

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

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

To: The Commission

COMMENTS OF JAB WIRELESS, INC.

JAB Wireless, Inc. dba Rise Broadband (“Rise Broadband”) shares the Commission’s concern that our nation’s communications infrastructure must be protected against security threats. Actions taken by the Commission in response to these threats, however, should be, in the words of the Commission, “targeted.”¹ Any rules the Commission may adopt in response to the *NPRM* should take into consideration the significant costs and consequences that would result from disrupting ongoing network buildouts and operations subsidized with universal service support. Unnecessarily broad restrictions could require Rise Broadband to remove subsidized equipment that is serving consumers in rural areas, sidelining existing operations and deployment that is currently underway. Moreover, a blanket ban on all equipment produced by certain manufacturers would disproportionately impact smaller providers like Rise Broadband that have reasonably relied on existing USF rules and globally accepted standards-based wireless technology in making significant investments in equipment and services provided by potentially targeted manufacturers.

Introduction

Rise Broadband is the largest fixed wireless Internet service provider (“WISP”) in the United States. It has approximately 160,000 customers in 16 states. With approximately 650

¹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Notice of Proposed Rulemaking, FCC 18-42 (rel. April 18, 2018) (“*NPRM*”), at 5.

employees, it qualifies as a “small entity” under SBA definitions.² Rise, through its Skybeam subsidiary, has been authorized for \$16.9 million in Rural Broadband Experiment (“RBE”) support, the most of any recipient, to help fund 10 projects in Illinois, Iowa, Kansas, Nebraska and Texas.³

Rise Broadband depends on this RBE funding, and on access to affordable, reliable equipment from manufacturers like ZTE, to implement its RBE-supported projects. Rise Broadband selected ZTE’s standards-based LTE equipment because, over the course of the expected 10-year lifecycle, it is upgradeable, dependable and globally established, and therefore more cost-effective than proprietary equipment that must be replaced more frequently. To date, Rise Broadband has invested a substantial amount of money to purchase ZTE-produced LTE equipment and ongoing support services for its RBE projects, and has invested millions of dollars of its own funds as part of the overall LTE deployment plan. Rise Broadband has a multi-year plan to continue to build-out under the RBE program using support approved by the Commission, and has construction milestones and ongoing obligations with which it must comply.⁴ Rise Broadband also

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).

³ See *Public Notice*, “Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc., Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.,” WC Docket No. 10-90 and 14-259, DA 15-897 (rel. Aug. 7, 2015); *Public Notice*, “Rural Broadband Experiment Support Authorized for Winning Bids Submitted by Skybeam, LLC, Daktel Communications, LLC, Federated Telephone Cooperative, and Paul Bunyan Rural Telephone Cooperative,” WC Docket No. 10-90 and 14-259, DA 15-1306 (rel. Nov. 12, 2015); *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.

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).

has filed a short-form application for the Connect America Fund Phase II reverse auction (Auction 903).⁵ In short, Rise Broadband is well qualified to comment on the potential impact of the *NPRM*'s proposals, particularly on small USF-funded providers who depend on access to low-cost, dependable equipment to serve rural areas.

Discussion

A. Prohibiting USF Support From Being Used To Purchase All ZTE-Manufactured Equipment And Services Would Harm Rise Broadband And Its Customers

Rise Broadband's RBE-supported investments have depended, and continue to depend, on access to dependable, cost-effective equipment such as that manufactured by ZTE. When Rise Broadband applied for RBE funding, it did so expressly based on reasonable assurances that RBE funds would be available to support ongoing deployment regardless of the manufacturer as long as speed, latency and data usage requirements are satisfied. It also reasonably relied on the fact that LTE equipment is based on an international standard and is deployed in wireless networks across the globe.

Replacement alternatives for this LTE equipment at this time are limited. ZTE's "true" LTE equipment is far less costly than similar equipment manufactured by providers like Nokia and Ericsson, and better performing than equipment from smaller companies like Telrad and Baicells. ZTE's standards-based software-defined radios have a longer lifecycle than non-standard equipment, and a proven track record both in the United States and around the world. Carrier-class equipment is vastly more costly, but does not offer improved performance to justify the additional expense for the service Rise Broadband is deploying. Moreover, the manufacturers of carrier-class equipment focus on global mobile wireless carrier customers and do not cater to the needs of small

⁵ See *Public Notice*, "Connect America Fund Phase II Auction Status of Short-Form Applications to Participate in Auction 903; Corrections due June 5, 2018," AU Docket No. 17-182 and WC Docket No. 10-90, DA 18-484 (rel. May 14, 2018).

fixed wireless providers, meaning that attention from and support by the carrier-class equipment manufacturers is of concern.

A blanket ban on all ZTE equipment would negatively affect Rise Broadband's ability going forward to construct, provide and maintain LTE service in rural areas. If Rise Broadband is compelled to build and maintain its LTE networks with equipment that is less well suited and/or overpriced for its needs, the end result could be scaled back projects, less service, and less reliability. Moreover, such a ban would have the potential to strand Rise Broadband's current ZTE-based networks, many of which have been implemented with RBE support. Without access to support services, replacement parts, and upgrades, equipment that has been purchased with federal funding will face premature and unnecessary obsolescence.

B. Any Rules the Commission Adopts Must Consider Costs To Subsidized Providers

The *NPRM* seeks comment on the potential costs of the proposed rule to universal service recipients and consumers.⁶ The current proposal – a “going forward” blanket ban on equipment and services manufactured by companies to be named under an as-yet-undetermined vetting system – could have devastating consequences for smaller providers that depend on USF support, with the end result being less reliable service for rural consumers that lack choice. Participation in USF programs could be inhibited because of the requirement to purchase products and services that are either ill-suited to deployment objectives, too expensive, or both. Accordingly, as described in more detail below, any rule the Commission adopts in this proceeding should be narrowly tailored to enable continued robust participation by smaller providers in new projects and proper upkeep of already-constructed USF-supported networks.

