March 25, 2020

Honorable Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
14th Street & Pennsylvania Ave., N.W.
Washington, DC 20230

Re: Comments of Mavenir Systems, Inc. on Temporary General License for Huawei Technologies Co. Ltd.: Docket No. BIS 2020-0001

Dear Assistant Secretary Ashooh:

In accordance with the Bureau of Industry and Security's request for public comments on the temporary general license ("TGL") for certain limited interactions with Huawei Technologies Co. Ltd. and its affiliates (collectively "Huawei"), as set forth in the March 12, 2020 *Federal Register*, 85 *Fed. Reg*. 14428, Mavenir Systems, Inc. ("Mavenir") respectfully submits the following comments.

As discussed in detail below, Mavenir recommends that the TGL be amended: (i) to remove the limitation that support and maintenance must be limited to networks and equipment that were fully operational as of May 16, 2019; and (ii) to specify that the TGL will remain in effect until revoked by the Bureau of Industry and Security ("BiS"). We emphasize that Mavenir requests these amendments to the TGL solely so that Mavenir can support Mavenir software products sold to *bona fide* commercial telecommunications companies, and installed on those companies' Huawei equipment, or on equipment managed for those companies by Huawei.

1. Background

Mavenir's global headquarters is located at 1700 International Parkway, Richardson, Texas 75081. Mavenir is engaged in the business of developing and distributing software solutions and providing related services for the commercial telecommunications industry. Mavenir's software-based network solutions provide and facilitate internal protocol-based voice and video communications and messaging services. Mavenir distributes its software products and provides related services to leading commercial telecommunications companies throughout the world.

Mavenir's software products are developed globally and distributed to its customers primarily from servers located in the United States, and, accordingly Mavenir treats those software products as subject to the EAR, under section 734.3(a) of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (the "Regulations"). The Mavenir software products are classified for export control purposes under ECCN 5D002, 5D992, 5D991 or EAR99, as the case may be.

Because the Mavenir software is critical to key functions of its customers' telecommunications networks and services, when Mavenir sells and supplies its software products to one of those telecommunications customers, it typically also enters into a service contract to provide on-going support and maintenance for the Mavenir software, as installed on the customer's telecommunications network. Under the terms of the standard Mavenir software service contract, Mavenir is contractually obligated to furnish:

(i) Software updates in the form of software code to correct errors, defects and "bugs" in the Mavenir software, and to improve the performance of that software; and

(ii) Technical assistance, in the form of consulting services, to assist the customer in troubleshooting and resolving performance problems, and to assure the customer's efficient use of the Mavenir software.

2. Interactions with Huawei

Mavenir understands that certain telecommunications customers (and prospective customers), primarily outside of the United States, have utilized Huawei equipment in building or enhancing their infrastructure and networks. Those customers have very substantial investments (likely in the range of millions of dollars) in Huawei equipment, and may, therefore, be "locked into" Huawei equipment when the customers replace existing infrastructure or enhance their existing networks. Importantly, Mavenir has no control over the customers' buying decisions for new and replacement telecommunications and network equipment.

In many instances, those customers that do utilize Huawei equipment as the backbone infrastructure for their telecommunications networks have informed Mavenir that they have entered into managed services agreements with Huawei, under the terms of which the customers have effectively "outsourced" the administration, operation and maintenance of their networks to Huawei. In those circumstances, a United States software vendor, such as Mavenir, must, of necessity, interact with Huawei in fulfilling its software support obligations to the customer. That interaction may involve the furnishing of software updates to Huawei personnel, for installation on the customer's network and/or the furnishing of technical assistance to Huawei personnel for use by Huawei in the administration, operation and maintenance of the software on the customer's network. In those circumstances, Mavenir does not have any contractual relationship with Huawei, and has no control over the customer's decision to enter into a managed services agreement with Huawei.

3. Proposed Amendments to the TGL

The March 12, 2020 BIS notice inviting public comments on the TGL specifically requested interested parties to identify "what potential revisions should BIS consider to enhance effectiveness both for covered transactions and transactions outside of the scope of the temporary general license." *See* 85 *Fed. Reg.* 14428-29. In accordance with that invitation from BIS, Mavenir respectfully requests that BIS consider the following two proposed amendments to the TGL:

a. **Remove the Limitation that Support and Maintenance Must be Limited to Networks and Equipment that were fully Operational as of May 16, 2019:** Section (c)(1) of the TGL provides that software vendors, such as Mavenir, may only provide items subject to the EAR (*e.g.*, software updates) to Huawei where necessary to support and maintain "fully operational networks and equipment", where Huawei has a binding agreement with the customer that was executed on or before May 16, 2019. Mavenir requests that this temporal limitation be removed from the TGL, so that United States software suppliers will be authorized to furnish software support and maintenance, including software updates and technical assistance subject to the EAR, to *bona fide* commercial telecommunications customers, through Huawei, where the software is installed on the customer's equipment or networks acquired and implemented after May 16, 2019, or where the customer has concluded a managed services agreement with Huawei after May 16, 2019. ***We emphasize that Mavenir, as a software supplier, has no control over its customers' decisions as to: (i) when to acquire or replace telecommunications hardware; (ii) the manufacturer or supplier of that hardware (i.e., Huawei or another vendor); or (iii) the terms and conditions of any managed services agreement between a customer and Huawei.***

