



Office of the Attorney General
Washington, D. C. 20530

November 13, 2019

The Honorable Ajit Pai
Chairman of the Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Dear Chairman Pai:

I write to strongly support the Federal Communications Commission's draft Report and Order concerning national security threats to the communications supply chain ("Report and Order"), released by the Commission on October 29, 2019, particularly the proposed designation of Huawei and ZTE as covered companies for purposes of that rule. *See In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89 (Oct. 29, 2019).

As you and your fellow Commissioners know well, we are at a critical moment of technological change. Telecommunications providers in America and around the world are deciding who should build and service the Fifth Generation (5G) of wireless networks. We will become even more dependent on those networks as more and more devices and services are connected and operate at unprecedented speeds. Human life and safety as well as critical government functions will ride on them. Our national defense will depend on the security of our allies' networks as well as our own. Protecting our networks (rural and urban alike) from equipment or services offered by companies posing a threat to the integrity of those networks is therefore a vital national security goal. And as the Commission noted in the Report and Order, "providing a secure service is part of providing quality service." *Id.* ¶ 29.

In light of the Commission's openness to considering all available evidence about an entity in making designation decisions, including determinations by other executive agencies, ¶ 40, I write to highlight allegations the Department of Justice has made against two entities the Commission is considering designating, Huawei and ZTE. Federal criminal charges are pending against Huawei in the Eastern District of New York relating to alleged violations of our embargo on Iran, bank fraud, and obstruction of justice, among several other criminal charges. The Department of Commerce pointed to those charges when it placed Huawei on its Entity List (as the Commission notes at paragraph 46). *See* 84 Fed. Reg. 22961 (May 21, 2019). In addition, the Department of Justice is separately prosecuting Huawei in the Western District of Washington for trade secret theft, fraud, and (again) obstruction of justice. The grand jury has alleged in that case that Huawei exploited a business relationship with T-Mobile to steal that company's intellectual property, even sending employees from China to do so when Huawei employees in America proved unwilling or unable to do as Huawei executives in China directed. Contemporaneously, according to the indictment in that case, Huawei offered bonuses to employees based on the value of information they stole from other companies around the world. As to ZTE, it pleaded guilty in 2017 to violating our embargo on Iran by sending approximately \$32 million dollars' worth of U.S. goods to that country and, when the

conduct was exposed, making false statements and obstructing justice in an effort to defeat the Department's investigation.

While these cases do not discuss activities that would directly affect the security of our telecommunications networks, it is impossible to ignore them in evaluating whether those companies should be trusted to build or service networks with the support of federal funds. As the Report and Order notes, a company's ties to a foreign government and willingness to take direction from it bear on its reliability. ¶ 27. Surely a willingness to break U.S. law combined with a determination to avoid the consequences by obstructing justice argues against the reliability of a provider. The need for trusted partners in our networks becomes particularly clear when considering the potential consequences of integrating an untrusted entity into our networks. As the Commission determined in its China Mobile Order, 34 FCC Rcd 3361 (2019), and as the Report and Order highlights, ¶¶ 43-44, an untrusted provider could facilitate espionage (including economic espionage) and disruption of our critical infrastructure at the whim of a foreign power. In sum, their own track record, as well as the practices of the Chinese government, demonstrate that Huawei and ZTE cannot be trusted.

The Report and Order recognizes this threat, and I applaud the FCC's efforts to ensure that the Universal Service Fund (USF) is not used to undermine our national security. Prohibiting USF recipients from using those funds to purchase equipment and services from companies like Huawei and ZTE helps secure our networks and protect our national security by encouraging those recipients to choose trusted, reliable providers. On the other hand, allowing recipients to use USF funds to purchase such equipment and services will have the opposite effect, including, for example, rewarding Huawei and ZTE for their business practices and putting further pressure on Huawei and ZTE's competitors, which already labor in a market wildly distorted by Chinese state-funding.

Indeed, the Chinese have subsidized their firms to lock up as much of the market as possible. This, as well as conduct like that alleged in our cases, threatens to thwart the emergence of fair competition and lead to irreversible market dominance that will force all of us onto Chinese systems, causing unmitigable harm to our national security.

For these reasons, as well as the others you have outlined in the Report and Order, the Department supports, and strongly encourages your fellow Commissioners to support, the proposed prohibition on the use of USF funds for companies like Huawei and ZTE and the launch of a process to remove and replace such equipment. At this critical moment, while the world decides where to place its trust, we should not signal that Huawei and ZTE are anything other than a threat to our collective security. For that is exactly what they, through their actions, have shown themselves to be.

Sincerely,



William P. Barr
Attorney General