

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**PETITION FOR RECONSIDERATION OF THE RURAL WIRELESS ASSOCIATION, INC.**

The Rural Wireless Association, Inc. (“RWA”), pursuant to section 1.429 of the Federal Communications Commission’s (“FCC,” or “Commission”) rules, submits this Petition for Reconsideration of the Commission’s Third Report and Order (“Third R&O”) in the above captioned proceeding.<sup>1</sup> RWA urges the Commission to reconsider how the Third R&O implements the Secure and Trusted Communications Networks Act of 2019 (“Secure Networks Act”).<sup>2</sup> Specifically, as set forth below, RWA seeks reconsideration of the FCC’s decision (1) to rescind the sub-prioritization scheme that fully funded ETCs;<sup>3</sup> (2) to deny a general extension of the removal, replacement, and disposal term;<sup>4</sup> and (3) to prejudge reimbursement of VoLTE non-compatible handsets.<sup>5</sup>

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<sup>1</sup> See generally *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, FCC 21-86 (Jul. 14, 2021) (Third R&O).

<sup>2</sup> Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) (SNA).

<sup>3</sup> Third R&O at 26, 28-29, paras. 58, 63-66.

<sup>4</sup> *Id.* at 41-42, para. 100.

<sup>5</sup> *Id.* at 38-39, paras. 93-94.

**I. The Commission should reinstate sub-prioritization for Eligible Telecommunications Carriers that are advanced service providers serving under 2 million subscribers.**

The Commission should reconsider its decision to eliminate funding sub-prioritization, and re-implement the Supply Chain Second Report and Order’s (“Second R&O”) sub-prioritization categories.<sup>6</sup> The Second R&O instituted three primary prioritization categories, and within each category, two sub-prioritization categories.<sup>7</sup> In so doing, the FCC noted that the SNA directed the agency to “make reasonable efforts” to ensure equitable funds distribution among all applicants,<sup>8</sup> and that “prorating support equally among all participants based on a set percentage of available funding, as the only means of allocating support, *fails to account for the individual needs of the applicants and runs counter to the directive in the Secure Networks Act.*”<sup>9</sup> Accordingly, the Commission stated that it would prioritize Eligible Telecommunications Carriers (“ETCs”), followed by other prioritization categories, including non-ETC providers of advanced communications service that participated in the Supply Chain Security Information Collection (“Information Collection”), followed by those non-ETCs that did not did not participate in the Information Collection.<sup>10</sup>

The Commission subsequently reversed course, issuing a Third R&O which reinterprets the Secure Networks Act (“SNA”), as amended by the 2021 Consolidated Appropriations Act (“CAA”).<sup>11</sup> The Third R&O prioritized “allocating funding to providers of advanced communications service with two million or fewer customers,”<sup>12</sup> and removed sub-prioritization and any ETC priority funding. The FCC explained removing sub-prioritization categories by stating that the Secure Network Act’s standard

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<sup>6</sup> 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) (Second R&O).

<sup>7</sup> *Id.* at 14349-50, para. 157.

<sup>8</sup> *Id.* at 14348, para. 155.

<sup>9</sup> *Id.* at 14349, para. 156 (emphasis added).

<sup>10</sup> See Second R&O, 35 FCC Rcd at 14349, para. 157; see also *id.*, Appx. A, at 14378 (Table 1 prioritization schedule).

<sup>11</sup> See generally Consolidated Appropriations Act, 2021, Pub. L. No. 116–260, § 901, 134 Stat. 1182 (2020) (CAA).

<sup>12</sup> Third R&O at 26, para. 59.

