

**Before the
Federal Communications Commission
Washington, DC 20554**

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



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

I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to comments addressing the Further Notice of Proposed Rulemaking (“*Notice*”) in the above-referenced proceeding.² In the *Notice*, the Commission proposed to require Eligible Telecommunications Carriers (“ETCs”) receiving universal service fund (“USF”) support “to remove and replace covered equipment and services from their network operations ... contingent on the availability of a funded reimbursement program.”³ Commenters universally supported the Commission’s proposal to make funding available as a condition precedent to requiring ETCs to remove and replace covered equipment and services. As

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.

commented by NTCA and others, ideally this funding will be allocated by Congress; however, if Congress does not appropriate funding for this purpose, or if the Commission elects to require ETCs to remove and replace covered equipment and services sooner than Congress is able to appropriate funding, the Commission's order can be effectuated only if the Commission allocates funding through another source, such as the USF. NTCA agrees with commenters who urged the Commission to allow adequate funding to reimburse ETCs for the cost of replacing *all* covered equipment and services with equipment that is commercially deployed generally when replacement must occur (in lieu of deploying "dated" equipment). NTCA further encourages the Commission to adopt one or more of the recommendations made by commenters regarding actions the Commission can take to help ensure ETCs do not inadvertently purchase covered equipment or services, thereby better achieving the Commission's goal of protecting against national security threats in communications services and equipment. Finally, NTCA joins commenters who urge the Commission to issue clear guidance regarding the Order's requirement that ETCs not use USF funds to "maintain" or "otherwise support" covered equipment and services.

II. COMMENTERS UNIVERSALLY SUPPORTED THE COMMISSION'S PROPOSAL TO MAKE THE REQUIREMENT TO REMOVE AND REPLACE COVERED EQUIPMENT AND SERVICES CONTINGENT UPON FUNDING.

The Commission proposes in the *Notice* to require ETCs receiving USF support to remove and replace covered equipment from their network contingent upon the availability of a funded reimbursement program, with the goal of this replacement taking place within two years.⁴ Commenters, including NTCA, universally supported the Commission's proposal to make

⁴ *Notice* at ¶¶ 122, 161.

federal funds available to reimburse carriers for the cost of replacing covered equipment and services. The Rural Wireless Broadband Coalition, for instance, stated, “it is critical, whether through Congressional appropriations, or by the Commission’s adoption of USF mechanisms, that sufficient reimbursement mechanisms are in place, as a prerequisite to” the Commission’s proposed removal and replacement requirement.⁵ Likewise, Nokia commented that “the Commission correctly recognized in the [*Notice*] that a funded reimbursement program should be implemented before requiring recipients that receive USF to remove and replace covered equipment from their networks.”⁶

The *Notice* does not specify the source of the funding; however, NTCA and other commenters suggest that the Commission should first look to Congress to appropriate funding for this purpose.⁷ If Congress does not appropriate the necessary funding or does not appropriate funding within the time frame the Commission establishes for ETCs to remove and replace covered equipment and services, then NTCA and others suggest that the Commission will need

⁵ Comments of the Rural Wireless Broadband Coalition, WC Docket No. 18-89 (Feb. 3, 2020), p. 3 (“RWB Coalition Comments”).

⁶ Comments of Nokia, WC Docket No. 18-89 (Feb. 3, 2020), p. 3 (“Nokia Comments”).

⁷ See, e.g., Comments of NTCA – The Rural Broadband Ass’n, WC Docket No. 18-89 (Feb. 3, 2020), p. 5 (“Ideally, Congress will appropriate funding to reimburse carriers for the cost of replacing covered equipment and services.”) (“NTCA Comments”); Comments of the Telecommunications Industry Ass’n, WC Docket No. 18-89 (Feb. 3, 2020), p. 10 (“funding should come from Congress”); Comments of the Wireless Telecommunications Ass’n, WC Docket No. 18-89 (Feb. 3, 2020), p. 4 (“WTA fully supports the Commission seeking funding from Congress to pay for the replacement of covered equipment.”) (“WTA Comments”); Comments of JAB Wireless, Inc., WC Docket No. 18-89 (Feb. 3, 2020), p. 16 (“In the first instance, the Commission should forcefully advocate for Congress to appropriate the necessary funds to support expedited removal and replacement of covered equipment.”) (“JAB Wireless Comments”).

to allocate funding through the USF program.⁸ Timeliness is key in establishing a reimbursement fund given the Commission’s order prohibiting ETCs from using USF funds, at a minimum, to repair or maintain existing networks that contain covered equipment and services.⁹ Indeed, to this latter point, time is already of the essence as, just to keep existing services running and avoid outages or serious disruptions, certain providers may be effectively compelled to “rip and replace” malfunctioning covered equipment or otherwise perform repair functions on such equipment in a manner potentially prohibited by the *Report and Order*.¹⁰ Thus, while funding needs to be in place simultaneous with the date by which ETCs must remove and replace covered equipment and services, if the Commission must use USF funds in order for there to be replacement funds available as soon as they are needed, NTCA encourages the Commission to continue to seek funding from Congress so that Congressional funds could be used to replenish any USF amounts used for this purpose.

