

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Protecting Against National Security Threats) WC Docket No. 18-89
to the Communications Supply Chain)
Through FCC Programs)

COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”)¹ submits these comments in response to the *Third Further Notice of Proposed Rulemaking*.² RWA supports the Commission’s initiative to align the Secure and Trusted Network Reimbursement Program (“Reimbursement Program”) rules³ with the recently enacted amendment to the Consolidated Appropriations Act of 2021.⁴ RWA is supportive of most of the Commission’s proposals set forth in the *Third FNPRM* and focuses its comments on specific recommendations that RWA believes will serve the public interest. Specifically, RWA recommends that the FCC consider: (1) seeking additional funding from Congress for the Reimbursement Program given its expansion to include parties that have not submitted estimated costs to the FCC and the increased number of eligible advanced service

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve consumers who, reside, work, or travel in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Third Further Notice of Proposed Rulemaking, WC Docket No. 18-89, FCC 21-26 (rel. Feb. 22, 2021) (*Third FNPRM*).

³ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, WC Docket No. 18-89, FCC 20-176 (rel. Dec. 11 2020) (Second Report and Order).

⁴ Pub. L. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet access Service, §§ 901, 906, 134 Stat. 1182 (2020) (Consolidated Appropriations Act of 2021 or CAA).

providers; (2) requiring that the \$1.9 billion in reimbursement funds appropriated by Congress be used only for reimbursement of costs related to the replacement, removal, and disposal of Huawei and ZTE equipment and services; (3) extending the “cutoff” date for reimbursable purchases to June 30, 2020; and (4) prioritizing reimbursement to the ETCs and other advanced service providers who participated in the FCC’s Information Collection process, the data of which Congress relied on for its \$1.9 billion appropriation to replace Huawei and ZTE equipment and services under the Secure Networks Act, as amended.

I. WITH MORE ENTITIES ELIGIBLE FOR THE REIMBURSEMENT PROGRAM, THE FCC NEEDS TO SEEK ADDITIONAL FUNDING FROM CONGRESS.

Due to the increase in the number of eligible participants in the Reimbursement Program required by the CAA, the FCC needs to revise its estimates and seek additional funding from Congress. In accordance with the amended statute, the Commission proposes to extend eligibility for the Reimbursement Program beyond providers of advanced communications services with two million or fewer subscribers.⁵ Specifically, the Commission proposes to expand eligibility to include providers of advanced communications services with ten million or fewer subscribers while also modifying the definition of “provider of advanced communications service” to include qualifying schools, libraries, health care providers, and consortiums thereof.⁶ RWA acknowledges that the CAA explicitly expands eligibility for the Reimbursement Program and thus the Commission has no discretion to materially deviate from the law.

Eligible participants are charged with removing *all* Huawei and ZTE equipment to secure their networks. However, there will likely not be sufficient funds for every Reimbursement

⁵ *Third FNPRM*, paras. 9, 26.

⁶ *Id.*

Program applicant, including eligible RWA members who participated in the FCC’s initial data collection process. The Information Collection Results Public Notice reported that the “[Wireline Competition Bureau] WCB and [Office of Economics and Analytics] OEA note that other providers of advanced communications may not have participated in the information collection and *yet still be eligible for reimbursement* under the terms of that Act.”⁷ RWA agrees with the FCC’s WCB and OEA, and anticipates that there will be numerous eligible applicants that did not report their Huawei and ZTE equipment and services during the FCC’s information collection process. Given this reality, and Congress’ \$1.9 billion funding limitation,⁸ the Commission should begin seeking additional appropriations from Congress to make up the difference. The more funding that is readily available at the onset, the quicker and more efficiently carriers will be able to replace, remove, and dispose of their unsecure equipment. Given that the congressional budgeting process for FY 2022 is beginning now, the FCC must plan to ask for additional funding in its FY 2022 budget.

II. THE USE OF REIMBURSEMENT FUNDS SHOULD BE LIMITED TO REIMBURSEMENT FOR HUAWEI/ZTE REPLACEMENT, REMOVAL, AND DISPOSAL COSTS.

