

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

In the Matter of

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

To: Chief, Wireline Competition Bureau

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby responds to the Wireline Competition Bureau’s October 26, 2018 *Public Notice* seeking comment on the Commission’s implementation of certain provisions of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (the “*2019 NDAA*”).¹ The statutory provisions at issue place potential limitations on various types of federal government expenditures for procurement of telecommunications “equipment, services, or systems” provided by certain Chinese companies. In particular, comment is sought on the impact of the statutory language on the Commission’s above-captioned rulemaking proceeding,² initiated last spring, several months prior to the passage of the *2019 NDAA*.

The Bureau seeks comment on the meaning and import of several provisions of the *2019 NDAA*. First, the *Public Notice* recites the restriction contained in Section 889(b)(1) that prohibits “the head of an executive agency from obligating or expending ‘*loan or grant funds*’ to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or

¹ See *Public Notice*, “Wireline Competition Bureau Seeks Comment on Section 889 of John S. McCain National Defense Authorization Act for Fiscal Year 2019,” WC Docket No. 18-89, DA 18-1099 (rel. Oct. 26, 2018) (“*Public Notice*”).

² See *Protecting Against National Security Threats to the Communications Supply Chain*, 33 FCC Rcd 4058 (2018) (“*NPRM*”).

extend or renew a contract) to procure or obtain equipment, services, or systems’ ‘that use[] covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.’”³ The Commission seeks comment on the “relevance, if any” of this prohibition to the current rulemaking with respect to “support provided by the Universal Service Fund (USF)?”⁴

It does not appear that this provision is intended to apply to USF support. The language references only loans and grants, *i.e.*, conditional (repayment required) or unconditional (outright award) disbursement of monies for a defined purpose.⁵ By contrast, funding from the USF is generally understood to constitute a *subsidy*, *i.e.*, government money directed toward facilitating the implementation of publicly-beneficial projects undertaken by a recipient for which the recipient has also allocated its own funds.⁶ Accordingly, Section 889(b)(1) does not appear to mandate that the Commission specifically withhold current USF subsidies from companies deploying “covered telecommunications equipment” as it does not reference such subsidy activity. Moreover, the restrictions on loans and grants (as opposed to those contained in Section 889(a) of the 2019 NDAA governing direct procurement) do not go into effect until two years

³ *Public Notice* at 1, citing 2019 NDAA, Sec. 889 (b), 132 Stat. at 1917 (emphasis added).

⁴ *Public Notice* at 2.

⁵ For example, in this context, the Cambridge English Dictionary defines the noun “grant” as “a sum of money given by the government ... to another organization or person for a special purpose.”

⁶ The Cambridge English Dictionary defines a “subsidy” as “money given as part of the cost of something to help or encourage it to happen.” Further, the Commission has consistently referred to USF as a “subsidy” program. *See, e.g., Connect America Fund*, 26 FCC Rcd 17663, 17673 (¶24) (2011) (“Importantly, the CAF will only provide support in those areas where a *federal subsidy* is necessary to ensure the build-out and operation of broadband networks.”) (emphasis added); *US West Communications, Inc. and Wiggins Telephone Association*, 8 FCC Rcd 6229, 6230 (¶6) (1993) (also referring to USF as “the subsidy fund”). By contrast, the Rural Utilities Service (“RUS”) specifically refers to its funding programs as grant, loan, and loan guarantee programs. *See, e.g., Notice of Funds Availability*, 74 Fed. Reg. 33104 (July 9, 2009) (procedures for applying for RUS Broadband Initiatives Program and award of grants, loans, and loan/grant combinations).

from the date of the 2019 NDAA's passage, or August 2020, and therefore do not yet apply, regardless of how the prohibitory language may be interpreted.

The foregoing conclusion that Section 889(b)(1) does not pertain to the USF program is buttressed by the distinct language used in Section 889(b)(2), which applies more broadly not just to “loans or grants,” but also to “subsidy programs.”⁷ In this section, as noted in the *Public Notice*, executive agencies, including the Commission, are specifically directed to “prioritize available funding and technical support to assist” entities affected by the implementation of the statutory prohibition “as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.”⁸ The omission of the term “subsidy programs” from Section 889(b)(1) of the 2019 NDAA, and its inclusion in Section 889(b)(2), which also includes specific reference to the Commission, strongly indicate that only the latter section is applicable to the USF program. Accordingly, the Commission has a mandate to use USF funding to subsidize the acquisition of new telecommunications equipment by entities that have previously procured this type of equipment from vendors that now fall into the prohibited category created under the 2019 NDAA. The use of federal subsidies for this purpose will enhance national security and fulfill the objectives outlined in the Commission's original *NPRM*.⁹

Finally, for the foregoing reasons, the restriction proposed by the Commission in the *NPRM* as Section 54.9 of its Rules would not fully satisfy the intent of the statute, as it merely

⁷ 2019 NDAA, Section 889(b)(2), cited in *Public Notice* at 2.

⁸ *Public Notice* at 2, citing 2019 NDAA, Section 889(b)(2).

⁹ See *NPRM* at 4069 (¶34) & 4070 (¶ 36) (seeking public input on both “minimizing the impact” of the proposed prohibition “on carriers seeking to deploy broadband to unserved or underserved areas” and ensuring that “USF funds should be used to deploy infrastructure and provide services that do not undermine our national security”).

precludes use of “universal service support ... to purchase or obtain any equipment or services produced or provided by any company posing a national security threat.”¹⁰ Such preclusive language does not capture the *2019 NDAA*’s provision for affirmatively directing USF funds to assist in transitioning away from such providers through procurement of replacement equipment. The Commission should address this limitation in response to the current *Public Notice* and update the language in adopting any final rules.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

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¹⁰ *NPRM* at 4073 (Appendix A).