is only applicable to the territory of China—and therefore has no bearing on Huawei’s U.S. operations at all.¹⁰ Nothing in the law or its application to Huawei in China allows intelligence officials to access telecommunications facilities, much less telecommunications facilities in *carriers’ networks in the United States*, or entitles intelligence officials to Huawei’s assistance in such an endeavor.

Dr. Zhou further clarifies that Article 17 is a defensive measure and does not provide authority for Chinese intelligence agencies to engage in offensive intelligence activities.¹¹ This is consistent with the generally defensive approach of the National Intelligence Law, as evidenced by Dr. Zhou’s detailed analysis of multiple other provisions in his initial report. For example, Article 28 lays out liabilities for non-compliance with the National Intelligence Law. Importantly,

⁶ National Intelligence Law of the People’s Republic of China, Article 17; *see also* Zhou Supplemental Report at para. 1.

⁷ Zhou Supplemental Report at para. 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at para. 4.

¹¹ *Id.*

parties are not necessarily subject to legal liabilities for mere non-compliance. Instead, the National Intelligence Law is concerned with parties who “obstruct” the law, a term that generally involves an intentional effort to hinder law enforcement through violence, threatening, or other acts.¹²

Respectfully submitted,

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¹² *Id.* at para. 6.

Attachment A

“Expert Opinion on Article 17 of China’s National Intelligence Law”

Expert Opinion on Article 17 of China's National Intelligence Law

Zhou Hanhua Research Scientist at the Institute of Law, Chinese Academy of Social Sciences (CASS)

As entrusted by Huawei, I have analyzed the foreign government's recent concern: "Article 17 allows Chinese intelligence agencies to take control of an organization's facilities, including communications equipment." This relates to Article 17 of the National Intelligence Law of the People's Republic of China.¹ This Article stipulates that: "The staff of national intelligence agencies may, upon presentation of relevant identification, enjoy convenient travel as needed to carry out urgent tasks. To accomplish duties as required for their work, the staff of national intelligence agencies may, in accordance with relevant national provisions, have preferential use of, or lawfully requisition, transport vehicles, communications tools, premises or buildings of relevant organs, organizations and individuals. When necessary, they may set up relevant work sites, equipment and facilities. After the tasks are completed, these items shall be promptly returned, or restored to their original conditions, the corresponding fees shall be paid in accordance with provisions, and compensation shall be made where damages are caused." In terms of the legal meaning of the above paragraphs and the several outstanding important issues related to them, I hereby give the following opinion:

1. Article 17 is divided into two paragraphs, which are applicable to different situations. The two paragraphs are distinctly different in nature and need to be interpreted separately.
2. Paragraph 1 stipulates that: "The staff of national intelligence agencies may, upon presentation of relevant identification, enjoy convenient travel as needed to carry out urgent tasks." This paragraph contains the following essentials: (1) These powers are awarded to the staff of national intelligence agencies, which are specific and do not include the staff of enterprises, public institutions, social organizations, or other state organs. (2) The prerequisite for applying this paragraph must be "as needed to carry out urgent tasks." It is generally understood that such tasks are not pre-planned, or even if they are pre-planned, they have become urgent tasks due to situation changes. Therefore, such tasks are urgent and sudden, and require emergency response. (3) The subjects of power shall present "relevant identification." Such identification is generally understood as a law enforcement document or a document proving that the subjects carrying out urgent tasks are "staff of national intelligence agencies." (4) The subjects of power "enjoy convenient travel." This means in general terms that the staff of national intelligence agencies, where feasible, have priority to use public transport vehicles such as planes, trains and cars, and are furthermore able to pass in the case of obstructed traffic. In certain cases, such convenient travel may also include exemption of tolls, parking fees and other fees when the staff use their own transport vehicles.² Beyond that, the subjects of power are not able to benefit

¹ See the *FCC Denies China Mobile Telecom Services Application* (FCC Denies International Section 214 Application of China Mobile USA; abbreviated as "FCC Denial Order" in this document).

