

**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	)	
	)	

**APPLICATION FOR REVIEW**

Pursuant to 47 CFR § 1.115, Cincinnati Bell Inc., by its undersigned counsel, respectfully submits this Application of Review of the Wireline Competition Bureau’s (“Bureau”) Public Notice released on August 3, 2021, and published in the Federal Register on August 31, 2021, at 86 Fed. Reg. 48521 (the “*Public Notice*”).<sup>1</sup> Specifically, Cincinnati Bell requests that the Commission revise (or alternatively clarify) paragraph 100 of the *Public Notice* to restore the reimbursement eligibility of certain network gateway devices with wireless (Wi-Fi) capabilities manufactured by ZTE, as the *Public Notice* is in conflict with the Commission’s rules implementing the Secure and Trusted Communications Networks Act of 2019 (“Secure Networks Act”).<sup>2</sup>

**QUESTION PRESENTED**

**1.** Whether certain network gateway equipment with Wi-Fi capabilities manufactured by ZTE is eligible for reimbursement under the Secure and Trusted Communications Networks

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<sup>1</sup> See *Wireline Competition Bureau Finalizes Application Filings, Procedures, Cost Catalog, and Replacement List for the Secure and Trusted Communications Networks Reimbursement Program*, Public Notice, WC Docket No. 18-89; DA 21-947 (rel. Aug. 3, 2021) (“*Public Notice*”).

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

Reimbursement Program (“Reimbursement Program”), given that the Public Notice is inconsistent with the *Third Report and Order*<sup>3</sup> and the Secure Networks Act.

## REASONS FOR GRANTING THE APPLICATION

### I. BACKGROUND

Congress passed the Secure Networks Act in 2020, directing the Commission to establish the Reimbursement Program<sup>4</sup> to compensate service providers for costs incurred in removing, replacing and disposing of communications equipment that poses an unacceptable risk to national security, such as certain communications equipment produced or provided by ZTE Corporation (“ZTE”),<sup>5</sup> that were obtained by June 30, 2020. On December 10, 2020, following the enactment of the Secure Networks Act, the Commission established the Reimbursement Program through the *Second Report and Order*.<sup>6</sup> In doing so, the Commission directed the Bureau to, among other things, “develop a final Catalog of Eligible Expenses [Catalog].”<sup>7</sup> The Commission explained that the Catalog is intended to serve as a reference point, as it “will contain a list of many, but not necessarily all, of the relevant expenses in lieu of providing additional supporting documentation to justify the specific cost estimate.”<sup>8</sup> The Commission further added that “[i]f an applicant believes the predetermined estimate does not fully account for its specific circumstances or a

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<sup>3</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Third Report and Order, WC Docket No. 18-89, FCC 21-86 (Jul. 14, 2021) (“*Third Report and Order*”).

<sup>4</sup> Secure Networks Act § 4(a)-(c).

<sup>5</sup> *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633 (2020) (“*Designation Order*”).

<sup>6</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, WC Docket No. 18-89 (2020) (“*Second Report and Order*”).

<sup>7</sup> *Second Report and Order*, ¶ 180.

<sup>8</sup> *Second Report and Order*, ¶ 129.

predetermined cost estimate is not provided in the [Catalog] for the cost identified by the applicant, the applicant can provide its own individualized cost estimate.”<sup>9</sup>

On March 25, 2021, the Bureau released a public notice seeking comment on a Preliminary Catalog and Replacement List (“Preliminary Catalog”) prepared at the Bureau’s direction by the consulting firm Widelity, Inc. (“Widelity”), itemizing expenses and suggesting replacements for insecure equipment.<sup>10</sup> The Preliminary Catalog focused on the removal, replacement, and disposal of covered communications equipment and services, including equipment produced by ZTE. Widelity analyzed core layer, distribution layer, access layer software, and services to prepare the Preliminary Catalog.<sup>11</sup> In the Preliminary Catalog, equipment subcategories “Home Network & Customer Premises Equipment (‘CPE’)” and “Smart Home” are identified as access layer equipment “responsible for connecting users to their immediate service providers.”<sup>12</sup> According to the Preliminary Catalog, CPE “is considered to be covered equipment if it is owned by the provider, including CPE that is in use and leased by the provider to end-user customers.”<sup>13</sup> The Preliminary Catalog also identifies ZTE CPE as one of the network categories.<sup>14</sup>

Not all CPE is reimbursable under the Reimbursement Program, and the Preliminary Catalog explicitly stated that certain smart home CPE devices, such as “IP cameras, wifi doorbells, wifi, light switches, etc.” are not eligible.<sup>15</sup> Notably, the Preliminary Catalog did not call out

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<sup>9</sup> *Id.*, ¶ 149.

