

**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)	

REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

RURAL WIRELESS ASSOCIATION, INC.

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SUMMARY

The Rural Wireless Association, Inc. (“RWA”) files these Reply Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking in which the Commission proposes and seeks comment on a rule to prohibit, going forward, the use of universal service funds to purchase equipment or services “from any communications equipment or service providers identified as posing a national security risk to communications networks or the communications supply chain.”

RWA and its members share the Commission’s desire to ensure “the security of America’s communications networks,” and recognize the critical role that communications networks play in protecting public safety and national security. However, RWA is concerned that, if adopted, the proposed rule would: (1) irreparably damage existing rural wireless broadband networks; (2) inhibit future wireless broadband deployment in many rural and remote areas throughout the country; and (3) fundamentally fail to effectively protect national security.

Rural wireless carriers operate on thin margins as a result of reduced and frozen USF support, decreasing roaming revenues, and other significant economic barriers which create an uneven playing field for them. Despite this, rural carriers diligently persevere in their quest to provide modern services to their customer base and the citizenry of their service areas at just and affordable rates. Given that the economics of their smaller, underserved market areas make it difficult and often impossible to purchase equipment at price points available to the largest carriers, many RWA members and other rural wireless carriers have lowered costs by utilizing less costly Chinese-manufactured network infrastructure equipment to provide wireless broadband service to rural America.

As discussed below, RWA opposes the proposed rule because: (1) it will harm rural America; (2) it exceeds the Commission's statutory authority and is unconstitutional; (3) other governmental entities are better situated to address national security threats; and (4) it will not achieve the Commission's national security objectives. If the Commission nonetheless proceeds, it should make substantial changes that mitigate the proposed rule's harmful impact and issue a further notice of proposed rulemaking to surgically narrow the broad impact of the currently proposed rule.

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The Rural Wireless Association, Inc. (“RWA”)¹ replies to the comments filed in response to the Federal Communications Commission (“FCC” or “Commission”) Notice of Proposed Rulemaking² in which the Commission proposes and seeks comment on a rule to prohibit, going forward, the use of universal service funds to purchase equipment or services “from any communications equipment or service providers identified as posing a national security risk to communications networks or the communications supply chain.”³

I. INTRODUCTION AND SUMMARY.

RWA and its members share the Commission’s desire to ensure “the security of America’s communications networks,”⁴ and recognize the critical role that communications networks play in protecting public safety and national security. However, RWA is concerned

¹ RWA is a Washington, DC – based trade association that ensures wireless carriers with fewer than 100,000 subscribers have a strong voice in our nation’s capital. RWA’s members have joined together to speed the delivery of new, efficient, and innovative communications technologies to underserved rural communities across the United States of America. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone/broadband companies that are passionate about ensuring rural America is not left behind.

² *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, [Notice of Proposed Rulemaking](#), WC Docket No. 18-89, FCC 18-42 (rel. Apr. 18, 2018) (“*NPRM*”).

³ *Id.* at ¶ 2.

⁴ *Id.* at ¶ 1.

that, if adopted, the proposed rule would: irreparably damage existing rural wireless broadband networks; inhibit future wireless broadband deployment in many rural and remote areas throughout the country; and fundamentally fail to effectively protect national security.

The Commission’s proposed rule states that “[n]o universal service support may be used to purchase or obtain any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain.”⁵ While the proposed rule text does not specifically refer to Huawei or ZTE, the *NPRM* discusses the two companies in detail⁶ and leaves little doubt that, if adopted, the rule would prohibit Universal Service Fund (“USF”) recipients from using USF funds to purchase equipment or services from either company.

As noted by the Rural Broadband Alliance, “[t]he largest cost component of a telecom network is infrastructure equipment, including the switching core, base stations, and transport equipment.”⁷ Rural carriers make equipment purchasing decisions based largely on cost. “[R]ural carriers...are advised and incented – indeed, required by the very universal service programs now at issue – to make cost-effective decisions, especially as it [sic] relates to capital investments.”⁸ The Commission’s use of reverse auctions to disburse USF support means that

⁵ *NPRM* at Appendix A.

⁶ *Id.* at ¶¶ 4-6.

⁷ *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of the Rural Broadband Alliance](#), WC Docket No. 18-89, at p. 3. (June 1, 2018) (“*Rural Broadband Alliance Comments*”).

⁸ *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of NTCA – The Rural Broadband Association](#), WC Docket No. 18-89, at p. 20. (June 1, 2018) (“*NTCA Comments*”).

these carriers – carriers with much higher per subscriber costs than larger service providers – simply *must* seek cost reductions wherever possible.⁹

Rural wireless carriers operate on thin margins as a result of reduced and frozen USF support, decreasing roaming revenues, and other significant economic barriers which create an extremely uneven playing field for them. Despite this, rural carriers diligently persevere in their quest to provide the full spectrum of modern services to their customer base and the citizenry of their service areas at just and affordable rates. Given that the economics of their smaller, underserved market areas make it difficult and often impossible to purchase equipment at price points available to the largest carriers, many RWA members and other rural wireless carriers have lowered costs by utilizing less costly Chinese-manufactured network infrastructure equipment to provide wireless broadband service to rural America.¹⁰

⁹ The proposed rule is particularly problematic in light of the Mobility Fund Phase II reverse auction tentatively scheduled to be held in 2019. In that auction, participants will bid to receive universal service support to provide 4G LTE mobile broadband service in unserved areas. The *NPRM* and proposed rule have caused tremendous uncertainty regarding equipment costs and the impact of those costs on Mobility Fund Phase II auction bids. Further, effective removal of vendors that provide low-cost and highly reliable equipment from the marketplace is at odds with the Commission’s goal for the Mobility Fund Phase II reverse auction – the efficient distribution of universal service support. It is critical to the success of the Mobility Fund Phase II Auction that the Commission first resolve this rulemaking proceeding. Failure to bring this proceeding to closure at least six months prior to applications being filed for the Mobility Fund Phase II Auction takes place will create marketplace uncertainty.

¹⁰ See e.g., *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of Pine Belt Cellular, Inc.](#), WC Docket No. 18-89, at pp. 5-6 (June 1, 2018) (“*Pine Belt Comments*”) (stating “Pine Belt chose ZTE because it was the most cost-effective option and Pine Belt knew of no facts that would suggest doing so would, in any way, put national security at risk”); see also *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of Sagebrush Cellular, Inc.](#), WC Docket No. 18-89, at p. 2 (June 1, 2018) (“*Sagebrush Comments*”) (stating “[w]hen Sagebrush solicited bids in 2010 for its network, it found the cost of Lucent equipment to be twice the cost of Huawei equipment and the cost of Ericsson equipment to be nearly four times the cost of Huawei equipment”); see also *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of Mark Twain Communications Company](#), WC Docket No. 18-89, at pp. 4-5 (June 1, 2018) (“*Mark Twain*

In response to a survey done by WTA, its members using Huawei products cited “cost, customer service, and reliability” as reasons for choosing to procure equipment from the company.¹¹ Similarly, Pine Belt noted that “[g]iven [its] size and financial status, purchasing the equipment necessary to construct the Network from ZTE was its best option at the time, as the cost of such equipment from other vendors used by large nationwide wireless providers would have allowed Pine Belt to extend coverage to only a portion of the geography and population that is currently covered.”¹²

At the time the equipment was installed, rural wireless carriers based their decisions upon current Commission regulations and installed equipment in good faith that the regulatory environment would not shift and suddenly retroactively require reversal of previous equipment purchase decisions. RWA agrees that “[t]he Commission’s proposal to prohibit the use of certain equipment suppliers *ex post facto* would make worthless significant past investments incurred in

Comments”) (stating “MTCC chose Huawei as its vendor for several reasons, the most relevant of which are the affordability and reliability of its equipment. Given MTCC’s size and financial status, purchasing the equipment necessary to construct the Network from Huawei was its only option at the time, as the cost of such equipment from other vendors used by large nationwide wireless providers was prohibitive”).

¹¹ See *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of WTA – Advocates for Rural Broadband](#), WC Docket No. 18-89, at pp. 3-4 (June 1, 2018) (“*WTA Comments*”) (further elaborating that “one member stated that when choosing vendors for their recent 4G deployment it considered several other well-known vendors that sell globally. However, the member noted those vendors were simply unaffordable at two to four times the cost of using Huawei. The member also noted that one prominent alternative vendor did not even give it a price quote for the deployment only stating that a small company ‘would be unable to afford them’”).

