

November 15, 2019

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

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

Dear Ms. Dortch:

On November 13, 2019, Mary Henze and Brendan Haggerty of AT&T, Jeff Lanning of CenturyLink, and I met with Nirali Patel, Wireline Advisor to Chairman Pai. Also on November 13, Mary Henze and I met with Erin McGrath, Legal Advisor, Wireless, to Commissioner O’Rielly. On November 14, Brendan Haggerty and I met with Joseph Calascione, Legal Advisor to Commissioner Carr. Subsequently, Brendan Haggerty, Jeff Lanning, and I met with Umair Javed, Legal Advisor, Wireless and International, to Commissioner Rosenworcel. Also on November 14, Brendan Haggerty of AT&T, Jeff Lanning of CenturyLink and I met with Justin Faulb, Aaron Garza, Trent Harkrader, William Layton, Ryan Palmer and John Visclosky of the Wireline Competition Bureau. Finally, on November 15, 2019, Brendan Haggerty and I met with William Davenport, Chief of Staff and Senior Legal Advisor for Wireless and International to Commissioner Starks. The purpose of these meetings was to discuss USTelecom’s views on the Draft item in this docket scheduled for a Commission vote on November 22, 2019.¹

USTelecom reiterated its support for the Commission’s overall objective of mitigating security risks in the nation’s communications infrastructure, offering suggestions that would help make the proposed actions more administrable and add clarity for those seeking to comply with the new rule. USTelecom expressed concern that demonstrating compliance with the rule may be difficult, both for service providers that have covered equipment in their networks today and even for those that do not.

In particular, USTelecom members have questions about the Draft’s certification requirements. The Draft is clear that it imposes a “blanket ban” on equipment and services from covered companies and explicitly rejects a “component-by-component” certification approach as being too burdensome.² It should therefore clarify in the order that to comply with the new

¹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket Nos. 18-89, Report and Order, Order and Further Notice of Proposed Rulemaking, FCCCIRC 1911-01 (Draft).

² *Id.* at ¶ 64 (“It would be far more difficult, costly, and invasive for the Commission to obligate providers to verify this same commitment on a product-by-product or even component-by-component basis.”)

certification requirement, a USF recipient does not need its non-covered-company-suppliers to obtain sub-certifications from their underlying component suppliers. USTelecom also urges the Commission to issue a public notice requesting comment on the proposed certification language. As part of that public notice, the Commission also must seek comment on how quickly USF recipients could begin making these certifications. Similarly, the Commission should specify what it means by “affirmatively demonstrate” that no funding was spent with covered providers since proving a negative is exceedingly burdensome for all parties involved. Alternatively it could adopt a more reasonable standard.³ It is also difficult to imagine how information now filed in the High Cost Universal Broadband Portal (HUBB) (location address and latitude and longitude) would provide USAC with information useful to a review of supply chain certifications.⁴ This lack of clarity in the Draft order, makes seeking comment on the exact language and scope of the certifications very important to ensuring that entities can comply with confidence.

Accordingly, USTelecom requests that in paragraph 70 and 71, the Commission make the following edits to the Draft:

- Para. 70: We direct the Wireline Competition Bureau, in coordination with USAC to develop a proposal for revising the relevant information collections for each of the four USF programs to require a certification attesting to compliance with the rule we adopted today and issue a Public Notice seeking comment upon the new certification language.
- Para. 71: We believe that USAC audits are the most effective way to determine compliance with the requirements of this Report and order, and we direct USAC to implement audit procedures for each program consistent with the rules we adopt today consistent with the certification language developed through public comment. . . . And ~~we note that many ETCs receiving High Cost funding now report the projects they complete using federal funds to the High Cost Universal Broadband portal, allowing relatively swift verification by USAC of compliance. To the extent that other ETCs do not yet report information to USAC that would verify compliance,~~ [W]e direct WCB and USAC to seek comment on its information collection procedures through the Public Notice mentioned above to ensure the information collection and audit procedures provide for the reporting of USF expenditures in a manner that will allow efficient oversight and thorough compliance.

Another way that the Commission can help ensure compliance is to add clarity with respect to what it means to “maintain, improve, modify, operate, manage, renew, or otherwise support any equipment or services provided or manufactured by a covered company.”⁵ Given the potential breadth of what could fall into such a description is far attenuated from the actual equipment itself, USTelecom supports the requests of others in this docket, including the Rural Wireless

³ *Id.* at para. 71.

⁴ *Id.* at para. 71, n.180.

⁵ *Id.* at para. 61.

Association, to add language distinctions that would add such clarity.⁶ USTelecom noted that to the extent new equipment is required in the near term as a condition of complying with the rule, there is a limited supply of vendors making suitable equipment, which may affect overall expense.

Additionally, the Draft importantly and correctly emphasizes a “whole of government” approach,⁷ and USTelecom expressed its desire for the Commission’s determination of covered entities to remain consistent with other federal entities in the future. To that end, USTelecom proposes that the Commission should add language to the Draft that directs the Public Safety and Homeland Security Bureau to conduct an annual report surveying other federal entities, including but not limited to the Department of Commerce, Department of Defense, and Department of Homeland Security, to determine what, if any, communications supply chain entities are designated as national security threats. To the extent the Bureau finds differences between the Commission’s list of covered entities and other branches of the federal government, the Bureau should note any discrepancies and provide a recommendation to the Commission as to whether it should consider harmonizing its list with those of the other branches of government.

Please contact me with any questions.

Sincerely,

_____/s/_____
Mike Saperstein
Vice President, Policy & Advocacy

cc: Meeting Participants

⁶ See e.g., Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-89, 2 (filed Nov. 12, 2019) (“No universal service support may be used to purchase or obtain any *additional* equipment or *new* services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain.” (emphasis added)).

⁷ Draft at para. 67.