April 22, 2020

Submitted electronically *via* https://www.regulations.gov

Mr. Richard E. Ashooh
Assistant Secretary for Export Administration
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Re: **Comments of CTIA on Future Extensions to Huawei Temporary General License, Docket No. BIS 2020-0001/RIN 0694–ZA02**

Dear Assistant Secretary Ashooh,

CTIA[1] respectfully submits these comments in response to the Bureau of Industry and Security's ("BIS") March 12, 2020 Notification of Inquiry ("Notification of Inquiry") requesting comments on future extensions of the temporary general license ("TGL") authorizing certain transactions with Huawei Technologies Co., Ltd. and its affiliates on BIS's Entity List (collectively, "Huawei") under the Export Administration Regulations ("EAR").[2]

I. INTRODUCTION AND SUMMARY

CTIA represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. CTIA's members are working tirelessly to deploy safe and secure 5G and next generation wireless networks and services to U.S. consumers. As we have seen during the ongoing COVID-

[1] CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] *Request for Comments on Future Extensions of Temporary General License (TGL)*, 85 Fed. Reg. 14,428 (BIS Mar. 12, 2020) (notification of inquiry); *Request for Comments on Future Extensions of Temporary General License (TGL)*, 85 Fed. Reg. 17,300 (BIS Mar. 27, 2020) (notification of inquiry; reopening comment period) (reopening the comment period through April 22, 2020).

19 pandemic, connectivity is vital to providing information, delivering essential services, and tracking emerging developments in the United States and around the world.

CTIA appreciates BIS's decision to put in place the TGL authorizing certain transactions with Huawei and welcomes the opportunity to provide comments in response to the Notification of Inquiry.

First, CTIA urges BIS to grant a long-term extension of the TGL, which has permitted transactions necessary to maintain certain telecommunications network equipment and to provide essential security updates and repairs to customers with Huawei handsets and other devices. Continued extension of the TGL to allow for ongoing support of certain equipment and devices, along with cybersecurity research and vulnerability disclosures, is vital. The relief provided by BIS has protected consumers and operators from severe disruptions in telecommunications networks and cyber risks that would have occurred had the TGL not allowed for the development and provision of security patches and updates and related activities. Extension also is consistent with the administration's statements in support of reasonable relief that does not pose a threat to U.S. national security and will prevent an inundation of license applications from companies seeking authority to engage in transactions that do not raise U.S. national security concerns.

Maintaining the status quo is even more imperative in light of current uncertainties associated with the COVID-19 pandemic. This includes a rush to add capacity, and the heightened risk of cyber threats during this vulnerable period, which may well last 18 months or longer.[3] The global pandemic highlights the vital role of telehealth, virtual meetings, online school, and social media across the globe as governments, non-governmental organizations, public health officials, and ordinary citizens deal with an unprecedented global challenge. Now more than ever it is essential that operators have a stable and predictable regulatory environment and consumers have access to service and devices.

Second, CTIA requests that BIS reinstate and modify the standards development authorization that was in the original, May 2019 TGL to clearly permit exchanges in furtherance of the development of global telecommunications standards as part of any duly recognized international standards body or association. Doing so will prevent unintended consequences that could have long-term, negative ramifications for U.S. industry and U.S. competitiveness.

[3] *See* P. Baker and E. Sullivan, "U.S. Virus Plan Anticipates 18-Month Pandemic and Widespread Shortages," N.Y. Times (Mar. 17, 2020), *available at* https://www.nytimes.com/2020/03/17/us/politics/trump-coronavirus-plan.html.

II. EXTENSION OF THE TGL IS NECESSARY TO MANAGE AND SECURE EXISTING NETWORK EQUIPMENT AND DEVICES.

The TGL currently authorizes transactions with Huawei in support of three types of activities: (1) continued operation of existing networks and equipment; (2) support of existing personal consumer electronic devices and Customer Premises Equipment; and (3) cybersecurity research and vulnerability disclosures. The relief provided in these three categories has facilitated transactions needed to operate and maintain existing telecommunications network equipment and to provide critical security updates to Huawei equipment, handsets, and other devices. The TGL's permissions have helped to avoid significant harm to consumers and operators. Avoiding negative ramifications is even more vital given the current economic uncertainty and efforts by operators to maintain and ramp up connectivity in this environment.

