

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**Comments of
WTA – Advocates for Rural Broadband**

WTA – Advocates for Rural Broadband

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Summary

WTA – Advocates for Rural Broadband supports the creation of a reimbursement fund to be used by carriers to replace equipment in their networks that poses a national security threat. However, WTA advises the Commission that this is a matter of national security and the cost of replacing the equipment should come from the general treasury and not the far more limited Universal Service Fund. Congress appears to agree as both the House and Senate have either passed or considered passing funding to pay for the replacement of such equipment

While carriers transition from covered equipment, the Commission must take steps to make sure there isn't a degradation of service in rural America. WTA is concerned that the steps taken by the Commission to prevent Universal Service and private funds from going towards the maintenance of covered equipment will lead to poor service for customers in rural America as carriers transition. Since a transition may be a multi-year process, the Commission should revise its rule and allow for limited Universal Service support to go towards maintaining the equipment. The Commission should also clarify how a carrier can maintain existing equipment with private funds so that it remains fully functional for customers during the transition.

The limited WTA members with covered equipment in their networks are open to not using or agreeing not to use within a designated period of time communications equipment or services from covered companies. However, this is contingent on the establishment of a reimbursement fund that can be used by carriers to cover the costs of ripping and replacing existing covered equipment in their networks. Once established, the Commission should focus support on the carriers immediately impacted by the USF prohibition. The Commission should also implement an approach that not only improves network security but also advances the principles of Universal Service.

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WTA – Advocates for Rural Broadband¹ (“WTA”) files these comments in response to the Report and Order, Further Notice of Proposed Rulemaking (“Further Notice”), and Order,² approved by the Commission on November 26, 2019. In its Further Notice, the Commission seeks comment on its proposal to block Universal Service Fund (“USF”) support from companies that have equipment from “covered companies” in their network – initially designating Huawei and ZTE as covered companies. The Further Notice also proposes “to require USF recipients that are eligible telecommunications carriers (ETCs) to remove and replace existing equipment and services produced or provided by covered companies.” This proposal is contingent on the creation of a reimbursement fund that will cover the costs of doing so. The Commission also seeks comment on how such a “rip and replace” program should be designed.³

¹ *WTA - Advocates for Rural Broadband* is a national trade association that represents more than 340 rural telecommunications providers offering voice, broadband, and video-related services in rural America. Its members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

² Protecting National Security Through FCC Programs, Report and Order, Further Notice of Proposed Rulemaking (“Further Notice”), and Order, WC Docket No. 18-89, rel. Nov. 26, 2019.

³ Further Notice at ¶ 122.

WTA's members are small, rural local exchange carriers ("RLECs") that rely on USF support to help build and maintain communications networks in high cost rural areas. Without these carriers, a significant portion of rural America would not have affordable, reliable, and quality communications services. WTA primarily represents the wireline interests of its members. However, many WTA members also have mobile wireless offerings for their customers.

In response to the Further Notice, WTA reiterates that any funding for a reimbursement program should come from a Congressional appropriation and not the Universal Service Fund. The Commission must also consider how affected carriers will continue offering service in rural America as they transition away from covered equipment in what might be a multi-year process. Finally, the Commission should ensure that the carriers immediately impacted by the USF prohibition – mostly small, rural ETCs – are given priority when distributing funding.

I.

ANY REIMBURSEMENT TRUST FUND SHOULD BE FUNDED BY AN APPROPRIATION OF CONGRESS AND NOT THE UNIVERSAL SERVICE FUND

In its Further Notice, the Commission proposes to create a reimbursement program that could fund the replacement of covered equipment. The Commission seeks comment on where funding for such a program should come from – initially proposing to ask Congress for an appropriation – while also asking if the Universal Service Fund should be considered as an alternative funding source if Congress does not appropriate funding.

Protection of the nation's communications networks and their customers – including the electrical grid, transportation systems, financial markets and emergency services – from potential security threats is a critical national security matter that affects all American households and

businesses. The cost of identifying and eliminating potential security vulnerabilities in communications networks and their supply chains – including the removal and replacement of existing equipment that was acquired and deployed lawfully before its vendor was determined to be a “covered company” – is a basic national security function that should be paid for out of the general treasury. It should not be imposed solely or primarily upon the far more limited community of interstate telecommunications service providers and customers that contribute to the Universal Service Fund.⁴

Moreover, the Commission lacks clear statutory authority at this time to use USF to fund a reimbursement program. Section 254 of the Communications Act provides no direct language creating such a program to reimburse carriers for the replacement of equipment that may pose a national security threat. While the 10th Circuit allowed the Commission to place restrictions on how Universal Service funds can be spent,⁵ there is no language in Section 254 that prescribes or permits – either via the creation of an entirely new program or via the modification or refocusing of an existing USF mechanism – the Commission to pay carriers to rip out and replace voice or broadband equipment for national security or any other purposes whether or not such equipment was deployed in whole or part with USF dollars. Rather, additional or revised statutory authority would need to be enacted by Congress and the requisite funding identified or appropriation provided.