“to treat all applicants on a just and fair basis”—which was unchanged by the CAA—now mandates prorating across all requests in a given category.<sup>13</sup> This is a reinterpretation of the FCC’s stance on the SNA in the Second R&O. The Second R&O prioritized first funding ETCs subject to the Rip and Replace requirement, and explicitly chose to not prorate funding equally across all applicants.<sup>14</sup> There, the FCC explained that “prorating support equally among all participants based on a set percentage of available funding, as the only means of allocating support, fails to account for the individual needs of the applicants and runs counter to the directive in the Secure Networks Act,”<sup>15</sup> namely, that protecting ETCs who “are funded through USF and serve on the front lines of providing universal service—from national security threats [is of] . . . the utmost importance.”<sup>16</sup>

In turn, in the Third R&O, the FCC adopted the very funding scheme that was “counter to” the SNA in December 2020—equal prorating instead of first funding ETCs.<sup>17</sup> In so doing, the FCC explained that it relied on a review of the proceeding’s record. The Third R&O leans heavily on only one set of record comments from USTelecom for this new and opposite interpretation,<sup>18</sup> and ignores other comments from RWA and NTCA warning of the dire consequences of not fully funding ETCs,<sup>19</sup> consequences which the FCC itself first underscored in the Second R&O.<sup>20</sup>

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<sup>13</sup> *Id.* at 27, para. 60.

<sup>14</sup> *See* Second R&O, 35 FCC Rcd at 14349, paras. 156, 157.

<sup>15</sup> *Id.* at 14349, para. 157.

<sup>16</sup> *Id.* at 14350-41, para. 159.

<sup>17</sup> *See* Third R&O at 27, para. 60 (“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.”)

<sup>18</sup> *Id.* at 27, para. 60.

<sup>19</sup> *See* Letter from Carri Bennet *et al.*, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-89 at 2-3 (Jul. 6, 2021) (RWA July 6 *Ex Parte*); NTCA Comments at 4-5.

<sup>20</sup> There, the Commission warned that “Perhaps most significantly, in this [Second Report and] Order we require ETCs receiving universal service support to remove covered equipment and services from their networks. Failure to comply will result in the loss of future universal service funding. ETCs, which often provide service in areas where providers are less likely to be able to recover their costs from subscribers, are more sensitive to the possibility that they could lose universal service funding. ETCs thus face greater consequences than non-ETC providers if the transition does not occur in a timely manner. The potential for enforcement liability or reduced universal service funding further distinguishes ETCs from the

Specifically, the FCC cites USTelecom’s statement that “if any sub-prioritization had any effect, it would be to reduce funding to one or more applications in favor of others notwithstanding Congress’s expectation that they would be treated equally,” and that Congress “intentionally set new, and different priorities,” given that Congress “had knowledge of” the FCC’s Second R&O prioritization scheme.<sup>21</sup> Congress however, did not set a new and different set of priorities; the SNA’s mandate for federally funded carriers to cease using covered equipment and services remained the same. RWA in particular voiced its concern that a failure to fully fund ETCs’ removal, replacement, and destruction of covered equipment and services would result in the collapse of the Universal Service Fund’s (“USF”) system of subsidizing small and rural providers to serve remote (and expensive) areas.<sup>22</sup> RWA stated that a 20 to 30% funding reduction “would drive small and rural companies out of business.”<sup>23</sup> In this proceeding’s record, NTCA also stressed that any unfunded covered equipment replacement costs would force ETC-designated carriers to seek funds elsewhere to keep operating as ETCs.<sup>24</sup> NTCA predicted and warned in its unaddressed record comments that forcing ETCs to incur additional, unfunded costs to comply with the rip and replace mandate would impose a “crushing burden,” and thus force ETCs out of the USF program, to the detriment of their subscribers.<sup>25</sup>

Despite quoting RWA and NTCA’s language above in the Third R&O,<sup>26</sup> the FCC failed to address the economic impact of not fully funding ETCs, which it previously did address in the Second

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circumstances of other applicants. Based on these factors, we find there is a greater urgency to expeditiously accommodate the transition of ETC networks over other applicants. Accordingly, if initial funding is insufficient to satisfy reimbursement requests, we will first prioritize funding to ETCs over non-ETC applicants.” Second R&O, 35 FCC Red at 14351, para. 160. The Commission also stated that it “has made a substantial investment to help ETCs provide service in areas where the economics often do not support viable service offerings. Facing the possibility of service disruptions absent continued support due to the remove-and-replace prohibition we adopt today . . . ETCs stand in a different position than non-ETCs, justifying a prioritization in the allocation of reimbursement support.” *Id.* at n.469.

