

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

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

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

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) in the above-referenced proceeding.² In the *Notice*, the Commission seeks comment on a proposal to require eligible telecommunications carriers (“ETCs”) receiving Universal Service Fund (“USF”) support to remove and replace equipment or services used in their networks that are manufactured by a covered company, as identified by the Commission.³

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 *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) (“*Report and Order*” or “*Notice*”).

³ *Notice* at ¶ 122.

NTCA and its members recognize the important cybersecurity challenges the country faces in the global supply chain and support efforts to promote national security interests in a manner that does not disrupt the voice and broadband services relied upon by consumers. Specifically, NTCA has filed Comments before the Commission in this docket and with the Department of Commerce in response to the Department's proposals governing the communications supply chain.⁴ Furthermore, NTCA is an executive committee member of the Communications Sector Coordinating Council and a working group participant in the Department of Homeland Security's ("DHS") Information and Communications Technology Supply Chain Risk Management Task Force, which bring together federal agencies and industry representatives to address cybersecurity issues facing communications providers. NTCA has also received awards from the National Institute of Hometown Security, funded by DHS in 2018 and again in 2019, to promote and enhance cybersecurity awareness among NTCA's members.

NTCA encourages the Commission to adopt rules that clearly identify ETCs' obligations for removing and replacing covered equipment and services in their network once Congress or the Commission has made funding available to reimburse ETCs for the cost of replacing such equipment and services with comparable new equipment. Indeed, given the immediate prohibition in the *Report and Order* on using USF funds to maintain or repair existing covered equipment, the Commission or Congress must act quickly to establish a fund to reimburse affected ETCs for the cost of removing and replacing covered equipment and services.

Moreover, to avoid placing burdens on the USF and to ensure that USF funds can otherwise be

⁴ See, e.g., *Securing the Information and Communications Technology and Services Supply Chain*, Docket No. 191119-0084, Dept. of Commerce, Proposed rule; request for comments, 84 FR 65316 (Nov. 27, 2019).

used for the mission of extending universal service, NTCA recommends that the Commission look to Congress for such funding in the first instance if at all possible. NTCA also requests that the Commission recognize carriers are dependent upon equipment vendors to accurately identify the source of equipment and thus grant ETCs a “safe harbor” if any agreement they enter into for equipment or services includes a representation by the vendor that no covered equipment or services are being purchased or provided. Finally, NTCA supports the Commission’s proposal to require ETCs to identify the cost of removing and replacing prohibited equipment and services in order to identify most accurately the amount of funding needed to reimburse ETCs for this cost. Any information collection, however, must be minimally burdensome on carriers and guarantee confidentiality of the information submitted.

II. FUNDING TO REPLACE COVERED EQUIPMENT AND SERVICES MUST BE AVAILABLE SIMULTANEOUSLY WITH REPLACEMENT.

The Commission adopted rules in the *Report and Order* prohibiting carriers from using USF support to “purchase or obtain any equipment or services produced or provided by a covered company.”⁵ However, the ban is not merely prospective. Rather, USF support also cannot be used to “maintain, improve, modify, operate, manage or otherwise support such equipment or services in any way....”⁶ In the *Notice*, the Commission proposes to require ETCs receiving USF support to remove and replace covered equipment from their network contingent upon the availability of a funded reimbursement program.⁷ NTCA supports the Commission’s proposal; however, funding must be made available in a timely fashion and simultaneously with

⁵ *Report and Order* at ¶ 26.

⁶ *Id.*

⁷ *Notice* at ¶ 122.

the requirement that equipment and services be removed from ETCs' networks. Due to the rule adopted in the *Report and Order* prohibiting ETCs now from using USF funds – and in all likelihood their own funds⁸ – to update, repair or modify any covered equipment or services that are used in their networks, it is imperative to make such funding available to affected ETCs as promptly as possible. Without the ability to even maintain or support covered equipment, this equipment will quickly become virtually obsolete, leaving ETCs and their customers at risk of outages to critical services. Furthermore, the USF funds already spent to build out the network providing these services will become a stranded investment.

In addition to making the funds available post haste for these purposes, the prospective equipment replacement mandate must occur simultaneously with available funds. Few, if any, ETCs have the funds available to remove and replace existing equipment outside of the normal upgrade cycle. While the cost of removing and replacing covered equipment and services in ETCs' networks still needs to be determined, the Commission itself estimates the cost for all affected carriers will be between \$600 million and \$2 billion if replacement occurs within the next two years.⁹ Carriers could not have anticipated or budgeted for the full breadth of the *Report and Order*. To require small ETCs who are serving the least populated and most geographically challenging parts of the country to replace equipment and services prior to available funding would therefore be a crushing burden.