¹² See *Pine Belt Comments* at p. 8 (also stating that “[i]n constructing the Network, Pine Belt followed all FCC rules regarding vendor selection and purchased only type-accepted equipment... Pine Belt should not be penalized for operating its business in compliance with the rules promulgated by the federal government”).

the reliance of regulation (or lack of regulation) in place at the time of purchase – equipment which was bought and used in the furtherance of universal service goals.”¹³

As discussed below, RWA opposes the proposed rule because: (1) it will harm rural America; (2) it exceeds the Commission’s statutory authority and is unconstitutional; (3) other governmental entities are better situated to address national security threats; and (4) it will not achieve the Commission’s national security objectives. If the Commission nonetheless proceeds, it should make substantial changes that mitigate the proposed rule’s harmful impact and issue a further notice of proposed rulemaking to surgically narrow the broad impact of the currently proposed rule.

II. THE PROPOSED RULE WILL HARM RURAL AMERICA.

Wireless broadband is vitally important to public safety, healthcare, education, and economic development in all of America – metropolitan, urban, suburban, and rural. It is especially significant in rural America where industries critical to sustaining urban America like precision agriculture, livestock operations, oil, gas and coal production, and alternative energy sources like wind, solar and water hydraulics, utilize Internet of Things (“IOT”) devices which require connectivity to wireless broadband services.¹⁴ Further, the Commission has found that “video calls, streaming media and real-time educational courses” “require high speeds” and are “becoming increasingly common.”¹⁵ These applications are critical to spurring rural economic

¹³ *NTCA Comments* at p. 20.

¹⁴ *Updating Part I Competitive Bidding Rules, et. al.*, [Comments of the Rural Carrier Coalition](#), WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WT Docket No. 05-211 (May 14, 2015) (noting the importance of wireless broadband to agriculture and energy production).

¹⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Development Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, [2016 Broadband Progress Report](#), 31 FCC Rcd. 699 ¶ 58 (2016) (“2016 Broadband Progress Report”).

development, as they support remote work sites, telework applications, and telemedicine and rural learning programs.¹⁶ Rural economic development is critical to bringing jobs back to the U.S., decreasing unemployment and allowing rural areas to prosper.¹⁷

Despite the importance of wireless broadband to life in rural America, citizens living in urban areas are more than four times as likely to have access to LTE at speeds of 10 Mbps/1 Mbps than their rural counterparts.¹⁸ In particular, the Commission found that 87 percent of rural Americans lack access to LTE service with a minimum advertised speed of 10 Mbps/1 Mbps LTE service, compared to just 45 percent of Americans in urban areas.¹⁹ RWA is concerned that, if the Commission adopts the proposed rule, it will cause access to wireless broadband in rural America to significantly decline, along with all of the applications that are dependent upon it.

¹⁶ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Development Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, [2015 Broadband Progress Report](#), 30 FCC Rcd. 1375, at ¶ 2 (2015) (stating that “[n]ew technologies and services such as real-time distance learning, telemedicine...are pushing demand for higher broadband speeds...”); see also *Connect America Fund, Universal Service Reform – Mobility Fund*, [Letter](#) from Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, WC Docket No. 10-90 (Oct. 20, 2016) (stating the importance of mobile broadband service to rural areas in order to support telehealth and education programs); see also *Connect America Fund, Universal Service Reform – Mobility Fund*, [Comments of Competitive Carriers Association](#) at p. 2, WT Docket No. 10-208 *et al.*, (filed Jan. 11, 2017) (discussing the critical importance of mobile connections to healthcare and job creation).

¹⁷ See, e.g., Exec. Order No. 13821, 83 Fed. Reg. 1507 (Jan. 11, 2018) (noting that lack of broadband access is “particularly acute in rural America, and it hinders the ability of rural American communities to increase economic prosperity; attract new businesses; [and] enhance job growth”); [Press Release](#), U.S. Dep’t of Agriculture, Secretary Perdue Applauds Broadband Investment Included in Omnibus (March 23, 2018) (noting “how important increased broadband is to rural Americans” and that “[r]eliable and affordable internet e-connectivity truly is the key to productivity in the 21st Century”); Brian Whiteacre, Roberto Gallardo, & Sharon Strover, *Broadband’s Contribution to Economic Growth in Rural Areas: Moving Towards a Causal Relationship*, 38 Telecomm. Pol’y 1011 (2014) (finding that high levels of broadband adoption in rural areas positively impacted income growth and negatively influenced unemployment growth).

¹⁸ *2016 Broadband Progress Report* at ¶ 83.

¹⁹ *Id.*

a. The Proposed Rule Will Reduce Wireless Coverage.

If the proposed rule is adopted, small rural carriers which rely on Huawei or ZTE equipment will eventually need to replace such equipment, with grave consequences for their customers and people who live, work, and travel through the areas they serve. RWA shares NTCA's concern that "new expenses associated with the equipment prohibition and subsequent wholesale replacement may force some small carriers out of business, thereby undermining the availability and affordability of telecommunications services in remote and rural areas of the country, including basic 9-1-1 connectivity."²⁰ More importantly, 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.²¹

For example, if the Commission prohibited universal service fund ("USF") recipients from using USF funds to purchase equipment or services from Huawei, RWA member Sagebrush Cellular "would be forced to substantially reduce its coverage."²² Sagebrush projects that its network "would be reduced by almost two-thirds, shrinking from 161 to 55 cell sites, while the size of its coverage area would be reduced by over two-thirds, a loss of 11,700 square miles of coverage."²³ The loss of a marketplace competitor – and accompanying increased prices and reduced service quality – would be bad enough, but most of these 11,700 square miles are

²⁰ *NTCA Comments* at pp. 20-21.

²¹ *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of Rise Broadband](#), WC Docket No. 18-89, at p. 4 (June 1, 2018) ("Rise Broadband Comments").

²² *Sagebrush Comments* at p. 3.

²³ *Id.*

not covered by *any* competing carriers.²⁴ As such, this loss of coverage would have severe public safety implications. In some areas where Sagebrush is the only wireless carrier, 911 service as well as voice and mobile broadband service will be lost.”²⁵

i. Carriers will be forced to remove and replace equipment at tremendous expense.

RWA shares commenters’ concerns that, despite the fact that the proposed rule is intended to apply prospectively, it will force carriers to “rip-and-replace” offending equipment. In order for equipment to remain functional, carriers (and/or their service providers) must continually service the equipment and install software and equipment upgrades through service agreements with the vendor as technology advances. Much of the equipment and software is proprietary and is not interoperable with other vendors’ equipment and software.

As CCA states, “there is great uncertainty as to whether existing network equipment purchased from now-disapproved manufacturers can operate or function with new equipment from approved vendors.”²⁶ Pine Belt, too, noted its concern “about the long-term interoperability if it was to continue using ZTE equipment in conjunction with newer equipment (including upgrades) from different manufacturers.”²⁷ Further, Pine Belt “believes the proposed rule

²⁴ Sagebrush currently has 83 active cell sites in northeast Montana, compared with 12 for T-Mobile and 3 for Verizon. *See Sagebrush Comments* at p. 3.

²⁵ *Id.* at pp. 3-4.

²⁶ *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of Competitive Carriers Association](#), WC Docket No. 18-89, at p. 9 (June 1, 2018) (“*CCA Comments*”) (further stating that “[c]arriers theoretically could attempt to plug upgrade or necessary replacement equipment from an approved manufacturer into clusters of equipment sourced from a disapproved company, but even if it works in the short term, the mid- and long-term viability of that arrangement and even the short-term performance efficiency remain highly uncertain”).

²⁷ *Pine Belt Comments* at p. 6. Pine Belt further notes that “despite the fact that the NPRM states that the proposed rule would apply only prospectively, the proposed rule would actually have extremely harmful retroactive effects.” *Id.* at p. 8.

would...soon lead to it having to replace all of its existing ZTE equipment, which represents the vast majority of its Network.”²⁸

The estimated rip-and-replace costs vary by carrier, but are significant across the board. Pine Belt estimates that the purchase price of replacement equipment “would be from \$6 million to \$10 million, and the downtime from installing new equipment would likely cause Pine Belt to forego another \$1 to 3 million in roaming fees.” In total, the proposed rule could easily result in \$7 to \$13 million in direct costs to Pine Belt.”²⁹ Sagebrush estimates the cost of replacing its network at around \$57 million, and notes that such replacement cost for a small rural carrier is prohibitive without replacement funding.³⁰

ii. The proposed rule has already had the harmful effect of deterring network investment, and will continue to deter network deployment further if adopted.

Given the uncertainty prompted by the *NPRM* and proposed rule, as well as the enormous costs to rip-and-replace offending network equipment, RWA is concerned that the proposed rule has already had the harmful effect of deterring network deployment, and will do extensive further damage if adopted. Carriers agree with this assessment. For example, Pine Belt recently acquired several 600 MHz licenses. However, because of the uncertainty created by the proposed rule, discussions with Pine Belt’s primary wireless infrastructure vendor, ZTE, regarding the deployment of 600 MHz radios and strategic plans for the commercial launch of 4G VoLTE and 5G services have ceased.³¹ Pine Belt further notes correctly that “the overall uncertainty created by the release of the *NPRM* and the...inability of rural telecommunications companies to predict which communications equipment or service providers may be

²⁸ *Pine Belt Comments* at p. 6.