² For example, according to the Notice of Yunnan Provincial Planning Commission on the Exemption of Fees for Parking in Parking Lots Invested by the State for State Security Organs Carrying Out Tasks in Yunnan issued on November 26, 2001, "pursuant to Articles 9 and 16 of the State Security Law and Articles 12 and 25 of the Rules for Implementation of the State Security Law", "parking lot management entities shall provide convenience as

from any advantages. (5) The subjects of obligation under this paragraph are limited to subjects that provide public transport vehicles, subjects that direct traffic, and subjects related to traffic and transport (such as places where vehicles are parked and toll stations). **The obligations of such subjects are limited to providing convenient travel and do not include any other obligations.**

3. Paragraph 2 stipulates that: "To accomplish duties as required for their work, the staff of national intelligence agencies may, in accordance with relevant national provisions, have preferential use of, or lawfully requisition, transport vehicles, communications tools, premises or buildings of relevant organs, organizations and individuals. When necessary, they may set up relevant work sites, equipment and facilities. After the tasks are completed, these items shall be promptly returned, or restored to their original conditions, the corresponding fees shall be paid in accordance with provisions, and compensation shall be made where damages are caused." Paragraph 2 contains the following essentials: (1) The subjects of power are limited to "the staff of national intelligence agencies." (2) The prerequisites for applying this paragraph must be "To accomplish duties as required for their work" and "in accordance with relevant national provisions." Paragraph 2 is applicable only when both prerequisites are met. Although no specific rules for implementing this paragraph have been issued, according to the general operating rules of Chinese law, "To accomplish duties as required for their work" indicates that a strict control procedure shall be made available within a national intelligence agency to determine duties which are applicable as work. A regular workforce is unable to decide such matters. "In accordance with relevant national provisions" means that implementation rules, as the basis for law enforcement, must be made public and not be held internally. Implementation rules are state-level regulations, and regional regulations are not allowed. Requirements such as entity conditions, permissions and procedures for initiating preferential use or lawful requisition shall be specified in the implementation rules, including safeguarding the rights of subjects of obligation to statement and to defend themselves. Compared with paragraph 1, paragraph 2 stipulates stricter conditions. It is impossible for the staff of national intelligence agencies to initiate the preferential use or lawful requisition procedure without fulfilling the prerequisite "upon presentation of relevant identification." (3) The subjects of obligation under paragraph 2 are defined as "relevant organs, organizations and individuals", which are different from the expressions in other relevant laws (such as "organs, organizations, enterprises, public institutions and individuals" in Article 11 of the Counterespionage Law, Article 13 of the People's Police Law, and Article 9 of the National Security Law (2009)). They are also different from the expression ("organs, organizations, enterprises, public institutions and individuals") in Article 15 of the draft National Intelligence Law. According to the systematic interpretation of laws and interpretation of the legislation history, paragraph 2 does not include the words "organizations, enterprises and public institutions", indicating that the legislative organ is more cautious about applying the measures in paragraph 2 to organizations, enterprises (including foreign investment enterprises), and public institutions. In practice, the measures may be applied more strictly or be restricted. Organs generally refer to state organs, and organizations have a broader meaning, including not only corporate organizations, such as enterprise legal

much as possible and exempt parking fees when provincial state security organs carry out tasks and park their cars with a local license in parking lots of airports, ports, wharfs, stations, stadium, shopping malls, parks, amusement parks, or other places invested by the state after showing a 'special pass' or 'secret pass with a car pattern'. Other parking lots shall also provide convenience for such state security organs."

