

No. 21-60089

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In the  
**United States Court of Appeals**  
**for the Fifth Circuit**

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**HUAWEI TECHNOLOGIES USA, INC., AND**  
**HUAWEI TECHNOLOGIES CO., LTD.,**

*Petitioners,*

v.

**FEDERAL COMMUNICATIONS COMMISSION AND**  
**UNITED STATES OF AMERICA,**

*Respondents.*

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On Petition for Review of an Order of the  
Federal Communications Commission

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**UNOPPOSED MOTION TO HOLD IN ABEYANCE**  
**AND SUSPEND BRIEFING**

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February 11, 2021

*Counsel for Petitioners Huawei Technologies USA, Inc.,  
and Huawei Technologies Co., Ltd.*

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## CERTIFICATE OF INTERESTED PERSONS

### **No. 21-60089, *Huawei Technologies USA, Inc., and Huawei Technologies Co., Ltd. v. Federal Communications Commission and United States of America***

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Local Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Petitioner Huawei Technologies USA, Inc., is a wholly owned, indirect subsidiary of Huawei Investment & Holding Co., Ltd. Specifically, Huawei Technologies USA, Inc., is wholly owned by Huawei Technologies Coöperatief U.A. (Netherlands). Huawei Technologies Coöperatief U.A.'s parent corporation is Huawei Technologies Co., Ltd. (China). Huawei Technologies Co., Ltd., is 100% owned by Huawei Investment & Holding Co., Ltd.

2. Petitioner Huawei Technologies Co., Ltd., is a wholly owned, direct subsidiary of Huawei Investment & Holding Co., Ltd.

3. Huawei Investment & Holding Co., Ltd., has no parent corporation, and no publicly held corporation owns 10% or more of its stock. Of

Huawei Investment's shares, (a) just over 1% are owned by the founder of Huawei, Mr. Ren Zhengfei, and (b) the remainder are owned by the Union of Huawei Investment & Holding Co., Ltd., which administers an employee stock ownership plan in which around 104,500 employees participate.

4. The Federal Communications Commission is a federal agency.

5. The United States of America is a respondent by statute. *See* 28 U.S.C. § 2344; 47 U.S.C. § 402(a).

6. The order on review potentially impacts the financial interests of the telecommunications industry as a whole, including manufacturers, end users, and service providers in a broad range of industries, such as internet, cellular and landline telephone, and similar telecommunications applications. Such entities may include, among others, the parties that participated in the rulemaking proceedings before the Federal Communications Commission (WC Docket No. 18-89) on which the final designation here at issue (PS Docket No. 19-351) was based, *see* Pet. for Review 11-16, No. 19-60896 (5th Cir. filed Dec. 4, 2019; docketed Dec. 5, 2019); Pet. for Review 12-17, No. 19-60896 (5th Cir. Jan. 7, 2020), as well

as the parties that participated in the final designation proceedings leading to the Final Designation Order here at issue (PS Docket No. 19-351).

Those persons or entities are:

- a. Caressa D. Bennett, Erin P. Fitzgerald, Stephen Sharbaugh, and Rural Wireless Association, Inc.
- b. Wireless Internet Service Providers Association and its counsel, Stephen E. Coran and David S. Keir of Lerman Senter PLLC
- c. Hytera Communications Corp. Ltd. and its counsel, William K. Keane and Patrick McPherson of Duane Morris LLP
- d. Cinnamon Rogers, Dileep Srihari, Savannah Schaefer, and Telecommunications Industry Association
- e. Rural Wireless Broadband Coalition and Rural Broadband Alliance and their counsel, Russell D. Lukas, David A. LaFuria, and John Cimko of Lukas, LaFuria, Gutierrez & Sachs, LLP
- f. Michael Saperstein and USTelecom Association
- g. Competitive Carriers Association and its counsel, Theodore B. Olson, Thomas H. Dupree Jr., and Andrew G.I. Kilberg of Gibson, Dunn & Crutcher LLP
- h. Genevieve Morelli, Michael J. Jacobs, and ITTA
- i. John A Howes, Jr., Computer & Communications Industry Association
- j. WTA – Advocates for Rural Broadband and its counsel, Gerald J. Duffy of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP

