



November 4, 2019

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, 2018, the Rural Wireless Association, Inc. (“RWA”)¹ filed Reply Comments² in response to the Federal Communications Commission’s (“FCC” or “Commission”) original *Notice of Proposed Rulemaking* proposing a rule that prohibits, on a going-forward basis, 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 At the time, RWA reminded the Commission that “[i]n 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.”⁴ This concern was echoed by the Competitive Carriers Association and an RWA carrier member.⁵

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 Reply Comments of the Rural Wireless Association, Inc. (filed July 2, 2018).

³ *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. April 18, 2018) (“*Notice of Proposed Rulemaking*” or “*NPRM*”) at ¶ 2.

⁴ Reply Comments at p. 8.

⁵ Comments of the Competitive Carriers Association, at p. 9; Comments of Pine Belt Cellular, Inc. at p. 6.

On October 29, 2019, FCC Chairman Ajit Pai circulated a Draft *Report and Order, Order, and Further Notice of Proposed Rulemaking*⁶ for consideration by the full Commission at the FCC's next Open Meeting scheduled for November 19, 2019. If the Draft *Report and Order* is adopted without modification, it would add a new Section 54.9 to the Commission's rules. Specifically, the new rule would prohibit universal service support from being used "to purchase or obtain any equipment or services" from companies posing a national security threat, including Huawei Technologies Company ("Huawei"), ZTE Corporation ("ZTE") and their respective parents and affiliates.⁷ Additionally, the Commission would also prohibit "USF recipients from using USF funds to maintain, improve, modify, or otherwise support equipment or services provided by covered companies."⁸ Furthermore, the Draft *Report and Order* would completely prohibit any upgrades to existing equipment, including those that might be mission-critical.⁹ What the Commission is proposing is an immediate, seismic shift that will likely disrupt mobile communications in rural markets.

The Draft *Report and Order* justifies the need for a "broad prohibition" of both goods and services because such an expansive restriction supposedly "provides the most administrable rule, and eases compliance for USF recipients."¹⁰ While there are arguably valid public interest justifications for not using universal service support in the deployment of *new* network equipment sourced from covered companies, there are legitimate concerns associated with the Commission's proposal to extend the prohibition to include basic *maintenance* of currently operational 3G and 4G/LTE mobile wireless networks. For the sake of expediency, the Chairman is proposing an overly-simplified solution that might inadvertently cripple basic communications starting in early 2020.

Of major concern to RWA's members (and the hundreds of thousands of rural consumers who depend upon them on a daily basis, as well as the millions more urban consumers that travel through rural areas) is the Commission's intent to prohibit "USF recipients from using USF funds to maintain, improve, modify, or otherwise support equipment or services provided by covered companies."¹¹ This single sentence alone is overbroad and ultimately vague. Also problematic is the sentence that "the prohibition will apply to upgrades and maintenance of

⁶ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Draft [Report and Order, Order, and Further Notice of Proposed Rulemaking](#), WC Docket No. 18-89, FCC-CIRC1911-01 (circ. October 29, 2019) ("Draft *Report and Order, Order, and Further Notice of Proposed Rulemaking*", "Draft *Report and Order*", "Draft *Further Notice of Proposed Rulemaking*", or "Draft FNPRM").

⁷ Draft *Report and Order, Order, and Further Notice of Proposed Rulemaking*, Appendix A (Proposed Final Rules, 47 CFR § 54.9).

⁸ *Id.* at ¶ 68.

⁹ *Id.*

¹⁰ *Id.* at ¶ 62.

¹¹ *Id.* at ¶ 68.

existing equipment and services.”¹² These restrictions have far-reaching, unintended consequences that disserve the public interest. Furthermore, if the Commission were to enforce a “blanket ban”¹³ on both equipment *and services*, this will give rise to a host of practical, legal, and logistical problems (identified below) that go well beyond the imposition of greater “attendant costs”¹⁴ identified by the Commission in the Draft *Report and Order*.

1. The Words “Upgrade,” “Maintain,” “Improve,” “Modify,” and “Otherwise Support” are Not Clearly Defined, Cause Marketplace Confusion, and Will Greatly Increase Compliance Costs.

While the purchase of discrete core, radio access network (“RAN”) and switching *equipment* directly from a covered company can be very easily identified and its treatment under the proposed rule is relatively black-and-white, there is zero guidance in the Draft *Report and Order* on how companies should treat the purchase of: (1) ancillary equipment not manufactured by covered companies, and (2) various services retained by USF recipients to maintain their overall company operations, including maintenance of the physical network. For example, could a USF recipient purchase a gas-powered generator or battery cells (not sourced from a covered company) that provide back-up power to RAN equipment (sourced from a covered company)? Clearly, these ancillary power systems help “maintain” and “otherwise support” the “equipment...provided by covered companies.” But they are also mission-critical pieces of equipment that allow service to be maintained during a power outage. Along the same lines, could a USF recipient purchase software patch upgrades and other maintenance-oriented services from third-party companies (not sourced from a covered company), especially if those services are based on widely uniform industry-standards (*e.g.*, 3GPP releases) which also happen to be supported and implemented by non-covered companies? Similarly, in the absence of clear guidance, could a USF recipient even pay its own internal technical staff to perform routine, day-to-day activities required to maintain and operate the covered equipment without risk of being in violation of this new rule? Rural carriers currently using equipment from covered companies will face these and similar scenarios immediately after the proposed rule is adopted. How each company interprets the proposed rule and ultimately acts when performing routine network maintenance remains unsettled, and this lack of clarity is bound to lead to network operator confusion. In turn, this confusion will cause impacted companies to spend scarce funds or go into further debt to maintain networks, or, companies might forgo network maintenance which will cripple the entire system and potentially lead to network outages. The Commission neglects to explore the real-world implications of its overly-broad proposal.