<sup>21</sup> Third R&O at 27, para. 60 (*quoting* USTelecom Comments at 3).

<sup>22</sup> See RWA July 6 *Ex Parte* at 2-3.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> See NTCA Comments at 4.

<sup>25</sup> See *id.* at 4-5.

<sup>26</sup> See Third R&O at 29, para. 65 (RWA quote); *id.* at 26, para. 58 (NTCA quote).

R&O. Relying on USTelecom’s single record comment for its decision to dispense with sub-prioritization is arbitrary and capricious, given these unaddressed record comments, and the FCC’s previous stance on the consequences of not fully funding ETCs that necessitated funding ETCs first.

The FCC should revisit sub-prioritization to better apportion funds to those recipients Congress intended be fully funded: ETCs and small providers.<sup>27</sup> While the FCC ultimately cites the need for “equitable” funds distribution, it is not equitable to deny ETCs the funding necessary to keep them economically viable and serving underserved or otherwise unserved communities. Indeed, ETCs are at risk of losing their subsidies due to the FCC’s plans to eventually eliminate the legacy support mobile ETCs receive as a result of the planned Rural 5G Fund reverse auction. The FCC should reconsider its decision to not sub-prioritize funding, and ensure ETCs are prioritized before all other applicants in that category.

## **II. The Commission should issue a general extension of the one year removal, replacement and disposal term.**

The FCC should issue a general extension of the one-year removal, replacement, and disposal term to ensure applicants have access to needed inventory and services to comply with the Rip and Replace requirement. In the Third R&O, the FCC declined to issue a general extension, as such an extension was “premature.”<sup>28</sup> The FCC stated that an extension was contrary to Congress’ intent of having a one-year period for carriers to remove covered equipment from their networks.<sup>29</sup> However, the FCC failed to address the reasons commenters requested a general extension, *i.e.*, supply chain and labor

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<sup>27</sup> See H.R. Rep. No. 116-352, at 9 (2019) (“Large communications companies with sophisticated network security operations and significant capital generally have avoided installing and using Huawei and other suspect foreign equipment in their networks. Moreover, Federal agencies have actively reached out to large carriers to express concerns when carriers have considered purchasing suspect equipment. In contrast, some 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.”).

<sup>28</sup> Third R&O at 42, para. 100.

<sup>29</sup> See *id.* at 41-42, para. 100.

shortages.<sup>30</sup> The FCC’s failure to do so is particularly egregious given the fact that Congress gave the FCC the power and discretion to modify that removal term deadline to address supply chain and labor shortages.<sup>31</sup>

Those shortage issues have only worsened since RWA and others last requested a general extension.<sup>32</sup> Compliance with the Rip and Replace mandate itself will also cause “inadequate supply” of the services and supplies needed to timely complete the removal, replacement, and destruction of covered equipment and services. Under the FCC’s reimbursement scheme, all applicants must seek reimbursement during one limited 90-day application window, and undergo application review.<sup>33</sup> Multiple applicants will receive funding apportionment contemporaneously, and to comply with the one-year removal, replacement, and disposal term applicants will be in a race with each other to purchase and install already limited approved equipment and hire installers from a limited pool, creating a further squeeze on supply and labor as well as an increase in costs due to supply shortages. These current and ongoing compliance shortages necessitate an immediate general extension.

Although the FCC correctly decided that it would take semiconductor shortages into consideration when determining whether to allow for additional time to obtain replacement hardware

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<sup>30</sup> See Letter from Alexi Maltas, Senior Vice President and General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-89, at 3 (Jul. 5, 2021) (CCA July 5 Ex Parte); (“A one-year deadline is not likely feasible for many carriers in the best of circumstances, but it is particularly challenging in the face of potential supply chain and labor shortages and the recovery from the worst global health crisis of our lifetimes”); USTelecom Comments at 5-6 (noting “Potential Impact of Semiconductor Availability on Remove-and-Replace”); RWA July 6 *Ex Parte* at 4-5 (citing semiconductor and labor shortages).

