

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Competitive Carriers Association (“CCA”)<sup>1</sup> submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Public Notice<sup>2</sup> seeking comment on the applicability of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (“2019 NDAA”)<sup>3</sup> to the Commission’s *Protecting Against National Security Threats to the Communications Supply Chain* rulemaking.<sup>4</sup>

CCA and its members support the Commission’s and Administration’s focus on protecting the nation’s telecommunications infrastructure, and continue to prioritize cybersecurity and network defense initiatives in light of the pressing need to secure networks against hostile actors. At the same time, the FCC should refrain from adopting policies that will

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<sup>1</sup> CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States, including many recipients of critical USF support. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers, to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Section 889 of John S. McCain National Defense Authorization Act for Fiscal Year 2019*, Public Notice, WC Docket No. 18-89 (rel. Oct. 26, 2018) (“Notice”).

<sup>3</sup> John S. McCain National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong., PL 115-232, 132 Stat. 1636 (2018) (“2019 NDAA”).

<sup>4</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, FCC 18-42, WC Docket No. 18-89 (rel. Apr. 18, 2018) (“NPRM”).

unnecessarily harm rural consumers and rural telecommunications providers, many of whom depend on support from the Universal Service Fund (“USF”) to provide vital services. The plain text of the 2019 NDAA does not apply to USF support, and the FCC therefore should not interpret the 2019 NDAA as a directive to place additional restrictions or limitations on USF support. Whatever action the Commission takes should focus on preserving affected businesses’ ability to continue to provide critical services to consumers in all corners of the United States.

**I. SECTION 889(b)(1) DOES NOT APPLY TO SUPPORT PROVIDED BY THE UNIVERSAL SERVICE FUND**

Section 889(b)(1) of the 2019 NDAA prohibits 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...[] 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.”<sup>5</sup> The Commission’s Public Notice asks whether this prohibition applies to support provided by USF and whether it has relevance to the FCC’s pending *Supply Chain* proceeding. The best interpretation of Section 889 is that it does not apply to USF support.

Section 889(b)(1) applies only to the use of funds “to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain” certain “equipment, services, or systems.”<sup>6</sup> A natural reading of this language indicates that Congress was focused on agencies’ procurement processes, and accordingly prohibited executive agencies from using funds in their own procurement. When distributing USF support, however, the FCC is not procuring anything for itself, but rather providing support

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<sup>5</sup> 2019 NDAA, Sec. 889(a), (b), 132 Stat. at 1917.

<sup>6</sup> *Id.*

for third parties to provide vital communications services. In the language of Section 889, the FCC is not “procur[ing] or obtain[ing],” or “enter[ing] into a contract to procure or obtain,” any services or equipment when it distributes USF support. USF distribution therefore does not implicate the concerns that Congress is addressing in Section 889(b)(1), and it is not relevant to the pending proceeding.

In addition, Section 889(b)(1) applies only to the use of “loan or grant funds.” USF support is best understood as a subsidy, rather than as a loan or grant, and the FCC previously has referred to USF as a form of subsidy.<sup>7</sup> Notably, Congress used the term “subsidy” in the implementation language of Section 889(b)(2), which indicates that Congress was aware of subsidies as a distinct form of expenditure from loans or grants. But Congress chose not to include “subsidies” in the prohibition of Section 889(b)(1). The FCC should honor Congress’s choice and similarly decline to extend Section 889(b)(1)’s prohibition to subsidies such as USF.

## **II. IF THE FCC TAKES ACTION TO IMPLEMENT SECTION 889, IT SHOULD MITIGATE HARM TO AFFECTED PROVIDERS AND CONSUMERS**

If the FCC moves forward with any new restrictions or conditions on USF support, it should limit the harm to rural Americans and the carriers that serve them by providing adequate funding to make affected businesses whole. To the extent that the 2019 NDAA could be deemed relevant to USF support, the FCC should heed Congress’s instructions in Section 889(b)(2) to “prioritize available funding and technical support to assist affected businesses, institutions, and organizations” that are affected by Section 889(b)(1), “and to ensure that communications services to users and customers is sustained.”<sup>8</sup> The FCC should not take any action to implement

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<sup>7</sup> See, e.g., *In re Connect Am. Fund*, 29 FCC Rcd. 7051, 7092–93, at ¶¶ 120, 123 (2014) (“federal universal service subsidies”).

<sup>8</sup> *Id.*

Section 889(b)(1) without a clear plan to reimburse affected carriers and ensure that consumers do not face any adverse impact to their service. Failure to make carriers whole could potentially devastate the ability of providers receiving USF support to offer critical telecommunications service in rural and other high-cost areas.<sup>9</sup> Much of that investment was made to bring networks from 2G and 3G to 4G, and to prepare for the transition to 5G. If the FCC changes the playing field and undermines carriers' existing investments, affected businesses will require meaningful compensation to mitigate negative effects on deployment strategies and existing services.

### **III. CONCLUSION**

The Commission should follow the plain language of Section 889 and refrain from stretching it to cover USF support, which would harm carriers and the consumers they serve. If the Commission intends to take action, it should move forward only when there is adequate funding and a clear plan to cover replacement costs for affected businesses so that existing critical services and investment decisions are maintained. Doing so will ensure all providers can continue to deploy advanced technologies to consumers across all areas of the country.

Respectfully submitted,

/s/ Alexi Maltas

Steven K. Berry

Alexi Maltas

Courtney Neville

COMPETITIVE CARRIERS ASSOCIATION

601 New Jersey Avenue, NW, Suite 820

Washington, DC 20001

(202) 449-9866

[www.ccamobile.org](http://www.ccamobile.org)

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<sup>9</sup> Comments of Competitive Carriers Association, WC Docket No. 18-89 at 2 (filed June 1, 2018) ("CCA Comments").