In fact, if Congressional appropriations are not made available soon, one option would be for the Commission to use USF to fund specifically and only the replacement of ETCs’ existing covered equipment that is malfunctioning or to allow for basic repairs of such equipment as needed to maintain services, with follow-on Congressional funding then being used for the

⁸ On February 27, 2020, Congress passed the Secure and Trusted Communications Networks Act, which, among other things, would allow telecommunications providers with fewer than two million customers to receive reimbursement for the cost of replacing covered equipment and services. *See* Secure and Trusted Communications Networks Act of 2019, H.R. 4998, 116th Cong. (2019). *See also* JAB Wireless Comments at p. 17 (“If Congress will not appropriate funds for the Commission’s program, then reimbursement funding should logically come from within the USF program.”); NTCA Comments at p. 5 (“NTCA recommends that the Commission look to Congress for such funding in the first instance . . . If Congress does not appropriate funds, however, the Commission may be forced to fill the void and use USF funding. . .”).

⁹ *See* Nokia Comments at p. 6 (“putting a funding mechanism in place must be done quickly and with urgency”).

¹⁰ *Report and Order* at ¶ 26.

systematic removal and replacement of ETCs' remaining covered equipment and services. This alternative would allow affected ETCs to continue providing essential, uninterrupted service while simultaneously eliminating the risk that, without some type of federal funding in the near future, ETCs would be forced to choose between maintaining service or losing USF funds.

III. FUNDING SHOULD COVER THE COST OF REPLACING ALL COVERED EQUIPMENT AND SERVICES PROHIBITED BY THE COMMISSION.

The Commission's *Report and Order* prohibits ETCs from using any USF support "to maintain, improve, modify, operate, manage, or otherwise support [covered] equipment or services in any way, including upgrades to existing equipment and services."¹¹ Without the ability to even operate, much less repair or support, covered equipment, the equipment will rapidly become outdated and thereby be subject to security breaches and possible service outages. Accordingly, ETCs must in effect remove and replace all covered equipment in their networks as a result of the rules adopted in the *Report and Order* and cannot wait for the normal replacement cycle to do so. ETCs must therefore receive funding that matches this prohibition, which is to say funding that covers the cost of removing and replacing all covered equipment and services. As WTA noted, "since the Commission placed a blanket ban on using covered equipment, all covered equipment should be eligible for reimbursement. After all, if any of the equipment remains in the network, the carriers may be prohibited from receiving Universal Service."¹²

¹¹ *Report and Order* at ¶ 26.

¹² WTA Comments at p. 10.

The suggestion by other commenters¹³ and the Commission that reimbursement costs could be limited to the scope of the 2019 National Defense Authorization Act (“2019 NDAA”) runs the risk of funds being used to purchase equipment that may be unable to “talk to” existing covered equipment due to differences in manufacturers or technical parameters. This in turn would render the replacement essentially useless while still leaving the likelihood that some covered equipment remains in the carrier’s network. Furthermore, given the Commission’s prohibition on using any USF contributions to “modify” covered equipment, even if the remaining covered equipment was technically capable of “talking to” the new equipment, ETCs would run a very significant risk that when installing or even operating the new equipment, the Commission could conclude that the carrier was using USF contributions to modify any remaining covered equipment, as some “modification” would likely be necessary to allow the new and existing equipment to communicate with one another.

IV. THE COMMISSION SHOULD ENSURE THAT EQUIPMENT REPLACEMENT FUNDS ARE USED WISELY AND CONSISTENT WITH USF GOALS.

To ensure reimbursement funds are used most effectively, several commenters, along with NTCA,¹⁴ recommended the Commission adopt rules that would allow carriers to receive reimbursement for the cost of equipment that is commercially deployed generally when replacement must occur. CompTIA, for instance, pointed out that “virtually all of the gear being replaced would likely have no current equivalent on the marketplace, and some degree of

¹³ See RWB Coalition Comments at p. 15 (“as the Commission suggests in the Further Notice, it could match up the scope of its removal and replacement requirement with the scope of equipment covered by the 2019 NDAA.”). See also Comments of USTelecom, WC Docket No. 18-89 (Feb. 3, 2020), p. 14 (replacement and reimbursement funding should be limited to the equipment and services covered by the 2019 NDAA) (“USTelecom Comments”).