⁶ See *NPRM* at 11.

1. “Company-wide” is too broad. The *NPRM* proposes that “no USF support may be used to purchase or obtain any equipment or services produced or provided by a company” that the Commission determines is a threat to national security.⁷ A blanket ban on all products and services from a particular company is not “targeted action.”⁸ There is no evidence, in the *NPRM* or otherwise, that *every single product* manufactured by a particular company poses a national security threat. After due inquiry, it may be determined that there are valid concerns regarding particular components or technologies – for example, handsets or fixed CPE – but it is unlikely that every single module somehow connected to a particular manufacturer places the United States at risk. Any rule the Commission adopts should focus on particular technologies and equipment that are determined to pose a threat, rather than on entire corporations. Rise Broadband encourages the Commission to first determine the exact nature of the concern, and only then to take actions that are properly targeted to address those precise concerns. Taking an overbroad approach will create unintended, costly effects that fall disproportionately on the entities and individuals USF is designed to aid.

Rise Broadband also encourages the Commission to defer to existing statutes and federally approved orders to define the scope of the prohibited products and services. Otherwise, the Commission will embark on a costly, subjective process that could be exposed to competitive influences at the agency level – and that might result in outcomes at odds with other, more expert, government bodies.

⁷ *Id.* at 6.

⁸ *Id.* at 5.

2. Defining “Going Forward.” The *NPRM* specifies that the proposed rule would apply “going forward.”⁹ How this term is defined is critically important. A “going forward” ban (no matter what the scope) will not only impact projects that are entirely implemented after the effective date of the prohibition, but may also affect networks and equipment that have already been constructed under USF and RBE rules and are currently providing much-needed service.

Some USF-supported equipment will inevitably malfunction or fail, and some will eventually reach its end of life. Over time, it can be expected that equipment will need software upgrades to improve performance, enhance security, or fix “glitches.” Much of this equipment is sustained with the assistance of support services provided by the manufacturer. It would be unjust to small providers like Rise Broadband, and to taxpayers, to prohibit the maintenance and continued use of high quality, currently operational equipment with component parts not specifically deemed a threat to national security that was purchased with USF support.

A “bright line” approach – one that abruptly cuts off all contact with a targeted manufacturer from a date certain – could mean the eventual decline and/or death of currently operational rural networks that depend on replacement parts and upgrades from a particular manufacturer. If already-purchased equipment fails because of providers’ inability to maintain it, providers may face debilitating compatibility issues when trying to insert products from other manufacturers into a system not designed for that equipment. The final tab could be millions in “spoiled” equipment.

Rural broadband providers (Rise Broadband included) continue to use federal support, in addition to its own resources, to build out service to unserved and underserved areas in an effort to close the digital divide. Service providers would face two very unattractive options if the “going forward” qualifier is applied in a broad way which requires replacement of existing equipment. On one hand, providers could choose to invest extra funds to build (or rebuild, depending on the final

⁹ *Id.* at 1.

scope of the rule) networks using less attractive and/or unnecessarily expensive equipment, effectively replacing the benefit of the support and absorbing the costs themselves. In this case, without any change to the performance requirements and reporting obligations, USF recipients will have none of the benefits on which they reasonably relied, but all of the burdens. On the other hand, support recipients could decide to accept the regulatory risk of not meeting build-out milestones and abandon projects altogether. Both options are contrary to universal service policies and the interests of consumers who will lose the intended benefits of USF programs. Moreover, telling a small provider that is a USF recipient that it can no longer rely on federal support will have a disproportionate impact on rural customers in high-cost areas – the very people that USF funding is meant most to assist.

C. The FCC Should Establish Mechanisms To Offset The Additional Costs That Any New Rule Will Impose.

There will be significant costs, especially to smaller providers that focus on bringing service to rural areas, if the Commission adopts the sweeping ban it proposes. These costs were not anticipated and have arisen through no fault of the providers themselves. Requiring providers to foot the bill for revamping ongoing USF-supported network construction, for maintaining networks at added cost without original manufacturer-supplied compatible parts and/or support, and/or for replacing “banned” equipment, would be patently unreasonable. Requiring providers to cover such costs on their own would be akin to forcing them to reimburse substantial portions of their federal funding. To address these concerns and provide some compensation for their reliance interests, the Commission should consider establishing a fund by which USF recipients that have installed equipment later deemed to pose a national security threat can seek reimbursement to offset the replacement costs of compliant equipment.

In addition, regardless of the scope of any rule the Commission might impose, the Commission should establish a waiver process, with straightforward standards for establishing good cause. There will certainly be cases, even in the instance of a narrowly drawn rule, where the costs of compliance will outweigh any countervailing benefits. Without such a waiver process, the most vulnerable rural broadband providers may be forced to curtail or end service, leaving rural consumers without broadband access.

Conclusion

For the foregoing reasons, Rise Broadband urges the Commission to proceed cautiously, and only with a narrowly tailored, precisely “targeted”¹⁰ rule. Blanket bans on all products, equipment, and services from particular manufacturers could harm America’s small providers, their networks that serve rural America, and the rural Americans who depend on them. While Rise Broadband agrees wholeheartedly that our nation’s communications networks must be protected, it also believes that this can be accomplished without endangering the viability of USF-funded providers and the networks that benefit rural consumers.

Respectfully submitted,

JAB WIRELESS, INC. dba RISE BROADBAND

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¹⁰ *Id.* at 5.