

March 15, 2019

President Donald J. Trump  
The White House  
Washington, DC 20500

Dear Mr. President:

Two years ago, many of us wrote you expressing disappointment with the decision by the Federal Trade Commission (FTC) to launch a complaint against an American company in the final hours of the Obama administration. As we wrote then, “We are particularly concerned with the decision by outgoing FTC leadership to bring a rushed and reckless complaint against Qualcomm only three days before you took office.

The FTC's complaint against Qualcomm is midnight regulation at its worst — a misuse of antitrust litigation to promote a destructive policy agenda that aims to undercut patent property rights and conservative free market principles.” In her strongly worded dissent, then-Commissioner Maureen Ohlhausen called the complaint legally baseless, lacking in economic and evidentiary support, and would set a precedent that will cause real harm to our economy and U.S. intellectual property rights worldwide.

Today, we write because we remain concerned that two years later – with a new commission – this lawsuit continues. As has been reported in the media, the commission has been largely paralyzed in this case by a recusal that has left a tied commission unable to settle or make significant decisions on the lawsuit.

Since it was filed, the stakes of this lawsuit have become even higher as it may well affect the global race for 5G. The United States is locked in a global battle – mainly with China — to determine who will control the technology and set the standards for 5G. Allowing China to take 5G leadership will have dangerous consequences for our nation for decades.

Your administration, through CFIUS, recognized this last year in blocking the attempted hostile takeover of Qualcomm by Broadcom. At the time, your administration recognized Qualcomm as the current leader in 5G development and standard setting and that a “weakening of Qualcomm’s position would leave an opening for China to expand its influence on the 5G standard setting process.” CFIUS recognized that China’s Huawei was aggressively vying to overtake Qualcomm as the global leader.

In recent months, your administration has moved aggressively on many fronts to take action against Huawei here and across the globe to limit its role in 5G. Yet, in an inexplicable move, the FTC called a Huawei executive as its first witness in the case against Qualcomm and relied on an expert witness who is a Huawei consultant.

Given the national and economic security ramifications of the battle for 5G, the last thing we should be doing is hobbling America’s 5G leader in midnight litigation brought on questionable antitrust grounds.

We recognize that the FTC is an independent agency. However, we write today because we believe a fully functioning FTC could be better positioned to resolve this case through a reasonable settlement, or other means. Unfortunately, as media reports indicate, the commission appears to be stuck in a deadlock because of a recusal. We urge your administration to take a serious look at this matter and explore all options to restore a

functioning majority that pursues an agenda of regulatory restraint and free-market principles that protects our economy and our national security.

Sincerely,

The Honorable J. Kenneth Blackwell  
Chairman  
Constitutional Congress, Inc.

Daniel Schneider  
Executive Director  
American Conservative Union

Kevin L. Kearns  
President  
U.S. Business & Industry Council

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Organization names appear for identification purposes only