²⁹ *Id.* at pp. 6-7.

³⁰ *Sagebrush Comments* at pp. 2-3.

³¹ *Pine Belt Comments* at p. 4.

determined...to pose a national security threat...will discourage such companies from investing additional money and resources into future network expansion and deployment.”³²

IITA also agrees, noting that “once the rule were to become effective any purchase of equipment or services from a foreign vendor would be fraught with uncertainty, insofar as such investment could lead to a denial of USF support should the vendor ultimately be deemed a covered company. Such uncertainty, in turn, will lead to an increase in rural carriers’ financing costs.”³³ NTCA notes that the *NPRM* “introduces substantial uncertainty into future network deployments and the equipment selection process... if enacted, this proposal would substantially narrow the scope of products and services available to rural operators, increasing costs for remaining ‘approved’ equipment.”³⁴ These increased costs pose a significant deterrent to future deployment.

b. The Proposed Rule Will Inflict Severe Harm on Rural Consumers and Small Businesses.

USF support is critical to ensuring that Americans in rural areas have access to wireless broadband services that are “reasonably comparable” to services found in urban areas.³⁵ Like NTCA’s members, RWA’s members “take great pride in serving areas of the country that are often forgotten, connecting rural and remote areas of the country with the rest of the world via advanced telecommunications services.”³⁶ Low population density, high poverty rates, difficult terrain, and challenging weather conditions in many rural parts of the country mean that there is simply not a business case for rural wireless broadband service providers to provide

³² *Pine Belt Comments* at pp. 3-4.

³³ *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of ITTA – The Voice of America’s Broadband Providers](#), WC Docket No. 18-89, at p. 6 (June 1, 2018) (“*ITTA Comments*”).

³⁴ *NTCA Comments* at p. 21.

³⁵ See 47 U.S.C. § 254(b).

³⁶ *NTCA Comments* at p. 5.

service absent USF support. USF “promote[s] the extension of the most modern telecommunications services to all consumers everywhere at just and affordable rates. The consumers who need and receive the most assistance are often those served by the locally-owned and managed small rural company.”³⁷ Small businesses throughout rural America rely on wireless broadband to connect them to manufacturers, suppliers, vendors, employees, and customers. These entities access and analyze data in real time – often remotely – which allows them to make critical decisions to maximize productivity, profitability, and efficiency. The loss or reduction of these networks would harm small businesses and the rural consumers they serve.

USF support is of particular importance in areas, such as those served by Sagebrush, that include Tribal lands.³⁸ Tribal lands can be even more difficult than non-Tribal rural areas to serve – lower population density, higher poverty rates, along with greater administrative and rights-of-way costs make provision of service more challenging. RWA agrees that “telling a small provider...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.”³⁹

c. The Proposed Rule Will Negatively Impact Population Centers Reliant on Goods and Services from Rural America.

The *NPRM*’s negative effects won’t stop at rural America’s edge. Reduced wireless broadband coverage will be detrimental not only to those Americans working in or traveling through rural America, but also to all Americans who use energy sources from – or eat food

³⁷ *Pine Belt Comments* at p. 9.

³⁸ *Sagebrush Comments* at p. 1 (Sagebrush “covers over 17,000 square miles, the vast majority of which is rural and remote in nature, including the Crow and Fort Peck Indian Reservations.”).

³⁹ *Rise Broadband Comments* at p. 7.

grown in – rural America.⁴⁰ Industries important to rural America like precision agriculture, energy production, and transportation have a tremendous impact on urban America. RWA has frequently stated that “supporting rural America, strengthens all of America.” The loss of wireless broadband coverage in rural areas as a result of the Commission’s adoption of the proposed rule would be detrimental to the symbiotic relationship that entwines rural and urban areas.

III. THE PROPOSED RULE EXCEEDS THE COMMISSION’S STATUTORY AUTHORITY AND IS UNCONSTITUTIONAL.

The proposed rule exceeds the Commission’s statutory authority because it violates the principles enumerated in Section 254(b) of the Communications Act of 1934, as amended (“the Act”), it exceeds the Commission’s general grant of rulemaking authority under Section 201 of the Act, and exceeds the Commission’s authority to make policies on the basis of national security concerns – a power that belongs to the President, not the Commission. Further, the proposed rule violates the due process clause of the U.S. Constitution and, if adopted, would result in unconstitutional regulatory takings.

a. The Proposed Rule Violates Section 254(b).

The Act directs the Commission to make USF decisions only if they are based on a list of policy principles that are enumerated in § 254(b) or prescribed through a specific statutory mechanism. Rather than basing the proposed rule on the principles of Section 254(b), the Commission has proposed a rule that threatens to thwart them. Further, Section 254(b)(7)

⁴⁰ [RWA Video](#) (a short audio-visual presentation that highlights the importance of mobile wireless networks to precision agriculture, energy production, telehealth, and public safety in rural areas. The presentation also discusses the importance of these rural industries to urban America – noting that investments made in rural America benefit all of America.)

prescribes a mechanism for establishing new universal-service principles beyond those set forth in the statutory text.⁴¹ The proposed rule was not devised via the prescribed mechanism.

i. The proposed rule conflicts with the principles enumerated in Section 254(b).

The Act directs the Commission to make USF decisions based only on a list of policy principles that are enumerated in § 254(b) of the Act or that are prescribed through a specific statutory mechanism. The Tenth Circuit has held that “the FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal.”⁴² Likewise, the D.C. Circuit has held that “the Commission may not depart from the principles in § 254(b) altogether to achieve some other goal.”⁴³

RWA agrees with Huawei that “the use of statutorily stated principles is mandatory, not discretionary, and the enumeration of a carefully defined set of universal-service principles implies that the Commission may not pursue other, unrelated goals through USF actions – much less take actions that impede the statutorily specified policies.”⁴⁴ The proposed rule conflicts with the principles set forth in the statute, in an effort to achieve its amorphous goal of “protecting national security” – a goal that is not articulated in Section 254. As set forth below, the Commission’s proposed rule stands in stark contrast to each of these principles.

- **Subsection (b)(1) – Quality and rates.** By requiring USF-supported carriers to rip-and-replace their networks at tremendous expense, the proposed rule will increase

⁴¹ See 47 U.S.C. § 254(b)(7).

⁴² *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001).

⁴³ *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009).

⁴⁴ *Protecting Against National Security Threats To the Communications Supply Chain Through FCC Programs*, [Comments of Huawei Technologies Co., Ltd. And Huawei Technologies USA, Inc.](#), WC Docket No. 18-89, at pp. 14-15 (June 1, 2018) (“*Huawei Comments*”).

rates without a corresponding increase in service quality. This violates the principle that “[q]uality services should be available at just, reasonable, and affordable rates.”⁴⁵

- **Subsection (b)(2) – Access to advanced services.** Congress emphasized the need for “[a]ccess to advanced telecommunications and information services . . . in all regions of the Nation,”⁴⁶ but the proposed rule will have the negative effect of reducing access to such services in many rural areas of the nation. The Commission has underscored the importance of this principle by expressly adopting “Support for Advanced Services” as an additional principle, which instructs the Commission to “direct []” USF funds “where possible to networks that provide advanced services, as well as voice services.”⁴⁷ The proposed rule violates this principle by *restricting* the use of USF funds for such networks.
- **Subsection (b)(3) – Access in rural and high cost areas.** The proposed rule will have a devastating effect on the services available to Americans in rural and high cost areas. Adoption of the proposed rule (and the consequent expected accompanying loss of coverage discussed in Section II.a) will mean that many low-income Americans and persons living in rural or high cost areas will not have services “that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”⁴⁸
- **Subsection (b)(5) – Specific and predictable support mechanisms.** The proposed rule is the opposite of “specific” and “predictable.”⁴⁹ It imposes a broad, vague, and uncertain mandate that disrupts settled expectations and makes investment planning virtually impossible, as companies lack the knowledge to foresee which companies could get added to the list of prohibited vendors. Beyond the clear suggestion that ZTE and Huawei will be placed on the list, it is unclear what other companies might be included. Carriers will hesitate to invest in network equipment or devices that could end up prohibited on short notice, as discussed *supra* in Section II.a.ii.
- **Subsection (b)(6) – Access to advanced telecommunications services for schools, health care, and libraries.** By jeopardizing the continued provision of service to rural and underserved areas where targeted equipment has been deployed, the proposed rule threatens the ability of “schools and classrooms, health care providers,

⁴⁵ See 47 U.S.C. § 254(b)(1).

⁴⁶ See 47 U.S.C. § 254(b)(2).

⁴⁷ *Connect America Fund, et. al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, *et. al.*, FCC 11-161, 26 FCC Rcd 17679, ¶ 45 (rel. Nov. 18, 2011) (“USF/ICC Transformation Order”).

