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

In the Matter of

Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	)))	WC Docket No. 18-89
	)	
Huawei Designation	)	PS Docket No. 19-351
	)	
ZTE Designation	)	PS Docket No. 19-352
	)	

To: Secretary, The Commission

COMMENTS OF JAB WIRELESS, INC.

Stephen E. Coran
David S. Keir
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
(202) 416-6744

February 3, 2020

Counsel to JAB Wireless, Inc.

TABLE OF CONTENTS

Summary

Rise Broadband, the nation's largest privately financed fixed wireless Internet service provider ("WISP"), believes that the Commission should adopt rules that will broadly compensate Eligible Telecommunications Carriers ("ETCs") for removing security threats to the nation's communications supply chain. Reimbursement should include those portions of ETC-operated integrated networks where a company serves some customers as an ETC and some as a non-ETC (*i.e.*, outside areas where it receives federal support). Reimbursing for all ETC equipment would advance the overall Commission and Congressional objective of removing equipment that poses a national security threat.

While the Commission needs to decide precisely which costs are reimbursable, it should allow ETCs to begin removal and replacement of "covered company" equipment as soon as possible. ZTE, for example, has largely abandoned support for existing equipment and the availability of replacement components in the marketplace is now rapidly diminishing. Moreover, once ZTE has been deemed a "covered company," Rise Broadband will be required to discontinue any support service and/or completely replace ZTE equipment in RBE-supported areas. As a result, operation of those facilities using ZTE equipment will no longer be sustainable. Companies facing these considerations would benefit from Commission guidance on specific costs that will be reimbursed so that they can direct resources appropriately and track their costs.

The Commission should also take steps to ensure that companies with performance requirements that will have replacement obligations are protected from the latter mandate impeding their ability to meet those commitments. ETCs that have buildout milestones should therefore get priority for funds distributed under the equipment replacement program.

The Commission should acknowledge that some upgrading in functionality may be inherent in replacing older equipment. Equipment identical to that which has been deployed may not be available at any price point, and suitable alternative solutions may be both more advanced and more expensive. Because network operators purchase replacement parts in advance for their deployed infrastructure, covered costs also should include replacement of existing inventory, such that each operator is made whole with respect to its ability to maintain existing infrastructure and address any near-term equipment failures.

Allowing companies like Rise Broadband that are subject to existing buildout milestones to replace equipment by a single, consolidated deadline will reduce costs and accelerate the process. During the transition period away from covered equipment, operators receiving RBE and other universal service support must continue to receive funding throughout the support term. Rise Broadband believes that a three-year replacement period is necessary to complete the removal and replacement process. ETCs should have the flexibility to move at their own pace to achieve compliance by the final deadline and should not be subject to interim milestones. A phased approach would be counterproductive, forcing affected companies to tailor their replacement efforts to meet artificial interim deadlines rather than establishing a schedule that suits the specific architecture of their network and the resources of the ETC.

The Commission should seek a Congressional appropriation to fund the removal and replacement program. The Commission's implementation of its new rules should be guided by the overarching principle that no ETC should be compelled to foot any part of the bill for a government-imposed mandate to replace significant portions of its network infrastructure.

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

In the Matter of

Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	))))	WC Docket No. 18-89
Huawei Designation	))	PS Docket No. 19-351
ZTE Designation	))	PS Docket No. 19-352

To: Secretary, The Commission

COMMENTS OF JAB WIRELESS, INC.

JAB Wireless, Inc. d/b/a Rise Broadband ("Rise Broadband"), by counsel and pursuant to Section 1.429 of the Commission's Rules, hereby comments on the *Further Notice of Proposed Rulemaking* released November 26, 2019 in the above-captioned dockets.[1] As further explained below, the Commission should adopt rules that will broadly compensate Eligible Telecommunications Carriers ("ETCs") for removing security threats to the nation's communications supply chain, including those portions of ETC-operated integrated networks where a company serves some customers as an ETC and some as a non-ETC (*i.e.*, where it does not receive federal support). While the Commission needs to decide which costs are reimbursable, it should allow ETCs to begin removing and replacing "covered company" equipment, including inventory, as soon as possible to advance the Commission's policy

