

ALA American Library Association

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

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

**Comments of The American Library Association
June 1, 2018**

The American Library Association (ALA) appreciates the opportunity to comment on this important issue. Our comments focus on the impact this proposed rule will have on the libraries and schools who participate in the E-rate program. We agree with the Commission’s proposal that no Universal Service Funds (USF) should be “used to purchase or obtain any equipment or services produced or provided by a company posing a national security threat to the integrity of communications networks or the communications supply chain.”¹ We also want to be clear that ALA believes that requiring our libraries (and schools) to be the responsible party regarding this national security issue is unrealistic and will add another burdensome mandate on applicants. Thus, it must be the E-rate service providers—not libraries and schools—who are the party responsible for compliance with any rules ultimately adopted as part of this procedure. Below we offer more specific comments corresponding to various sections of the Notice.

¹ See the Notice of Proposed Rulemaking, paragraph 13.

Types of Equipment and Services (NPRM par. 15): We suggest the Commission’s “bright-line approach” prohibiting purchase of hardware or services from companies identified as national security risks is likely the clearest way to differentiate compliant from non-compliant companies. We think that several of the proposals in the Notice to make the rules more flexible will likely cause confusion and will be difficult to enforce.²

Use of Funds (par. 16): The Notice asks about the proposed rule’s impact on subcontractors and if there is a need to develop specific rules for each of the four USF programs. We think any rule that goes beyond the level of a single subcontractor will place an undue burden on service providers and will be challenging to enforce.³ Regarding separate rules for each USAC program, we think there is a need for specific language referencing E-rate because it is the only USF program where funds can go directly to end users—our libraries and schools. Considering this, we ask that the proposed language⁴ (§54.9) in the Code of Federal Regulations (CFR) be clarified to explicitly place responsibility for adherence on service providers, not libraries or schools. The current draft language clearly could be applied to libraries and schools.

Effective Date (par. 17): ALA proposes that any rule on this issue be effective a full E-rate funding year after adoption. For example, a rule adopted in September 2018, will be effective July 1, 2020. The Notice also asks if there are concerns that libraries and schools may not be as knowledgeable as service providers about any equipment or services which are a security risk. We think it very likely that libraries and schools will not be as aware as providers but our proposal to make service providers the responsible party removes this concern.

² For example, an alternative stated in paragraph 15 is to try and determine “which components or services are most prone to supply chain vulnerabilities.” We think it will be difficult for providers to make this determination and adopting this approach will result in more E-rate program complexity.

³ Historically, the Universal Service Administrative Company (USAC) does not usually ask questions on use of subcontractors and even requiring compliance at the single subcontractor level is problematic. For example, a library’s internet provider may have subcontracts with several transit providers. Will the Commission require the internet provider to verify that all the hardware used by the transit providers complies with the national security rule? And how high up in the internet network will this rule apply? Some transit providers have networks that span large segments of the nation.

⁴ See proposed language on page 16 of the NPRM.

Multiyear Contracts (par. 18): Ideally, multi-year contracts executed before the rule becomes effective should be exempt (i.e., “grandfathered”) from rule compliance but if the Commission is concerned about the lengthy time a provider may be out of compliance it could set a maximum date of, say, two years. This means that in a finding of non-compliance the provider has two years to correct the issue (e.g., provide acceptable hardware). If this does not occur the library or school then has the right to submit a SPIN change for the next funding year to select a compliant service provider.

Identifying Companies That Pose a National Security Threat (par. 19-25): Our purpose here is not to opine on how to identify companies that pose security risks⁵ but to make certain that it is the E-rate service providers who are responsible to know what companies are on any national security risk list. As in paragraph 17, the Notice asks (par. 24) on how to ensure libraries and schools can know what companies are on any national security risk list.⁶ We again reiterate that adopting our suggestion to hold E-rate service providers responsible to know this removes libraries and schools from this obligation.

Enforcement (par. 26-30): The Commission acknowledges that in the E-rate program recovery of improperly distributed E-rate funds can fall on the service provider, the applicant or both. But as we have made clear in our comments thus far, it is definitely the service provider who is in the best position to prevent any violations of the Commission’s proposed rule. Thus when a violation occurs, the recovery of funds should be sought from the service provider, not the applicant. The NPRM also asks (par. 27), “How can non-provider recipients of USF support, such as school districts or libraries, determine whether their service provider has purchased prohibited services or equipment?” Holding service providers responsible removes the need for libraries and schools to know this. If at some later date (e.g., via an audit) it is determined the provider was not truthful

⁵ We lack expertise in ascertaining security risks but we think it makes sense for the Commission to consider the options it outlines in this section of the NPRM; namely, relying on the Spectrum Act of 2012 and/or the National Defense Authorization Act (NDAA).

⁶ We certainly encourage the Commission or USAC to publish any list of any companies, equipment or services which are a national security risk. While applicants will find such a list valuable it is still the service providers who must have the legal responsibility to adhere to the regulation.

there is no way in which the library or school should be held accountable for this. Certification language holding service providers responsible can be done by adding appropriate language to block #2 of the Service Provider Annual Certification (SPAC) Form, #473.

Conclusion

As we have made clear throughout our comments, the American Library Association very much believes that the service providers— not libraries or schools— are in the best position to know what hardware or other services are ineligible for E-rate funding under the proposed rule and thus it is the service providers who must be held responsible for any violation of the rules. Thank you for reviewing our comments.

Sincerely,

/s/

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