<sup>31</sup> 47 U.S.C. § 1603(d)(6)(B)-(B)(i) (allowing extensions if equipment or services available are “*inadequate to meet the needs of the recipients*”).

<sup>32</sup> E.g. Michael Wayland, *GM to significantly cut North American vehicle production due to chip shortage*, cnbc.com (Sep. 2, 2021 11:19 AM EDT), <https://www.cnbc.com/2021/09/02/gm-to-significantly-cut-north-american-vehicle-production-due-to-chip-shortage.html>.

<sup>33</sup> See *Wireline Competition Bureau Finalizes Application Filings, Procedures, Cost Catalog, and Replacement List for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 21-947, at 13, para. 33 (WCB Aug. 3, 2021) (90-day review window) (Cost Catalog PN).

components on an *individual* basis,<sup>34</sup> the FCC failed to address the fact that these semiconductor shortage issues are pervasive and worldwide in scope, cutting across multiple industries. This shortage is not a mere unavailability of limited types of materials to certain individual applicants that can be solved individually. The semiconductor shortage is everywhere, affecting all industry vendors and installers alike, and will thus cause multiple Reimbursement Program applicants to ask for extensions at the same time, prompting the Wireline Competition Bureau (“WCB,” “Bureau”) to issue multiple individual extensions in a piecemeal fashion. This ad-hoc extension system will create an inequitable, two-tier system, where extension recipients *might* have the chance to get needed equipment and labor (at a premium) due to the additional time allotted, while others who file for extensions later and are still awaiting FCC action on an extension end up waiting in line to get access to equipment and services needed to complete the process. This is most likely to impact rural and small carrier applicants that cannot afford the added expenses to apply for extensions or the added costs of penalties associated with non-compliance with the Rip and Replace mandate such as lost revenue and lost USF funding.

In the absence of a general extension of the removal, replacement, and disposal term, applicants rushing to comply with the one-year removal, replacement, and disposal period will strain the capacity of a finite number of installers and disposal companies, exacerbating a labor shortage. Case-by-case extensions will drive up costs to both extension applicants and the federal government. First, extension applicants will need to pay compliance firms and law firms to apply for individual extensions.<sup>35</sup> Then, applicants will apply to have these fees reimbursed,<sup>36</sup> further depleting existing reimbursement funding that would be better be used on replacement equipment and services in the first place. In addition, by

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<sup>34</sup> See Third R&O at 41, para. 97 (“We agree with these commenters and direct the Wireline Competition Bureau to consider limited availability of the replacement options as a factor for whether to grant an individual extension request, including impacts caused by a shortage of semiconductors.”).

<sup>35</sup> Applicants typically require the assistance of compliance firms and/or law firms to compile an applicant’s reimbursement program substantiating documentation and file the reimbursement program application with the Commission.

<sup>36</sup> See, e.g., Cost Catalog PN at 35, Appx. C (showing certain attorney’s fees eligible for reimbursement).

not having the certainty of an extension upfront, carriers will be forced to pay premiums for equipment and installation which will further deplete the funding. A general extension will allow a finite labor supply time to timely schedule removal and installation of more equipment, and allow manufacturers to catch up to the increased demand created by the Reimbursement Program. A general extension will also provide the FCC additional time to allow it to better evaluate applications and apportion funding accordingly. This is important in light of the Commission increasing the number of providers of advanced communications services now eligible for reimbursement.<sup>37</sup>

If Congress did not foresee that granting an extension may be necessary, Congress would not have allowed the FCC discretion to issue extensions. The FCC should exercise its statutory discretion to effectuate Congress' intent that all unsecure equipment should be replaced, and allow additional time for providers to get necessary labor and replacement equipment in place. The FCC should accordingly issue a 6- to 12-month general extension. Such an extension is in the public interest.