[1] *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Report & Order, Further Notice of Proposed Rulemaking, and Order, WC Docket No. 18-89, FCC 19-121 (rel. Nov. 26, 2019) ("*Report & Order*" or "*FNPRM*" as applicable).

objectives. Rise Broadband also believes that the Commission's rules should incorporate the following elements:

- ETCs with performance obligations should get funding priority to allow them to meet their ongoing service commitments.
- The Commission should acknowledge that "replacement" may require some upgrading in functionality given the continuing advances in network technology and/or lack of identical comparable equipment.
- There should be a three-year period for ETCs to complete the removal and replacement process.
- ETCs should be permitted to move at their own pace to achieve compliance by the final deadline and should not be subject to interim milestones.
- The Commission should aggressively seek a Congressional appropriation to fund the removal and replacement program.

Introduction

Rise Broadband is the largest privately financed fixed wireless Internet service provider ("WISP") in the United States. It serves customers throughout rural and suburban areas of 16 states, extending from the upper Midwest to South Texas and across the Rocky Mountain states all the way to the California border. With approximately 625 employees, Rise Broadband qualifies as a "small entity" under SBA definitions.[2] Through its Skybeam subsidiary, it is authorized to receive a total outlay of $16.9 million in Rural Broadband Experiment ("RBE") support to help fund ten projects in five states that it serves – Illinois, Iowa, Kansas, Nebraska

[2] *See* 13 C.F.R. § 121.201, NAICS Code 517210 (defining Wireless Telecommunications Carriers (except Satellite) Code 517210 as a business with 1,500 or fewer employees).

and Texas.[3] As a condition precedent to receiving RBE support, Skybeam became certified as an ETC in the to-be-supported Study Areas in each of those states.

In building out its RBE-supported facilities, Rise Broadband has relied on access to affordable, reliable equipment optimized for use in the 3.65 GHz frequency band as well as other bands available for fixed wireless service to provide broadband connectivity to thousands of rural customers, including the 2.5 GHz and 5 GHz spectrum bands. Some of this equipment is manufactured by ZTE Corporation or a subsidiary of ZTE (collectively, "ZTE"). Rise Broadband has deployed 416 sectors that use ZTE equipment. Of these, 198 are used in the RBE-supported networks where Rise Broadband is an ETC, and 218 are located outside the RBE Study Areas.

Rise Broadband made the decision to test, purchase and deploy significant amounts of ZTE equipment because of the components' expected performance and relatively low cost, as well as their upgrade capability through anticipated periodic software updates. As a result, using ZTE's LTE-based technology proved significantly more cost-effective than other proprietary equipment that likely would have been more costly and required more frequent replacement. Rise Broadband has invested several million dollars to purchase ZTE-produced LTE equipment and support services.

Rise Broadband has developed and is implementing a multi-year plan to continue to build out and maintain network services under the RBE program using support approved and provided by the Commission, and has buildout milestones and ongoing obligations with which it must

[3] *See, e.g., Public Notice*, "Rural Broadband Experiment Support Authorized for Winning Bid Submitted by Skybeam, LLC," WC Docket No. 10-90 and 14-259, DA 16-30 (rel. Jan.12, 2016). Skybeam is required to deploy a network capable of delivering 100 Mbps downstream/25 Mbps upstream and offer at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all eligible locations.

comply.[4] On December 20, 2019, it filed with the Commission a request for waiver of the Commission's Rules to permit it to continue use of equipment licensed under Part 90 pending resolution of this proceeding.[5] Rather than embark on multiple cycles of equipment removal and replacement to meet these different obligations, it would be far more efficient for Rise Broadband to be able to comply with all of its federally mandated equipment change-outs with a single substitution process.