⁴ A glance at the recent trajectory of the Universal Service contributions rate sees a stark increase in the rate from 14% to 21% in the last ten years while the assessable revenue base has decreased. An additional demand on the fund due to a reimbursement program will result in a further increase in the contribution rate. Contribution Factor & Quarterly Filings - Universal Service Fund (USF) Management Support, <https://www.fcc.gov/general/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>, last accessed Jan. 29, 2020.

⁵ In re FCC 11-161, 753 F.3d 1015, 1046 (2014).

WTA fully supports the Commission seeking funding from Congress to pay for the replacement of covered equipment. Thankfully, Congress appears to agree. In December, the House of Representatives passed H.R. 4998, the Secure and Trusted Communications Networks Act of 2019, which establishes a \$1 billion fund for the replacement of equipment.⁶ Meanwhile, the Senate Commerce Committee has approved S. 1625, the United States 5G Leadership Act of 2019, which establishes a \$700 million fund for the replacement of covered equipment.⁷ WTA recommends to the Commission that it continue engaging Congress so that a funding mechanism is approved and signed into law - allowing covered equipment to be removed and replaced without involving or impacting the Universal Service Fund.

II.
THE COMMISSION MUST GRANT AFFECTED CARRIERS FLEXIBILITY WHILE THEY TRANSITION FROM COVERED EQUIPMENT SO THAT SERVICE IN RURAL AMERICA IS NOT DISRUPTED

WTA is concerned that the steps taken by the Commission in its Report and Order will lead to a poorly executed transition that will result in a degradation of service experienced by the customers of the affected carriers. Specifically, the Commission’s prohibition on using Universal Service funds to maintain and support existing equipment⁸ and its assertion that current USF recipients would be “unlikely” able to prove that only private funds were spent on supporting equipment⁹ will leave carriers on tenuous grounds shall it be necessary to fix existing equipment if a malfunction occurs prior to new equipment being ready for use.

⁶ Secure and Trusted Communications Networks Act of 2019, H.R.4998, 116th Cong. (2019).

⁷ United States 5G Leadership Act, S. 1625, 116th Cong. (2019).

⁸ Report and Order at ¶ 71.

⁹ Id. at ¶ 72.

WTA agrees that the “safety, reliability, and security” of our nation’s communications networks is critical.¹⁰ However, the other Universal Service principles clearly stated in Section 254 of the Act must not be sacrificed in their entirety in the name of security. A critical component of a successful transition away from covered equipment must be the continuation of reliable service by carriers to their affected customers. The reality on the ground is that covered equipment currently is in use and helping to ensure that there is affordable and reliable voice and data services in many parts of rural America. For that current service to continue, it must be possible for carriers to properly maintain that equipment to ensure that it is in working order.

WTA wishes that a transition could be a simple occurrence. However, the Commission should be prepared for a long transition. To start, Congress has yet to appropriate funding for a transition and it may be some time, possibly a few years, before all regulatory matters are resolved and funds can begin to be disbursed to carriers. The Commission must also be aware that broadband deployments are multi-year efforts and that a timeline of between 3-to-7 years should be an appropriate length to ensure that new equipment is ready to serve existing customers without a loss in service. This will allow time for possible network re-designs, tower construction (when necessary), and installation of equipment. Deploying first class communications in rural America is not an easy endeavor. In some circumstances, carriers may need to cover large swaths of land with backhaul, erect new towers, and attach equipment in hard-to-reach locations that may not be accessible at certain times of the year. Once installed, the equipment must then undergo testing to ensure it is capable of handling the customer traffic that will be transferred to it from covered equipment. It is also important to note that there are a limited number of qualified construction crews that are capable of installing a network. Once the

¹⁰ Further Notice at ¶ 124.

reimbursement fund is established, WTA expects there to be a rush of carriers seeking construction services with many carriers having to wait an extended period of time before new equipment can be installed. Further, all carriers are situated differently financially and depending on how reimbursement funds are distributed could result in shorter or longer transition timelines.