⁴⁸ See 47 U.S.C. § 254(b)(3).

⁴⁹ See 47 U.S.C. § 254(b)(5).

and libraries [to have continued] access to advanced telecommunications services...”⁵⁰

In sum, as noted by ITTA, the proposed rule would lead to increased costs and less access to telecommunications and information services, especially in rural and high-cost areas, all in contravention of Section 254(b).⁵¹ Because adoption of the proposed rule actually inhibits advancement of USF goals, it should be rejected.

ii. Section 254 prescribes a mechanism for establishing new universal service principles.

The NPRM sidesteps any discussion of the six principles enumerated above and instead relies on subsection (b)(7) for support for the proposition that the Commission may be guided by “[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.”⁵² But this provision cannot justify adoption of the proposed rule without further administrative procedures taking place, because Section 254(b)(7) prescribes a procedural mechanism for establishing new universal-service principles beyond those set forth in the statutory text. Under this administrative procedure, the Joint Board first recommends the establishment of an additional universal-service principle, and the Commission then decides whether to ratify the proposal.⁵³ This process requires a notice-and-comment proceeding.⁵⁴ The

⁵⁰ See 47 U.S.C. § 254(b)(6); see also generally *CCA Comments* at pp. 17-19 (outlining systematic violations of each of the principles set forth in 47 U.S.C. § 254(b)).

⁵¹ *ITTA Comments* at pp. 7-9 (further stating that “the proposed rule would lead to increased costs and less access to telecommunications and information services, especially in rural and high-cost areas, all in contravention of the first three principles of Section 254(b), which are designed to preserve and advance universal service”).

⁵² 47 U.S.C. § 254(b)(7)

⁵³ See, e.g., *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 87, ¶ 23 (1996) (Joint Board’s recommendation to establish an additional principle of “competitive neutrality”); *In the Matter of Fed-State Joint Board*, 12 FCC Rcd 8776, ¶¶ 46–47 (1997) (Commission’s adoption of this recommendation); *Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, 25

proposed rule was not devised via the prescribed administrative law mechanism. RWA agrees that “[t]here would have been no point to requiring that the Joint Board and the Commission jointly adopt new universal-service principles through this procedure if the Commission could, as it seeks to do here, just unilaterally consider whatever factors it wished anyway.”⁵⁵ Indeed, RWA agrees with Huawei that “it would be unreasonable under this statutory scheme to infer that [the Commission] retains inherent authority to short-circuit or end-run the carefully prescribed statutory process.”⁵⁶

b. The Proposed Rule Exceeds the Commission’s General Grant of Rulemaking Authority under Section 201 of the Act.

The Commission claims that Section 201 of the Act “provide[s] ample legal authority” for the proposed rule.⁵⁷ Section 201(b) grants the Commission general authority to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.”⁵⁸ The Supreme Court has “consistently held” that “the words ‘public interest’ in a regulatory statute” grant an agency only a bounded authority to promote “the purposes of the regulatory legislation,” not “a broad license to promote the general public welfare.”⁵⁹ The Supreme Court has held that the phrase “public interest” in the Communications Act is “to be interpreted by its context,” and “is not to be interpreted as setting up a standard so

FCC Rcd 15598, ¶ 75 (2011) (Joint Board recommendation of additional principle of support for “advanced services”); *Connect America Fund*, 26 FCC Rcd 17663, ¶ 45 (2011) (Commission’s adoption of this recommendation).

⁵⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report & Order, 12 FCC Rcd. 8799–806, ¶¶ 43–55 (rel. May 8, 1997) (considering and discussing comments on whether to adopt a new universal service principle).

⁵⁵ *Huawei Comments* at p. 15.

⁵⁶ *Id.* at p. 15; see also *Ivy Sports Medicine, LLC v. Burwell*, 767 F.3d 81, 87 (D.C. Cir. 2014).

⁵⁷ *NPRM* at ¶ 35.

⁵⁸ 47 U.S.C. § 201(b).

⁵⁹ *NAACP v. FPC*, 425 U.S. 662, 670 (1976).

indefinite as to confer an unlimited power.”⁶⁰ RWA agrees with Huawei that “the power to make rules in the ‘public interest’ is the power to promote the goals of the specific regulatory program at hand – not the power to promote other, unrelated objectives (no matter how important or admirable those other objectives might be).”⁶¹

In the context of universal service, the “public interest” is the interest in promoting the purposes of the statute’s universal-service provisions. There is no need to guess what those purposes are as § 254(b) expressly enumerates them and states that the Commission “shall” base its policies on them. Section 201(b) thus takes the Commission back to the Section 254(b) enumerated universal-service principles already discussed. As such, Section 254(b)’s specificity undeniably supersedes the general grant of rulemaking authority established by Section 201(b).⁶² Accordingly, Section 201 of the Act does not empower the Commission to invoke other unrelated factors such as national-security concerns.

c. The Act Grants the President – not the Commission – the Power to Make Certain Policies on the Basis of National Security Concerns.

In addition to the fact that the proposed rule runs afoul of Section 254(b) of the Act, the Commission lacks the statutory authority to promulgate a rule with such direct national security implications. The Act grants *the President* – not the Commission – the power to make policies on the basis of national security concerns.⁶³ As noted by Huawei, “Congress has expressly empowered the President to consider national-security concerns in certain other parts

⁶⁰ *Nat’l Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1943).

⁶¹ *Huawei Comments* at pp. 26-26.

⁶² *See also CCA Comments* at p. 16.

⁶³ *See infra* notes 65-67.

of the statute, but conspicuously failed to empower the Commission to do so in the context of the USF program.”⁶⁴

For example, Section 305(c) of the Act empowers the President of the United States to authorize foreign governments to operate radio stations near their embassies in Washington, D.C., if “he determines it to be consistent with and in the interest of national security.”⁶⁵ Section 308 empowers the Commission to suspend ordinary licensing procedures “during a national emergency proclaimed by the President.”⁶⁶ Section 606(a) empowers the President, during “a war,” to direct carriers to give priority to “such communications as in his judgment may be essential to the national defense and security.” Section 606(c) empowers the President to order “the closing of any station for radio communication” during “a war,” “if [the President] deems it necessary in the interest of national security or defense.” Section 606(d) empowers the President to “suspend ... the rules ... applicable to ... facilities or stations for wire communications,” if the President determines that “there exists a state or threat of war” and that the suspension is “in the interest of the national security and defense.”⁶⁷

The universal service provisions, in stark contrast, include no comparable authorization to act on the basis of foreign-policy or national-security concerns (much less authorizations to treat these concerns as dispositive). Nor do these provisions explicitly set out procedures that the agency must follow when making decisions on the basis of such concerns. RWA agrees that “[i]f Congress wanted to grant the Commission the politically, diplomatically,

⁶⁴ *Huawei Comments* at p. 14.

⁶⁵ 47 U.S.C. § 305(c).

⁶⁶ 47 U.S.C. § 308.

⁶⁷ *See* 47 U.S.C. §§ 606(a), (c)-(d); *see also, generally, Huawei Comments* at p. 18.

and constitutionally significant power to make USF decisions on the basis of national-security concerns, it would surely have said so explicitly.”⁶⁸

As further evidence of the Commission’s lack of authority, the Trump Administration has drafted an executive order under which the president would authorize the commerce secretary to block transactions involving U.S. and foreign telecommunications equipment makers on national security grounds.⁶⁹ As such, the Commission should allow the President to exercise his authority under the Act.

d. The Proposed Rule is Unconstitutional.

RWA agrees with CCA and other commenters that the proposed rule is unconstitutional because it would (i) violate due process and (ii) result in uncompensated regulatory takings.⁷⁰

i. The proposed rule would violate the due process clause of the Fifth Amendment.

RWA shares CCA’s concern that the proposed rule would violate the due process clause of the Fifth Amendment of the Constitution. Under established due process principles, the FCC must give fair notice of prohibited conduct to carriers and other affected entities.⁷¹ However, carriers that have invested in network technologies impacted by the proposed rule “did not have fair notice of what [would be] forbidden” and “did not kn[o]w they were taking a risk in entering contracts with foreign suppliers. Rather, they believed they were following the USF’s mandate

⁶⁸ *Huawei Comments* at p. 14.

⁶⁹ Shane Harris, David J. Lynch and Josh Dawsey, [Trump Eyes Executive Order Expanding Power to Block Deals Between U.S., Foreign Telecom Firms](#), THE WASHINGTON POST (June 29, 2018).

⁷⁰ *See, e.g., CCA Comments* at pp. 40-44.