Mavenir believes that this proposed amendment to the TGL is consistent with current BIS export licensing policy. Mavenir is aware that BIS has issued a number of individual export licenses which authorize United States software companies to interact with Huawei under the circumstances described herein, to support *bona fide* third party customers, even where the customers have: (i) acquired Huawei equipment after May 16, 2019; and/or (ii) entered into managed services agreements with Huawei effective after May 16, 2019. Presumably BIS has made the determination that such software support and technical assistance for *bona fide* telecommunications companies, which may involve interactions with Huawei, does not present any material national security concerns. Thus, in a July 9, 2019 speech at the BIS Update Conference, Commerce Secretary Wilbur Ross stated that BIS would issue export licenses for the export/reexport/transfer of items subject to the EAR to Huawei where the proposed transactions do not present United States national security concerns.

Mavenir believes that this proposed amendment to the TGL will relieve both United States companies and BIS of substantial burdens in preparing and processing export license applications, without any material negative impact United States export control objectives. Importantly, the beneficiaries of such support and maintenance would be Mavenir's bona fide telecommunications customers, and ***not Huawei***, so the proposed amendment should also be consistent with the policy objectives of the BIS May 16, 2019 Entity List order with respect to Huawei.

b. **Specify that the TGL Will Remain in Effect until Revoked by BIS:** The TGL was issued, and has been renewed, only for a limited period of time (initially for 90 days, and more recently for 45 days). The current version of the TGL is scheduled to expire on May 15, 2020. See 85 *Fed. Reg.* 14416 (March 12, 2020). Mavenir respectfully requests that the TGL be extended

indefinitely, without a specific expiration date, so that it will remain in effect unless and until revoked by BIS.

The limited period of each extension of the TGL creates great uncertainty for United States exporters and their foreign customers and prospective customers that have managed services agreements with Huawei. A United States software supplier cannot be certain that it will be able to maintain its software products, as installed on customers' telecommunications equipment and network systems, for the useful life of those software products. Correspondingly, those third-party customers cannot be assured that they will have the on-going support and maintenance that they require for continued operation of the software products on their systems. With the proposed amendments, United States suppliers of commodities and software to foreign commercial telecommunications companies and internet service providers will be able to provide those foreign customers with reasonable assurance that they will receive the support and technical assistance that they require to operate and maintain their systems, and to furnish service to their customers.

Mavenir believes that this proposed amendment to the TGL is also consistent with current BIS policy. Mavenir understands that BIS has issued a series of export licenses authorizing United States hardware and software suppliers to interact with Huawei in supporting and maintaining products sold and supplied to third party customers. Each of those export licenses is effective for 4 years. Allowing support and maintenance activities under the TGL for a comparable period of time should not, therefore, pose any material threat to, or otherwise be inconsistent with, United States export control objectives.

In the March 12, 2020 *Federal Register* notice inviting public comments on the TGL, BIS asked interested parties to address any actual or potential costs (in the form of lost business opportunities) associated with the current version of the TGL. *See* 85 *Fed. Reg.* 14428-29. In that context, Mavenir believes that the uncertainty created by the temporary nature of the TGL poses a serious risk of the loss of business among foreign telecommunications companies for Mavenir's products.

If a United States software supplier is unable to provide the assurance to its customers of on-going support and maintenance, there is a substantial risk that those customers will simply opt to acquire comparable software products from foreign competitors that are not subject to restrictions on interactions with Huawei in providing maintenance and support for their products. In that context, Mavenir understands that Huawei may offer software solutions that have functions or features similar to those of one or more of the Mavenir products.

Secretary Ross has stated that, in imposing restrictions on export transactions with Huawei, it is not the intent of the United States Government to divert business from United States companies to foreign competitors. It would be an extraordinary and counter-intuitive result

if the BIS policy, as reflected in the restrictive terms of the TGL, led to the diversion of business opportunities from United States suppliers to Huawei. The proposed amendment to the TGL, as requested herein, will substantially mitigate the risk that business opportunities to supply commodities and software to *bona fide* commercial telecommunication companies outside of the United States will be diverted to foreign competitors of United States companies, including especially Huawei.

4. Conclusion

Thank you very much for your consideration of these comments and proposed amendments to the TGL.

Respectfully Submitted,

Mavenir Systems, Inc.

By: _____

Charles Scott Gilbert
Executive Vice President and
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cc: Pardeep Kohli, President & CEO
John F. McKenzie – Baker & McKenzie LLP