persons, institutional legal persons and juridical associations, but also unincorporated organizations. Therefore, the subjects of obligation under this paragraph, if literally interpreted, should include organs, organizations, enterprises, public institutions and individuals in China (including foreign investment enterprises and foreigners in China). The scope of subjects of obligation under this paragraph and criteria for applying this paragraph to different subjects are uncertain and need to be verified in practice. (4) The power is limited to "have preferential use of, or lawfully requisition, transport vehicles, communications tools, premises or buildings of relevant organs, organizations and individuals." Accordingly, the subjects of obligation are obligated to transfer the rights of use and control of transport vehicles, communications tools, premises or buildings to subjects of power, and do not have any other obligations. **This is also the "administrative requisition" that is common in the laws of China and other countries where state administrative organs can temporarily obtain the right to use requisitioned property for public interests and public purposes, without transferring the property ownership. Administrative requisition is not exclusive to intelligence agencies.** For example, Article 44 of the Real Right Law stipulates that: "In case of emergent dangers or disasters, one is allowed to use the real properties or movable properties of entities and individuals in accordance with the statutory power limit and procedures." Article 15 of the Regulation on the Relief of Natural Disasters stipulates that: "During the emergency period for the relief of a natural disaster, the local people's governments at or above the county level or the emergency coordination bodies of the people's governments may requisition materials, equipment, transport vehicles and premises in their administrative regions, but shall return them immediately after the emergency rescue work is done and offer compensations pursuant to the relevant state provisions." Article 20 of the 2004 Amendment to the Constitution of the People's Republic of China revised Article 10(3) of the Constitution from "The State may, in the public interest, requisition land for its use in accordance with the law." to "The State may, in the public interest and in accordance with law, expropriate or requisition land for its use and make compensation for the land expropriated or requisitioned." Article 22 of the 2004 Amendment to the Constitution revised Article 13 of the Constitution from "The State protects the right of citizens to own lawfully earned income, savings, houses and other lawful property." and "The State protects according to law the right of citizens to inherit private property." to "Citizens' lawful private property is inviolable.", "The State, in accordance with law, protects the rights of citizens to private property and to its inheritance.", and "The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and make compensation for the private property expropriated or requisitioned." The Amendment to the Constitution clearly specifies "expropriated or requisitioned" objects as things or property, which do not have the obligation to act. Expropriation involves the transfer of ownership, whereas requisition does not. This amendment is clearly and consistently reflected in other relevant subsequent laws. For example, Article 117 of the General Provisions of Civil Law stipulates that: "Fair and reasonable compensation shall be paid if any real properties or movable properties are expropriated or requisitioned for public interests, according to the authority and procedure as prescribed by the law." This reflects the difference between expropriation and requisition in the nature of law: expropriation involves the transfer of ownership, whereas requisition does not. In addition, expropriated or requisitioned objects are limited to "real properties or movable properties" and do not involve the obligation to act. The

National Intelligence Law shall also be interpreted within the constitutional framework. The obligation boundaries of paragraph 2 in Article 17 can therefore be clearly defined. First, the obligations are limited to four types of objects, namely, transport vehicles, communications tools, premises and buildings, which all belong to "things" of the subjects of obligation. **These objects do not involve the behavior of the subjects of obligation and do not include objects not specifically listed, such as business secrets, business information, and communications information attached to communications tools.** Second, "preferential use" or "lawful requisition" only temporarily transfers the rights of use and control of these things during the period when the staff of national intelligence agencies carry out tasks. **The staff of national intelligence agencies can control and use these things, but the ownership remains unchanged. Besides the temporary transfer of the rights of use and control, the owners and operators (subjects of obligation) are not obligated to provide other intelligence law enforcement cooperation (except normal O&M obligations to maintain these things). For example, the owners and operators are not obligated to assist in interception/monitoring or information acquisition.** Although the Constitution does not explicitly define "preferential use", the objects can only be things rather than behavior, according to normal understanding in Chinese. The provisions of "promptly returned" and "restored to their original conditions" in this paragraph also indicate that the objects can only be things rather than behavior. In addition, each type of object is specific and has the characteristic "immediate return after use" of things, so that the objects can be "promptly returned" or "restored to their original conditions." **For example, it should be emphasized that the term "communications tools" in Article 17 of the National Intelligence Law refers to "tools" rather than "facilities"; however, the FCC Denial Order incorrectly translated this term into "communications equipment." According to relevant Chinese laws involving "communication tools"³, "communication tools" refer to mobile phones or pagers, rather than telecommunications facilities such as switches, servers, and routers.** (5) According to the preceding reasoning, after the staff of national intelligence agencies obtain the rights to temporarily control and use any type of the objects, they may "set up relevant work sites, equipment and facilities" on the objects "when necessary", which is a subordinate and subsidiary authority not requiring separate authorization. Even if authorized, no new authority will be generated, and no new obligations will be incurred for third parties. The subjects that "set up relevant work sites, equipment and facilities" are still the staff of national intelligence agencies rather than third parties, and third parties cannot be required to perform assistance obligations. (6) After completing the tasks, the staff of national intelligence agencies shall return the objects promptly, or if any object is changed, restore the object to its original condition, with the expenses for the use or requisition to be paid in accordance with provisions. The FCC Denial Order uses Article 17 of China's National Intelligence Law as an example and raises its concern about the security risks brought by Chinese intelligence agencies' control over communications equipment in organizations to the U.S. This is an incorrect interpretation of the Article. First, the staff of national intelligence agencies have transferred the rights of control and use of an object back to its owner or operator