⁷¹ *See, e.g., Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926).

to provide affordable telecommunications access to underserved communities.”⁷² Because these carriers never received fair notice, the proposed rule would unjustly interfere with their longstanding investment-backed reliance interests, upending their “legitimate expectations and upset[ting] settled transactions.”⁷³

RWA further agrees with CCA that the proposed rule would violate due process by failing to give carriers and other interested stakeholders an opportunity to review the evidence upon which the Commission relied.⁷⁴ Carriers have no meaningful “opportunity to rebut the evidence regarding security risks because essentially no evidence has been offered.”⁷⁵ Thus far, the FCC has based its proposed rule almost exclusively on a 2012 House Committee report that merely “encouraged private entities to seek out non-Chinese vendors” but “made no finding that these companies pose a threat to national security.”⁷⁶ If the Commission adopts a rule determining that the targeted vendors jeopardize national security without first presenting concrete evidence of this threat to affected entities, it will infringe on the constitutionally ordained due process rights of rural carriers reliant on universal service support across the country.⁷⁷

⁷² CCA Comments at p. 41 (citing *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 254 (2012) and *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 192 (1992)).

⁷³ *Gen. Motors Corp.* at 191.

⁷⁴ CCA Comments at p. 42.

⁷⁵ *Id.* (citing *Ralls Corp. v. Comm. on Foreign Inv. in the U.S.*, 758 F.3d 296, 319 (D.C. Cir. 2014)).

⁷⁶ Sagebrush Comments at p. 4.

⁷⁷ CCA Comments at p. 42.

ii. The proposed rule would result in unconstitutional regulatory takings in violation of the Fifth Amendment.

RWA agrees with CCA and Puerto Rico Telephone Company that the proposed rule would result in unconstitutional regulatory takings in violation of the Fifth Amendment.⁷⁸ A regulatory taking occurs when, as a result of a governmental action, an owner is denied “all economically beneficial or productive use” of his property.⁷⁹ If the Commission adopts a rule determining that the targeted vendors pose a threat to national security, “[c]arriers will be unable to continue using their property” because they will be prevented “from upgrading or repairing their networks and their software components.”⁸⁰ Uncertainty created by the NPRM’s mere release has already deterred USF-supported carriers from making such network improvements.⁸¹ As Puerto Rico Telephone Company rightly states, “[i]f providers are unable to maintain and repair their equipment, it will quickly become obsolete, depriving them of all economic and beneficial use” of their property.⁸²

The proposed rule singles out “USF recipients who purchase equipment, devices, and services from companies deemed to pose a security risk.”⁸³ The Fifth Amendment’s Takings Clause is “‘designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.’”⁸⁴ RWA agrees with CCA that the proposed rule would cause rural carriers to “disproportionately bear the burden for the security of the entirety of the nation’s telecommunications network” and that

⁷⁸ See U.S. Const. amend. V (“nor shall private property be taken for public use, without just compensation”)

⁷⁹ *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992).

⁸⁰ *CCA Comments* at p. 42.

⁸¹ See, e.g., *Pine Belt Comments* at p. 4; *Mark Twain Comments* at p. 3.

⁸² *Puerto Rico Telephone Company Comments* at p. 7.

⁸³ *CCA Comments* at p. 43.

⁸⁴ *Colo. Springs Prod. Credit Ass’n v. Farm Credit Admin.*, 967 F.2d 648, 654 (D.C. Cir. 1992) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

“[r]ural carriers whose businesses will be destroyed or severely burdened by the proposed rule will obviously not receive a benefit...roughly commensurate with the burdens they [will be] forced to bear.”⁸⁵ RWA agrees that without, at the very least, providing additional funding to compensate these carriers for the losses they will suffer, the proposed rule will violate the Fifth Amendment’s prohibition against denying an owner economically productive use of his property without just compensation.⁸⁶

IV. OTHER GOVERNMENTAL ENTITIES ARE BETTER SITUATED TO ADDRESS NATIONAL SECURITY THREATS AND FOREIGN TRADE ISSUES.

In addition to lacking the statutory and constitutional authority necessary to adopt the proposed rule, the Commission is simply not well-suited to undertake efforts focused on national security and foreign trade. Other governmental entities, including executive agencies and Congress, are better situated to address these issues.⁸⁷ In another proceeding, Commissioners have agreed. As Commissioner O’Rielly has stated, “the Commission has no authority to adopt cybersecurity requirements,” and, “cybersecurity is an important issue and Congress has assigned authority to oversee it to other agencies.”⁸⁸ RWA agrees with ITTA that “matters of

⁸⁵ *CCA Comments* at 43-44 (citing *Colo. Springs*, 967 F.2d at 655).

⁸⁶ *Id.* at p. 44.

⁸⁷ RWA agrees with ITTA that “the Commission has far less expertise on national security matters, including problematic actors or technologies, than do other federal departments or agencies.” *ITTA Comments* at p. 3. Notably, in contrast to multiple direct references to several other departments and agencies, the Commission is merely mentioned once directly in Executive Order 13800, in a consultative role at that. See Executive Order 13800 § 2(d). *See also Sagebrush Comments* at p. 6 (stating “[t]he FCC is not an expert agency with respect to matters of national security and should not be making determinations as to national security”).

⁸⁸ *Technology Transitions, USTelecom Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8403, Statement of Commissioner Michael O’Rielly Approving in Part and Dissenting in Part (2016).

foreign trade policy also are inextricably intertwined with the NPRM’s proposal, rendering its proposed measure beyond the Commission’s ken and best addressed, in coordination with governmental entities with national security expertise, by other departments or agencies whose core missions include jurisdiction over foreign trade.”⁸⁹

Further, there are already efforts underway by both executive agencies and Congress to deal with supply chain risks. RWA shares Puerto Rico Telephone Company’s (“PRTC”) view that “the Commission should defer action on the proposed rule to allow the U.S. government an opportunity to develop and implement a comprehensive federal policy on information and communications technology (“ICT”) supply chain risk matters. Currently, the Administration and Congress have various efforts underway to ensure the integrity of the ICT supply chain, and it would be counterproductive in the interim for a single federal agency like the FCC to implement unilaterally a proposed remedy to address perceived national security risks – no matter how well intentioned.”⁹⁰

RWA also agrees with NTCA that “[t]aken as a whole, there appears to be a need for more coordination at the Federal level. It is unclear how the Commission’s discrete proposal to bar USF recipients from relying upon specific manufacturers ties to the many ‘irons in the fire,’ including the broader national efforts regarding national security being debated within Congress and the extensive initiatives recently undertaken by DHS to evaluate supply chain threats to the telecommunications sector.”⁹¹ RWA joins NTCA in urging the Commission to, at a minimum, “pause in its actions to ensure that it coordinates with other Federal agencies and the administration on a comprehensive, holistic strategy to address supply chain risk that aims to

⁸⁹ *ITTA Comments* at pp. 3-4.

⁹⁰ *Puerto Rico Telephone Comments* at pp. 1-4.

⁹¹ *NTCA Comments* at p. 15.

address the same kinds of equipment based upon the same detailed risk assessments by agencies with core competency and proper jurisdiction in such matters.”⁹²

a. The Commission Should Coordinate its Actions with Other Federal Government Agencies.

RWA agrees with Rise Broadband that, “[u]nlike other Executive Branch agencies, the Commission does not have the specific expertise, staff, resources or access to intelligence necessary to establish criteria for determining which companies pose a national security threat to the integrity of communications networks or the communications supply chain.”⁹³ As such, the Commission should not continue its efforts to adopt the proposed rule.

If the Commission still decides to pursue this effort, RWA encourages the agency to coordinate its work with that of other federal agencies. U.S. Department of Homeland Security Secretary Kirstjen Nielsen recently noted in a speech at the recent RSA cybersecurity conference, “successfully identifying and mitigating systemic risk within the supply chain requires extensive coordination among multiple private and public-sector partners, including government entities, technical manufacturers, and communications operators.”⁹⁴ As stated by NTCA, “observ[ing] and evaluat[ing] physical and cyber-based threats, and then ensur[ing] that this intelligence is subsequently shared with smaller communications providers...requires government partners with robust technical expertise, access to classified intelligence, and an

⁹² *NTCA Comments* at p. 15.

⁹³ *Puerto Rico Telephone Comments* at p. 5.

⁹⁴ *NTCA Comments* at pp. 5-6; *see also* Secretary Nielsen’s Remarks at the RSA Conference, rel. April 17, 2018, available at: <https://www.dhs.gov/news/2018/04/17/secretary-kirstjen-m-nielsen-remarks-rsa-conference>.

established public-private partnership with industry – a role that can only be fulfilled via the cooperation and coordination of multiple Federal agencies...”⁹⁵

Executive branch efforts to evaluate and mitigate supply chain risk are already underway. As the Commission is aware, DHS is the civilian agency responsible for serving as the Sector Specific Agency for the communications sector; the DHS Office of Cybersecurity and Communications, within the National Protection and Programs Directorate, is responsible for enhancing the security, resilience, and reliability of the nation’s cyber and communications infrastructure. Consistent with its mission, DHS recently initiated a series of substantive projects to evaluate supply chain risk, in collaboration with other Federal agencies.⁹⁶ RWA encourages the Commission to coordinate its work with DHS and other executive agencies so as to avoid duplicating efforts, or even worse, reaching outcomes “at odds with other, more expert, government bodies.”⁹⁷

b. The Commission Should Coordinate its Actions with Congress.