Hence, for a significant period of time, it will be necessary for affected carriers to continue to use covered equipment. WTA members are concerned as to how they will be able to continue using existing covered equipment if they are unable to provide the maintenance necessary to ensure that it functions in proper order. To relieve these concerns, the Commission should consider revising its rules that prohibit carriers from purchasing, obtaining, maintaining, improving, modifying, or otherwise supporting equipment or services provided or produced by covered companies with USF support.¹¹ WTA proposes that the Commission revise its adopted rule to allow limited USF support to go towards ensuring that covered equipment continues to operate while the transition is underway. The Commission should only allow limited support to go to carriers that have committed to removing equipment via the reimbursement trust fund, and the support should only go towards ensuring that the equipment remains functional, which would exclude further upgrades to the equipment, but allow software patches, updates, as well as other tasks necessary to maintain the equipment.

The Commission could also provide more clarity to affected carriers on how to proceed with maintaining equipment through private, non-USF funds during a transition. In its Report and Order, the Commission stated that “USF recipients must be able to clearly demonstrate that no USF funds were used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by a covered entity” and further stated that it is

¹¹ Report and Order at ¶ 71.

“unlikely that many USF recipients will be able to show the detailed records necessary to demonstrate that no USF funds were used on equipment or services from a covered company on any part of that project.”¹² However, USF recipients, in general, have long had to implement and use accounting systems that comply with existing Commission, National Exchange Carrier Association (“NECA”), and Universal Service Administrative Company (“USAC”) requirements for the accurate calculation and tracking of their costs. Further, carriers operate with the expectation that they may be audited by USAC or the Commission or that they must validate a NECA¹³ tariff filing. Thus, they need to have clear accounting records. Therefore, WTA members contend that they can comply with reasonable requirements for the identification of the costs of and funding for the maintenance of covered equipment during a transition.

As WTA has explained on several occasions, one of the most important factors that carriers consider when operating is certainty. The Commission should outline a process that clearly shows how a provider can use private funds to maintain its existing network during the transition or outline how it cannot be done.

In summary, the Commission must give carriers flexibility and certainty that will allow them to continue to serve their customers with reliable service while they transition from covered equipment. Failure to do so will result in a loss of coverage for customers as carriers are no longer able to keep their networks running in functional order.

¹² Id at ¶ 72.

¹³ National Exchange Carrier Association, <https://www.neca.org/about-us>.

III.
**THE COMMISSION SHOULD PLACE A PRIORITY ON REMOVING, REPLACING,
AND REIMBURSING FOR ALL COVERED EQUIPMENT FROM ETCs THAT WILL
BE IMMEDIATELY AFFECTED BY THE USF BAN**

In its Further Notice, the Commission proposes that as a condition for the receipt of any future USF support that ETCs not use or agree not to use within a designated period of time, communications equipment or services from covered companies. The Further Notice also proposes “to require USF recipients that are eligible telecommunications carriers (ETCs) to remove and replace existing equipment and services produced or provided by covered companies.”¹⁴ This proposal is contingent on the creation of a reimbursement program, which will be used to fund the “rip and replacement” of covered equipment.¹⁵

The limited WTA members that have covered equipment in their networks are open to not using or agreeing not to use within a designated period of time communications equipment or services from covered companies. However, this willingness is contingent on the establishment of a reimbursement fund that can be used by carriers to cover the costs of ripping and replacing existing covered equipment in their networks. WTA warns the Commission that proceeding on this proposal without the establishment of a reimbursement fund runs counter to the principles of the Universal Service Program as small, rural carriers are not in a financial position to remove existing equipment without additional funding. Further, it would risk compromising the entirety of a carrier’s network including parts of the network that do not have covered equipment and are entitled to the predictable and sufficient funding afforded by the Act.

Once a reimbursement fund is established, the Commission should ensure that the carriers immediately impacted by the prohibition – mostly small, rural ETCs – are given priority

¹⁴ Further Notice at ¶ 122.

¹⁵ Id.

when distributing funding. The Commission should also implement an approach that not only improves network security but also advances the principles of Universal Service. It is critical that the Commission preserve and whenever possible increase recent gains in rural coverage while replacing covered equipment.

The Further Notice seeks comment on who should be subject to the removal requirement and be eligible for reimbursement.¹⁶ WTA agrees with the Commission that the requirement and eligibility should be limited to ETCs. As the Commission notes, the administration of Universal Service is where the Commission has the clearest authority in this matter.¹⁷ It is also in the public interest of the Commission to place a priority on removing equipment that was purchased lawfully with prior Universal Service funds before the present security issues were identified. Limiting it to ETCs helps ensure that there is adequate funding to do this as well as preserve the recent gains rural America has achieved in Universal Service.