In view of its background, financial commitment, service footprint and reliance on equipment manufactured by ZTE, Rise Broadband is well-positioned to provide important insights on the costs and burdens of implementing the rules adopted in the *Report & Order*, particularly the expected impact on small federally funded providers that serve rural areas. Rise Broadband provides an important perspective, as it is not just mobile service providers that are affected by the proposed ban of "covered companies," but fixed wireless providers as well. First, it is an unavoidable reality that removing and replacing equipment across widely dispersed network facilities will take substantial time, resources and effort, requiring a redirection of resources to replace equipment that will distract significantly from other company priorities and objectives, such as everyday network maintenance, upgrades to existing network, and expansion

---

[4] *See Connect America Fund, et al.*, 29 FCC Rcd 8769, 8794 (2014) (establishing accelerated deployment requirements to build out to at least 25 percent of the requisite number of locations within 15 months, 85 percent within three years and 100 percent within five years, and to comply with support terms for the full 10-year support term).

[5] *See* JAB Wireless, Inc., Petition for Waiver of Section 90.1307(b) of the Commission's Rules (filed Dec. 20, 2019), also filed as an *ex parte* presentation in WT Docket No. 18-353. The waiver request seeks additional time for Rise Broadband to transition its 3.65 GHz equipment based on delays in the CBRS equipment certification process as well as the pending *FNPRM*. Consistent with Commission rules, Rise Broadband's subsidiaries filed the Petition for Waiver as a modification application for each of its licenses. Rise Broadband hereby incorporates by reference the Petition for Waiver, to the extent the facts, arguments and relief sought therein support these Comments.

to underserved and unserved areas. Second, mandatory compliance with rules found necessary to protect the security of the communications supply chain should not force recipients of federal funding into non-compliance with their federal or state RBE or ETC requirements or render them unable to make required certifications to the states, the Commission and USAC. In other words, the effect of rules adopted pursuant to the *FNPRM* cannot require Rise Broadband to miss buildout milestones or extend its buildout commitment, outcomes that would delay vital service to rural areas and exacerbate the large financial impact of the irrevocable standby letter of credit that Rise Broadband, as an RBE recipient, otherwise would be able to retire more quickly. Third, the reimbursement rules should be interpreted broadly in recognition of the fact that equipment can't be replaced without considering changes in the availability of "comparable" equipment due to different manufacturers' features, technology advances, potentially higher costs for newer equipment, and consideration of the need to reconfigure each network to achieve replacement of covered equipment functionality.

Discussion

I. THE COMMISSION'S RULES SHOULD BE BROADLY APPLIED TO COMPENSATE APPROPRIATELY ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR REMOVING SECURITY THREATS TO THE NATION'S COMMUNICATIONS SUPPLY CHAIN.

A. The Commission's Rules Should Apply to All ETCs.

The Commission proposes to limit the removal and replacement mandate to companies that have qualified as ETCs.[6] It premises this proposed limitation on several relevant factors, including the extent of its legal authority to impose such requirements to its oversight role for the Universal Service Fund ("USF"), the scope of the replacement burden on these providers and the

[6] *See FNPRM* at 50-51, ¶128.

funding needed to accomplish this goal, and evidence in the record that "the primary recipients that currently rely on Huawei and ZTE are ETCs."[7] Based on these factors, the Commission finds that the networks of ETCs raise the greatest concern with respect to potential threats to national security.

If the Commission makes a final designation of ZTE as a "covered company," Rise Broadband supports the Commission's proposal as a reasonable mechanism to define the scope of the program and believes that the replacement requirement should apply to all ETCs. Having established that policy, however, the Commission should be mindful of the need to extend the availability of reimbursement to all equipment used by the ETCs subject to the replacement policy that is impacted by the security enhancement obligation. The scope of reimbursement must include covered company equipment that exists within the same service area, even those areas that are not covered by USF or other federal support.

1. If the Commission Limits Reimbursement to ETCs *Only*, It Should Nonetheless Provide Reimbursement for ETCs that Operate as Non-ETCs In Areas Where They Do Not Receive Federal Support.

In the *FNPRM*, the Commission proposes to focus its equipment replacement efforts "on the networks of ETCs, where there is the greatest concern regarding equipment and services posing a national security threat."[8] While this approach may be sound as a general organizing principle, given considerations of authority and cost, it does not fully consider the variations in network architecture that exist on the ground. In actual practice, transmission and related facilities used by entities designated as ETCs may serve both supported and non-supported customers, or centralized network equipment of a covered company may be used to provide

[7] *Id.* at 51, ¶ 128.

