



July 6, 2021

via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: NOTICE OF EX PARTE
WC Docket No. 18-89 – *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*

Dear Ms. Dortch:

On July 2, 2021, Carri Bennet, General Counsel, Rural Wireless Association, Inc. (“RWA”), and E. Alex Espinoza, Regulatory Counsel, RWA, (together, “RWA representatives”) spoke in separate meetings with Ramesh Nagarajan, Acting Wireline Legal Advisor, and Trent Harkrader, Acting Special Advisor to the Chairwoman and Deputy Bureau Chief, Wireline Competition Bureau; and Carolyn Roddy, Chief of Staff and Senior Legal Advisor for Wireline Issues to Commissioner Simington. On July 6, 2021, the RWA representatives spoke in separate meetings with Greg Watson, Policy Advisor to Commissioner Carr; and Austin Bonner, Legal Advisor for Wireline and Public Safety to Commissioner Starks.

The attendees discussed the Federal Communications Commission’s (“FCC” or “Commission”) draft supply chain Third Report and Order, in the above-mentioned docket.¹ Generally referencing paragraphs in the Third Report and Order, RWA discussed and recommended the following changes:

Paras. 66, 67, 72. RWA discussed the Commission’s proposed prioritization for the supply chain Reimbursement Program.² RWA requested that the Commission reinstate the within-category prioritization proposed in the Second Report and Order, and award funding to Eligible Telecommunications Carriers (ETCs) before prorating funding within the other categories.

RWA expressed its concern that as proposed, the definition of “provider of advanced telecommunication service” with 2 million or fewer customers includes all intermediary

¹ See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, FCCCIRC2107-01 (2021) (Third Report and Order Circulation Copy).

² See Third Report and Order Circulation Copy at 32-33, para. 78.

carriers, schools, libraries and health care providers, leaving no one in the second prioritization category, Priority 2.³

RWA underscored that the only way an entity will qualify for Priority 2 is if it provides less than 200 kbps in either direction, or does not meet the other advanced communications services qualifications—*e.g.*, that entity has more than 2 million customers.⁴ The draft Third Report and Order's addition of universities, healthcare providers, and libraries also further negates the Commission's Prioritization scheme; all providers—save for one—will be included in first prioritization category, Priority 1. RWA noted that Century Link is likely to be the only impacted company that falls outside of Priority 1, due to that company's customer size.

RWA is extremely concerned that the Commission's decision to decline prioritization of ETCs⁵ will force many ETCs to leave the communications market altogether, to the detriment of the Universal Service Fund program and its recipient subscribers. The proposed non-prioritization will lead to ETC Reimbursement Program applicants to come afoul of the Rip and Replace mandate, due to lack of funding. Many RWA member carriers will be unable to maintain ETC status—the option will be to either replace the entire network and remain ETCs, or if unable to replace their entire network, relinquish that status.⁶ It will be economically unfeasible for most RWA ETC carriers to remain in business without USF funding.

While RWA commends Congress's decision to include educational institutions, healthcare providers, and libraries in the Reimbursement Program, those institutions have access to funds that ETCs do not, should there be insufficient funds, via, *e.g.*, external fundraising and endowments. Rural ETCs, on the other hand, are entirely dependent on Universal Service Fund ("USF") program funding, in addition to business revenue from a sparse number of subscribers in high cost areas. Rural ETCs also serve small healthcare providers, schools, and libraries in underserved and rural areas; a huge reason for the USF program's existence.

Relatedly, the Commission's assertion to "prorate funding equally across all requests" in a given category⁷ also places ETCs at risk of collapse. RWA member carriers have expressed concern that a 20% - 30% funding reduction would drive small and rural companies out of business. Even if the Commission requests additional funding to cover the shortfall, small and rural members cannot afford to wait for another congressional appropriation that either may not come, or which timing is uncertain.

³ See, *e.g.*, Third Report and Order Circulation Copy at 32-33, para. 78 (noting that accredited public or private educational institutions, healthcare providers and libraries "are eligible for participation in the Reimbursement Program . . . are included in the *first* prioritization category if they have fewer than 2 million customers." *Id.* (emphasis added).).

⁴ See *id.* at 32-33, paras. 76-78.

⁵ See *id.* at 29-30, paras. 66-67.

⁶ See *id.* at 20-21, para. 43 ("Providers currently designated as ETCs and that participate in USF programs may relinquish their ETC status or decline to participate in USF programs should they wish to avoid compliance with our rules.").

⁷ *Id.* at 27, para. 60.

It would indeed be ironic if the Commission were to allow ETCs and the USF program to fail in the name of “fairness.”⁸ The Commission’s draft Third Report and Order notes that it has the discretion to adopt sub-prioritization schemes, but opts not to do so, absent “express direction” from Congress.⁹ The House Report accompanying the Secure and Trusted Communications Act of 2019 (“Secure Networks Act”) notes that unlike larger carriers, “smaller carriers with more limited resources and less sophisticated security operations have purchased and installed Huawei, and other suspect foreign equipment, in their networks either because the equipment was less expensive or they were unaware of the security risk, or both.”¹⁰ *Small carriers are the reason the Reimbursement Program exists.*

Accordingly, the Commission should prioritize ETCs before all other applicants, in keeping with its 2020 Supply Chain Order,¹¹ and fully fund ETCs before all other applicants so that they can stay in business. The Commission should seek additional funding from Congress to cover the full cost of the Reimbursement Program if the current amount is insufficient. In the interim, the Commission should use its full faith and credit to ensure that the USF program will endure, and fund ETCs entirely.