WTA recognizes that it remains to be seen how much a national transition from covered equipment will cost and whether or not all equipment can be removed with future appropriated funds. Whether or not an appropriation will be sufficient will depend upon multiple factors such as how much is appropriated, how much equipment must be removed, as well as how quickly the transition must occur. The record reflects that most covered equipment is used by small, rural carriers that chose to deploy the equipment for a number of reasons, including affordability and customer service. Unlike larger carriers that are able to spread costs over large customer bases, small, rural carriers are much more likely to depend on federal funding, such as USF, to deploy communications services. Without continued federal support, many parts of rural America would lose access to affordable and reliable service.

¹⁶ Id. at ¶ 128.

¹⁷ Id.

Therefore, the Commission should place a priority on assisting the carriers that will be immediately impacted by its USF prohibition and will need to remove the equipment in order to continue receiving USF throughout the rest of their network, especially in areas where covered equipment is not present. WTA notes that the Commission should not separate a carrier's wireline and wireless operations when considering if a carrier should receive priority. For example, if a carrier has covered equipment in both its wireline and wireless networks, but only its wireline network is USF supported, the carriers should still have priority to remove the equipment from its wireless network – and vice versa. This is reasonable as wireline and wireless networks are becoming increasingly integrated such that a security risk in one could pose a threat in the other.

The Further Notice also seeks comment on what equipment must be removed and also what equipment should be eligible for replacement.¹⁸ In previous filings, WTA, and others, have urged the Commission to take a narrow position on what equipment should be removed. Groups have argued that removal should be limited to equipment that can actually redirect data or grant visibility into a network. Such narrow language was adopted in the 2019 National Defense Authorization Act, and as the Commission notes, adopting such language in this instance “would limit the replacement burden.”¹⁹ However, the Commission has gone beyond the 2019 NDAA language to place a far broader ban on Universal Service funding to covered equipment. WTA proposes that since the Commission placed a blanket ban on using covered equipment, all covered equipment should be eligible for replacement and reimbursement. After all, if any of the equipment remains in the network, the carriers may be prohibited from receiving Universal Service. WTA proposes that a carrier must provide documentation to show that equipment is still

¹⁸ Id. at ¶ 133.

¹⁹ Id. at ¶ 134.

in use. For example, a carrier may still operate older CDMA equipment along with newer 4G equipment to serve different customer needs. Depriving the carrier of this CDMA equipment would be an additional burden on the carrier and interrupt its current business practices. This may lead to service coverage issues, increased rates for its customers, as well as the potential breach of roaming agreements with other wireless carriers. Reimbursing the carrier for the loss of that equipment would make it far more likely that the carrier could continue its operations and minimize customer and business impact.

However, while WTA supports carrier reimbursement for older equipment that is still in use and must now be removed, it does not support requiring carriers to build replica networks using older technologies. Not only would this be impractical, but it would also run counter to the goals of Universal Service. If a carrier uses older 3G equipment from a covered company, the carrier would be faced with the reality that such equipment is no longer in production forcing the carrier to purchase equipment second-hand – raising new issues for reliability and security.

Second, the Commission should view this as an opportunity to upgrade the networks affected by the prohibition. Re-deploying older technologies in rural America while urban areas enjoy the latest technologies only worsens our nation's digital divide. In this instance, an affected wireless carrier should deploy the most advanced network feasible, which in rural America is likely a 4G network that can potentially be upgraded to 5G in time.

The Further Notice also seeks comment on what the Commission can do to reduce the cost difference in new equipment. As the Commission notes, carriers chose equipment from the covered companies because it was much more affordable than deploying equipment from other companies.²⁰ The Commission should allow and encourage carriers to explore joint purchasing

²⁰ Id. at ¶ 139.

programs in hope that they may reduce cost. However, the single most important thing that the Commission can do to restrain the cost of a transition is to allow for a more gradual, multi-year transition from covered equipment. This will allow carriers to potentially retire existing equipment as it comes to the end of its lifespan. And as stated before, it would also ensure that equipment vendors and construction crews could not effectively charge “surge pricing” for carriers that are trying to meet the deadline.

Finally, WTA notes that these positions are based upon the Commission’s Further Notice alone and that these positions could be potentially changed by any superseding act of Congress. In the wake of Congressional action on this issue, the Commission must release a Second Further Notice and allow for additional comment from stakeholders.

IV. CONCLUSION

WTA applauds the Commission for recognizing the necessity of reimbursing carriers for the replacement of covered equipment. However, WTA warns that funding the reimbursement program through the Universal Service Fund will drastically increase the contributions rate as well as potentially undercut the principles of Universal Service. WTA advises the Commission that it must grant affected carriers the flexibility needed to continue maintaining and supporting covered equipment while they transition to new, trusted equipment. Failing to do so may result in network degradation that will be to the detriment of rural customers. Further, the Commission should ensure that the carriers immediately impacted by the USF prohibition – mostly small, rural ETCs – are given priority when distributing funding.

Respectfully submitted,

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