[8] *Id.*

service both in areas where a company is designated an ETC and receives federal support, and in areas where it is not designated an ETC and therefore provides unsubsidized service.

Such is the case with Rise Broadband, which in many cases serves both supported and non-supported customers from the same tower and access point. In other areas, Rise Broadband uses both ZTE and non-ZTE equipment in the same federally supported network. The result in these cases is that replacing ZTE equipment in a supported portion of a larger network may also ultimately require replacement of associated ZTE equipment for facilities that are not serving supported customers. As pressure on ZTE in the U.S. market has increased, it has largely abandoned support for existing equipment and the availability of replacement components in the marketplace is now rapidly diminishing. As a result, operation of any facilities using ZTE equipment will not be sustainable over the long run. While it is not impossible to operate two separate LTE-based platforms in the same area – *i.e.*, one without covered equipment and one with legacy covered equipment – it would impose complexity and hardship to function in this manner. Such dual operation would create a need for increased technical staff and customer support training, complicate vendor management and deleverage buying power, all of which would impose substantial costs and resource constraints on Rise Broadband.

Accordingly, the Commission's implementing regulations should permit extending reimbursement to those portions of an ETC's facilities where it does not operate as an ETC. This approach would be consistent with the overall Commission and Congressional objective of removing equipment that poses a national security threat, a goal that would be less achievable if some equipment deemed to be prohibited were not reimbursable simply based on where the ETC has chosen to deploy it. In addition, a solution that supports reduced costs and administrative burdens for companies serving rural communities will support the Commission's "top priority" of bridging the digital divide.[9]

2. **<u>ETCs With Performance Obligations Should Get Funding Priority to Allow Them to Meet Their Service Commitments.</u>**

The Commission seeks comment on which "costs associated with replacing [covered company] equipment and services are reasonable," as well as "what types of restrictions to place on equipment and service replacement costs."[10] Because new Section 54.9 of the Commission's Rules, adopted in the *Report & Order*, is now effective and the Commission has simultaneously initiated proceedings to designate each of ZTE and Huawei as a "covered company" under that rule, Rise Broadband and other affected companies may soon be prohibited from repairing, provisioning, maintaining or "otherwise support[ing]" their installed equipment manufactured by these companies.[11] Assuming ZTE is soon deemed a "covered company," this new rule could require discontinuance of any support service and/or immediate replacement of ZTE equipment. The provision, however, is vague as to the near-term consequences for operational support. For example, Rise Broadband has ZTE equipment operating in areas where it receives RBE subsidy dollars on which it depends to deliver service. If under a broad interpretation of the new rule this money is suddenly barred from use to repair, maintain or support this existing service, there would appear to be no permissible use for the funding, with consequent loss of the subsidy benefit to the public, including in the worst case scenario potential loss of service in some areas. For this reason, the Commission should make clear that while the identification of an equipment provider as a "covered company" immediately precludes the purchase of any additional network

---

[9] *See FNPRM* at 53, ¶138.

[10] *FNPRM* at 53, ¶ 137.

[11] 47 C.F.R. § 54.9(a).

equipment from that entity, an operator would be permitted to continue spending subsidy dollars necessary to maintain existing service and meet USF and RBE performance obligations, including installation of previously-purchased components, until the equipment can be replaced.[12]

As these obligations loom, the Commission is just beginning the process of determining in this proceeding what replacement costs will be covered, and when and how those costs will be reimbursed. In view of this time lag in the process, the Commission should take steps to ensure that companies that have network buildout requirements that now will coincide with equipment replacement obligations are protected from the latter mandate impeding performance of their USF and RBE commitments. ETCs that have milestones for coverage and performance should get first priority for funds distributed under the equipment replacement program. If ETCs with time-sensitive performance obligations are not afforded the opportunity to replace covered company equipment in the first stages of the reimbursement process, they would face a substantial risk that their USF-supported networks would not be able to comply with their buildout milestones and meet speed, data capacity and latency requirements. Such a result would undermine the achievement of the important Commission goal of closing the digital divide, the primary objective of the RBE and other USF high-cost programs.