<sup>10</sup> *Wireline Competition Bureau Seeks Comment on a Report and Preliminary Cost Catalog and Replacement List to Help Providers Participate in the Supply Chain Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 21-355 (Mar. 25, 2021) (“*Catalog Public Notice*”).

<sup>11</sup> *Catalog Public Notice*, Attach. 3 at 4; Attach. 1, Appx. B.

<sup>12</sup> *Catalog Public Notice*, Attach. 3 at 4; Attach. 1, at 44.

<sup>13</sup> *Catalog Public Notice*, Attach. 1, Appx. B, at 1.

<sup>14</sup> *Catalog Public Notice*, Attach. 1, Appx. B, at 3.

<sup>15</sup> *Catalog Public Notice*, Attach. 2, at 7.

equipment such as a network gateway as ineligible equipment under the Reimbursement Program. The Bureau stated that after considering public comments on the Preliminary Catalog, it would issue a public notice to adopt the final version of the Catalog and Replacement List (“Final Catalog”).

Subsequently, on July 13, 2021, the Commission adopted the *Third Report and Order* to amend the Commission’s rules to incorporate the Consolidated Appropriations Act, 2021 (“CAA”) amendments to the Secure Networks Act.<sup>16</sup> The Commission modified the type of equipment and services eligible for reimbursement and clarified that *all* telecommunications equipment and services produced or provided by ZTE are eligible for reimbursement.<sup>17</sup>

## II. DISCUSSION

Cincinnati Bell had several thousand ZTE gateway devices deployed at customer premises as of April 2018 and has incurred additional cost in servicing, repairing, and replacing them. The gateway is a multipurpose modem/router that provides IP Addressing, Routing, Network Address Translation, Port Forwarding, Firewall Services, Ethernet and WiFi connectivity. The WiFi capability is ancillary to the primary purpose of the gateway device, which is to route user data traffic to the Internet.

After the enactment of the Secure Networks Act, Cincinnati Bell relied on the *Second Report and Order*, the *Third Report and Order*, and the Preliminary Catalog in preparing for the replacement and removal of covered communications equipment and services, and has always treated ZTE gateways with Wi-Fi capabilities as eligible equipment under the Reimbursement

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<sup>16</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Third Report and Order, WC Docket No. 18-89, FCC 21-86 (Jul. 14, 2021) (“*Third Report and Order*”); see Pub. L. No. 116–260, Title IX, § 906(2), 134 Stat. 1182 (2020) (“CAA”).

<sup>17</sup> *Third Report and Order*, ¶ 18.

Program. Cincinnati Bell has been counting on the Reimbursement Program to remove and replace ZTE gateways, but the *Public Notice*, for the first time, amended the Final Catalog without justification to categorically exclude reimbursement for “WiFi Routers.”<sup>18</sup>

The Commission should confirm that *all* network equipment produced by ZTE, specifically including premise gateway devices, is eligible for reimbursement according to the *Third Report and Order* and the Secure Networks Act, even if they include Wi-Fi capability. In the alternative, the Commission should require the Bureau to correct and update the *Public Notice* and Final Catalog to remove information contradictory to the Commission’s determination that all communications equipment provided by ZTE is reimbursable.

To begin with, disallowing reimbursement for ZTE-manufactured communications equipment and devices, such as ZTE gateways, is not supported by the provisions of *Third Report and Order* that the Bureau cited in the *Public Notice*. Specifically, in revising the “Smart Home” subcategory to declare that “Wi-Fi Routers” would not be reimbursable under the Reimbursement Program, the Bureau stated that “Wired (Wi-Fi) and wireless routers *may* constitute CPE used by end users to access non-core network elements ... [and] are not reasonably necessary for the removal, replacement, and disposal of covered communications equipment or services.”<sup>19</sup> The Bureau cited paragraphs 93-94 of the *Third Report and Order* to support this revision.<sup>20</sup> The primary focus of paragraphs 93-94, however, is on the costs associated with the replacement of subscriber mobile handheld devices *not* produced by ZTE.