Congress has also expressed clear interest in addressing supply chain security concerns within the telecommunications sector while avoiding unintended consequences on small and rural network operators and their customers.⁹⁸ The House Energy & Commerce Subcommittee on Internet and Technology held a hearing on May 16, 2018 entitled “Telecommunications, Global Competitiveness and National Security.” Further both the

⁹⁵ *NTCA Comments* at p. 6 (further stating that “[t]he NPRM lacks broader discussion of how the FCC’s potential actions tie to the simultaneous actions of other Federal agencies and the Executive branch administration, and therefore, the larger national strategy to address supply chain risk”).

⁹⁶ *Id.* at p. 13.

⁹⁷ *Rise Broadband Comments* at p. 5.

⁹⁸ *NTCA Comments* at p. 15; *see also* House Energy & Commerce Committee Subcommittee on Internet and Technology, Subcommittee on Internet & Technology, May 16, 2018 hearing, “Telecommunications, Global Competitiveness and National Security.”

National Defense Authorization Act passed by the House and Senate discuss communications supply chain issues as they relate to Huawei and ZTE.⁹⁹ RWA encourages the Commission to coordinate with Congress as its work progresses, again to avoid duplication of efforts or conflicting outcomes.

V. THE PROPOSED RULE WILL NOT ACHIEVE THE COMMISSION'S STATED NATIONAL SECURITY OBJECTIVES.

In addition to harming consumers and decreasing access to public safety communications by decimating wireless networks in rural areas, the Commission's proposed rule fails to achieve the Commission's stated national security objectives. First, the Commission has not identified any actual evidence supporting the need for its proposed rule. Further, the proposed rule is vague and has not been tailored to address the asserted risk. Finally, the proposed rule's significant costs substantially outweigh its minimal benefits. Any benefits that would flow from the proposed rule would be nominal because nearly every component used in the construction and operation of telecommunications networks is at least partially manufactured overseas, posing a potential security risk in the supply chain. Further, the proposed rule addresses only carriers that are USF recipients, leaving carriers who do not receive USF support able to utilize the same equipment and services being targeted.

a. The Commission has not Identified Evidence Supporting the Need for its Proposed Rule.

As an initial matter, RWA notes that the Commission did not identify any evidence supporting the need for its proposed rule. The *NPRM* relies heavily on a 2012 Permanent Select Committee on Intelligence report to justify the proposed rule, but does not cite any actual proof that equipment sold or services provided by either Huawei or ZTE endangers our national

⁹⁹ See H.R. 5515 and S. 2987 (2018).

security. Other parties in this proceeding agree, stating that “there has been no finding that either of these companies or their equipment poses any kind of threat to national security” and that “[t]he NPRM cites only to examples of ‘Congressional concern’ about ‘possible risks’ associated with certain foreign communications equipment providers (i.e., Huawei and ZTE) to undermine national security.”¹⁰⁰ Further, “the Commission fails to provide any new information as to why this concern has reached a tipping point that mandates the use of prescriptive regulatory rulemaking authority...”¹⁰¹ The Permanent Select Committee on Intelligence report was released more than six years ago. One would think that, if the Commission found the report to be of such tremendous concern, it would have acted before now – or at least at the start of the current Chairman’s tenure. Instead, this scrutiny is being undertaken when the Trump Administration is on the brink of a trade war with China. The FCC is an independent agency and should act as such by staying out of the constantly changing political winds associated with the current administration.¹⁰²

b. The Proposed Rule is Vague, and Has Not Been Tailored to Address the Asserted Risk.

The *NPRM* proposes a rule to prospectively prohibit “the use of USF funds to purchase equipment or services from any communications equipment or service providers identified as posing a national security risk to communications networks or the communications supply chain.”¹⁰³ While the Commission may have intended to offer for comment a simple, bright-line rule, the proposed rule’s application in the real world is unclear at best. As NTCA

¹⁰⁰ *Sagebrush Comments* at p. 4.

¹⁰¹ *NTCA Comments* at p. 8.

¹⁰² The Commission is an independent agency overseen by Congress and bound by the Administrative Procedure Act. *See* Administrative Procedure Act, 5 U.S.C. § 500 *et seq.* *See also* FCC, [Rulemaking Process](#) (last visited June 22, 2018).

¹⁰³ *NPRM* at ¶ 1.

states, “Given the complexity in the design and architecture of telecommunications networks, and the interconnected nature of the supply chain, a blanket restriction on equipment and service providers, even prospectively, is quite difficult to apply.”¹⁰⁴

The proposed rule focuses on companies rather than equipment, without explaining why all equipment from a given vendor may present a risk. Even if the Commission were to find evidence that some equipment sold by one or more manufacturers was cause for concern, it is unlikely that preventing USF recipients from spending funds on *all* equipment sold by that manufacturer would be necessary. RWA agrees with Rise Broadband that “[t]here is no evidence, in the NPRM or otherwise, that every single product manufactured by a particular company poses a national security threat...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.”¹⁰⁵

NTCA concurs, stating that “a prohibition based upon an equipment manufacturer’s country of origin is arbitrary at best. Without more specific information regarding credible threats affecting specific components, targeting all products made by a certain company is overly broad and still likely ineffectual at mitigating supply chain threats...”¹⁰⁶ RWA agrees that any rule the Commission ultimately adopts should focus on specific pieces of equipment and/or software that are found by other agencies with core competency in such matters to present substantiated and credible national security threats.¹⁰⁷ As Rise Broadband states, “[t]aking an

¹⁰⁴ *NTCA Comments* at p. 8.

¹⁰⁵ *Rise Broadband Comments* at p. 5.

¹⁰⁶ *NTCA Comments* at pp. 8-9.

¹⁰⁷ *Id.*

overbroad approach will create unintended, costly effects that fall disproportionately on the entities and individuals USF is designed to aid.”¹⁰⁸

c. The Proposed Rule’s Costs Substantially Outweigh Its Benefits.

As discussed above, “[t]he costs associated with the replacement of existing network equipment...imposes [sic] a significant and unreasonable financial burden on rural telecommunications carriers.”¹⁰⁹ The costs imposed by the proposed rule would simply not yield corresponding benefits because the rule would continue to permit the current overseas manufacture or partial manufacture of nearly every component of telecommunications network equipment. Further, the proposed rule would only impact USF-recipient carriers – carriers that service a miniscule portion of American consumers.

i. Nearly Every Component Used in the Construction and Operation of Telecommunications Networks is Partially Manufactured Overseas.

The proposed rule will do little to achieve the Commission’s national security objectives because “almost every component used in the construction and operation of telecommunications networks, wired and wireless, is partially manufactured overseas.”¹¹⁰ The telecommunications supply chain includes a series of activities such as the “development of intellectual property and standards; fabrication of components and chips; assembly and test of devices; development of software and firmware; acquisition, installation, and management of devices in operational networks; and the data and services that operate over those networks.”¹¹¹

¹⁰⁸ *Rise Broadband Comments* at p. 5.

¹⁰⁹ *Pine Belt Comments* at p. 5.

¹¹⁰ *Pine Belt Comments* at p. 4.

¹¹¹ *NTCA Comments* at pp. 16-17; *see also* Testimony of Dr. Charles Clancy Professor of Electrical and Computer Engineering, Virginia Tech before the House Energy and Commerce Committee, Subcommittee on Communications and Technology, Hearing on Telecommunications, Global Competitiveness, and National Security (May 16, 2018) (“*Clancy Testimony*”).

The Commission’s proposed rule targets “equipment or services...posing a national security threat to the integrity of communications networks or the communications supply chain.”¹¹² But a proposed rule that is, in effect, a country of origin restriction that targets Chinese equipment manufacturers does little to address “equipment or services...posing a national security threat to the integrity of communications networks or the communications supply chain” that is assembled elsewhere and then used extensively by other, non-USF supported carriers both domestically and internationally.

For example, more than 700 suppliers from 30 countries supply components for the Apple iPhone, which are derived from numerous countries and assembled in China. “‘Only 7% of the suppliers are U.S.-based companies, including wireless chips from Qualcomm and Intel, that are actually fabricated [in] Korea and Taiwan.’ Generally with respect to chip fabrication, Taiwan leads with over 45% of global capacity, and China is number two at 20%, while the United States only accounts for 8%. In addition, software developed for American companies is often authored by non-U.S. citizens, providing opportunity for bad actors to slip malicious code into otherwise ‘approved’ equipment.”¹¹³ Concerns regarding software development are legitimate and, as noted by the Rural Broadband Alliance, “[t]he FCC proposal does not address the integrity of the software used in the equipment or its supply chain. In many cases, there is significant software development conducted in China, as well as complete manufacture of entire assemblies.”¹¹⁴

Further, the proposed rule does nothing to address so-called “white label” equipment. RWA agrees “that eliminating all China-sourced equipment currently held by [rural wireless]

¹¹² *NPRM* at Appendix A.