³ Article 29 of the Regulation of the People's Republic of China on Flood Control (2011), Article 29 of the Notice of the All China Lawyers Association on Issuing the Rules on the Handling of Criminal Cases by Lawyers (Provisional) (1997), Article 2 of the Provisional Regulation on Determining the Price of Property Involved in Cases of Discipline Inspection and Supervision Organs (2010), Article 6 of the Regulation on Handling Major Animal Epidemic Emergencies (2006), and more

after they promptly return the object or restore it to its original conditions. Second, enterprises can decide not to sell or provide the communication tools that have been requisitioned to customers to avoid the possible compromise of customers' communications security. (7) The objects are lawfully used or requisitioned. Therefore, compensation shall be made according to law if any loss is caused to the objects in the preferential use or lawful requisition.

4. Article 17 is applicable only to the territory of China. The reasons are as follows: (1) The Instructions on the draft of National Intelligence Law of the People's Republic of China specifies that: "Foreign bodies, organizations or individuals who engage in acts that endanger the national security and interests of China within Chinese territory must face legal punishment. National intelligence agencies shall provide intelligence as a reference or basis for preventing, curbing and punishing such acts." "The staff of national intelligence agencies may, when lawfully exercising their duties, acquaint themselves with the relevant organs, organizations, enterprises, public institutions and individuals. Moreover, they reserve the right to inquire into relevant circumstances, consult or obtain relevant files, materials and goods, enter relevant limited-access areas and premises, and enjoy convenient travel."⁴ A literal interpretation indicates that the above mentioned measures are only allowed within Chinese territory. In addition, these measures are taken for "preventing, curbing and punishing the acts" that "endanger the national security and interests of China." These acts are defensive, and do not authorize national intelligence agencies to engage in offensive intelligence activities.⁵ (2) According to Article 16 ("with permission and after presenting relevant identification, enter relevant limited-access areas and premises") and Article 18 ("may request customs, exit/entry border inspection authorities and other such bodies to provide exemption from inspection and other convenience"), the acts are applicable only within Chinese territory. This means that the staff of national intelligence agencies cannot enter limited-access areas and premises after presenting identification outside of China, or ask customs and border inspection authorities to provide convenience from outside of China. Therefore, according to the systematic interpretation of laws, Article 17 is applicable only within Chinese territory. (3) Article 16 of the draft National Intelligence Law⁶ stipulates that: "The staff of national intelligence agencies may, when lawfully exercising their duties according to relevant national regulations, with permission and after presenting relevant identification, enter relevant limited-access areas and premises; they may, upon presentation of relevant identification, enjoy convenient travel as needed to carry out urgent tasks. As is necessary for their work, the staff of national intelligence agencies may, in accordance with relevant national provisions, have preferential use of, or lawfully requisition, the transport vehicles, communications tools, premises or buildings of organs, organizations, enterprises, public institutions and individuals. When necessary, they may set up relevant work sites, equipment and facilities and once the tasks are completed, these items shall be promptly returned, or restored to their original conditions, while the

⁴ Chen Wenqing, Minister of State Security of the People's Republic of China, *Instructions on the National Intelligence Law of the People's Republic of China (Draft)*, at the 25th Session of the Standing Committee of the Twelfth National People's Congress on December 19, 2016.

⁵ For a comprehensive analysis of the defensive and reactive nature of legal obligations under China's national security laws, see: Zhou Hanhua, *On the Nature of Legal Obligations Under China's National Security Laws: Based on Comparison of Chinese and Australian Laws*, Peking University Law Journal, No. 4 (2019) p. 871-890.

⁶ The 25th Session of the Standing Committee of the Twelfth National People's Congress reviewed the *Instructions on the National Intelligence Law of the People's Republic of China (Draft)* and issued the Draft at the official website of the National People's Congress of the People's Republic of China to solicit public opinions.


corresponding fees shall be paid in accordance with the necessary provisions, and compensation shall be made where damages are caused." Articles 16 and 17 in the National Intelligence Law were in the same article, indicating that they are applicable to the same scope mentioned above. (4) No extraterritorial effect is specified for the National Intelligence Law. This Law is effective only within Chinese territory, and does not require subjects outside of China to fulfill legal obligations according to Chinese law.