Telecommunications networks require constant maintenance, repair, and replacement to maintain secure and reliable services. The provision of software fixes, security vulnerability patches, and other updates to existing network equipment helps to ensure secure and reliable service, without which, consumers will suffer. While CTIA understands BIS's interest in operators shifting to other, non-Huawei sources of equipment, software, and technology, it is critical to keep in mind that network equipment takes a relatively long time to resource and requires a significant investment. This is reflected in the recently enacted *Secure and Trusted Communications Networks Act*, which prohibits federals funds from being used to purchase equipment made by Huawei and ZTE and establishes $1 billion for replacement costs to help small operators meet these new requirements, providing the recipients of funds one year to effect permanent replacement, subject to a possible extension.[4] Congress and the President recognized that significant time and money are needed to swap network equipment. The FCC also has recognized this in its related proceeding.[5]

Continuing the TGL will address these concerns while preventing disruptions to networks in the United States and around the world, which have proven critical in the COVID-19 pandemic, as public health officials track and respond to the crisis. Citizens, doctors, government officials, and innovators have been racing to deploy new solutions for communication with their communities and to stop the spread of infection. Now is not the

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[4] Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124 (2020); *see also* A. Cullen, "Trump Signs $1B Bill To 'Rip and Replace' Huawei, ZTE Gear," Law360 (Mar. 12, 2020), *available at* https://www.law360.com/articles/1252892/trump-signs-1b-bill-to-rip-and-replace-huawei-zte-gear.

[5] *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs; Huawei Designation; ZTE Designation*, 85 Fed. Reg. 230 (FCC Jan. 3, 2020) (final rule); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, 85 Fed. Reg. 277 (FCC Jan. 3, 2020) (proposed rule).

time to hamper global operators' ability to maintain the health of the networks on which those connections rely.

At the same time, it is critical to ensure that consumer devices, which support personal and professional communications, are updated and protected from a range of cyber risks. The U.S. government has recognized that keeping software up to date is essential for safeguarding against cyberattacks, and protecting consumers from identity theft, fraudulent charges, and other cyber threats is of paramount importance.[6] Participants in the wireless ecosystem—including manufacturers, operating system developers, and wireless network operators—each have a role in addressing security concerns. Identification of vulnerabilities, creation of software updates or patches, compatibility testing, and release of the updates require collaboration among the various participants, including Huawei. Ongoing, limited engagement with Huawei to protect the security of equipment and devices in the market benefits American consumers by reducing the risk that they will be subject to device compromise.

III. CTIA URGES BIS TO REVISIT STANDARDS DEVELOPMENT ACTIVITIES IN THE TGL.

While the guidance BIS published in August 2019 on standards setting and development activities involving Huawei has been instructive,[7] certain preparatory activities and technical exchanges leading up to the creation of published standards may fall outside of the exceptions in Section 734.7 of the EAR, as there may not be an intent to publish all such input information. This uncertainty chills U.S. participation in standards development activities involving Huawei, as U.S. companies may be cautious to ensure full compliance with the EAR. Modifying the TGL to permit standards-related activities would protect collaborative work on security and standards in interoperable global telecommunications.

Limited technical exchanges, including formal submissions as well as informal discussions, are necessary to develop standards that provide the building blocks for nascent

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[6] Federal Trade Commission, *Mobile Security Updates: Understanding the Issues, Commission Report February 2018* at 5, *available at*: https://www.ftc.gov/system/files/documents/reports/mobile-security-updates-understanding-issues/mobile_security_updates_understanding_the_issues_publication_final.pdf; *see also* FCC, Press Release, *FCC Wireless Telecommunications Bureau Launches Inquiry into Mobile Device Security Updates* (May 9, 2016), *available at:* https://apps.fcc.gov/edocs_public/attachmatch/DOC-339256A1.pdf; DHS, *Strategic Principles for Securing the Internet of Things (IoT)* (Nov. 15, 2016), *available at*: https://www.dhs.gov/sites/default/files/publications/Strategic_Principles_for_Securing_the_Internet_of_Things-2016-1115-FINAL....pdf.

[7] BIS, *General Advisory Opinion Concerning Prohibited Activities in the Standards Setting or Development Context When a Listed Entity Is Involved* (Aug. 19, 2019), *available at:* https://www.bis.doc.gov/index.php/documents/advisory-opinions/2437-general-advisory-opinion-concerning-prohibited-activities-in-the-standards-setting-or-development-context-when-a-listed-entity-is-involved/file.

technology. This type of collaboration and communication enable the design and production of products that are critical to U.S. competitiveness. On the other hand, fear of violating export controls could threaten the leading role played by U.S.-based standards setting organizations. By discouraging U.S. companies from participating in a process that forms the foundation for new technology, U.S. industry may not be able to lead in technological innovation, including 5G.

