

No. 21-_____

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

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

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES OF AMERICA,

Respondents.

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

PETITION FOR REVIEW

Andrew D. Lipman
Russell M. Blau
David B. Salmons
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541
(202) 739-3000
andrew.lipman@morganlewis.com

Glen D. Nager
Michael A. Carvin
Counsel of Record
James E. Gauch
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001-2113
(202) 879-3939
macarvin@jonesday.com

February 5, 2021

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

Pursuant to 5 U.S.C. § 706, 47 U.S.C. § 402, 28 U.S.C. §§ 2342–2344, and Federal Rule of Appellate Procedure 15(a), Huawei Technologies USA, Inc., and Huawei Technologies Co., Ltd. (collectively, “Petitioners”), hereby petition this Court for review of the final order of the United States Federal Communications Commission (“FCC”) captioned *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. The Final Designation Order was released on December 11, 2020, and a copy of the order is attached as Exhibit A. This Petition for Review is timely filed “within 60 days after ... entry,” 28 U.S.C. § 2344, of “public notice of the order,” 47 U.S.C. § 405(a), which is “the release date” “[f]or non-rulemaking documents released by the Commission,” 47 C.F.R. § 1.4(b)(2), like the Final Designation Order.

To date, no court has upheld the validity of the Final Designation Order.

Jurisdiction and venue are proper because Petitioners are adversely affected by the Final Designation Order, which is a final FCC order under 47 U.S.C. § 402 and 28 U.S.C. § 2342, and because Huawei

Technologies USA, Inc., is a corporation organized under Texas law with its principal office in this circuit at 5700 Tennyson Parkway #500 in Plano, Texas 75024, *see* 28 U.S.C. § 2343.

Petitioners seek review of the Final Designation Order on the grounds that it exceeds the FCC's statutory authority; violates federal law and the Constitution; is 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.*; was adopted through a process that failed to provide Petitioners with the procedural protections afforded by the Constitution and the Administrative Procedure Act; and is otherwise contrary to law. Accordingly, Petitioners respectfully request that this Court (1) hold that the Final Designation Order is unlawful, (2) vacate the Final Designation Order, and (3) provide such other relief as this Court deems appropriate.

CERTIFICATE OF INTERESTED PERSONS

No. 21-_____, *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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.