



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket No. 18-89; FCC 21-86; FR ID 41783]

Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules to modify the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) consistent with the Secure and Trusted Communications Networks Act of 2019, as modified by the Congressional Appropriations Act, 2021.

DATES: Effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Third Report and Order in WC Docket No. 18-89; FCC 21-86, adopted July 13, 2021 and released July 14, 2021. 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/fcc-acts-protect-national-security-communications-supply-chain-0>

I. INTRODUCTION

1. The Federal Communications Commission (Commission) continues to play a leading role protecting the security of its communications networks and communications supply chain. Securing its nation's networks from those who would harm the United States and its people is more important than ever due to the outsized impact that the Internet has on its work, education, health care, and personal connections. Recognizing this reality, and the damage that attacks on these networks can and do cause, today the Commission modifies its rules to incorporate the Consolidated Appropriations Act, 2021 (CAA)

amendments to the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act).

2. Specifically, in response to several sections of the CAA that provide additional guidance for and direct changes to the Commission's Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program), the Commission adopts several changes to the program rules. The Commission first increases the customer eligibility cap for participation in the Reimbursement Program. The Commission also modifies the type of equipment and services eligible for reimbursement and adjust the date by which equipment or services must have been obtained to be eligible for Reimbursement Program funds. The Commission further adopts the prioritization scheme created in the CAA and clarify the definition of "provider of advanced communications service" for purposes of the Reimbursement Program. Finally, the Commission clarifies portions of the Reimbursement Program to assist eligible providers as they prepare to seek reimbursement.

II. REPORT AND ORDER

3. After reviewing the record, the Commission implements several of the Commission's proposals to incorporate the CAA's amendments to the Secure Networks Act into its rules. Specifically, the Commission revises the eligibility to participate in the Reimbursement Program to providers of advanced communications service with 10 million or fewer customers; amend the scope of equipment and services that Reimbursement Program participants may use funding to remove, replace, or dispose; adjust the cutoff date for equipment and services eligible for reimbursement; adopt the CAA's prioritization scheme for distributing reimbursement funding; clarify the definition of "provider of advanced communications service"; and clarify various aspects of the Reimbursement Program.

A. Eligibility for Participation in the Reimbursement Program

4. The Commission first amends its rules to allow providers of advanced communications service with 10 million or fewer customers to participate in the Reimbursement Program, consistent with the Secure Networks Act, as amended by the CAA. Prior to enactment of the CAA, its rules limited Reimbursement Program eligibility to providers of advanced communications service with two million or fewer customers, in line with the participation restriction in section 4(b)(1) of the Secure Networks Act. In the CAA, however, Congress amended the Secure Networks Act to expand eligibility to providers of advanced communications service with 10 million or fewer customers. The rule revisions the

Commission adopts today align eligibility for participation in the Reimbursement Program with the congressional directives in the CAA. This approach is also supported by comments in the record.

5. In the *2020 Supply Chain Order*, 86 FR 2904 (January 13, 2021), the Commission defined “customer” of a provider of advanced communications service as the customer of such provider as well as the customer of any affiliate of such provider. The Commission further defined “affiliate” as “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.” The Commission maintains the definition of “customer” as interpreted in the *2020 Supply Chain Order* as those taking advanced communications service from the provider and/or its affiliate. As such, eligibility in the Reimbursement Program shall continue to be determined based on the number of customers to the specific advanced communications service offered by the provider and/or its affiliate, as set forth in the *2020 Supply Chain Order*.

6. Increasing the number of providers of advanced communications service eligible for the Reimbursement Program has important benefits. First, it will advance the Commission’s goals of removing vulnerable equipment and services from its nation’s communications networks by eliminating covered equipment and services from the networks of more providers. LATAM Telecommunications, LLC (LATAM) agrees, arguing that by expanding eligibility, in conjunction with the CAA’s reimbursement prioritization scheme, “Congress has given the Commission flexibility” to secure a greater number of networks throughout the communications ecosystem. While the vast majority of providers of advanced communications service participating in the Reimbursement Program are expected to have fewer than two million customers, increasing the number of providers eligible for reimbursement will ensure the removal of covered equipment and services from a broader swath of its nation’s communications networks. Furthermore, eligibility expansion will also reduce the likelihood that insecure equipment and services will remain in domestic communications networks.

