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November 8, 2019

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, D.C. 20554

Re: WC Docket 18-89

Dear Ms. Dortch:

On November 6, 2019, Christopher Reno and Jason Wilcox of Union Telephone Company, dba Union Wireless (“Union Wireless”), along with undersigned counsel, met with Commissioner O’Rielly and Erin McGrath, and, on November 7, 2019, we met with Nirali Patel, Umair Javed, Will Adams, and William Davenport, to discuss the Commission’s upcoming Report and Order, Order, and Further Notice of Proposed Rulemaking in the above-captioned proceeding (the “*Circulated Order*”).<sup>1</sup>

At the outset of each meeting, Union Wireless made clear that the company’s owners fully understand the need to provide secure communications throughout the United States. The Union Telephone Company was founded over 100 years ago by the father of a World War II veteran who survived the Allied landing at Omaha Beach, and today the company places a priority on providing opportunities for veterans, employing persons who have served in the U.S. military at a rate twice that of the percentage of veterans in the general civilian population.

If it is the U.S. government’s decision to replace equipment from Huawei/ZTE or other companies that pose a threat to our nation’s security, then Union Wireless will undertake to meet the challenge.

Union Wireless has approximately 418 cellular towers that would be affected by requirements in the *Circulated Order*. These towers are spread across 90,000 square miles, some at elevations more than 10,000 feet above sea level, along with associated switching and ancillary equipment. Union Wireless has invested over \$34 million in Huawei network equipment, and estimates that replacing it will cost between \$40-45 million, plus another \$60-65 million in installation costs.

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<sup>1</sup> FCC-CIRC1911-01 (Oct. 29, 2019) available at <https://docs.fcc.gov/public/attachments/DOC-360522A1.pdf>.

At this time, it is not possible to insert gear provided by a non-Huawei equipment vendor into an operating network utilizing Huawei equipment. An entirely new network must be constructed. Upon the completion of construction, the old network must be cut over to the newly-constructed network, after which the old network can be dismantled. From Union Wireless' perspective, any requirement to replace Huawei network equipment will make it imperative for Union Wireless to carefully manage much-needed network expansion and upgrades in the interim.

Accordingly, it is critical for the Commission to act with great care, as it is not overstating matters to say that this situation is existential for Union Wireless, and likely for other small carriers serving rural America, which is to say that the requirements the Commission adopts could foreclose the ability of these carriers to continue operating.

Our discussions focused primarily on language in the proposed *Circulated Order* that would require Universal Service Fund ("USF") recipients to:

clearly demonstrate that no USF funds were used to purchase, maintain, improve, modify, operate, manage, **or otherwise support** any equipment or services produced or provided by a covered entity (emphasis added).<sup>2</sup>

Without providing bright lines, the Commission goes on to state that it believes it unlikely that USF recipients will be able to demonstrate that no USF funds were used, "on any part of the project" and that all labor and "any and all related expenditures" connected to the installation of cell site equipment provided by a covered company (i.e., Huawei, ZTE, or any other company designated by the Commission) would be considered ineligible expenditures.<sup>3</sup> While the *Circulated Order* is not clear, it appears that a USF recipient will either be in the position of submitting an allocated expense report for approval after expenditures are made, or requesting a waiver to allow certain "related expenditures" to be covered by USF support.

Union Wireless' representatives stated that, going forward, the company would be able to prevent USF support from being expended on equipment and services produced or provided by a covered entity. Union Wireless' parent, Union Telephone Company, is a rural local exchange carrier and has been allocating capital and operating expenses for decades, and Union Wireless routinely allocates expenses for accounting purposes. Every component part of a project, as well as the labor, can be allocated into USF/non-USF categories. Accordingly, Union Wireless urged the Commission to remove the draft language, "or otherwise support,"

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<sup>2</sup> *Circulated Order* at ¶ 66 (emphasis added).

<sup>3</sup> *Id.*

and related language expressing doubt that carriers will be able to allocate expenses into appropriate categories. Unless this language is removed, the resulting uncertainty will freeze Union Wireless' ability to move forward with any project and cause potentially irreparable harm to the company's ability to provide service.