¹¹³ *NTCA Comments* at pp. 16-17; *see also generally Clancy Testimony*.

¹¹⁴ *Rural Broadband Alliance Comments* at pp. 7-8.

carriers would take only a tiny fraction of such equipment out of the country.”¹¹⁵ This is because “a significant portion of telecommunications and Internet equipment currently operating our nation’s communications networks was manufactured in Chinese factories, some controlled by Huawei/ZTE, under ‘white label’ agreements with brand name equipment suppliers.”¹¹⁶ Rural wireless carriers utilize only a small fraction of the nation’s telecommunications and Internet infrastructure equipment sourced from China. RWA agrees that denying federal USF support to these carriers, while at the same time allowing a substantial percentage of the equipment in use by other carriers to remain, does nothing to protect our nation’s security.

ii. As Written, the Proposed Rule Applies Only to Domestic Carriers that Receive USF Support.

If enacted, this prohibition would only apply to “a small subset of carriers which receive universal service funds” to deploy and maintain communications infrastructure.¹¹⁷ As NTCA notes, “other telecommunications operators which utilize private or public funding sources would not be affected or similarly prohibited from accessing and deploying what is defined as problematic supply chain partnerships.”¹¹⁸ The proposed rule would not have the Commission’s desired effect of protecting our national security because it would only apply to carriers that receive USF support – carriers that are primarily small and rural and that serve only a tiny percentage of total U.S. subscribers.

¹¹⁵ *Rural Broadband Alliance Comments* at p. 8. “RBA suggests that the Commission send a data request to major equipment sellers here in the U.S., requesting information on what percentage of equipment sales are “white label” or similar arrangements. In order to make a good policy choice, the Commission needs to fully understand who makes what, to know how much equipment from China is being sold into the U.S. market.” *See id.*

¹¹⁶ *Id.*

¹¹⁷ *NTCA Comments* at p. 16.

¹¹⁸ *Id.*

RWA agrees that the proposed rule “would have a *de minimis* impact on...reducing or eliminating national security risks to communications networks or the communications supply chain...because such risks are an issue throughout the communications ecosystem. Security vulnerabilities in the communications network are not limited to USF recipients...Therefore, approaching the issue in a manner that could only affect USF recipients would do little to protect communications networks or the communications supply chain. What it would do, however, is increase demand on the USF due to increased equipment and services costs.”¹¹⁹ AT&T concurs, stating that “[t]o effectively protect the communications supply chains...against national security threats, restrictions to address such threats should apply to all U.S. telecom and information network operators... With providers’ choices of equipment and services strongly impacting both cost and innovation, restricting the equipment and service choices of some market participants but not others, as would result from limiting such measures to USF recipients, would potentially distort competition and harm consumers.”¹²⁰

The proposed rule targeting USF recipients similarly does nothing to mitigate the asserted risks posed by international networks’ use of Huawei and ZTE equipment. CCIA rightfully notes that “the U.S. market shares of Huawei and ZTE are relatively small compared to the rest of the world.”¹²¹ In fact, networks utilizing Huawei equipment are operating in Canada and Mexico. Sagebrush, a rural wireless carrier that covers 173 miles of the U.S.-Canadian

¹¹⁹ *ITTA Comments* at pp. 4-5.

¹²⁰ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, [Comments of AT&T Services, Inc.](#), WC Docket No. 18-89, at pp. 3-4 (June 1, 2018) (“AT&T Comments”).

¹²¹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, [Comments of the Computer & Communications Industry Association](#), WC Docket No. 18-89, at p. 3 (June 1, 2018) (“CCIA Comments”); *see also* Apple Passes Samsung to Capture the Top Position in the Worldwide Smartphone Market While Overall Shipments Decline 6.3% in the Fourth Quarter, According to IDC, IDC (Feb. 1, 2018), *available at*: <https://www.idc.com/getdoc.jsp?containerId=prUS43548018>.

border and provides service to more than 75 U.S. Border Patrol and U.S. Customs agents, correctly states that “limiting the scope of the proposed rule to entities receiving USF funding fails to...address the threat posed by the use of Huawei equipment by Canadian telecom carriers that U.S. citizens and our own Customs and Border Patrol use when roaming day in and day out between Canada and Montana and North Dakota.”¹²² Sagebrush elaborated further, noting that Canadian carriers SaskTel Mobility, Telus Mobility, and Bell Mobility use Huawei equipment and “[t]he U.S. Border Patrol roams on these Huawei networks more often than not.”¹²³

NTCA, too, expressed concerns regarding international carriers and roaming issues. “[T]he current proposal fails to consider the critical operations of border patrol agents on the northern and southern borders, which roam freely between U.S. network providers and those operated by neighboring countries which often rely upon Huawei equipment, a supplier frequently cited as a cause for concern related to supply chain security. Therefore, at best, the NPRM may represent only a small “finger in the dike” response, which leaves vulnerable equipment within the larger telecommunications network untouched and thus does little to mitigate in fact meaningful risk.”¹²⁴

The proposed rule also fails to address the asserted threat posed by the use of Huawei handsets (both those purchased domestically and those brought into the U.S. by international

¹²² *Sagebrush Comments* at p. 5.

¹²³ *Id.* at p. 4, n. 4.

¹²⁴ *NTCA Comments* at p. 16. A recent Wall Street Journal article discusses Huawei’s impact internationally, stating “[s]ince 2012, Huawei has expanded to 170 countries from 140, and now claims 45 of the world’s 50 biggest wireless carriers as customers. Huawei, which also runs a popular smartphone brand, made \$75 billion overall in 2016. About \$26 billion came from its telecom equipment and software business, making it the leader in the \$126 billion-a-year global market...” See Stu Woo, Dan Strumpf and Betsy Morris, [Huawei, Seen as Possible Spy Threat, Boomed Despite U.S. Warnings](#), THE WALL STREET JOURNAL (Jan. 8, 2018).

roamers).”¹²⁵ Huawei is the world’s third-largest smartphone maker by sales after Samsung Electronics Co. and Apple Inc., and said that it sold 153 million smartphones globally last year.¹²⁶

VI. IF THE COMMISSION PROCEEDS WITH A RULE, IT SHOULD MAKE SUBSTANTIAL CHANGES TO MITIGATE THE PROPOSED RULE’S HARMFUL IMPACT.

As discussed above, RWA urges the Commission not to adopt the proposed rule and instead allow other federal agencies that are better situated (and both statutorily and constitutionally enabled) to address communications supply chain issues to do so. However, if the Commission proceeds with a rule, it should make substantial changes to mitigate the proposed rule’s harmful impact.

a. Narrow the Rule’s Scope.

RWA urges the Commission to narrow the rule’s scope so that it applies only to particular devices or types of equipment that, based on record evidence, present actual security risks that cannot be fixed via software patches or other remediation options. RWA agrees that the Commission should make it very clear that the rule only applies to direct spending on prohibited equipment, devices, and/or services. If the rule extends to funding of projects and services that utilize prohibited equipment, devices, or services, that would drastically increase the odds that any given carrier will have to rip and replace substantial portions of its network. Such a result would render meaningless the FCC’s assurance that it seeks only to regulate on a “going forward” basis.¹²⁷

¹²⁵ *Sagebrush Comments* at p. 5.

¹²⁶ Josh Chin, [Strong Smartphone Sales Drive Huawei Profit Growth](#), THE WALL STREET JOURNAL (Mar. 30, 2018).

¹²⁷ *CCA Comments* at pp. 44-45.

b. Adequate Transitional Funding.

If the Commission goes forward with a rule in this proceeding, it should ensure that adequate funding is made available to reimburse affected carriers. 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. As stated by Rise Broadband, “[r]equiring providers to cover such costs on their own would be akin to forcing them to reimburse substantial portions of their federal funding.”¹²⁸ The Commission should establish 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.

RWA also agrees with NTCA that the Commission “should ensure the provision of financial assistance for affected small businesses.”¹²⁹ Small and rural wireless carriers operate on extremely thin margins and must plan for network investments many years in advance. As NTCA notes, “[a]ny new, wholesale replacement of infrastructure and equipment must be supported with clear recovery mechanisms to ensure rural carriers are afforded the necessary assistance before, during, and after the transition period if national security considerations dictate anything more than an ‘organic’ transition away from such elements at the end of their useful life.”¹³⁰

¹²⁸ *Rise Broadband* at p. 7.

¹²⁹ *NTCA Comments* at p. 24.

