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

In the Matter of

Petition of the Rural Wireless Association, Inc. for Declaratory Ruling Regarding Reimbursement of Replacement Costs for Equipment and Services Purchased Pursuant to the Secure Networks Act

PETITION OF THE RURAL WIRELESS ASSOCIATION, INC.
FOR DECLARATORY RULING

The Rural Wireless Association, Inc. (“RWA”)\(^1\), pursuant to Section 1.2 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), seeks a declaratory ruling that “Eligible Providers”\(^2\) under the Secure Networks Act’s reimbursement program will be reimbursed for the costs of purchasing replacement equipment and services and for other associated costs that have been incurred prior to the adoption of final rules by the Commission.

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\(^1\) RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve consumers who, reside, work, or travel in rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

\(^2\) Secure and Trusted Communications Networks Act, Pub. L. 116-124, 133 Stat. 158, Sec. 4(b) (2020) (“Secure Networks Act”) (To be an eligible provider, an entity must provide advanced communications service, as defined by “advanced telecommunications capability” in section 706 of the Telecommunications Act of 1996, serve 2 million or fewer customers and make all the required certifications in its reimbursement application.). As the term is used herein, “Eligible Providers” are eligible providers that currently employ Huawei or ZTE equipment or services in their networks.
Commission in its *Supply Chain*\(^3\) proceeding. A declaratory ruling is needed in order to remove uncertainty surrounding when such providers may purchase equipment or services that will be reimbursable under the Secure Networks Act.

The Commission may “issue a declaratory order on motion or on its own motion to issue a declaratory ruling terminating a controversy or removing uncertainty.”\(^4\) Pending the issuance of a Report and Order in the *Supply Chain* proceeding, a declaratory ruling should remove uncertainty regarding (1) when an Eligible Provider can purchase equipment or services that will be deemed to be “covered” and still qualify for reimbursement\(^5\) and (2) whether universal service funds received by an Eligible Provider can be used in the interim to replace covered equipment and services.

In its *Supply Chain Second FNPRM*,\(^6\) the FCC is considering administering a reimbursement program to fund Eligible Providers’ costs for the replacement, removal, and disposal of their Huawei and ZTE equipment and services that have been deemed a threat to national security. Until the Commission officially adopts its reimbursement program and corresponding rules and Congress allocates funding, Eligible Providers will continue to be

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\(^3\) *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Public Notice, WC Docket No. 18-89, DA18-301 (released March 27, 2018) (*Supply Chain*).

\(^4\) 47 CFR 1.2(a).

\(^5\) The issue of whether equipment and services replaced “before the availability of a reimbursement program” should be eligible for reimbursement remains pending. *Supply Chain Order/FNPRM* at par. 141.

deterred from making investments in replacement equipment and services by uncertainty as to whether or not they will be reimbursed (under the rules ultimately adopted by the Commission) for costs incurred prior to adoption of those rules. As discussed below, a declaratory ruling that removes this uncertainty will serve the public interest by providing Eligible Providers with the certainty needed for them to proceed to make their networks more secure. As the Commission considers this petition, it is important to keep one salient fact in mind – RWA members who are Eligible Providers\(^7\) recognize that the requested declaratory ruling cannot remove all uncertainty as to whether a particular expense will ultimately be reimbursable, but they are willing to live with this uncertainty, and make investments in replacement equipment and services accordingly, as long as they can be certain that whatever reimbursement provisions the Commission ultimately adopts will apply to purchases and other associated costs of replacement equipment and services (as ultimately defined) incurred prior to the adoption of those rules.

Under the Supply Chain Order/FNPRM, Eligible Providers that receive universal service support are no longer permitted to use universal service funds (“USF”) to maintain or support networks using Huawei and ZTE equipment or services.\(^8\) RWA’s Eligible Provider members cannot continue to maintain and support their networks without universal service support, and need to purchase new equipment and services as soon as possible to replace unsecure equipment

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and services within their networks. However, they cannot do so without reasonable assurance that they will be able to receive reimbursement for the costs of such replacement. Impacted carriers are already struggling to meet the increased demands for broadband stimulated by COVID-19 and provide their customers with the level of broadband service required for distance learning and remote work or expand services to new customers who need access to broadband. In some instances, portions of 3G networks are being turned down resulting in coverage loss because planned 4G LTE expansion cannot be undertaken using the Huawei or ZTE equipment and services. Loss of the 3G coverage means loss of access to critical 911 services.

