

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

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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

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