5. Implementation assurance mechanisms for Article 17. The National Intelligence Law provides at least four mechanisms to ensure strict compliance with Article 17 and other provisions. (1) Article 19 stipulates that: "National intelligence agencies and their staff shall act in strict accordance with the law and must not exceed or abuse their powers, infringe on the legitimate rights and interests of citizens and organizations, use their position to facilitate personal gains for themselves or others, or disclose state secrets, business secrets and personal information." This is a typical preventive and detective control mechanism for codes of conduct that prevents acts beyond one's authority and abuse of one's authority from occurring. (2) Article 26 stipulates that: "National intelligence agencies shall establish and implement a strict supervision and security review system, supervise their staff's compliance with laws and disciplines, and take necessary measures according to the law to conduct security reviews on a regular or irregular basis." This is a typical top-down proactive review control mechanism, which is initiated by national intelligence agencies. (3) Article 27 stipulates that: "Any individual or organization shall have the right to prosecute or accuse national intelligence agencies and their staff of any abusive conduct and other law violating acts. The relevant authorities accepting the prosecution or accusation shall promptly investigate it and inform the prosecutor and accuser of the result of the investigation. Furthermore, no individual or organization may suppress or retaliate against individuals and organizations that have prosecuted or accused national intelligence agencies and their staff. National intelligence agencies shall provide convenient channels for individuals and organizations to prosecute, accuse, and report instances of abuse and law violation, while keeping details of the prosecutor and accuser confidential." This is a typical external prosecution and accusation supervision mechanism, which enhances the supervision of intelligence activities through external participation. (4) Article 31 stipulates that: "National intelligence agencies and their staff who have exceeded or abused their powers, infringed on the legitimate rights and interests of citizens and organizations, used their position to facilitate personal gains for themselves or others, or disclosed state secrets, business secrets and personal information shall be punished according to law. If the act constitutes a crime, criminal liability shall be pursued according to law." This is a post-event legal accountability mechanism, which regulates the activities of intelligence agencies by lawfully enforcing deterrent penalties. In addition to the four mechanisms, it is equally important that, according to the Administrative Reconsideration Law and Administrative Procedure Law, the subjects of obligation who consider that administrative acts, such as the preferential use or lawful requisition, of national intelligence agencies infringe upon their legitimate rights and interests or who believe that their transport vehicles, communications tools, premises or buildings shall not be preferentially used or lawfully requisitioned may apply for administrative reconsideration or file administrative proceedings according to law. The National Intelligence Law does not explicitly define remedy mechanisms such as administrative reconsideration and administrative proceeding. This does not indicate that these mechanisms are excluded from application.

6. Legal consequences of failure to comply with the obligations under Article 17. The National Intelligence Law does not explicitly define the legal liability of the subjects of obligation who fail to fulfill the provisions in Article 17. However, Article 28 of the Law stipulates that: "Where provisions of this Law are violated by obstructing national intelligence agencies and their staff from lawfully carrying out intelligence work, the national intelligence agencies are to recommend relevant units to give out sanctions, or national security organs and public security organs are to give warnings or up to 15 days of detention; where a crime is committed, criminal liability shall be pursued according to law." Therefore, in the course of fulfilling the obligations under Article 17, if "obstruction" occurs, the subjects of obligation shall bear the administrative legal liability and criminal legal liability prescribed in this Article. The National Intelligence Law and Public Security Administration Punishment Law do not specify or list the circumstances that constitute "obstruction" in the sense of administrative violations. In the Chinese language and Chinese law, "obstruction" generally involves an intentional effort to hinder law enforcement through violence, threatening or other acts. Therefore, not all actions or omissions that fail to fulfill the legal obligations under Article 17 in a timely and comprehensive manner are regarded as "obstruction." If the rights of control and use of the four types of objects are not transferred in a timely and comprehensive manner due to objective reasons, this does not constitute "obstruction." Administrative legal liability cannot be pursued in accordance with Article 28 where the failure to fulfill legal obligations does not constitute "obstruction." In addition, according to the principle of no penalty without a law, any criminal liability to be pursued in China must be found in the Criminal Law. Slip laws including the National Intelligence Law cannot directly establish a crime or provide for criminal liability. Failure to fulfill the obligations under Article 17 is most likely to trigger the crime of obstructing public affairs as stipulated in Article 277 of the Criminal Law. Article 277(1) of the Criminal Law stipulates that: "Whoever uses violence or threatening to obstruct state personnel from performing their duties in accordance with the law is to be sentenced to no more than three years of fixed-term imprisonment, criminal detention or control, or a fine." Article 277(3) stipulates that: "Whoever intentionally obstructs national security organs or public security organs from carrying out their national security assignments, and has caused serious consequences even though no violence or threatening has been used is to be punished in accordance with the first paragraph." According to paragraph 1 of this Article, the premise for determining whether a crime is committed must be "administration according to law." A clear scope for the execution of public affairs must be specified; for example, lawful requisition refers to "discharging their duties according to law." If an enterprise is required to assist in building backdoors, this goes beyond the provisions of Article 17 in the National Intelligence Law and is not interpreted as "discharging their duties according to law." Additionally, "obstruction" must be specific, rather than general support or assistance obligations. China's Criminal Law has no charges or provisions regarding criminal liability for failing to fulfill the obligation of intelligence cooperation. In the Criminal Law, only Article 111 "Whoever steals, secretly gathers, purchases, or illegally provides state secrets or intelligence ..." defines intelligence-related crimes; however, this is not applicable to the failure to fulfill the obligation of intelligence law enforcement. If enterprises do not build backdoors, they will not be considered as specific obstructions, and consequently there is no legal basis for separately pursuing criminal liability.

