



6712-01

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 18-89; FCC 20-99; FRS 16963]

National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (Commission) finds it has already substantially complied with the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act) with the prohibition adopted in the *2019 Supply Chain Order*.

DATES: This Declaratory Ruling is applicable July 17, 2020.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Brian Cruikshank, Wireline Competition Bureau, Brian.Cruikshank@fcc.gov, 202-418-7400 or TTY: 202-418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling in WC Docket No. 18-89, FCC 20-99, adopted on July 16, 2020 and released July 17, 2020. Due to the COVID-19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following Internet address: <https://www.fcc.gov/document/implementing-secure-networks-act-0>. The Second Further Notice of Proposed Rulemaking that was adopted concurrently with this Declaratory Ruling will be published elsewhere in the *Federal Register*.

I. INTRODUCTION

1. America's communications networks have become the indispensable infrastructure of our economy and our everyday lives. The COVID-19 pandemic has demonstrated as never before the importance of these networks for employment and economic opportunity, education, health care, social and civic engagement, and staying connected with family and friends. It is therefore imperative that the Commission safeguards this critical infrastructure from potential security threats.

2. The Commission has taken a number of targeted steps in this regard. For example, in November 2019, the Commission prohibited the use of public funds from the Commission's Universal Service Fund (USF) to purchase or obtain any equipment or services produced or provided by companies posing a national security threat to the integrity of communications networks or the communications supply chain. The Commission also initially designated Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as covered companies for purposes of this rule, and the Commission established a process for designating additional covered companies in the future. Additionally, last month, the Commission's Public Safety and Homeland Security Bureau (PSHSB) issued final designations of Huawei and ZTE as covered companies, thereby prohibiting the use of USF funds on equipment or services produced or provided by these two suppliers.

3. The Commission takes further steps to protect the nation's communications networks from potential security threats as it integrates provisions of the recently enacted Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act) into its existing supply chain rulemaking proceeding. The Commission adopts a Declaratory Ruling finding that, in the *2019 Supply Chain Order*, 85 FR 230, January 3, 2020, it fulfilled its obligation pursuant to section 3 of the Secure Networks Act to prohibit the use of funds made available through a Federal subsidy program administered by the Commission to purchase, rent, lease, or otherwise obtain or maintain any covered communications equipment or services from certain companies.

II. DECLARATORY RULING

4. In the *2019 Supply Chain Order*, the Commission prohibited the use of universal service support for equipment and services produced or provided by companies designated as a national security threat. The Commission finds that its prohibition, codified in section 54.9 of the Commission's rules, is consistent with and substantially implements subsection 3(a) of the Secure Networks Act, which prohibits the use of federal funds on certain communications equipment and services. Accordingly, the Commission further finds that it has satisfied the requirements of section 3(b) in the Secure Networks Act

and it needs not revisit or otherwise modify our prior action in the *2019 Supply Chain Order*.

5. Introduced prior to the adoption of the *2019 Supply Chain Order* and subsequently enacted on March 12, 2020, section 3(a) of the Secure Networks Act prohibits “[a] Federal subsidy that is made available through a program administered by the Commission and that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service” from being used either to “purchase, rent, lease or otherwise obtain any covered communications equipment or service; or maintain any covered communications equipment or service” The prohibition applies “60 days after the date the Commission places such equipment or service on the list” required by section 2(a) of the statute.

6. In section 3(b), Congress directed the Commission to adopt a Report and Order to implement this prohibition within 180 days following the Secure Networks Act’s enactment. Section 3(b) further states, “If the Commission has, before the date of the enactment of this Act, taken action that in whole or in part implements subsection (a), the Commission is not required to revisit such action, but only to the extent such action is consistent with this section.” The Commission interprets the language in section 3(b) to mean that if it has, prior to the enactment of the Secure Networks Act, already adopted a prohibition on the use of Federal funds that substantially tracks the statutory prohibition, then the Commission is deemed to have satisfied the 180-day deadline contained in section 3(b) and need not revisit its prior action. To avail itself of this exception to the statutory deadline, however, the Commission’s previously adopted prohibition must be “consistent” with, i.e., compatible with, and must not conflict with, the requirements of section 3(a).