RWA agrees that the Commission should limit the use of reimbursement funds to reimbursement only for costs associated with the replacement, removal, and disposal of all Huawei and ZTE equipment and services, as proposed in the *Third FNPRM*,⁹ rather than be expanded to include *all* costs associated with equipment and services published on the Covered

⁷ See *Wireline Competition Bureau and Office of Economics and Analytics Release Results from Supply Chain Security Information Collection*, Public Notice, 35 FCC Rcd 9471, 9472 (WCB 2020) (Information Collection Results Public Notice) (emphasis added).

⁸ Consolidated Appropriations Act of 2021, § 901(1)(D) (“In carrying out this section, the Commission may not expend more than \$1,900,000,000.”).

⁹ *Third FNPRM*, paras. 10-11.

List which could eventually include other unsecure equipment and services. RWA agrees that this proposal aligns with Congress' intent in its amendments to the Reimbursement Program rules. Congress made its intent clear — that it did not mean to cover *all* equipment and services later placed on the Covered List — as Congress based its funding *solely* on the Information Collection Results, and imposed a matching \$1.9 billion funding limitation. Other equipment or services that may be added to the Covered List in the future were clearly not contemplated by Congress in its amendment to the Secure Networks Act. Thus, reimbursement under this particular Reimbursement Program should be limited to reimbursement for costs associated with replacing, removing, and disposing of Huawei and ZTE equipment and services. In the event that equipment and services, outside of Huawei and ZTE equipment and services, are added to the Covered List, before the Reimbursement Program concludes, such equipment and services should not be eligible for reimbursement under this program and should be subject to a specific additional appropriation of funds by Congress.

Furthermore, the Commission should clarify that *all* Huawei and ZTE equipment and services should be eligible for reimbursement given the national security threat concerns, as proposed in the *Third FNPRM*.¹⁰ The public interest in completely safeguarding communications networks far outweighs a relatively small savings in tax dollars. Such clarity would also lessen administrative costs for both eligible providers and the Commission in deciphering which Huawei or ZTE equipment components are eligible for reimbursement.

¹⁰ *Id.*, at para. 13.

In promoting consistent and uniform rules, RWA agrees with the FCC that it should revise its Removal and Replacement Mandate¹¹ to include only Huawei and ZTE equipment and services. It would be premature and without foundation to mandate the removal and replacement of communications equipment and services that the FCC has no knowledge of at this time. The Commission should impose the Removal and Replacement Mandate in the future on a case-by-case basis should it become aware of unsecure equipment and services from other vendors.

III. RWA FULLY SUPPORTS EXTENDING THE REIMBURSEMENT “CUTOFF” DATE TO JUNE 30, 2020.

RWA fully supports the Commission’s proposal to allow providers to be reimbursed for eligible equipment and services purchased or obtained on or before June 30, 2020.¹² RWA agrees with the Commission that the CAA’s amendments now require the FCC to accept eligible costs incurred for reimbursement on or before June 30, 2020,¹³ which conforms the eligible reimbursement “cutoff” date to when the FCC’s Public Safety and Homeland Security Bureau finalized the designations of Huawei and ZTE. Using the previously adopted August 14, 2018 date as the “cutoff” would run afoul of the CAA which allows eligible recipients to be reimbursed for eligible costs any time before the date “communications equipment...became covered pursuant to the Designation Orders, June 30, 2020.”¹⁴ Huawei and ZTE were only

¹¹ Second Report and Order, para. 18 (“[W]e require recipients of reimbursement funds under the Reimbursement Program and ETCs receiving USF support to remove and replace from their network and operations environments equipment and services included on the covered list required by section 2 of the Secure Networks Act (Covered List).”) (Removal and Replacement Mandate).

¹² *Third FNPRM*, para. 17 (“We propose to amend our rules to allow Reimbursement Program recipients to use such funds to remove, replace, or dispose of any equipment or services that was purchased, rented, leased, or otherwise obtained on or before June 30, 2020.”).