7. The Commission rejects the argument that raising the cap would extend reimbursement eligibility to larger companies that “do not need government assistance,” and the Commission declines to use a different metric, such as revenue or net income, to determine eligibility for participation in the Reimbursement Program. From an administrative standpoint, utilizing customer count as the sole eligibility metric allows prospective participants and the Commission to easily determine participants’

eligibility in the Reimbursement Program. The Commission also notes that a variety of entities have identified Huawei and ZTE equipment and services in their networks, indicating that until such equipment and services are removed, those networks are at risk, regardless of size. Furthermore, the Commission finds that its decision to expand eligibility for the Reimbursement Program is consistent not only with the statutory directive but also with the Commission's stated goals of the Reimbursement Program. Although the Commission anticipates that expanding participant eligibility will increase Reimbursement Program applications and demand, doing so does not frustrate its ability to administer a program that effectively and efficiently distributes funds in accordance with congressional directives. By allowing more providers to participate in the Reimbursement Program, the Commission will further its goal of ensuring that insecure equipment and services are promptly removed from provider networks, thus improving the security and reliability of its nation's communications systems.

B. Equipment and Services Eligible for Reimbursement

8. Consistent with the CAA, the Commission modifies its rules to limit the equipment and services for which recipients may use Reimbursement Program funding to the removal, replacement, or disposal of communications equipment and services produced or provided by Huawei or ZTE that are on the Covered List. Because 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.

9. The CAA's amendments to the Secure Networks Act changed the scope of equipment and services eligible for reimbursement from the Reimbursement Program. Specifically, the CAA's amendments to the Secure Networks Act make "covered communications equipment and services," as further specified by the *2019 Supply Chain Order*, 85 FR 48134 (August 10, 2020) or *Designation Orders*, eligible for reimbursement. The Commission is bound by the statutory language, and find that the Secure Networks Act, as amended, requires the Commission to limit the acceptable use of Reimbursement Program funds to the removal, replacement, and disposal of eligible equipment and services that are both: (1) on the Covered List published pursuant to section 2(a) of the Secure Networks Act; and (2) as captured by the definition of equipment or services established in the *2019 Supply Chain Order*, or as determined by the process set forth in section 54.9 of the Commission's rules and in the *Designation Orders*. In practice, as the Commission explains below, that means that *all* communications

equipment or services produced or provided by Huawei and ZTE, the companies that are both included on the Covered List and subject to the *Designation Orders*, are eligible for reimbursement. The Commission also revises the scope of its section 54.11 remove-and-replace rule to require ETCs receiving USF support and recipients of Reimbursement Program funding to remove all Huawei and ZTE communications equipment and services from their networks, consistent with the scope of equipment and services eligible for reimbursement.

10. *Covered List*. The rules adopted in the *2020 Supply Chain Order* limit the use of Reimbursement Program funding to the removal, replacement, and disposal of covered communications equipment or services as published on the Covered List, consistent with section 4(c) of the Secure Networks Act before it was amended by the CAA. To be included on the Covered List, equipment and services must meet three requirements. First, they must be communications equipment, which the Commission defined in the *2020 Supply Chain Order* to include “all equipment or services used in fixed and mobile broadband networks, provided they include or use electronic components.” Second, the equipment and services must be identified as posing “an unacceptable risk to the national security of the United States or the security and safety of United States persons” by sources enumerated in section 2(c) of the Secure Networks Act. Third, the equipment and services must be capable of satisfying the criteria in section 2(b)(2)(A)-(C) of the Secure Networks Act. As discussed in more detail below, all communications equipment and services produced or provided by Huawei and ZTE are included on the Covered List.

11. *Designation Orders*. The *Designation Orders* prohibit the use of USF support for *all* equipment and services produced or provided by Huawei and ZTE because of their designations as covered companies under section 54.9 of the Commission’s rules. As a result, some equipment and services identified pursuant to those section 54.9 designations may not be eligible for reimbursement under the rules of the Reimbursement Program if they do not meet the three requirements and therefore are not “covered communications equipment and services,” even though they are subject to the USF prohibition in section 54.9.

12. *Effect of CAA Amendments*. The Commission finds that further analysis of the effect of the CAA’s amendments on section 4 of the Secure Networks Act compels it to slightly diverge from its

original proposal in the *2021 Supply Chain Further Notice*, 86 FR 15165 (March 22, 2021). In that *Notice*, the Commission proposed to modify the scope of communications equipment and services eligible for reimbursement to those equipment and services produced or provided by covered companies subject to the *Designation Orders*. While there is record support for its original proposal, it overlooked the requirement in section 4(c) of the Secure Networks Act, as amended, to limit equipment and services eligible for reimbursement to those that are “covered communications equipment and services,” defined as communications equipment and services found on the Covered List. The Commission accordingly finds, based on a further review of the Secure Networks Act, as amended by the CAA, that Congress intended to limit the scope of equipment and services eligible for Reimbursement Program funding to a subset of equipment and services identified on the Covered List *and* that are either defined in the *2019 Supply Chain Order* or designated in the *Designation Orders*. As such, the Commission amends its rules consistent with the CAA.

