

October 29, 2021

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, DC 20002

The Honorable Marco Rubio
United States Senate
284 Russell Senate Office Building
Washington, DC 20002

The Honorable Anna Eshoo
United States House of Representatives
202 Canon House Office Building
Washington, DC 20515

The Honorable Steve Scalise
United States House of Representatives
2049 Rayburn House Office Building
Washington, DC 20515

Re: Secure Equipment Act of 2021

Dear Senators Markey and Rubio and Representatives Eshoo and Scalise:

Thank you for your leadership to protect Americans' safety, security, and privacy by sponsoring the Secure Equipment Act of 2021. We applaud your bipartisan effort on this critical issue. The undersigned, representing a broad, diverse group, are united in the view that Congress and the Federal Communications Commission (FCC) must protect Americans from unacceptable risks to national security. We are pleased that this bill has passed both houses of Congress near unanimously and now heads to the White House.

Congress lays out a roadmap for US national security agencies to designate entities for the FCC's Covered List. The Office of the Director of National Intelligence (ODNI), the Cybersecurity and Infrastructure Security Agency (CISA), the National Security Agency (NSA), the Department of Justice (DOJ), and Federal Bureau of Investigation (FBI) assert that PRC state-sponsored cyber actors aggressively target U.S. assets of political, economic, military, educational, critical infrastructure, personnel and organizational value to steal sensitive data, emerging and key technologies, intellectual property, and personally identifiable information (PII). Cyberattacks and intrusions on Americans are increasing in sophistication, severity, and frequency. America's growing install base of electronics equipment and devices—many manufactured by PRC state-owned and military-aligned firms—represents yet another playing field for the PRC to conduct surveillance, espionage, sabotage, and warfare. Threats from PRC information technology products and services include the presence of malicious hardware, software, and components; data theft and exfiltration; and unethical and illegal business practices in the development, production, and distribution of these products and services.

Most Americans don't realize that they are at risk from intrusion by People's Republic of China (PRC) actors when they use products and services from "Covered List" entities. These includes smartphones by Huawei and ZTE, video surveillance cameras by Hikvision and Dahua, and Hytera radios. Despite major policy enacted by the Congress and the Departments of Defense and Commerce to address risks posed by these PRC entities as well as their human rights violations, the FCC reports that some 3,000 applications for equipment authorization from Huawei alone have been approved since 2018. The Secure Equipment Act addresses this egregious loophole by instructing the FCC to conduct a proceeding and adopt rules which restrict equipment authorizations from Covered List entities.

Fortunately the FCC proceeding on the Covered List is underway. In fact FCC Commissioner Carr proposed adding the drone maker SZ DJI Technology Co., Ltd. to the Covered List, calling it "Huawei

with wings.”¹ There are many other PRC entities making products, services, and components which pose an unacceptable national security risk to Americans and which should be considered for Covered List addition. These include but are not limited to the Yangtze Memory Technologies Corp (YMTC), Lenovo, and TikTok. We encourage the FCC to follow the path outlined by 2019 Secure and Trusted Networks Act, which identifies entities to be placed on Covered List.

The proposed Secure Equipment Act affirms the following shared values:

Rule of Law. The FCC was chartered by the Communications Act of 1934 with the express purpose for the safety and security of communication, ensuring “adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication. . .” While we appreciate the importance of enterprise, the FCC’s purpose is not to maximize revenue for firms or to facilitate the rollout of PRC information technology across the US. With the passage of the Secure Equipment Act, Congress affirms the FCC’s authority to prohibit authorizations for Covered List entities. More largely, this process demonstrates that Congress plays an essential role to clarify the FCC’s authority so that regulation is not under or over interpreted.

Defense. The promulgation of the Secure Equipment Act demonstrates the recognition that national defense is a mandatory function of government. The unacceptable levels of theft of intellectual property via communications networks, data breach, and other forms of unauthorized access of Americans’ information technology by the PRC is effectively cyber war. The proposed bill mandates meaningful action to reduce Americans’ exposure to malicious Covered List providers of information technology.

Competition. We support robust and diverse competition in the market for information technology products and services. Equipment authorization is a privilege, not a right, for lawful providers which honor America’s laws. Many PRC entities have demonstrated theft, predatory pricing, and other anticompetitive practices to gain market share. Today their monopolies encompass once competitive markets for certain categories of computers, smartphones, communications equipment, solar panels, flat panel displays, and light emitting diodes (LED). There are dozens of non-PRC equipment providers which struggle to gain a foothold in the market because of unfair and unlawful practices by PRC firms. Restricting the unlawful firms will open and advance the playing field for the lawful firms.

Thank you for your leadership on the Secure Equipment Act of 2021.

Sincerely,

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American Consumer Institute

Roslyn Layton PhD, Co-Founder
China Tech Threat

Noah Vehafric, Student
American University, Department of
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Clark Fonda, former Chief of Staff to Rep.
Robert Pittenger (NC-9)

Jordan Brunner, National Security Attorney

Jeff Ferry, Chief Economist
Coalition for a Prosperous America

¹ See the October 19, 2021 event by China Tech Threat, “Updating the FCC’s Covered List to Reflect Reality” featuring remarks by FCC Commissioner Carr.

https://www.youtube.com/channel/UCNKR6_6CZ5Xmi7mFolJrPeg/videos

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*Views expressed in the letter reflect those of the scholar, not necessarily that of the organization.

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