- k. Michael Romano, Jill Canfield, Tamber Ray, Jesse Ward, and NTCA – The Rural Broadband Association
- l. Mark Twain Communications Co. and its counsel, Donald L. Herman, Jr., Carrie DeVier, and Clare Liedquist of Herman & Whiteaker, LLC
- m. Brian Hendricks, Jeffrey Marks, and Nokia
- n. Dr. J. Michel Guite, Vermont Telephone Co., Inc., and VTel Wireless, Inc.
- o. Rick Chessen and NCTA – The Internet and Television Association
- p. David S. Addington and National Federation for Independent Business, Inc.
- q. Jeffry H. Smith and GVNW Consulting, Inc.
- r. Jennifer A. Manner, Paul Kay, Echostar Satellite Operating Corp., and Hughes Network Systems, LLC
- s. Gary Rawson, State E-Rate Coordinators' Alliance, and Mississippi Department for Information Technology Services
- t. David Hartshorn and Global VSAT Forum
- u. NE Colorado Cellular, Inc., and its counsel, David A. LaFuria of Lukas, LaFuria, Gutierrez & Sachs, LLP
- v. Pine Belt Communications, Inc., and its counsel, Donald L. Herman, Jr., and Carrie L. DeVier of Herman & Whiteaker, LLC
- w. Tom Stroup and Satellite Industry Association
- x. Marijke Visser, Ellen Satterwhite, Alan S. Inouye, and American Library Association

- y. AT&T Services, Inc., and its counsel, James J.R. Talbot, Gary L. Phillips, and David L. Lawson
- z. Melanie K. Tiano, Thomas C. Power, Scott K. Bergmann, Thomas K. Sawanobori, and CTIA
- aa. JAB Wireless, Inc., and their counsel, Stephen E. Coran, David S. Keir, and F. Scott Pippin of Lerman Senter PLLC
- bb. Francisco J. Silva and Puerto Rico Telephone Co., Inc.
- cc. Sagebrush Cellular, Inc., and its counsel, Michael R. Bennet of Womble Bond Dickinson (US) LLP
- dd. Frank Korinek and Motorola Solutions, Inc.
- ee. Rick Salzman, Mark Rubin, and TracFone Wireless, Inc.
- ff. Todd Houseman, United Telephone Association, Inc., United Wireless Communications, Inc., and United Communications Association, Inc.
- gg. Joseph Franell and Eastern Oregon Telecom
- hh. Jane Kellogg and Deborah J. Sovereign of Kellogg & Sovereign Consulting, LLC
- ii. Matthew M. Polka, Brian D. Hurley, and American Cable Association
- jj. Ross J. Lieberman and ACA Connects – America’s Communications Association
- kk. Robert F. West and CoBank, ACB
- ll. Geoff Feiss and Montana Telecommunications Association
- mm. Union Telephone Company and its counsel, David A. LaFuria of Lukas, LaFuria, Gutierrez & Sachs, LLP

- nn. Tracy S. Weeks and State Educational Technology Directors Association
- oo. Aarti Holla and EMEA Satellite Operators Association
- pp. Russell P. Branzell, Mari Savickis, and CHIME
- qq. PTA-FLA, Inc., and its counsel Donald J. Evans of Fletcher, Heald & Hildreth PLC
- rr. NTCH, Inc., and Flat Wireless, LLC, and its counsel Donald J. Evans of Fletcher, Heald & Hildreth, PLC
- ss. Steve Papa and Parallel Wireless
- tt. AST Telecom, LLC, Bluesky, and its counsel Kent Bressie and Colleen Sechrest of Harris, Wiltshire & Grannis LLP
- uu. Melissa Slawson, California Internet, L.P., and GeoLinks

The parties and their counsel are:

**Petitioners**

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USA, Inc., and Huawei  
Technologies Co., Ltd.

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**Counsel**

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Acting Attorney General  
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950 Pennsylvania Ave. NW  
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Dated: February 11, 2021

Respectfully submitted,

*/s/ Michael A. Carvin*

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*Counsel of Record for Huawei  
Technologies USA, Inc., and  
Huawei Technologies Co., Ltd.*

## UNOPPOSED MOTION TO HOLD APPEAL IN ABEYANCE AND SUSPEND BRIEFING

On December 4, 2019, and January 6, 2020, Huawei Technologies USA, Inc., and Huawei Technologies Co., Ltd. (collectively, “Huawei”), petitioned this Court for review of the Federal Communications Commission (“FCC”)’s promulgation of a rule barring the use of universal service funds to purchase equipment sold by companies the FCC determines are national security threats (“USF rule”) and the FCC’s simultaneous “initial designation” of Huawei under that rule (“*Huawei I*”).<sup>1</sup> On February 5, 2021, Huawei filed a petition for review challenging the FCC’s “final designation” of Huawei under the USF rule (“*Huawei II*”).<sup>2</sup>

Huawei respectfully moves, under Federal Rules of Appellate Procedure 2, 26(b), and 27(a), for an order to hold in abeyance, and suspend the briefing schedule for, *Huawei II* (No. 21-60089) pending this Court’s

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<sup>1</sup> *Huawei I* challenges the FCC’s order *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, Huawei Designation, ZTE Designation* (“USF Order”), Report and Order, Further Notice of Proposed Rulemaking, and Order, FCC 19-121, WC Docket No. 18-89 and PS Docket Nos. 19-351 and 19-352 (released November 26, 2019).