13. Congress, in amending section 4(c) of the Secure Networks Act, modified the scope of equipment and services eligible for reimbursement but did not revise the definition of “covered communications equipment or service” found in section 9 of the Secure Networks Act, which defines “covered communications equipment and services” as equipment and services found on the Covered List. As a result, the Secure Networks Act, as amended, allows reimbursement for equipment and services from the companies designated as national security threats pursuant to section 54.9 of the Commission’s rules that are *also* included on the Covered List. The Commission interprets the CAA’s amendment as maintaining the Covered List as the baseline source for eligibility for the Reimbursement Program, but altering the scope of covered communications equipment and services to those equipment and services on the Covered List that are either defined in the *2019 Supply Chain Order* or designated in the *Designation Orders* and through the designation process in section 54.9 of the Commission’s rules. To align its Reimbursement Program rules with the modified scope of eligible covered communications equipment and services, the Commission therefore revises its eligibility rules to specify that the equipment and services eligible for reimbursement are limited to communications equipment and services produced or provided by Huawei and ZTE, as they are covered companies designated in the *Designation Orders* under section 54.9 of the Commission’s rules whose communications equipment is also on the Covered List.

14. The record generally supports its interpretation of the CAA amendments to section 4(c) of the Secure Networks Act. As the Rural Wireless Association, Inc. (RWA) states, the CAA's amendment to section 4(c) of the Secure Networks Act makes clear Congress's intent "that it did not mean to cover *all* equipment and services later placed on the Covered List," instead choosing to limit reimbursement funding to Huawei and ZTE communications equipment and services. Both RWA and Mediacom argue that the Commission's proposals are supported by provisions in the CAA that further align the scope of reimbursement with the equipment and services identified by the *2019 Information Collection Order*, 85 FR 230 (January 3, 2020), which sought data on Huawei and ZTE equipment and services contained in ETCs', and their subsidiaries and affiliates, networks. The Commission concurs that this alignment supports its interpretation that Congress intended to narrow the scope of eligible equipment and services to Huawei and ZTE communications equipment and services, as covered companies established in the *Designation Orders*. Furthermore, the CAA's revision to set the cutoff date for equipment and services eligible for reimbursement as the effective date of the *Designation Orders*, June 30, 2020, likewise indicates Congress's intent to synchronize the Reimbursement Program eligibility with the scope of equipment and services designated pursuant to section 54.9 of the Commission's rules.

15. The Competitive Carriers Association (CCA), NTCA – The Rural Broadband Association (NTCA), and the Secure Networks Coalition offer slightly varied interpretations of the CAA's amendment to section 4(c) of the Secure Networks Act. CCA argues that the CAA's amendment demonstrates Congress's "intent to allow the use of Reimbursement Program funds to remove, replace, and dispose of equipment and services subject either to the Covered List *or* the Designation Orders, rather than including only equipment and services subject both to the Covered List *and* the Designation Orders." NTCA mischaracterizes the Commission's proposal, instead supporting revising the equipment and services subject to removal and reimbursement "to encompass *all* equipment and services produced or provided by entities identified on the Commission's Covered List." The Secure Networks Coalition's similarly misconstrues the section 4(c) amendments. The Secure Networks Coalition argues that the CAA requires the Reimbursement Program to fund the replacement of all equipment, software, and services included on the Covered List. The Secure Networks Coalition claims that because Congress allocated funding to remove network equipment posing a national security risk to the nation's

communications networks, the Commission must allow for the removal and replacement of any hardware or software from companies on the Covered List in order to meet Congress's mandate to mitigate risks to national security.

16. While the Commission agrees with commenters' conclusions that Congress intended to include Huawei and ZTE communications equipment and services in the scope of products eligible for reimbursement, the Commission rejects CCA, NTCA, and the Secure Network Coalition's interpretations of the CAA. Section 901 of the CAA amends section 4(c) of the Secure Networks Act by replacing the entire text of sections 4(c)(1)(A)(i) & (ii) to revise the scope of equipment and services eligible for reimbursement from those that are either published on the initial Covered List or subsequently placed on the Covered List, to those that are defined by the *2019 Supply Chain Order* or as determined by the designation process in section 54.9 of the Commission's rules and the *Designation Orders* designating Huawei and ZTE as covered companies. Section 901 does not, however, amend section 4(c)(1)(A), which limits reimbursement funding to the permanent removal of covered communications equipment or services, nor does it amend the definition of "covered communications equipment or service" in section 9(5) of the Secure Networks Act, which means any communications equipment or service on the Covered List.