The harmful effect of retaining this overbroad language can be illustrated by how the requirements of the *Circulated Order* would apply to the installation of an American-made backup generator at a cell site that provides electricity to equipment provided by a covered company. A backup generator improves the health and safety of citizens and first responders. It improves overall network reliability. It improves the quality of service. It does not jeopardize national security. It fulfills the directive Congress gave the FCC to use USF support to ensure that services in rural areas are reasonably comparable to those in urban areas.<sup>4</sup>

Yet, the overbroad language discussed above could restrict carriers from installing backup generators with USF support. If this is the case, carriers may choose not to do the backup generator installation at all. This would frustrate the essential purpose of the federal universal service fund: to provide support for investments in high-cost areas that private businesses might not otherwise choose to make, to *preserve and advance* universal service throughout rural and high-cost areas.<sup>5</sup>

Retaining the overbroad language in the *Circulated Order* could prohibit federal USF support from being used to purchase equipment made in the United States, or for American workers to provide labor for any number of other essential and proper purposes, such as for example:

- Tower purchase and construction
- Purchase and installation of concrete
- Expanding a base station shed to accommodate new equipment
- Replacing a base station air conditioning unit
- Purchase and installation of transmission lines
- Purchasing and installing fiber from switch to cell site
- Building a road to a new cell site

The list of possible related expenditures is so broad as to make the proposed language unworkable. To be clear, Union Wireless is completely willing and able to use its own funds to install or maintain equipment provided by a covered company, and segregate those expenditures in a clear and verifiable way, so that the Commission can be sure that federal USF

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<sup>4</sup> See, 47 U.S.C. § 254(b)(3).

<sup>5</sup> See, 47 U.S.C. § 254(b)(5), 254(d).

support is only used for the kinds of expenditures set forth above. In its legitimate desire to prohibit USF expenditures on equipment or services produced and provided by covered companies, the Commission should not, inadvertently or otherwise, restrict an American company from using USF to purchase goods made in America and employ American labor.

Union Wireless also noted that the Commission recognized that the new rule might encourage some providers to replace equipment that is not secure, prior to the end of its life cycle, which would serve the public interest.<sup>6</sup> This sentiment is misplaced, because the entire purpose of the Notice of Proposed Rulemaking accompanying the *Circulated Order* is to, “make the requirement to remove covered equipment and services by ETCs contingent on the availability of a funded reimbursement program.”<sup>7</sup>

Union Wireless urged the Commission not to use the overbroad language in paragraph 66 of the *Circulated Order* to squeeze carriers into abandoning equipment from covered companies before a reimbursement mechanism is in place. Our understanding is that this is not the Commission’s intent, but it will surely be the result if the Commission were to retain the overbroad language. And the results for small wireless carriers that have recently made significant capital investments, some of which have not yet been paid for, could be catastrophic. A reimbursement mechanism **must** be in place before carriers are forced to replace an entire network.

Union Wireless also discussed “white label” equipment. Most times, when a product is manufactured by a covered company, a carrier can discern that fact. On the other hand, when a covered company manufactures one or more components that are combined with those manufactured elsewhere and made part of a much larger finished product, such as a switch, it is very difficult and sometimes impossible for a purchaser to discern whether the entire finished product is 100% free of components manufactured by covered companies. It is also very difficult for small carriers to obtain representations, warranties, and indemnifications from equipment vendors about the content of their products. Accordingly, Union Wireless suggested that the Commission may seek to have equipment vendors make clear that their products do not contain components sourced by a covered company.

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<sup>6</sup> *Circulated Order* at ¶ 69.

<sup>7</sup> Notice of Proposed Rulemaking at ¶ 112.

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We thank Commissioner O’Rielly and all of the Commission’s advisors for their time and attention to this important matter. Should you have any questions, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria  
Counsel for Union Telephone Company,  
dba Union Wireless

cc: Hon. Michael O’Rielly  
Nirali Patel  
Umair Javed  
Will Adams  
William Davenport  
Christopher Reno  
Jason Wilcox