¹⁴ NTCA Comments at p. 6.

upgrading through the new Commission-funded program will be inevitable. Moreover, as a policy matter it makes little sense to use funding from a federally-administered program to pay for equipment that would be outdated on the day it was installed.”¹⁵ Likewise, JAB Wireless noted that identical equipment “may not be available at any price point, and suitable alternative solutions may be both more advanced and more expensive.”¹⁶

Based on the likelihood that “it will be virtually impossible for carriers to procure equipment that is now directly and precisely equivalent to” existing covered equipment, NTCH/Flat Wireless noted that “disputes about what is or is not ‘comparable’ would inevitably drag out the process.”¹⁷ Accordingly, NTCH/Flat Wireless encouraged the Commission to reimburse carriers “for their actual original cost of acquiring the covered equipment plus 25% without attempting to correlate it exactly to the replacement cost of new equipment.”¹⁸ NTCA believes this idea is worth exploring as this could be a viable method for the Commission to more rapidly allocate funds to reimburse ETCs for the cost of replacing covered equipment in their network, consistent with the Commission’s goal. If the Commission elects to offer this option, the Commission could ensure that funds are used appropriately by requiring funding recipients to certify that all reimbursement funds were used to purchase and install non-covered equipment and services currently available at the time of replacement.

¹⁵ Comments of The Computing Technology Industry Ass’n (“CompTIA”), WC Docket No. 18-89 (Feb. 3, 2020), p. 6.

¹⁶ JAB Wireless Comments at p. 11.

¹⁷ Joint Comments of NTCH, Inc. and Flat Wireless, LLC, WC Docket No. 18-89 (Jan. 31, 2020), p. 8.

¹⁸ *Id.*

Installing modern equipment could also help bridge the digital divide and is consistent with the goals for USF.¹⁹ Specifically, over the past few years, the Commission has made bridging the digital divide a priority and taken multiple steps to ensure rural communities have access to broadband services that are reasonably comparable in price and quality to those available in urban communities.²⁰ Swapping out existing equipment for deployment of “new vintage” equipment – in lieu of providing USF support for the deployment of equipment that will over its useful life keep pace with consumer demand – would not further these efforts. Additionally, outdated equipment that is no longer supported by the manufacturer or able to be updated to a current software release might not comply with other federal agencies’ requirements for secure networks and could leave carriers’ networks open to security vulnerabilities.²¹ Such an outcome would not only be contrary to the Commission’s objective in the instant proceeding but also a waste of any federal funds spent on the replacement equipment.

¹⁹ See RWB Coalition Comments at pp. 18-19 (allowing USF recipients to use reimbursement funds to upgrade to 5G equipment “will promote the Commission’s efforts to close the digital divide and deliver to rural areas services that are reasonably comparable to those available in urban areas.”).

²⁰ See, e.g., Chairman Pai Visits Wind River Reservation in Wyoming to See Gigabit-Speed Broadband Deployment, *News Release*, Feb. 11, 2020 (“Bringing high-speed connectivity to rural Tribal lands ... will be critical to providing those living there with access to digital opportunity.” See also Remarks of FCC Chairman Ajit Pai at the Hawaii Int’l Conference on Science Systems, Jan. 10, 2020 (“The FCC’s first and foremost mission is to help ensure that every American can access advanced communications.”).

²¹ See, e.g., “Outdated Technology Costs Businesses More Than It Saves,” by Zech Crook, *Phoenix Business Journal* (Nov. 15, 2018), available at <https://www.bizjournals.com/phoenix/news/2018/11/15/outdated-technology-costs-businesses-more-than-it.html> (last visited Feb. 20, 2020) (“Older hardware and software lack the critical security updates of their newer counterparts.”).

V. ETCs NEED THE COMMISSION’S ASSISTANCE TO GUARD AGAINST UNKNOWNLY PURCHASING COVERED EQUIPMENT OR SERVICES.

The Commission stated in the *Report and Order* 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.”²² However, as NTCA noted in its comments, carriers – regardless of size – do not always have the ability to conclusively identify the source of equipment and services.²³ NTCA therefore recommends the Commission either establish methods that will provide ETCs and other carriers with assurance that they are not purchasing covered equipment or services or make carriers eligible for a safe harbor.