In Rise Broadband's case, it accepted accelerated payout of RBE support in exchange for accelerated buildout obligations that require it to deploy 25/5 Mbps service to 25 percent of eligible locations within 15 months of funding, 85 percent of eligible locations within three years

[12] *See, e.g.,* Union Telephone Company d/b/a Union Wireless *Ex Parte* Letter, WC Dkt. No. 18-89, PS Dkt. Nos. 19-351 & 19-352, at 1-2 (dated January 29, 2020).

and 100 percent of eligible locations within five years.[13] Because it has performance commitments, Rise Broadband should receive reimbursement ahead of ETCs that are not required to meet performance obligations or that have buildout obligations occurring later in time.

B. The Rules Should Reimburse for Removing and Replacing All of the ETC's Covered Company Equipment and Associated Equipment.

1. Reimbursing Removal and Replacement of All of an ETC's Equipment and Inventory Would Advance the Commission's Policy Objectives.

The Commission asks a series of critical questions concerning the scope of equipment eligibility for full reimbursement, seeking input on which costs should be reimbursed and what types of restrictions it might need to impose.[14] In order to maximize the efficacy of the equipment replacement program, the Commission should strive to eliminate all covered company equipment in use by ETCs generally. Once it has been determined that a covered company or particular equipment poses a national security risk, the Commission should endeavor to eliminate that risk rather than simply reducing it. Applying reimbursement funds to all covered company equipment that is present within an ETC's network (*i.e.*, equipment either within the state where the provider operates as an ETC, supported or not, or outside the state where the provider operates as an ETC, thus allowing the provider to mitigate threats regardless of where covered equipment is located) will extend the benefits of the program by eliminating more of the equipment of concern from the supply chain.

---

[13] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8794, ¶75 (2014).

[14] *See FNPRM* at 53, ¶137.

2. <u>To the Significant Extent that "Comparable Facilities" Are No Longer Available, The Commission Should Accept Some Upgrading.</u>

The Commission notes that during its broadcast incentive auction it was compelled to recognize that because some equipment requiring replacement was "older, legacy equipment," the Commission would need to "reimburse for some equipment that includes improved functionality."[15] The Commission asks whether it should "adopt a similar compatibility standard for replacement costs" in this instance.[16] Rise Broadband believes that it is essential for the Commission to adopt such an approach given the mandatory nature of the removal and replacement requirement, incremental advances in technology that are ongoing all the time and the resulting fact that any "replacement" technology may include enhanced functionality that has evolved since older covered company equipment was purchased and deployed.

As described above, when Rise Broadband was planning and constructing new fixed broadband facilities in the last five years to support its RBE buildout, ZTE's LTE-based equipment was an attractive option because it was both inexpensive and high-performing, and therefore could meet the company's RBE performance obligations cost-effectively. Since that time, communications network equipment has continued to improve, but costs may also have increased along with functionality. Equipment identically comparable to the ZTE equipment Rise Broadband deployed may not be available at any price point, and suitable alternative solutions may be both more advanced and more expensive. A direct, corollary substitute for the ZTE portion of Rise Broadband's network may not be available, however similar grade, standards-based LTE equipment does exist.

---

[15] *FNPRM* at 54, ¶140.

[16] *Id.*

Because network operators also must plan years ahead and purchase replacement parts for their deployed infrastructure, covered costs also should include full replacement of such existing inventory in order that each operator is made whole with respect to its current network capability and readiness to address any near-term equipment failures. Parts manufactured by covered companies that have already been pre-purchased for this purpose will never be deployed for supported networks, and these items should not be permitted to be deployed elsewhere in ETCs' networks given the importance of eliminating the supply chain threat. Accordingly, the reimbursement program should cover the costs of replacing these inventoried components.

3. While the Commission Needs to Decide Which Costs are Reimbursable, It Should Allow ETCs to Begin Removal and Replacement As Soon As Possible.

