Telecommunications Industry Association
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Re: Section 889 of the FY19 National Defense Authorization Act

The Telecommunications Industry Association ("TIA") respectfully submits these comments regarding **Section 889** of the FY19 National Defense Authorization Act, Pub. L. No. 115-232. TIA represents hundreds of global manufacturers and vendors of information and communications technology ("ICT") equipment and services that are supplied to the owners and operators of communications networks, enabling operations across all segments of the economy.

Section 889 prohibits federal agencies from purchasing or obtaining certain telecommunications or video surveillance equipment, systems, or services that are provided by Chinese suppliers of particular concern. However, and as described below, the statute includes two key provisions that are somewhat ambiguous. These provisions could present serious obstacles to federal procurement of ICT systems depending on how the Department of Defense interprets the language.

Scope of Indirect Procurement Ban. Section 889(a)(1)(A) contains a direct ban on procurement of any equipment, system, or service that uses "covered telecommunications equipment or services," such as products and services from Huawei or ZTE. Section 889(a)(1)(B) supplements this with an indirect ban on procurement from any entity that "*uses* any equipment, system or service" that, in turn, uses "covered telecommunications equipment or services."

The concern with the indirect ban is that many multinational ICT companies likely maintain small sales or operations offices in foreign countries throughout the world. Those offices may rely on local ISPs that in turn use Huawei or ZTE equipment. Under an expansive interpretation of this indirect ban, no federal agency may enter into a contract with any "entity" – the ICT company – that "*uses* any … system or service" – their local ISP in a foreign city – that in turn "uses covered telecommunications equipment" such as Huawei gear. This literal interpretation would likely prohibit federal agencies from procuring equipment from most large multinational ICT vendors.

We do not think that Congress intended that outcome. When implementing this provision, we therefore respectfully suggest that the Department limit the scope of Sec. 889(a)(1)(B) to those entities that "*use* any equipment, system or service" *within the United States* that in turn relies upon "covered telecommunications equipment or services" from companies such as Huawei or ZTE. Alternatively, the Department could adopt limiting constructions of the terms "system" or "service" to avoid the problem described above.

Designation of Additional Covered Chinese Companies. In addition to Huawei, ZTE, and three other named companies, Section 889(f)(3)(D) grants the Secretary of Defense the authority to

determine which other Chinese companies are "covered" companies. Notably, *the Secretary of Defense's determinations in this regard will apply to all federal agencies.* More specifically, the Secretary must determine whether any particular entity is "owned or controlled by, or otherwise connected to," the government of China, and must act in consultation with the Director of National Intelligence or the Director of the FBI.

This provision raises the specter that trusted ICT suppliers that have established joint ventures in China – often a requirement to do business in that country – could inadvertently get swept up in Section 889's procurement ban. Specifically, the statute provides no guidance on whether any particular entity may be "otherwise connected to" the government of China. The prohibition could therefore be read to include joint ventures that global ICT companies may have with Chinese companies.

TIA's understanding is that the intent of this provision was to ensure that yet-to-be created Chinese companies with strong connections to the Chinese state – including but not limited to any future successor entities of ZTE or Huawei – should be subject to Section 889. Meanwhile, the intent was *not* to cover existing joint ventures with non-Chinese companies. Therefore, we respectfully suggest that this provision should be clarified in any regulations or interpretations so that trusted suppliers with joint ventures should not be deemed as entities that are "otherwise connected to" the government of China.

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Thank you for your consideration of TIA's comments. Please contact us if you need any further information on the above.

Sincerely,

Cinnamon Rogers
Senior Vice President, Government Affairs
Telecommunications Industry Association