

**Before the
Federal Communications Commission
Washington, DC 20230**

In the Matter of)
)
Application of Section 4 of the Secure and) WC Docket No. 18-89
Trusted Communications Networks Act of)
2019 to the Commission’s Rulemaking on)
Protecting Against National Security)
Threats to the Communications Supply)
Chain)

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the *Public Notice* issued by the Federal Communications Commission (“Commission”) in the above-referenced proceeding.² In the *Public Notice*, the Commission seeks comment on whether the Secure and Trusted Communications Networks Act of 2019 (“Act”) requires the Commission to modify the reimbursement program for Eligible

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² *Wireline Competition Bureau Seeks Comment on the Applicability of Section 4 of the Secure and Trusted Communications Networks Act of 2019 to the Commission’s Rulemaking on Protecting Against National Security Threats to the Communications Supply Chain*, Public Notice, WC Docket No. 18-89 (Apr. 13, 2020) (“*Public Notice*”).

Telecommunications Carriers (“ETCs”) utilizing covered equipment or services, including the process for doing so, as proposed in the Commission’s *Further Notice of Proposed Rulemaking*.³

II. THE COMMISSION SHOULD AWAIT FUNDING FROM CONGRESS PRIOR TO TAKING ANY ACTION THAT WOULD COMPEL RIP AND REPLACE PRIOR TO THE STATUTORY DEADLINE.

The Commission notes in the *Public Notice* that the reimbursement program established by the Act “appears to require an express appropriation from Congress” and must be “separate from any Federal universal service program established under section 254 of the Communications Act....”⁴ This appears to be relatively clear in indicating that the Commission should decline to compel ETCs to remove and replace their covered equipment and services until Congress appropriates funding for this purpose. “Rip but don’t replace” is not a strategy that will yield great success or continuity of much-needed services and could not have been the intent of Congress. Instead, the Commission should be poised for an allocation of reimbursement funds from Congress before requiring providers to remove and replace covered equipment and services, unless and until the Commission must do so to meet the Act’s statutory deadline.

Indeed, while the Act prohibits ETCs’ use of “certain federal subsidies” to purchase or maintain covered equipment and services,⁵ the statute applies to more than ETCs alone – the Act expressly makes eligible for “rip and replace” funding *any* “provider of advanced communications services,” without reference to ETC status, that has 2 million or fewer

³ *Notice* at p. 2.

⁴ *Id.* at p. 3.

⁵ Act section 3.

customers and that makes certain certifications.⁶ It would make little sense to compel ETCs to remove and replace their equipment immediately but not provide funding to do so – *and* to bar the use of universal service funds to do so – and then to top that off with the authorization of a separate fund that would provide “rip and replace” reimbursement to *any* small provider with covered equipment in its network, whether an ETC or not. The only logical reading of all of these provisions together is that ETCs and smaller providers should be required to “rip and replace” covered equipment and services simultaneously once congressional funding is provided to do so. There should be no requirement to “rip” before there is definitive funding to “replace.”

The Commission should also note that providers will likely need more lead time than usual to acquire replacement equipment due to fulfillment delays related to COVID-19. Thus, even if the Commission were to require ETCs to install replacement equipment and services earlier than the date mandated by Congress, and even if ETCs were somehow able to afford to remove existing covered equipment and purchase replacement equipment, giving providers the full statutory time provided by the Act in which to identify, secure, and install replacement equipment and services will allow providers the time needed to complete such activities.

III. THE COMMISSION’S LIST OF APPROVED REPLACEMENT EQUIPMENT AND SERVICES SHOULD MATCH THE SCOPE OF THE REMOVAL REQUIREMENT.

The Commission pointed out in the *Public Notice* that the Act directs the Commission to “develop a list of suggested replacements” that can be used by ETCs and other providers to identify permissible equipment and services that can be used to replace covered equipment and

⁶ Act section 4(b).

services.⁷ Accordingly, the Commission requested comment on how to “develop a list of suggested replacement communications equipment and services.”⁸ NTCA encourages the Commission to allow providers to purchase and install any equipment or service that is not identified as a threat to national security by the 2019 NDAA and to provide a list of companies identified by the 2019 NDAA, rather than attempting to create a list of permissible hardware and software components, their manufacturers, and any names under which such products and services might be sold. This approach would be consistent with that taken by the Commission when identifying equipment and services that must be removed.⁹

The Commission concluded a “bright line” test for identifying covered equipment and services that includes all equipment and services manufactured or offered by specified companies, including their subsidiaries, parents, or affiliates, “best promotes national security, provides the most administrable rule, and eases compliance.”¹⁰ NTCA recommends the Commission apply the same logic when identifying permissible replacement equipment and services. Furthermore, due to the rapidly approaching deadline for providers to remove and replace covered equipment and services, there is insufficient time for the Commission to evaluate every possible equipment or service that could be offered or installed by providers in order to determine whether such equipment or service poses a threat to national security. This approach

⁷ *Id.*

⁸ *Id.* at p. 4.

⁹ The Commission’s Order identifying ZTE and Huawei as covered entities applies to “any and all equipment or services, including software, produced or provided by” these entities, their parents, affiliates or subsidiaries. See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Report and Order, Further Notice of Proposed Rulemaking, and Order, WC Docket No. 18-89 (Nov. 26, 2019) at ¶ 66.

¹⁰ *Id.* at ¶ 67.

would also be consistent with the 2019 NDAA while also providing much-needed uniformity across multiple federal agencies.

IV. CONCLUSION

NTCA agrees with the Commission that the Act requires a separate funding allocation from Congress to reimburse providers for the cost of removing and replacing covered equipment and services. NTCA therefore encourages the Commission to await this allocation prior to initiating any action that would require ETCs to remove and replace covered equipment or services sooner than required to meet the Act’s statutory deadline. Additionally, NTCA recommends the Commission apply the same “bright line” test in identifying permissible replacement equipment and services as the Commission created for prohibited equipment and services. Such a test will provide clarity for providers as well as consistency among federal agencies overseeing threats to national security.

Respectfully submitted,



By: /s/ Michael Romano

Michael Romano
Jill Canfield
Tamber Ray

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000 (Tel)