¹² *Id.*

¹³ *Id.* at ¶ 64.

¹⁴ *Id.* at ¶ 62.

2. Non-USF Funding Sources May Not Be Available in the Near-Term.

If the Commission's proposed rule is adopted "as is," it could take effect early in 2020. RWA acknowledges that the Commission's proposed rule "does not prohibit USF recipients from using their own funds to purchase or obtain equipment or services from covered companies."¹⁵ However, the major assumption the Commission seems to be making is that near-term and mid-term company cash-flows or third-party financing will provide guaranteed, alternative funding of network operations. Unlike large, publicly-traded companies, which can issue more debt or raise capital via equity financing and have much "richer" markets from which to generate internal cash flows, rural co-ops and closely held companies are massively restricted in their financial operations. These restrictions are directly tied to the realities of their primary sources of operating cash flow, which are rooted in a very small set of low-density markets, and USF support is often critical in order to "keep the lights on." A blanket ban on using USF support for network maintenance and non-enhancing services risks the operational viability of these rural networks. It is wrong to assume that private-sector financing or internally-generated cash-flow will fill the void.

3. Unmaintained Networks Are Susceptible to Natural Disasters and Threaten the Public Safety.

America's rural markets tend to be disproportionately affected by natural weather phenomena and catastrophic events that often paralyze, or even destroy, mobile wireless infrastructure. These weather events often occur with little advance warning. Between the ongoing California wildfires, seasonal hurricanes (in the Gulf of Mexico, Caribbean Sea, and Atlantic Ocean) hitting dozens of states and U.S. territories, and even severe winter storms in Alaska and the northern and western Continental U.S., no part of our country remains unscathed by debilitating natural disasters. Other natural events such as earthquakes and tsunamis are completely unpredictable, as are man-made disasters. Rural wireless carriers are tasked with supporting "last mile" connectivity in some of the most remote and harsh environments on our planet. At a moment's notice, these same carriers may be required to resume connectivity for citizens and government alike, and most companies do not have a rainy-day fund to cover the costs associated with resuming even just pre-event operations. Therefore, for the Commission to foreclose the option to service or maintain networks without providing any alternative funding for new equipment sourcing options would open the door to unintended consequences.

The Commission should strongly consider instituting some type of "services" or "network maintenance" testing program, similar to the FCC's existing device certification regime. Rather than universally prohibit all types of network maintenance or network servicing options available to USF recipients, it is in the public interest to have the FCC or another federal Executive branch

¹⁵ *Id.* at ¶ 66.

agency authorize bespoke servicing or maintenance protocols. According to the Draft *Report and Order*, the Commission “generously estimate[s] 106 firms currently buy Huawei and ZTE equipment” and that the actual number may even be as low as “30 rural carriers.”¹⁶ If this is the case, then a more administratively practical solution would be to have this handful of impacted carriers submit for government approval their proposed (but mission-critical) service or maintenance plans. Just as important as protecting national security is the continuity of permissible, *existing* network operations which the Commission is explicitly allowing, especially when the alternatives are network outages and the associated losses of commerce, and access to public services (and even first responders). The Commission already acknowledges that the “useful lifetime of network equipment (like mobile switches) and exterior equipment (radio network access equipment (RAN))” is ten years or less.¹⁷ This timeline gets reduced even more through the contemplated ban of all equipment provisioned by covered companies - - regardless of USF status - - as is currently proposed by the *FNPRM*. In time, upgrading to 5G over the course of the mid- and long-term will resolve this problem. However, in the near-term, and given the relatively limited number of impacted parties, the public interest is best served by having USF recipients submit mission-critical maintenance and service proposals to an appointed federal clearinghouse until such time that Congress intervenes or a universal ban stemming from the *FNPRM* becomes reality.

If the ultimate goal of the *FNPRM* is to completely ban covered equipment, then until such time as all covered equipment is actually decommissioned, the risk to national security remains. The national security threats do not depend on whether active networks are fully-funded by USF support, partially-funded by USF support, or not dependent upon USF support at all. Put differently, the near-term servicing or maintenance of *existing* wireless networks using equipment sourced from covered companies does not increase the threat to national security. Nor does it shirk any responsibility to the American consumer. So long as the Commission is permitting actual networks that use equipment from covered companies to remain operational, the threat to network security remains.

The scope of the threat today is the same as it will be just prior to when networks get decommissioned, so long as these existing networks are not expanded in any way, either through increased RANs or additional interconnection touch-points. Rather, the national security threat will decrease significantly only when a national “replace and remove” order is adopted and all affected systems are decommissioned. If existing, covered company equipment currently used in America’s networks (whether 3G/4G commercial wireless systems, Wi-Fi equipment in schools, or routers/servers aiding health care facilities) poses a legitimate concern today, then that equipment should not be allowed to remain in operation, regardless of whether any universal service support is utilized.

¹⁶ *Id.* at ¶ 106.

¹⁷ *Id.* at ¶ 101.

RWA also notes that there is bi-partisan legislation quickly moving in both the U.S. Senate and House of Representatives that will assist with funding the replacement and disposal of covered equipment. The FCC should be careful not to get too far ahead of Congress by attempting to utilize limited USF for this purpose.

Respectfully submitted,

/s/ Caressa D. Bennet

Caressa D. Bennet, General Counsel
Daryl A. Zakov, Assistant General Counsel
5185 MacArthur Blvd., NW, Suite 729
Washington, DC 20016
(202) 857-4519
legal@ruralwireless.org