The Commission also seeks comment on the extent to which equipment and services replaced during the interim period between the effective date of the *Report & Order* and the availability of the reimbursement program should be eligible to receive funds.[17] Rise Broadband would benefit from Commission guidance on what specific costs will be reimbursed so that it can direct resources to those items and networks and track costs appropriately. To this end, the Commission should work to issue this guidance as quickly as possible (and ideally before it completes the Huawei and ZTE covered company processes), perhaps even issuing an interim guidance order to provide at least an overview of the program's scope and limits at the earliest possible date. The issuance of such guidance would allow ETCs to move forward more quickly to begin evaluation, testing and ordering of replacement equipment and engaging alternative support services. For example, the Commission may find the need to address the status of equipment that requires replacement due to damage (*e.g.*, lightning strike) or that reaches end-of-

[17] *FNPRM* at 54, ¶ 141.

life prior to the full implementation of the Section 54.9 prohibitions, to provide assurance that these costs can nonetheless be recovered by service providers that act to replace such items with acceptable replacements rather than continuing to use covered company equipment from inventory or purchase in the marketplace. Such guidance would serve the Commission's goals by encouraging companies to move as quickly as possible to remove covered company equipment from their networks.

As noted above, Rise Broadband currently has pending with the Commission a request for waiver of the April 17, 2020 deadline for compliance with the new Part 96 CBRS Rules. This request specifically seeks latitude to conform the Part 96 compliance deadline with the deadline established in this proceeding for removing and replacing its covered company equipment and services.[18] This accommodation would allow Rise Broadband to meet all of its regulatory obligations efficiently once the final requirements have been established, enabling it to replace its Part 90 equipment, complying with both Part 96 and the additional rules adopted as a result of the *FNPRM*, and permitting it to obtain cost reimbursement to the extent authorized in this proceeding. Allowing companies like Rise Broadband to replace its equipment by a single, consolidated deadline will reduce costs and streamline the process, allowing them to achieve compliance with the new Part 96 Rules more economically and efficiently than if conflicting requirements are maintained.

[18] At the same time, the Commerce Department is considering imposing a ban on all transactions involving ZTE equipment, including equipment that is not deployed with Federal support. *See* Executive Order 13873, "Securing the Information and Communications Technology and Services Supply Chain," 84 Fed. Reg. 22689 (May 15, 2019); Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain, Proposed Rule and Request for Comment, Docket No. 191119-0084, 84 Fed. Reg. 65316 (Nov. 27, 2019).

4. **<u>Rise Broadband Expects It Will Need Three Years to Complete the Removal and Replacement Process, and that the Commission Should Allow ETCs to Move at Their Own Pace to Achieve Compliance by the Deadline.</u>**

The Commission also seeks comment on the appropriate timing and deadlines within which ETCs will be required to replace covered equipment and services.[19] As a practical matter, the resolution of this issue requires additional information so that the affected companies can understand what expenses will be reimbursable and within what timeframe. Once these threshold criteria are set, ETCs will need time to test and evaluate replacement equipment, acquire it in the marketplace, and complete installation. During this transition period away from covered equipment, operators receiving RBE and other universal service support must continue to receive funding even though the process of conversion is not yet completed. As the Commission indicates, this would "allow for a transition period to come into compliance *without causing a disruption in annual funding for much needed supported services*."[20]

The phased approach contemplated in the *FNPRM* as a possibility,[21] however, would be counterproductive, forcing affected companies to tailor their transition efforts to meet artificial interim deadlines rather than establishing a schedule that suits the specific architecture and conversion requirements of their network and the resources of the ETC. The Commission should let ETCs decide how to best schedule and plan for removal and replacement of covered equipment within the appropriate completion timeframe the Commission adopts. Operators will require flexibility to accommodate testing of the new network elements, as well as to manage their own internal purchasing choices, engineering, labor resources and company cash flow.

---

[19] *See FNPRM* at 57, ¶153.

[20] *FNPRM* at 58, ¶154 (emphasis added).

[21] *See FNPRM* at 58, ¶¶155-157.

Companies also will need to accommodate external factors beyond their immediate control that are likely to vary in different parts of the country, such as the weather and the availability of local tower and installation crews or contractors that may be necessary for some elements of the transition process. Smaller companies with more limited internal resources will especially need significant flexibility to move at their own pace, so long as the process is completed by the end of the term established in this proceeding.[22]

Based on the information currently available, Rise Broadband believes that a three-year transition period would be sufficient to permit it to achieve compliance with the new mandate. This time period would also enable Rise Broadband to complete the transition of its Part 90 3650-3700 MHz equipment to the Part 96 technical rules. Meeting that timeline, however, requires the Commission to quickly set the threshold ground rules with respect to the costs eligible to be reimbursed under the program and the timeframe within which the covered costs will be reimbursed.