A declaratory ruling will serve the public interest by removing some uncertainty and providing Eligible Providers with sufficient assurance to proceed with the replacement of unsecure equipment from their networks at the earliest possible date, thereby enhancing national security, while also ensuring continuity of service to their customers. Given the national security implications, there is an urgency that necessitates immediate clarification by the Commission. In removing this uncertainty, the Commission should declare that Eligible Providers will be reimbursed for any eligible purchases of replacement equipment and services purchased prior to the adoption of final rules.

The Commission should also declare that Eligible Providers are able to use their existing USF support to cover costs associated with purchasing replacement equipment and services. There is currently a lack of clarity on this issue given that the Secure Networks Act explicitly states that the reimbursement program “shall be separate from” the federal universal service program.9 The Secure Networks Act does not mention whether Eligible Providers are able to use

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9 Secure Networks Act, Sec. 4(j) (“The Program shall be separate from any Federal universal service program established under section 254 of the Communications Act of 1934.”).
their existing USF support to cover their costs of replacing Huawei and ZTE equipment while they await the appropriation of funds from Congress and the eventual reimbursement program adopted by the Commission. Given that Eligible Providers who receive USF support cannot spend the support on maintaining or supporting their Huawei and ZTE networks, it would make logical sense for them to be able to repurpose those funds toward the replacement of the Huawei and ZTE equipment pending adoption of the reimbursement program being adopted and Congress appropriating the funding for the reimbursement program. Once the program is in place, Eligible Providers could be reimbursed for any costs incurred that used existing USF funds and those funds could then be put toward non-reimbursable expenses related to operating the new network once installed.

Furthermore, the Commission should clarify that Eligible Providers are able to be reimbursed for “soft” costs associated with the replacement, removal, and disposal of the unsecure network prior to the adoption of final rules. By way of example, these “soft” costs would include costs associated with legal, consulting, RF design, and transition services related to the transition away from Huawei and ZTE equipment and services. Reimbursing carriers fully for their costs during this process, including those incurred both before and after implementation of the reimbursement program, is vital considering that many carriers have stretched their resources to a maximum to keep their customers connected during the COVID-19 pandemic by committing to not terminate service to non-pays, waive late fees, and open Wi-Fi hotspots to those in need.10 As the Commission’s Wireline Competition Bureau (“WCB”) and Office of

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10 Chairman Pai Launches the Keep Americans Connected Pledge, Press Release (released March 13, 2020); see https://docs.fcc.gov/public/attachments/DOC-363033A1.pdf. RWA’s members suffered a combined more than $3 million in write-offs between March and June and continue to be unable to collect payments for services as many subscribers are still unable to pay bills due to job losses and struggles associated with the COVID19 pandemic.
Economics and Analytics (“OEA”) have already provided estimates of the costs of replacing and removing Huawei and ZTE equipment and services from U.S. networks – a minimum of $1.837 billion to replace and remove Huawei and ZTE equipment and services from U.S. networks and a minimum of $1.612 billion for Eligible Providers to replace and remove such equipment and services. The Commission has the data it needs to prepare for a distribution of funds that compensates Eligible Providers for all of their costs associated with replacement, removal, and disposal. Armed with this data, the Commission should be able to confidently confirm to carriers that they will be reimbursed for costs incurred prior to the adoption of final rules. In this regard, RWA notes that the House of Representatives has passed an appropriations bill that would provide $1 billion to the FCC to implement the reimbursement program. Additionally, the Secure Networks Act allows the Commission to request more funds from Congress if needed. Given that FCC Chairman Pai has already contemplated needing up to $2 billion for

11 Information Collection at p. 2 (This estimation only includes ETCs and those who voluntarily reported, 51 total entities. WCB and OEA conceded that there may be more Huawei or ZTE equipment and services in U.S. networks to be replaced that was not included in this Information Collection.) Of the costs reported, $1.612 billion are the costs for those carriers that have 2 million or fewer subscribers.


13 Secure Networks Act, Sec. 4(d)(5)(B).
the reimbursement program, RWA anticipates that there will be sufficient funds to reimburse Eligible Providers’ costs incurred both before and after the finals rules are adopted.

In serving the public interest, the Commission’s main priority should be helping to maintain the security and continued viability of U.S. communications networks by not further delaying this process. Eligible Providers are ready to begin the replacement of their unsecure equipment and services now and prolonging the period during which such providers cannot be assured of receiving reimbursement of expenses incurred to begin such replacement will have detrimental consequences to U.S. communications networks. Accordingly, RWA requests the Commission to act favorably on its Petition.

Respectfully submitted,

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