⁸ *See Id.* at ¶ 72 (although the Commission's rules do not prohibit USF recipients from using their own funds to purchase equipment or services from covered companies, the Commission "believe[s] it unlikely that many USF recipients will be able to ... demonstrate that no USF funds were used on equipment or services from a covered company).

⁹ *Id.* at ¶ 161.

Ideally, Congress will appropriate funding to reimburse carriers for the cost of replacing covered equipment and services. To avoid placing burdens on the USF and to ensure that USF funds can otherwise be used for the mission of extending universal service, NTCA recommends that the Commission look to Congress for such funding in the first instance if at all possible. If Congress does not appropriate funds, however, the Commission may be forced to fill the void and use USF funding to reimburse carriers.¹⁰ USF funds were established by the Commission to make deployment of telecommunications services in the most rural, least populated areas of the country economically feasible. Such funding remains essential today. If the Commission requires ETCs to remove and replace covered equipment prior to the normal business cycle, without reimbursement for the cost of doing so, customers who depend upon the networks built by leveraging USF funds will suffer the most. Such a result is contrary to the Commission's goal of expanding telecommunications services throughout rural America.¹¹

The Commission also seeks comment on whether ETCs with covered equipment and services in their network should continue to receive USF support provided they agree to replace such equipment and services at a future date.¹² NTCA supports this proposal. USF support is fundamental to ETCs' ability to continue building out and maintaining voice and broadband services throughout the most rural areas of the country. As for how much time ETCs should receive to replace covered equipment and services,¹³ NTCA suggests that instead of a firm

¹⁰ *Id.* at ¶ 144.

¹¹ *See, e.g., FCC Launches \$20 Billion Rural Digital Opportunity Fund to Expand Rural Broadband Deployment*, News Release, WC Docket Nos. 19-126, 10-90 (rel. Jan. 30, 2020).

¹² *Notice* at ¶ 154.

¹³ *Id.*

deadline, carriers should continue receiving USF support until either federal funding is available to reimburse affected ETCs for the cost of replacement equipment and services or the carrier replaces the equipment or service in the normal course of business.¹⁴

III. THE COMMISSION SHOULD ENSURE THAT FUNDING IS USED TO DEPLOY NETWORKS THAT WILL PROVIDE SIMILAR FUNCTIONALITIES BUT ALSO STAND THE TEST OF TIME.

The Commission seeks comment on whether replacement funding should be for comparable equipment, even if the equipment is outdated.¹⁵ The Commission correctly concludes that carriers will likely be unable to find functionally equivalent equipment given the amount of time and changes in technology that have occurred since the equipment was purchased and installed.¹⁶ Even if functionally equivalent equipment could be obtained, expending funds to purchase outdated equipment would be wasteful. Instead, to make the best use of any replacement funding available, NTCA encourages the Commission to adopt rules that would allow affected ETCs to obtain reimbursement for current releases of equipment available at the time of replacement that most closely resemble the functionality of the equipment being replaced – but that is also capable of meeting reasonable projections of future demand.

The Commission further asks for ways carriers and equipment vendors could work together to lower the cost of replacement equipment.¹⁷ Small carriers, many of whom are ETCs, lack the buying power of larger carriers. Consequently, even if a group of smaller carriers

¹⁴ This should apply *both* with respect to the removal and replacement of prohibited equipment *and* to the ability to repair such equipment while still being used in the network pending replacement.

¹⁵ *Id.* at ¶ 138.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 139.

needed identical equipment and/or services and was able to form a joint purchasing program, there would be little to no cost savings. Smaller carriers, whether operating alone or in a group, simply do not have the ability to negotiate for a better price. Thus, the only option for affected ETCs to obtain lower-priced replacement equipment would be for the Commission to encourage equipment providers to offer the same prices to small carriers as they offer to large carriers.

The Commission can also minimize the amount needed to reimburse carriers for the cost of replacement equipment by making reimbursement available only to ETCs with covered equipment or services in their network as of November 26, 2019, the date of the *Report and Order*. This would not only allow the Commission to identify a more precise amount needed to be included in any reimbursement fund, but also reflects the fact that ETCs who currently have covered equipment and services in their network had no expectation prior to the Commission's *Report and Order* that the equipment and services used in their networks would need to be replaced outside of the normal business cycle.