¹³ *Id.*, at para. 19 (“Consistent with the statutory language and the statutory language discussed above that appears to make all equipment and services subject to the Designation Orders eligible for reimbursement, we propose to amend our rules to make all equipment and services obtained on or before June 30, 2020 to be eligible for reimbursement.”).

¹⁴ Consolidated Appropriations Act of 2021, § 901.

deemed *initially covered* in the November 2019 Supply Chain Order¹⁵ and were not officially designated as covered companies until the Designation Orders were adopted on June 30, 2020. Linking the “cutoff” date to the enactment of the 2019 NDAA, August 14, 2018, would also be inequitable to eligible carriers who at that time were not even aware of the availability of a reimbursement program, which was not introduced until the adoption of the November 2019 Supply Chain Order.¹⁶ Carriers could not have reasonably made significant business decisions to immediately cease dealings with Huawei and ZTE without breaching contracts and jeopardizing the ongoing operations of their networks at that time given the regulatory uncertainty, especially small rural carriers with limited funds.

IV. THE FCC SHOULD INCLUDE SUB-CATEGORY PRIORITIZATIONS.

RWA supports the FCC’s proposed prioritization schedule as an accurate reflection of the priority schedule set out in the CAA.¹⁷ While the CAA is silent on further prioritizations, RWA proposes that the Commission adopt sub-category prioritizations to ensure that funds are distributed fairly and equitably to those that need them the most. Specifically, RWA proposes that the FCC further prioritize allocation of funds to ETCs within each of the three proposed categories¹⁸ as it previously adopted in its Second Report and Order.¹⁹ While the CAA does not specify prioritizing ETCs over non-ETCs, it does not prohibit such prioritization, and such

¹⁵ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, WC Docket 18-89, FCC 19-121 (2019) (November 2019 Supply Chain Order).

¹⁶ *Id.*, at para. 122.

¹⁷ Consolidated Appropriations Act of 2021, § 901; *Third FNPRM*, paras. 20-25.

¹⁸ The FCC’s three proposed categories are: (1) advanced communication service providers with 2 million or fewer customers; (2) Advanced communications service providers that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service; and (3) Any remaining approved applicants determined to be eligible for reimbursement under the Program.

¹⁹ Second Report and Order, para. 157.

prioritization is consistent with the CAA. RWA notes the importance of ETCs receiving sufficient reimbursement funds because of their dependence on USF funds, the use of which has been constrained by the November 2019 Supply Chain Order. In the November 2019 Supply Chain Order, the Commission adopted a rule barring ETCs from using USF funds on their networks with Huawei and ZTE equipment.²⁰ Considering the USF constitutes the source of much of ETCs' funding as opposed to non-ETCs, limiting those funds has significantly hampered the ability of many rural ETCs to maintain their networks. The pandemic has exacerbated this issue.²¹ ETC resources are even more severely stretched. In an attempt to keep customers connected by committing to not terminate service to non-pays, waive late fees, and open Wi-Fi hotspots to those in need, less revenue is coming in requiring USF to play a more significant role in keeping rural Americans connected.²² RWA members continue to be unable to collect payments for services — job losses and struggles associated with the COVID-19 pandemic are preventing subscribers from paying their bills. While RWA members are proud to assist their subscribers however they can during the pandemic, those uncollected payments could have otherwise been applied to laying the groundwork to harden and maintain networks against foreign interference as Congress intended. Furthermore, the FCC already acknowledged the importance of ETC networks in its Second Report and Order as it agreed that ETCs should be allocated reimbursement funds first.²³ Thus, the existence of a reimbursement program that can

²⁰ November 2019 Supply Chain Order, para. 29.

²¹ Smith V., Stephen. "Broadband Today: Rural America's Critical Connection," *Foundation for Rural Service* (2021) (According to the report, average broadband network usage increased by 40% between 2019 and 2020).

²² Chairman Pai Launches the Keep Americans Connected Pledge, Press Release (rel. Mar. 13, 2020), <https://docs.fcc.gov/public/attachments/DOC-363033A1.pdf>.