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<sup>18</sup> *Public Notice*, Appx. C, at 41.

<sup>19</sup> *Public Notice*, ¶ 100 (citing *Third Report and Order*, ¶ 94) (emphasis supplied). The Bureau did not explain why it said Wi-Fi routers *may* constitute CPE, or under what circumstances this equipment would *not* constitute CPE. However, it appears to have taken pains to avoid stating that these routers are always considered CPE.

<sup>20</sup> *Third Report and Order*, ¶¶ 93-94.

Paragraph 93 discusses a commenter’s narrowed request to add certain consumer handsets (*i.e.*, VoLTE compatible replacement subscriber handsets) to the Final Catalog so that recipients of the Reimbursement Program could replace consumer handsets that are no longer compatible with replacement networks.<sup>21</sup> The Commission declined the commenter’s proposal, explaining that “replacing such handsets [*i.e.*, handsets *not* produced by ZTE or Huawei] with VoLTE compatible subscriber handsets is not reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service.”<sup>22</sup> Paragraph 93 does not discuss or even mention equipment that *is* produced by ZTE.

Similarly, the discussion in paragraph 94 centers on mobile handheld devices *not* produced or provided by ZTE, as the Commission was concerned that the inclusion of non-ZTE subscriber mobile handheld devices” would “threaten[] to detract substantial funding away from the core mission of securing the nation’s networks.”<sup>23</sup> Recognizing that “consumers typically choose on their own to upgrade their mobile handsets every two years on average absent any network transition,” the Commission found “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>24</sup> The footnote to paragraph 94 further identifies the specific types of devices the Commission was discussing by citing (1) a CNBC article discussing American smartphone users are waiting longer before upgrading,<sup>25</sup> (2) a Best Buy listing of a Motorola One

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<sup>21</sup> *Third Report and Order*, ¶ 93.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, ¶ 94.

<sup>24</sup> *Third Report and Order*, ¶ 94 (emphasis supplied).

<sup>25</sup> *Third Report and Order*, ¶ 94 (citing Abigail Ng, *Smartphone Users are Waiting Longer Before Upgrading – Here’s Why*, CNBC (May 17, 2019), <https://www.cnbc.com/2019/05/17/smartphone-users-are-waiting-longer-before-upgrading-heres-why.html>).

5G Ace smartphone,<sup>26</sup> and (3) a comment arguing that “spending scarce Reimbursement Program funds on handsets *not* produced by Huawei or ZTE would frustrate the Reimbursement Program’s goal of removing insecure equipment from our networks.”<sup>27</sup>

Thus, it is clear that the Commission in paragraphs 93-94 of the *Third Report and Order* was addressing only replacement of mobile handheld devices not produced by ZTE, rather than advanced communications network equipment such as ZTE gateways that are deployed at customer premises. Even a broader interpretation of these two paragraphs would only support disallowing reimbursement for other types of equipment *not* produced by ZTE on grounds of incompatibility with the updated network.

Further, disallowing reimbursement for advanced communications equipment such as ZTE gateways is not supported by the Secure Networks Act statutory obligations. Under Section 2 of the Secure Networks Act, Reimbursement Program funds can be used for the removal, replacement, and disposal of equipment and services that are specified on the Commission’s Covered List.<sup>28</sup> To be included on the Covered List, equipment must be (1) “communication equipment,” (2) determined to pose “an unacceptable risk to the national security of the United States or the security and safety of United States persons” based on sources enumerated in Section

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<sup>26</sup> *Third Report and Order*, ¶ 94 (citing Best Buy, <https://www.bestbuy.com/site/motorola-one-5g-ace-2021-unlocked-128gb-memory-frosted-silver/6441181.p?skuId=6441181>).

<sup>27</sup> *Third Report and Order*, ¶ 94 (quoting RWA July 6 Ex Parte, WC Docket No. 18-89, at 3-4) (emphasis added).