II. RISE BROADBAND SUPPORTS THE COMMISSION'S EFFORTS TO SEEK CONGRESSIONAL APPROPRIATION TO FUND REMOVAL AND REPLACEMENT OF COVERED COMPANY EQUIPMENT AND SERVICES.

The Commission proposes "to seek an appropriation or authorization of funds from Congress to fund [its] proposed reimbursement program."[23] Rise Broadband strongly supports this initiative. The Commission's implementation of its new rules should be guided by the overarching principle that no ETC should be compelled to foot any part of the bill for a government-imposed mandate to replace significant portions of its network infrastructure, especially equipment funded through a federal support program. Such a massive switch of

[22] *See FNPRM* at 58, ¶156.

[23] *FNPRM* at 55, ¶143.

critical equipment is unavoidably disruptive to any service provider even with appropriate financial support, and Rise Broadband is no exception to that. Even with the assumption that capital outlays for replacement equipment and labor will be fully covered, the obligation to rebuild parts of an existing network will involve other significant company resources, including strategic planning and engineering staff, which may be diverted from other important company projects, including the maintenance and upgrade of its existing network and expansion of service to new areas. These are opportunity costs that can't be recovered even when the financial component is fully reimbursed. As detailed above, this diversion of resources could also impede a company's ability to comply with critical USF and RBE performance requirements and certifications.

Accordingly, it is vitally important for the Commission to secure full funding for reimbursement of all costs as quickly as possible. 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. To achieve this result, there will need to be better, more complete information to permit overall costs to be accurately estimated and a budget established for the program. Central to this inquiry is the identification of the precise costs that will be reimbursed – which equipment and services and what related component network elements.

The Commission may be moving too quickly to seek information on ETCs' specific costs without providing more concrete information to them on the extent to which certain costs will be reimbursable and over what time period.[24] The data collection the Commission has proposed is still in the process of being approved by the Office of Management and Budget ("OMB").[25]

---

[24] *See FNPRM* at 56, ¶145.

[25] *See* Paperwork Reduction Act Notice, 84 Fed. Reg. 71935 (Dec. 30, 2019) (establishing a January 29, 2020 deadline for submission of written comments to OMB).

That process may function more smoothly as a vehicle to get useful information if the Commission can provide more definitive initial guidance on the types of costs it plans to reimburse and how. In this regard, it should not impose any one-size-fits-all cap on overall reimbursement eligibility, as it suggests is possible.[26] Every network is different, with characteristics such as population covered, service area, terrain, climate, local government oversight, contractor availability and cost, and equipment options all having an impact on the overall expense entailed in infrastructure changes. Cost submissions and Wireless Bureau/USAC review, verification and audit will be sufficient to prevent waste, fraud and abuse.

If Congress will not appropriate funds for the Commission's program,[27] then reimbursement funding should logically come from within the USF program. This added cost can either funded through existing contributions, via an additional limited-purpose USF collection program, or by using some alternative type of mechanism.

Conclusion

As an ETC with significant performance obligations to meet milestones for construction of federally supported rural broadband networks, it is critical that Rise Broadband not bear the burdens and suffer disruptions associated with a large equipment change-out covering multiple networks. The Commission must provide sufficient funding for ETCs to remove and replace any deployed or inventoried equipment manufactured by a covered company. Reimbursement funding should be prioritized so that those ETCs such Rise Broadband that have performance obligations are at the front of the line. The Commission should afford ETCs at least three years

[26] *See FNPRM* at 56, ¶146.

[27] *See FNPRM* at 55, ¶144.

to complete the removal and replacement process, with reimbursement funded preferably through Congressional appropriation.

Respectfully submitted,

By: */s/ Stephen E. Coran*
/s/ David S. Keir
Stephen E. Coran
David S. Keir
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
(202) 416-6744

February 3, 2020

Counsel to JAB Wireless, Inc.