Paras. 93-94. RWA reiterated its concern that the Commission should add VoLTE compatible replacement handsets to the Cost Catalog for those carriers with 3G CDMA networks, since these CDMA only handsets will not be compatible with the LTE networks. Citing an article that uses 2018 data, the Commission erroneously reports that consumers choose to upgrade handsets “every two years on average absent any network transition.”¹² In fact, multiple studies find that consumers replace handsets at a rate approximating 3 to 4 years, with Americans over 60 and women being even more likely to replace handsets at even longer rates.¹³ RWA’s carrier membership can anecdotally attest that rural subscribers are also likely

⁸ See *id.* (“After reviewing the record, we find that the most equitable solution, and the one that is consistent with the Secure Networks Act direction that the “Commission make reasonable efforts to treat all applicants on a just and fair basis,” requires the Commission to adopt a pro-rata distribution system in the event demand exceeds supply at any given prioritization level. Thus, if available funding is insufficient to satisfy all requests in a prioritization category, we will prorate the available funding equally across all requests in this category.”).

⁹ *Id.* at 29, para. 66.

¹⁰ H.R. Rep. No. 116-352, at 10 (2019).

¹¹ See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, 35 FCC Rcd 14284, 14349-50, para. 157 (2020).

¹² Third Report and Order Circulation Copy at 38, para. 94.

¹³ See *Smartphone Replacement Cycle in the US 2014-2024*, Statista, <https://www.statista.com/statistics/619788/average-smartphone-life/> (last visited Jul. 6, 2021) (projecting current handset replacement rates at over 3 years in 2021 (3.29 years), and closer to 4 years (3.77 years) by 2024); Christine Ottoni, *How often should you upgrade your phone? Our upgrade cycle infographic*, Ting (Aug. 21, 2019), <https://ting.com/blog/phone-upgrade-cycle-survey-results/> (2019 survey of 3,000 people finding 47% of people kept phones 3-5 years on average); BlinkAI’s 2021 Smartphone Consumer Report, BlinkAI, <https://www.blink.ai/post/blinkai-s-2021-smartphone-consumer-report> (last visited Jul. 6, 2021) (citing Aug. 2019 study finding that the replacement cycle is currently at 3 years, and even longer for some demographics, such as users over 60 years old (50% likely to keep phones >3 years), and finding that women are more likely to keep their phones over 3 years than men (4 in 10 women (39%) vs. 33% of men)).

to keep handsets 3 to 4 years on average, mainly due to the costs and inability of small carriers to get the latest and greatest smartphones on the market.

Contrary to the Commission's assertion that handset reimbursement is not "reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service,"¹⁴ RWA reiterates that but for the Commission's mandate to Rip and Replace equipment and services, CDMA-only capable handsets would still be in service, especially given the 3 to 4 year replacement cycle. The Cost Catalog should thus allow for CDMA-compatible handset reimbursement, which RWA estimates at total cost of less than \$6 million to replace approximately 6,000 CDMA handsets with VoLTE capable handsets.

Para. 95. RWA discussed the need to increase the filing window for the estimates to 90 days. RWA appreciates the Commission for allowing the Wireline Bureau discretion to expand the filing window beyond 30 days, to allow applicants to navigate the application portal and compile necessary information. Unlike the Broadcast Repack reimbursement program—upon which the instant reimbursement process is based—where applicants only needed to input one or a few tower sites, supply chain reimbursement applicants are faced with submitting hundreds of tower sites, and Customer Premises Equipment sites (in the case of fixed wireless, especially). Because the reimbursement application sorts applications by *location*, sorted by latitude and longitude, each of these potentially hundreds of sites require its own individual stack of paperwork.

As such, RWA estimates the burden to submit complete network applications at well over 30 days per applicant; closer to 90 days in total. RWA also asks that the Commission's application system permit batch uploads of required paperwork, to allow for single sets of documentation to account for multiple reimbursement locations. This in turn would also lower the review and response burden on Commission and third party reviewing staff, getting funding to eligible applicants that much quicker.

Blanket waiver. RWA also discussed the need for a blanket extension upfront, due to the present semiconductor and workforce shortage. As the Commission is aware from its semiconductor shortage public notice, the semiconductor shortage has had ripple effects, extending from communications equipment to motor vehicles. In addition to delays in getting radio equipment and handsets, RWA members report that because of the semiconductor shortage, even the trucks necessary to maintain and upgrade the networks are on back order.

Accordingly, RWA asks the Commission to invoke its statutory authority under the Secure Networks Act, to initially issue two six-month waivers, due to this unavailability of equipment or services to achieve the Reimbursement Program's purposes.¹⁵ By doing so, the Commission will give carriers much needed breathing room, preventing carriers from increasing estimates to account for temporary price increases and inflation expected over the next two years due to

¹⁴ Third Report and Order Circulation Copy at 38, para. 93.

¹⁵ See 47 U.S.C. § 1603 (d)(6)(B).

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the workforce labor and semiconductor shortages. The Commission will increase costs if it keeps to a tight, one-year migration time frame; unnecessarily depleting the reimbursement fund at a greater rate. In contrast, an upfront time extension of two six-month periods will allow for a greater apportionment of time and funds towards securing our networks against unsecure equipment, allowing carriers to be fully funded, and more fully complete the migration.

Pursuant to Section 1.1206 of the Commission's Rules,¹⁶ this *ex parte* is being filed electronically with the Office of the Secretary.

Respectfully submitted,

/s/ Carri Bennet

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¹⁶ 47 CFR §1.1206.