<sup>2</sup> *Huawei II* challenges the FCC’s order *In the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs—Huawei Designation* (“Final Designation Order”), Memorandum Opinion and Order, FCC 20-179, PS Docket No. 19-351.

decision in *Huawei I* (Case No. 19-60896). This Court’s resolution of *Huawei I*, which challenges the USF rule and simultaneous “initial designation” promulgated under that rule, is likely to have a meaningful impact on the proper resolution of *Huawei II*, which seeks review of the FCC’s “final designation” of Huawei under the challenged USF rule. Consequently, holding this appeal in abeyance and suspending the briefing schedule pending the Court’s decision in *Huawei I* is likely to conserve the resources of the Court and the parties. Respondents, the FCC and the United States (collectively, the “Government”), do not oppose this request.

For the below reasons, good cause exists to grant the motion. Fed. R. App. P. 26(b).

1. This Court heard oral argument in *Huawei I* on November 4, 2020, regarding Huawei’s challenge to the USF rule and “initial designation” of Huawei. This Court has not yet issued its decision. Huawei’s second petition for review, filed on February 5, 2021, challenges the Commission’s subsequent “final designation” of Huawei under the challenged USF rule.

2. Both petitions involve the same parties, similar facts, and similar claims, including that the FCC’s rulemaking and adjudications

exceed its statutory authority; violate federal law and the Constitution; are arbitrary, capricious, and an abuse of discretion, and not supported by substantial evidence within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; were adopted through a process that denied Huawei the procedural protections afforded by the Constitution and the Administrative Procedure Act; and are otherwise contrary to law.

3. This Court's decision in *Huawei I* will inevitably affect the briefing in *Huawei II*. If this Court grants Huawei's first petition for review and vacates the USF rule or the initial designation, Huawei's challenge to the final designation under the then-voided USF rule will likely be rendered moot, eliminating the need for briefing altogether. By contrast, if this Court rules in favor of the Government, the Court's decision may foreclose certain of Huawei's cross-cutting claims, narrowing the scope of the briefing.

4. Thus, regardless of the outcome, a decision in *Huawei I* will likely narrow the issues for resolution in *Huawei II*. Holding this appeal in abeyance and suspending the briefing will therefore conserve the resources of this Court and the parties without causing undue delay. This motion is made in the interest of justice, not for delay, and no party will

be prejudiced if the motion is granted. *See Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1417 (5th Cir. 1995) (“The federal courts are vested with the inherent power ‘to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’”); *MCR Oil Tools, LLC v. SPEX Group US, LLC*, 785 F. App’x 241, 242 (5th Cir. 2019) (holding appeal in abeyance pending Fifth Circuit’s decision in a different case); *United States v. Hernandez-Saenz*, 733 F. App’x 144, 146 (5th Cir. 2018) (same).

5. Counsel for Huawei has conferred with counsel for the Government regarding this motion. The Government does not oppose this request.

For the foregoing reasons, Huawei respectfully requests that the Court hold this appeal in abeyance and suspend the briefing schedule, pending this Court’s decision in *Huawei I*.

Dated: February 11, 2021

Respectfully submitted,

/s/ Michael A. Carvin

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and Huawei Technologies Co., Ltd.*

## **CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the items exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2, the motion contains 761 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in a 14-point Century Schoolbook font.

Dated: February 11, 2021

Respectfully submitted,

/s/ Michael A. Carvin

*Counsel of Record for Huawei  
Technologies USA, Inc., and  
Huawei Technologies Co., Ltd.*

## CERTIFICATE OF ELECTRONIC SUBMISSION

I certify that: (1) any required privacy redactions have been made; (2) the electronic submission of this document is an exact copy of any corresponding paper document; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free from viruses.

Dated: February 11, 2021

Respectfully submitted,

/s/ Michael A. Carvin

*Counsel of Record for Huawei  
Technologies USA, Inc., and  
Huawei Technologies Co., Ltd.*



## CERTIFICATE OF SERVICE

I certify that on February 11, 2021, the foregoing motion was electronically filed with the United States Court of Appeals for the Fifth Circuit using the CM/ECF system, which accomplished service on the Federal Communications Commission. I also caused a copy of this motion to be delivered to the United Parcel Service for service by overnight delivery on the United States, Monty Wilkinson, Acting Attorney General, U.S. Department of Justice, at the following address: 950 Pennsylvania Ave. NW, Washington, DC 20530.

Dated: February 11, 2021

Respectfully submitted,

/s/ Michael A. Carvin

*Counsel of Record for Huawei Technologies USA, Inc., and Huawei Technologies Co., Ltd.*