### **III. The FCC should allow handset reimbursement on a case-by-case basis.**

The FCC should reconsider its decision to deny RWA's request to add VoLTE-compatible replacement subscriber handsets to the Cost Catalog, and the decision to deny all requests for consumer handset reimbursement.<sup>38</sup> Ignoring evidence that handset upgrade cycles have increased to 3 to 4 years,<sup>39</sup> the FCC without support continued to claim that consumers will upgrade handsets around every two years, and that funding non-Huawei and ZTE handset reimbursements "threatens to detract substantial funding away from the core mission of securing the nation's networks," "regardless of the

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<sup>37</sup> See Third R&O at 6-8, para. 14-17 (raising applicant eligibility cap to 10 million customers).

<sup>38</sup> See *id.* at 38-39, paras. 93-94.

<sup>39</sup> See RWA July 6 *Ex Parte* at 3-4 ("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. RWA's carrier membership can anecdotally attest that rural subscribers are also likely 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.").

current upgrade cycle for handsets.”<sup>40</sup> The FCC’s Third R&O thus deemed the “replacement of non-Huawei or ZTE mobile devices not reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service.”<sup>41</sup> It is in the public interest that the FCC consider individual requests for handset reimbursement on a case-by-case basis, and not categorically bar all requests for handset reimbursement.

The Third R&O did not fully address the arguments for allowing handset replacement; the FCC instead only doubled down on generalizations about handset replacement and upgrade rates. Moreover, instead of opting to consider requests for handset reimbursement even on a case-by-case basis, the FCC chose to prejudge and preclude all such requests without viewing any supporting evidence from applicants.

The Bureau has emphasized that it will entertain requests for reimbursement of items or services not expressly listed in the Cost Catalog, that inclusion or exclusion in the Catalog “should not be interpreted as a determination whether the expense will be eligible for reimbursement,” and that the Catalog is not “definitive or exhaustive,” but an “additional tool” to determine reimbursement.<sup>42</sup> Reimbursable expenses should be “reasonably necessary for removing, replacing, and disposing of covered communications equipment and services.”<sup>43</sup> Absent a full accounting on the merits of each reimbursement case by the FCC, neither the FCC nor WCB can tell what is “reasonably necessary.” In addressing handset reimbursement, the FCC stated that “without detailed information as to the handset models end users own, it is unclear whether a transition to a newer technology network will prevent those users from accessing the network.”<sup>44</sup> RWA agrees; the FCC needs more information to make

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<sup>40</sup> Third R&O at 39, para. 94 & n.285.

<sup>41</sup> *Id.* at 39, para. 94.

<sup>42</sup> Cost Catalog PN at 27, para. 76.

<sup>43</sup> *Id.* at 30, 31, paras. 82, 87 (addressing reimbursement of contract early termination fees, reimbursement of labor costs); *see also, e.g.*, Third R&O at 31, 37, para. 90 (addressing non-reimbursement of microwave backhaul).

<sup>44</sup> Third R&O at 39, para. 94.

decisions as to reimbursing claims. Accordingly, in lieu of categorical inclusion of handset reimbursement in the Cost Catalog, RWA asks that the FCC reconsider its categorical denial of handset reimbursements, and in the public interest, allow applicants to submit claims for equipment such as VoLTE-compatible replacement subscriber handsets, and adjudge each reimbursement case based on the evidence submitted.

**IV. Conclusion**

For the forgoing reasons, the Commission should reconsider its decisions not to: (1) sub-prioritize funding, (2) issue a general extension, and (3) reimburse the costs of disposing of and replacing VoLTE-compatible replacement subscriber handsets. Granting the requested relief will serve the public interest as providers need further clarity and assistance to dispose of and replace covered equipment and services.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

By: /s/ Carri Bennet  
Carri Bennet, General Counsel  
Alex Espinoza, Regulatory Counsel  
5185 MacArthur Blvd., NW, Suite 729  
Washington, DC 20016  
(202) 551-0010  
[legal@ruralwireless.org](mailto:legal@ruralwireless.org)

Michael Bennet, Esquire  
Womble Bond Dickinson (US) LLP  
2001 K Street, NW  
Suite 400 South  
Washington, DC 20006  
*Counsel to the Rural Wireless Association, Inc.*

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