

United States Senate

WASHINGTON, DC 20510

June 25, 2018

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Ross:

We write to urge the Commerce Department to immediately provide assurances, in the form of guidance and waivers, to both telecommunications operators and other customers who wish to remove ZTE software, hardware, and technology (“ZTE items”) from their network infrastructure and install products from other suppliers in the market, as well as to suppliers who are in compliance with U.S. export controls and seek to provide these customers with alternative products to ZTE items.

We strongly support the decision by the Commerce Department’s Bureau of Industry and Security to impose the *Order Activating Suspended Denial Order Relating to Zhongxing Telecommunications Equipment Corporation and ZTE Kangxun Telecommunications Ltd.* of April 15, 2018 (“Denial Order”). The Denial Order—which, among other things, banned ZTE from buying U.S. components for seven years—came in response to the Chinese firm’s numerous violations of U.S. export controls and sanctions laws. More generally, it is clear that Chinese state-directed telecommunications companies like ZTE and Huawei are used by the Chinese government and Communist Party for espionage and intellectual property theft, and therefore pose a direct threat to the national security, people, and economy of the United States.

We are concerned to hear, however, that the Commerce Department and its Bureau of Industry and Security have repeatedly declined to provide clarity on a specific element of the Denial Order that has created uncertainty. Part of the Denial Order, which imposes a prohibition on anyone servicing ZTE items, states that:

*“no person may, directly or indirectly [...] [e]ngage in any transaction to service any item subject to the Regulations that has been or will be exported by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. **For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing**” (emphasis added).*

The Denial Order’s prohibition on servicing, in turn, has created uncertainty as to whether telecommunications operators and other customers can take actions to remove ZTE items from their network infrastructure and install products from other suppliers, and whether other suppliers can take actions to provide these customers with alternative products to ZTE items.

The *Superseding Order Relating to Zhongxing Telecommunications Equipment Corporation and ZTE Kangxun Telecommunications Ltd.* of June 8, 2018 (“Superseding Order”) and the *Superseding Settlement Agreement* of June 7, 2018 (“Superseding Settlement”)—which we oppose because they lift the seven-year ban against ZTE’s ability to purchase U.S. components—added to this uncertainty. While the Superseding Order and Superseding Settlement make clear that the Denial Order will remain temporarily in place until ZTE fulfills a set of conditions, neither document addressed the uncertainty that was created by the Denial Order’s prohibition on servicing for telecommunications operators and other customers wishing to swap out ZTE items and suppliers seeking to provide alternative products.

The Commerce Department and its Bureau of Industry and Security’s reluctance to clarify such uncertainty is patently unjust to customers who have had no part in the malign conduct that caused ZTE to be penalized in the first place. It is also profoundly unfair to other suppliers who, unlike ZTE, have complied with U.S. export controls and sanctions laws. Moreover, enabling ZTE to continue effectively benefiting from such uncertainty at the expense of other market participants runs directly counter to U.S. foreign policy, national security interests, and values.

Suppliers who are seeking to comply with U.S. export laws deserve the clarity and authorizations that they require to support customers who have opted against ZTE while the Denial Order’s prohibition on servicing remains in place and thereafter. We therefore request the Commerce Department and its Bureau of Industry and Security to respond accordingly, and to immediately provide requested assurances, in the form of guidance and waivers, to customers wishing to remove ZTE items from their network infrastructure and suppliers seeking to provide alternative products.

Sincerely,



Marco Rubio
U.S. Senator



Chris Van Hollen
U.S. Senator



Tom Cotton
U.S. Senator