¹³⁰ *Id.*; see also *Rural Broadband Alliance Comments* at p. 14 (stating “[T]he Commission should conduct an intra-governmental search for funding to reimburse small carriers for the cost of replacing network equipment”); see also *WTA Comments* at p. 6, n. 8 (stating “[s]ince it is a matter of national security, if the Commission finds that a ban is necessary, the Commission should provide additional funding to incentivize providers to voluntarily replace the applicable equipment”); see also *CCA Comments* at p. 45 (stating that the Commission should “[p]rovide

Perhaps the most obvious source of funding is the Universal Service Fund. RWA agrees with parties to this proceeding advocating in support of using USF funds to reimburse affected carriers for expenses related to the proposed rule. As Commissioner Clyburn rightly stated, “we can ill afford . . . to raise the cost of deployment or adoption of services for those who need connectivity the most.”¹³¹ Another possible funding source is the Congressional appropriation of a portion of the reported \$1 billion fine recently agreed to by ZTE and the U.S. Commerce Department.¹³² Given that RWA members and other rural wireless carriers found alternative equipment manufacturers’ prices to be between two and four times more expensive and what was offered by Huawei or ZTE, RWA also urges other equipment vendors to offer a discount and/or extend most favored nation (“MFN”) contract prices to affected USF recipients in the event the Commission adopts the proposed rule. To the extent most favored nation clauses are in existing contracts, these other equipment vendors should be allowed to offer deep discounts to help affected carriers replace equipment and services without having those MFN clauses triggered by non-affected carriers.

c. Sufficient Compliance Period.

Any rule must be prospective. Network equipment has an extended lifespan, and this must be addressed and accommodated in any rule which seeks to prospectively prohibit the use

additional USF or other funds to offset the costs of compliance, especially for rural carriers who lack ready access to cost effective replacement equipment and reliable substitute services”).

¹³¹ *NPRM*, Statement of Commissioner Mignon L. Clyburn (referencing Commission’s “desire to minimize compliance costs for recipients of USF support”); *see also Puerto Rico Telephone Comments* at p. 2 (stating “[T]he Commission should not mandate the removal of existing network equipment or devices, but if it were to impose such an extraordinary requirement, it should allocate USF funds to assist service providers with the replacement costs”).

¹³² David J. Lynch, Simon Denyer and Heather Long, [U.S. Reaches Deal with China’s ZTE That Includes \\$1 Billion Fine, Commerce Secretary Says](#), *THE WASHINGTON POST* (June 7, 2018).

of universal funds for restricted suppliers.¹³³ As such, the Commission should provide a sufficient phase-in period and/or delayed compliance date. Affected RWA members and other small and rural wireless carriers need at least 10 years to replace network equipment and ensure a smooth transition.¹³⁴ The longer the period before carriers have to comply, the greater ability they have to spread out costs to try to lessen the proposed rule's crippling financial impact. Further, replacing an entire network's worth of equipment takes time.

One RWA member estimates that "transitioning to a new network will require approximately two years of planning, including research and negotiation with vendors, network planning, and developing a financial plan to pay for the new network. Once a new vendor is chosen, the buildout, core turn up, configuration of the new network, and optimization are all likely to take at least an additional eight years"¹³⁵ The Rural Broadband Alliance agrees, noting that "tearing out 4G LTE network is an enormous physical and economic challenge. For small carriers, such an action has heretofore been unthinkable, as replacing a network before its useful lifespan is exhausted and it is fully depreciated is an existential threat to the entire business. Accordingly, RBA asks the Commission for a consultative process to develop a rational runway, to allow existing equipment to be rolled off in an orderly fashion. Key to this is avoiding the possibility that entire networks will be torn out prematurely, a potentially catastrophic result."¹³⁶

d. Functional Waiver Process.

If the Commission goes forward with a rule in this proceeding, it should create a meaningful waiver process. RWA underscores the point that this process must be functional and yield decisions within a reasonable amount of time. RWA proposes that the Commission impose

¹³³ *NTCA Comments* at pp. 22-23.

¹³⁴ *CCA Comments* at p. 45; *see also Sagebrush Comments* at pp. 5-6.

¹³⁵ *Sagebrush Comments* at pp. 5-6.

¹³⁶ *Rural Broadband Alliance Comments* at p. 14.

upon itself a 90-day decision shot clock. Currently, waiver petitions can linger at the Commission for months or years without a decision. A waiver process that fails to yield an actionable decision is not an acceptable remedy.

e. Exemption for Existing Contracts, Equipment, and Devices.

If the Commission goes forward with a rule in this proceeding, the rule should not apply to existing contracts, including multiyear contracts and contracts for future upgrades and/or services. Without a provision allowing for upgrades to and services for existing equipment throughout the contract period, carriers will be forced to rip and replace all equipment purchased from now-prohibited entities.¹³⁷ The rule should also not apply to already-purchased consumer devices, such as phones and tablets, including software updates and other related services.¹³⁸ This would allow universal service funds to be used in relation to already-purchased consumer devices for the usable life of the device.

In addition, the Commission should continue to allow USF support to be used for upgrades to and services for existing equipment, regardless of whether a contract for upgrades and/or services is currently in place. Carriers have made substantial investments in equipment for their networks, based on existing law and Commission policy. This equipment requires service and upgrades in order to be functional for its expected usable life. Prohibiting the use of USF

¹³⁷ *CCA Comments* at pp. 46-47; *see also NTCA Comments* at p. 23 (stating that “multi-year contracts or service agreements should last for as long as the related equipment is permitted and should be explicitly grandfathered, or a clear change of law is required”); *see also Puerto Rico Telephone Comments* at pp. 6-7 (stating “the Commission should grandfather existing service contracts, including multiyear contracts and contracts for future upgrades and/or services”); *see also WTA Comments* at p. 6 (stating that the Commission “should only affect future agreements to purchase new equipment. All prior existing agreements, including agreements for maintenance and customer service, between an applicable vendor and a provider should be grandfathered. Though equipment may have already been purchased and installed, funding is still necessary to maintain and upgrade the equipment through its normal lifespan. As such, new agreements to service existing equipment should be allowed”).

¹³⁸ *CCA Comments* at pp. 46-47.

support to pay for upgrades and services would be unfairly retroactive and would destroy those reasonable investment-backed expectations.¹³⁹ NTCA agrees, noting that during the transition period, “existing hardware and software will need to be maintained, patched, and repaired, or a telecommunications operator risks jeopardizing the quality of service it provides to its customers.”¹⁴⁰ NTCA further states in support that “[a]ffected providers should be explicitly allowed to replace failing equipment, as required, with spare parts, including procuring additional spares as needed. Equipment and software also need to be patched on a regular basis. Ironically, if systems are not regularly patched, this poses a security risk by itself as out-of-date software is highly vulnerable to cyber-attack. As such, during the transition process, software updates also should be explicitly allowed.”¹⁴¹

¹³⁹ *CCA Comments* at pp. 46-47.

¹⁴⁰ *NTCA Comments* at p. 23.

¹⁴¹ *NTCA Comments* at p. 23; *see also Puerto Rico Telephone Comments* at pp. 2, 6 (stating “[i]f the Commission decides to adopt the proposed rule, it should decline to extend the rule to maintenance and upgrades of existing equipment or services that are critically important to network functionality and security...According to the NPRM, the prohibition on the use of USF support for the purchase of 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 ‘would not apply to equipment already in place.’ However, the NPRM also states that the Commission expects the rule to extend to “upgrades of existing equipment or services” and seeks comment on this view. The Commission should reconcile this tension by declining to extend the proposed rule to maintenance of and upgrades to existing equipment or services.”); *see also Rise Broadband Comments* at p. 6 (stating “[s]ome 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 ... 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”).

VII. THE FCC SHOULD ISSUE A FURTHER NPRM WITH AN UPDATED, MORE DETAILED PROPOSED RULE.

The *NPRM* lacks clarity and definition and introduces threshold questions that require further study and discussion. RWA joins NTCA in urging the Commission to “further refine and define its proposal” and answer threshold questions regarding: (1) why the Commission’s concerns regarding security have reached a tipping point mandating the use of prescriptive regulatory rulemaking authority; (2) why the proposed rule focuses on companies rather than equipment; and (3) whether this prospective ban would apply to new hardware, new software, and/or existing software and/or hardware.¹⁴² Only then should the Commission seek comment on better-defined regulations.

VIII. CONCLUSION.

As discussed above, RWA opposes the proposed rule because: (1) it will harm rural America; (2) it exceeds the Commission’s statutory authority and is unconstitutional; (3) other governmental entities are better situated to address national security threats; and (4) it will not achieve the Commission’s national security objectives. If the Commission nonetheless proceeds, it should make substantial changes that mitigate the proposed rule’s harmful impact and issue a further notice of proposed rulemaking. RWA looks forward to its continued work with the Chairman, Commissioners, and Commission staff in this proceeding.

¹⁴² *NTCA Comments* at pp. 7-9.

Respectfully submitted,

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