IV. CARRIERS WITH WRITTEN ASSURANCES FROM THEIR SUPPLIERS THAT THEY ARE NOT PURCHASING OR INSTALLING COVERED EQUIPMENT OR SERVICES SHOULD BE FOUND TO HAVE MET THEIR STANDARD OF CARE.

In adopting a complete prohibition on covered equipment and services, the Commission stated that carriers are responsible for working with their suppliers to understand what equipment and services they are purchasing, in order to “ensure that such equipment and services are not produced or provided by a covered company.”¹⁸ Thus, carriers must somehow have the ability to “see through” equipment that has been labeled to disguise its origin. The consequences for ETCs who fail to do so are significant, with USF support being at risk.

¹⁸ *Report and Order* at ¶ 20.

While NTCA recognizes and supports the Commission’s responsibility to ensure USF funds are used appropriately, penalizing carriers by withholding USF funds for something outside of their control is not only ineffective in preventing covered equipment from being installed in our nation’s communications network,¹⁹ but could also deter carriers from investing in their networks due to fear of losing USF funds by unknowingly purchasing covered equipment or services. The Commission can help close the “loophole” that allows covered companies to “sneak their equipment into our communications networks”²⁰ and ensure that, “going forward, ETCs obtain and rely on equipment only from trusted vendors”²¹ by making clear that: 1) carriers should obtain written assurances from their suppliers, vendors or manufacturers asserting that the equipment or services purchased do not include any covered equipment or services; and 2) such written assurances will satisfy the Commission’s requirements. A rule that creates a safe harbor for ETCs in these instances will help achieve the Commission’s goal by providing small and rural providers the bargaining power they need to insist upon assurances and indemnification in their contracts. Such a rule would also put unscrupulous manufacturers, suppliers and vendors on notice that they will ultimately be held responsible for behavior or practices that risk the nation’s security.

¹⁹ *See, e.g., Id.* at n. 211, demonstrating that even the Federal government unwittingly purchased equipment represented by its vendor as being made in America, concealing the fact that the equipment was in fact manufactured in the People’s Republic of China.

²⁰ *Id.* at ¶ 70.

²¹ *Notice* at ¶ 139.

V. THE COMMISSION’S PROPOSED INFORMATION COLLECTION SHOULD BE MINIMALLY BURDENSOME AND ENSURE THE INFORMATION COLLECTED REMAINS CONFIDENTIAL.

In the *Notice*, the Commission proposes to require ETCs to submit information to the Commission identifying the covered equipment and services currently used in their networks along with detailed estimates demonstrating the anticipated cost to remove and replace such equipment or services.²² NTCA supports the Commission’s request to obtain the proposed information in order to identify as accurately as possible the amount needed to reimburse ETCs for the cost of replacing covered equipment and services. As the Commission has noted, current estimates vary significantly²³ and without detailed cost information from affected carriers, the Commission is left to make a “best guess” as to the amount of funding needed.

To minimize the burden of the Commission’s proposed information collection on carriers and allow the Commission to quickly identify the amount of funding needed, NTCA encourages the Commission to only obtain this information from ETCs that have covered equipment or services in their network. The Commission should also use the information collection process to identify the cost of replacing covered equipment and services with current equipment that most closely resembles the functionality of existing equipment capable of meeting reasonable expectations for future growth. Due to the sensitive and proprietary nature of the information collected, however, ETCs must be permitted to request that the information provided be withheld from public inspection pursuant to Section 0.459 of the Commission’s rules.²⁴

²² *Id.* at ¶ 165.

²³ *Id.* at n. 308 (estimates for replacing equipment ranged from \$6 million to over \$300 million).

²⁴ 47 C.F.R. § 0.459.

VI. CONCLUSION

NTCA supports strategic steps to manage cybersecurity risks in our nation's communications networks. To further this goal without interrupting critical broadband and voice services, NTCA recommends the Commission ensure funding is available to reimburse ETCs for the cost of replacing covered equipment and services simultaneously with any deadline the Commission establishes for such replacement. NTCA also encourages the Commission to adopt rules providing carriers with a "safe harbor" from any loss of USF support if those carriers receive a written guarantee from their vendors that no covered equipment or services are being provided. Finally, NTCA supports the Commission's proposal to require ETCs with covered equipment and services in their networks to submit information to the Commission demonstrating the cost of replacing such equipment and services, provided that such information collection is minimally burdensome and ensures the confidentiality of the information submitted.

Respectfully submitted,



By: /s/ Jill Canfield
Jill Canfield
Vice President, Legal

By: /s/ Tamber Ray
Tamber Ray
Regulatory Counsel

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203

703-351-2000 (Tel)