The U.S government has emphasized the importance of global standards work. The Cyberspace Solarium Commission Report released on March 11, 2020 recognizes the importance of the United States keeping up in the standards race. In that report, U.S. policymakers encourage the U.S. to engage "actively and effectively in forums setting international information and communications technology standards,"[8] which depends on "robust and integrated participation from the federal government, academia, professional societies, and industry."[9] This level of engagement will help to "ensure that our most critical technologies are designed using standards that align with American values."[10] The Administration's approach to 5G security calls for enhancing United States leadership on 5G in organizations that set standards with the private sector and for increased participation by the private sector in relevant global standards bodies. Constraining U.S. efforts is at odds with calls by the U.S. government to redouble U.S. standards leadership and development activities.

If BIS reinstates the authorization to engage in exchanges with Huawei as part of standards development activities, BIS should modify the authorization so that it broadly covers transactions that are "in furtherance of or for the development of global telecommunications standards as part of any duly recognized international standards body or association." First, given the interrelationship between earlier telecom generations (2G, 3G, 4G/LTE) and nascent technologies,[11] the reinstated authorization should not be limited to standards development solely related to 5G technology. Certain parts of the world have not yet fully deployed 4G, and many global "operators will still have to upgrade their 4G networks to cope with growing demand" in the run up to 5G.[12] As McKinsey reports, 5G will not render 4G obsolete: "Like 4G, 5G is not going to be a flash cut. Instead, 5G will evolve side by side with 4G, with logical

[8] *Cyberspace Solarium Commission Report,* Recommendation 2.1.2 (Mar. 2020), *available at* https://www.solarium.gov/report.
[9] *Id.*
[10] *Id.* at 18.
[11] McKinsey & Company, *The road to 5G: The inevitable growth of infrastructure cost* (Feb. 2018), *available at:* https://www.mckinsey.com/industries/telecommunications/our-insights/the-road-to-5g-the-inevitable-growth-of-infrastructure-cost.
[12] *Id.*

evolution phases taking place over the next decade."[13] Because "elements of current 5G technology build on 4G networks, rather than representing a complete departure—. . . that means mobile operators can take an evolutionary approach."[14] Standards work on telecommunications is not always cleanly cabined to "5G" technology, as the development of such technology is iterative; clarifying this authorization would give experts and industry stakeholders more comfort about the permissibility of their work.

Second, the original TGL applied to development of standards "as part of a duly recognized international standards body (*e.g.*, IEEE—Institute of Electrical and Electronics Engineers; IETF—Internet Engineering Task Force; ISO— International Organization for Standards; ITU—International Telecommunications Union; ETSI European Telecommunications Standards Institute; 3GPP—3rd Generation Partnership Project; TIA— Telecommunications Industry Association; and GSMA, a.k.a., GSM Association, Global System for Mobile Communications)."[15] Because any number of organizations may be involved in the standards setting process, the reinstated authorization should not be limited to any particular standards bodies or associations, or it should be broadened to apply to a broader group.

Additionally, should BIS choose to reinstate the authorization to engage in exchanges with Huawei as part of standards development activities, CTIA also requests that BIS waive the requirement for each company in the relevant standards body/association to obtain the certification from Huawei required by paragraph (d) of Supp. No. 7 to Part 744 of the EAR, as this would be extremely burdensome and may limit the practical effect of the authorization.

IV. CONCLUSION

CTIA encourages BIS to extend the TGL to permit transactions necessary to operate and maintain existing telecommunications network equipment and to provide security updates to customers with Huawei handsets and devices. CTIA also requests that BIS reinstate and modify its prior authorization for standards development work to allow for exchanges with Huawei in furtherance of global telecommunications standards development as part of duly recognized international standards bodies or associations.

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[13] Shane McClelland, Vice President, Strategy and Business Development, Head of Transport at Ericsson blogpost, *5G transport security: What service providers need to evolve?, available at:* https://www.ericsson.com/en/blog/2019/7/5g-transport-security-what-service-providers-need-to-evolve-part1.

[14] McKinsey & Company, *The road to 5G: The inevitable growth of infrastructure cost* (Feb. 2018), *available at:* https://www.mckinsey.com/industries/telecommunications/our-insights/the-road-to-5g-the-inevitable-growth-of-infrastructure-cost.

[15] *Temporary General License*, 84 Fed. Reg. 23,468 (BIS May 22, 2019) (final rule).

In light of the current uncertainties associated with the COVID-19 pandemic and operators' efforts to quickly adapt and add capacity to combat this global challenge, a long-term extension of the TGL by BIS can act as a stabilizing force that protects consumers and limits network disruptions worldwide. CTIA appreciates BIS's openness to industry input on the TGL and looks forward to continuing to collaborate with the U.S. government on security and economic issues.

Respectfully Submitted,

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