7. In the *2019 Supply Chain Order*, the Commission prohibited the use of universal service support to “maintain, improve, modify, operate, manage, or otherwise support any equipment or services produced or provided by a company posing a national security threat to the integrity of the communications networks or the communications supply chain.” The Commission also initially designated two companies, Huawei and ZTE, as companies posing a national security threat. PSHSB

recently issued final designations of these entities, thereby prohibiting the use of USF funds to maintain, improve, modify, operate, manage, or otherwise support equipment or services produced or provided by Huawei and ZTE effective June 30, 2020.

8. The Commission's prohibition in the *2019 Supply Chain Order* is consistent with and substantially implements the prohibition required by section 3(a) of the Secure Networks Act. The Commission starts by noting that it administers two ongoing programs that provide a "Federal subsidy": the USF, a Federal subsidy program that subsidizes the cost of obtaining communications equipment and/or services for carriers serving high-cost areas, schools and libraries, rural health care providers, and low-income households, and the Interstate Telecommunications Relay Service Fund, a Federal subsidy program that subsidizes the cost of relay services for individuals who are deaf, hard of hearing, deaf/blind, or have a speech impediment. Given that the USF, unlike the Interstate Telecommunications Relay Service Fund, "provides funds to be used for the capital expenditures necessary for the provision of advanced communications service," we believe Congress clearly intended the section 3 prohibition to apply to the USF.

9. The Commission also finds the scope of communications equipment and services covered by the Commission's prohibition encompasses the scope of the Secure Networks Act's section 3 prohibition. The Commission's prohibition broadly covers "any equipment or services produced by any company posing a national security threat." In comparison, the prohibition in section 3 of the Secure Networks Act applies to "any covered communications equipment or service." Covered communications equipment or service is limited to that which is capable of certain functions and capabilities or otherwise poses a security threat. Although the Commission's prohibition goes further than the requirements of the Secure Networks Act, it does not conflict with the statutory requirements of section 3(a). Accordingly, by complying with the Commission's broader prohibition, USF support recipients will be in compliance with the Secure Networks Act prohibition. Section 3(a) of the Secure Networks Act also specifies that the ban takes effect 60 days after the Commission places the equipment or service on the list required by section 2

of the statute. The Commission believes that rule 54.9 substantially implements this section 3 requirement by providing a notice period for interested parties (which, if opposed, the Commission would expect to last at least 60 days) and stating that the ban takes effect only when initial designations of covered companies are finalized. However, to the extent there are differences between the Commission's rules and section 3 of the Secure Networks Act, it seeks comment on additional changes to its rules.

10. With the Commission's adoption of the prohibition in the *2019 Supply Chain Order*, the Commission has substantially implemented the section 3 statutory mandate to adopt a prohibition on covered communications equipment or services. As such, the Commission avails ourselves of the proviso, set forth in section 3(b), not to revisit its prior action implementing the mandate. Nevertheless, in the concurrently adopted Further Notice, the Commission seeks comment on additional changes to its rules pursuant to section 3 of the Secure Networks Act.

III. ORDERING CLAUSE

11. It is further Ordered that, pursuant to Section 3 of the Secure Networks Act, 47 U.S.C. 1602 and the authority contained in Sections 1, 4(i), 201(b), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155(b), 155(c), 201(b), 214, 254, 303(r), and 403, and Sections 1.2 and 54.9 of the Commission's rules, 47 CFR 1.2 and 54.9, the Declaratory Ruling in WC Docket No. 18-89 is adopted.

12. It is further Ordered that the Declaratory Ruling is EFFECTIVE upon release.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2020-16884 Filed: 8/3/2020 8:45 am; Publication Date: 8/4/2020]