<sup>28</sup> Secure Networks Act § 2.

2(c) of the Secure Networks Act;<sup>29</sup> and (3) capable of satisfying the criteria in Section 2(b)(2)(A)-(C) of the Secure Networks Act.<sup>30</sup>

Under this definition, CPE such as a ZTE gateway is apparently eligible for reimbursement. *First*, ZTE gateways constitute “communications equipment” because the Secure Networks Act defines “communications equipment or service” as “any equipment or service that is essential to the provision of advanced communications service.”<sup>31</sup> The Commission has consistently interpreted the term “advanced communications service” under the Secure Networks Act to include “all equipment or services used in fixed and mobile broadband networks, provided they include or use electronic components”<sup>32</sup> and “services with any connection of at least 200 kbps in any direction.”<sup>33</sup> ZTE gateways meet this definition. *Second*, equipment provided by ZTE meets the Section 2(c) criteria by virtue of being “covered telecommunications equipment or services, as defined in section 889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019[.]”<sup>34</sup> *Third*, ZTE gateways are capable of “routing or redirecting user data traffic” and hence meet the technical requirement specified under Section 2(b)(2)(A) of the Secure Networks Act. As a result, ZTE gateways are covered communications equipment reimbursable under the

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<sup>29</sup> Secure Networks Act § 2(c)

<sup>30</sup> Secure Networks Act § 2(b)(2)(A)-(C) (“The Commission shall place on the list published under subsection (a) any communications equipment or service, if and only if such equipment or service . . . (2) is capable of—(A) routing or redirecting user data traffic or permitting visibility into any user data or packets that such equipment or service transmits or otherwise handles; (B) causing the network of a provider of advanced communications service to be disrupted remotely; or (C) otherwise posing an unacceptable risk to the national security of the United States or the security and safety of United States persons.”).

<sup>31</sup> “Communications equipment or service” means “any equipment or service that is essential to the provision of advanced communications service.” Secure Networks Act § 9(4).

<sup>32</sup> *Second Report and Order*, ¶ 53.

<sup>33</sup> *Second Report and Order*, ¶ 55; see also *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 7821, 7829, ¶ 27 (2020).

<sup>34</sup> Secure Networks Act, § 2(c)(3).



Reimbursement Program. This view is further supported by the unequivocal statement in the *Third Report and Order* that, “[b]ecause the Covered List includes *all* communications equipment and services produced or provided by Huawei or ZTE, *all* such equipment and services are eligible for reimbursement.”<sup>35</sup>

Consequently, consistent with the *Third Report and Order* and the Secure Networks Act, the Commission should direct the Bureau to revise the Final Catalog to clarify that premises gateway devices (including those with Wi-Fi capabilities) produced by ZTE are reimbursable. In issuing the *Public Notice*, the Bureau stated that “costs associated with removing, replacing, and disposing of wired (Wi-Fi) and wireless routers that constitute CPE are not [] reimbursable under the program.”<sup>36</sup> While the Bureau has revised and adopted the Final Catalog accordingly, the subcategory “Home Network and Customer Premises Equipment (‘CPE’)” has been kept as an eligible category on the Final Catalog – CPE remains an eligible category for reimbursement under Access Layer Equipment,<sup>37</sup> and equipment available at end-user location by truck roll or self-install (per end-user) continues to be eligible for reimbursement.<sup>38</sup> Although the Bureau modified the definition of the Smart Home subcategory to exclude “WiFi Routers” from being reimbursable, this abrupt change is not supported by the underlying provisions cited by the Bureau for the reasons stated above.

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<sup>35</sup> *Third Report and Order*, ¶ 18; *see also id.*, ¶¶ 19-45.

<sup>36</sup> *Public Notice*, ¶ 100.

<sup>37</sup> *Public Notice*, Appx. C, at 1, 9.

<sup>38</sup> *Public Notice*, Appx. C, at 55 (changing description from “Customer Premise Equipment (CPE) - Truck roll or self-install” to “End-User Location - Truck roll or self-install (per end-user)”).

### III. CONCLUSION

For the foregoing reasons, the Commission should grant Cincinnati Bell's Application for Review, and revise (or clarify) the Bureau's Public Notice and the Final Catalog.

Respectfully submitted,

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