²³ Second Report and Order, para. 159 ("ETCs in many instances represent the only provider of such services in the most rural areas of our country. Accordingly, we find the protection of ETC networks—networks which are funded through USF and serve on the front lines of providing universal service—from national security threats to be of the utmost importance.").

provide sufficient funds to ETCs to assist in the transition of their networks is practically essential.

Moreover, once ETCs receive their funding allocations, non-ETCs who participated in the Commission's information collection process should be next in line to be allocated funds as adopted in the Second Report and Order.²⁴ In addition to the numerous ETCs who were required to participate, non-ETCs -- who were not required to participate -- submitted cost estimates to the Commission. Congress ultimately used these estimates to come up with the \$1.9 billion appropriation. Non-ETCs submitted these estimates in reliance on the Commission's indication that non-ETC estimates would assist in soliciting Congressional funding. As stated above, RWA anticipates both ETCs and non-ETCs not participating in the information collection will file reimbursement applications. Non-ETC participants who filed as part of the information collection should be allocated available funding after ETCs, for each of the three priority categories, as these providers demonstrated candor before the Commission in presenting their costs, and most importantly, prioritized network security despite regulatory uncertainty.

In the likely event that there is not sufficient funding, the Commission should fund those participating in the Information Data Collection process up to their estimated costs. Overages beyond the estimates should not be funded unless sufficient funds remain after the first prioritization has been allocated. Within this bucket, ETCs would be funded for their overages beyond their estimates prior to non-ETCs.²⁵ Furthermore, if the Commission creates subsequent filing windows to distribute additional funding, the Commission should follow the prioritization schedule RWA proposes here due to the high probability that eligible providers in all

²⁴ *Id.*, at para. 157

²⁵ *Id.*, at para. 163.

prioritization categories may need to make adjustments to their estimates because of the complexity of replacing a communications network. Attached is a proposed prioritization schedule that follows RWA's comments.²⁶

V. CONCLUSION

RWA appreciates the Commission's efforts to implement this Reimbursement Program, but the Commission must move quickly to finalize its rules and open a filing window for eligible providers to submit cost estimates. Timely disbursement of funds to eligible providers is essential to a quick and smooth transition of communications networks as many rural providers are currently struggling to garner sufficient funds and equipment to begin the replacement and removal processes in their networks amid a global pandemic and global supply chain shortage.²⁷ RWA looks forward to continued discussions with the Commission on this proceeding.

Respectfully submitted,

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April 12, 2021

²⁶ Attachment A

²⁷ See Whalen, Jeanne, et al. "Biden can't fix the chip shortage any time soon. Here's why," *The Washington Post*, March 1, 2021, <https://www.washingtonpost.com/technology/2021/03/01/semiconductor-shortage-halts-auto-factories/>.

ATTACHMENT A

Funding Prioritization Categories	
Priority 1: Advanced communications service providers with 2 million or fewer customers.	Priority 1a: ETCs that participated in the Information Collection, up to the amount estimated.
	Priority 1b: Other advanced service providers that participated in the Information Collection Process up to the amount estimated.
	Priority 1c: ETCs that did not participate in the Information Collection Process.
	Priority 1d: Other advanced service providers that did not participate in the Information Collection process.
	Priority 1e: ETCs that participated in the Information Collection Process beyond the amount estimated.
	Priority 1f: Other advanced service providers that participated in the Information Collection Process beyond the amount estimated.
Priority 2: Qualifying schools, libraries, health care providers, and consortiums thereof.	
Priority 3: Advanced communications service providers with more than 2 million customers but fewer than 10 million customers.	Priority 3a: ETCs that participated in the Information Collection, up to the amount estimated.
	Priority 3b: Other advanced service providers that participated in the Information Collection Process up to the amount estimated.
	Priority 3c: ETCs that did not participate in the Information Collection Process.
	Priority 3d: Other advanced service providers that did not participate in the Information Collection process.
	Priority 3e: ETCs that participated in the Information Collection Process beyond the amount estimated.
	Priority 3f: Other advanced service providers that participated in the Information Collection Process beyond the amount estimated.