Establishing a rule that protects ETCs from having USF disbursements withheld if they obtain written assurance from any equipment or service vendor stating the ETC is not purchasing or installing any covered equipment or services, as proposed by NTCA,²⁴ would be a simple and immediate method of guarding against covered equipment and services entering ETCs’ systems. Alternatively, or additionally, as suggested by the RWB Coalition and the Rural Wireless Association, the Commission could publish a white list of trusted suppliers or create a “cyber seal” as part of the Commission’s equipment authorization program.²⁵ A “white list” and/or an

²² *Report and Order* at ¶ 20.

²³ *See* NTCA Comments at pp. 7-8.

²⁴ *Id.* at p. 8.

²⁵ *See* RWB Coalition Comments at p. 14 (The Commission could “generate ‘white-lists’ of trusted and reliable suppliers producing specific equipment or components and sub-parts that do not pose any threats to national security. The white-list would thus identify approved products that ETCs may continue using in their broadband networks, and that would not be subject to the Commission’s removal and replacement requirements.”). *See also* Comments of the Rural Wireless Ass’n, WC Docket No. 18-89 (Feb. 3, 2020),

equipment certification review created and conducted by the Commission would also help avoid a repeat of the instant situation by making carriers aware in advance of the equipment and services that the Commission has deemed meet national security standards. NTCA further agrees with USTelecom and NCTA that the Commission must coordinate across all of federal government when making any future determinations regarding which equipment or services meet national security standards and the method of making such determinations.²⁶

VI. THE COMMISSION MUST ISSUE CLEAR GUIDANCE ON THE PROHIBITIONS ADOPTED IN THE REPORT AND ORDER.

The Commission adopted a broad, sweeping prohibition on ETCs' use of covered equipment and services and accompanied the prohibition with a mandatory compliance certification along with threats of audits and USF recovery actions.²⁷ Yet, as CTIA noted, the breadth of the Commission's language in establishing these requirements and accompanying consequences for noncompliance "creates uncertainty among regulated USF recipients.... What does it mean to 'use' support to 'maintain' or 'otherwise support' equipment or services...?"²⁸ Similarly, Mark Twain Communications Company urged the Commission to describe "exactly what is meant by an ETC's or USF recipient's 'use of covered equipment.'" ²⁹

p. 14 (the Commission "should create an equipment certification program clearly specifying that the equipment satisfies U.S. national security requirements.").

²⁶ See USTelecom Comments at pp. 6, 9; Comments of NCTA – The Internet & Television Ass'n ("NCTA"), WC Docket No. 18-89 (Feb. 3, 2020), p. 6 ("Inconsistent and conflicting requirements from multiple agencies addressing the same subject matter can create confusion and result in unnecessary costs and burdens as companies seek to reconcile conflicting approaches and directives.").

²⁷ See *Report and Order* at ¶¶ 79-81.

²⁸ Comments of CTIA, WC Docket No. 18-89 (Feb. 3, 2020), p. 22.

²⁹ Comments of Mark Twain Communications Co., WC Docket No. 18-89 (Feb. 3, 2020), pp. 3-4.

All businesses perform better with regulatory certainty and small carriers especially need regulatory certainty given the thin margins on which they operate and the consequential larger impact of any changes on their bottom line. Commission rules that retroactively require ETCs to remove and replace certain equipment and services used in their networks at some date in the future is challenging enough, but adding unclear restrictions on the “use” etc. of such equipment pending removal and replacement, combined with the threat of having USF funds withheld for violating such rules, creates a significant challenge for small providers whose services are reliant upon USF funds. Accordingly, NTCA joins CTIA and Mark Twain Communications in requesting that any rules adopted in this proceeding clearly specify the actions the Commission concludes fall within the scope of “to maintain, improve, modify, operate, manage, or otherwise support” covered equipment or services.

VII. CONCLUSION

For the reasons discussed above, the Commission should condition any requirement that ETCs remove and replace covered equipment and services on the availability of federal funds sufficient to reimburse affected ETCs for the cost of removing and replacing all covered equipment and services. The Commission should also adopt rules that will provide ETCs and other carriers with assurance that they either are not purchasing covered equipment or services or qualify for a safe harbor if the carrier undertakes certain precautionary steps to guard against purchasing covered equipment and services. NTCA also joins other commenters in requesting the Commission clarify the meaning of the restrictions governing covered equipment specified in the *Report and Order*.

Respectfully submitted,



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