7. With regard to the issue of lawyers' participation, according to the *General Office of the Central Committee of the Communist Party of China and the General Office of the State Council Issuing the Opinions on Promoting the Legal Adviser System and the Government Lawyer and Corporate Lawyer System* (June 16, 2016), by the end of 2017, all departments and commissions of the CPC Central Committee and state authorities, and local CPC and government departments at and above the county levels shall universally establish positions of legal advisers and government lawyers. Legal advisers refer to the staff who engage in legal affairs with the CPC and government departments as well as legal experts and lawyers who are employed by these departments. The responsibilities of legal advisers include but are not limited to: providing legal advice for major decision-making and administrative actions, and providing legal services for handling legal cases, petition cases, and major emergencies. Government lawyers are government officials of the CPC and government departments who have obtained a government lawyer certificate in accordance with national provisions. Government lawyers have the right to meet, consult case files, investigate, collect evidence and pose questions, cross-examine, and argue as well as other rights in practice activities as stipulated in the Lawyers Law. Therefore, in the above mentioned implementation assurance mechanisms of Article 17, it is necessary to involve legal advisers and government lawyers of intelligence agencies. Major law enforcement decisions of national intelligence agencies, including "administrative expropriation and requisition", must also go through verification by the legal review system defined in the *Guiding Opinions of the General Office of the State Council on Comprehensively Implementing the Administrative Law Enforcement Publication System, the Recording System of Law Enforcement in the Whole Process and the Legal Review System of Major Law Enforcement Decisions* (General Office of the State Council No. [2018] 118). Decisions that fail or do not go through legal review shall not be made. Both legal advisers and government lawyers will play an important role in the review process. Therefore, the notion that lawyers do not participate in China's intelligence work is not substantiated. Additionally, the subjects of obligation under Article 17 may also employ lawyers to provide relevant legal services in different phases in accordance to China's Lawyers Law, and there is no legally restrictive provisions or other legal impediment. Legal services offered by lawyers include: (1) serve as a legal adviser in administrative procedures, such as the preferential use or lawful requisition of objects, to provide non-litigation legal services, answer inquiries concerning law, and represent clients in writing documents regarding legal matters; (2) serve as an agent if a subject of obligation decides to apply for administrative reconsideration or bring an administrative lawsuit against the decision of the preferential use or lawful requisition of objects, or if the subject of obligation is given warnings or up to 15 days of detention by national security organs or public security organs in accordance with the National Intelligence Law; (3) accept authorization by a criminal suspect or defendant or accept appointment by a legal aid agency according to law to act as a defendant and participate in proceedings if criminal liability is pursued according to law.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

A handwritten signature in black ink, appearing to read 'Hanhua Zhou', written over a horizontal line.

Hanhua Zhou

Executed on Oct 31, 2019
Beijing, PRC