17. The Commission concludes that had Congress intended to continue using the Covered List as the sole means to identify equipment and services eligible for reimbursement, it would have left the original provisions in the Secure Networks Act intact, rather than replacing them with different parameters. At the same time, Congress preserved the definition of "covered communications equipment or service" to include such items on the Covered List. This indicates Congress's intent to maintain the Covered List as a baseline source for eligible equipment and services. The amendments in section 901 of the CAA suggest that Congress meant to further limit reimbursement eligibility from the Covered List to the subset of those equipment and services defined in the *2019 Supply Chain Order* or subject to the designation process in section 54.9 of the Commission's rules. Specifically, Congress replaced language that formerly listed the Covered List as the sole source of equipment and service eligible for reimbursement with language identifying Huawei and ZTE equipment and services subject to the *Designation Orders* when setting the bounds of equipment and services eligible for reimbursement

through the Reimbursement Program.

18. Therefore, CCA's interpretation, that Congress intended to allow reimbursement funds to be used for eligible equipment and services on either the Covered List or produced or provided by designated companies in the *Designation Orders*, does not comport with the structure of the amended section 4 of the Secure Networks Act. The amended section 4 still preserves the Covered List as the baseline source for eligible equipment and services but *then* limits eligibility to those such equipment and services as defined by the *2019 Supply Chain Order* or as determined by the designation process in section 54.9 of the Commission's rules and the *Designation Orders* designating Huawei and ZTE as covered companies. Nor do NTCA and the Secure Networks Coalition's interpretations supporting eligibility for all equipment and services on the Covered List reconcile with the CAA's amendments to section 4(c)(1) of the Secure Networks Act. Congress intended to limit eligibility to a subset of equipment and services on the Covered List by amending sections 4(c)(1)(A)(i) & (ii) to replace the original text, which referenced the Covered List, with a reference the *2019 Supply Chain Order*, the *Designation Orders*, and the Commission's process for designations under section 54.9 of its rules.

19. *Analysis of Covered List.* Consistent with the Commission's previous interpretation of the scope of Huawei and ZTE equipment and services included in the Covered List, the Commission interprets the CAA's revised scope of equipment and services eligible for reimbursement to include all communications equipment and services produced or provided by Huawei or ZTE. Section 2(b) of the Secure Networks Act requires the Commission to add to the Covered List communications equipment and services that satisfy certain functional capabilities, as determined by specific sources enumerated in section 2(c). In the *2020 Supply Chain Order*, the Commission acknowledged that section 889(f)(3) of the 2019 NDAA is one of the enumerated sources in section 2(c) for including equipment and services on the Covered List. Section 889(f)(3) defines "covered telecommunications equipment and services" to include "(A) telecommunications equipment produced or provided by Huawei or ZTE; [and] (C) telecommunications or video surveillance services provided by such entities or using such equipment." Notably, the Commission rejected arguments that it should have added a narrower list of equipment and services to the Covered List based upon a separate section of the 2019 NDAA, section 889(a)(2)(B), that limited the "covered telecommunications equipment or services" in the statute to

equipment and services that can “route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.” The Commission found that Congress explicitly limited the scope of its procurement restrictions to Huawei and ZTE equipment in subsections (a) and (b) of the 2019 NDAA to equipment capable of routing or permitting network visibility, but did not include such a limitation in paragraph 889(f)(3), which governs the determination the Commission must add on the Covered List. Therefore, consistent with the Secure Networks Act statutory obligation, the Commission placed on the Covered List the determination found in section 889(f)(3)(A), that is, “telecommunications equipment produced or provided by Huawei or ZTE” capable of the functions outlined in sections 2(b)(2)(A), (B), or (C) of the Secure Networks Act.

20. The Commission finds that the Commission’s prior interpretation of the 2019 NDAA provisions means that Huawei and ZTE communications equipment and services need not be capable of the functions listed in sections 2(b)(2)(A) or (B) of the Secure Networks Act to be on the Covered List. The Commission determined in the *2020 Supply Chain Order* that Congress chose to specifically include the broader definition of eligible equipment and services in section 889(f)(3), and the Commission concluded that section 889(f)(3) incorporated all such Huawei and ZTE communications equipment and services into the Covered List. Furthermore, in dismissing arguments to limit inclusion to only Huawei or ZTE equipment and services capable of the functionality enumerated in section 889(a)(2)(B) of the 2019 NDAA, the Commission interpreted the inclusion of section 2(b)(2)(C) of the Secure Networks Act, that is, including equipment and services capable of “otherwise posing an unacceptable risk to the national security of the United States or the security and safety of United States persons,” as indicative of Congress’s intent to encompass on the Covered List equipment and services beyond the narrower list of enumerated functions. As the Commission stated in the *2020 Supply Chain Order*, “[t]o limit the NDAA determination to equipment capable of routing or permitting network visibility would both ignore the plain text of the NDAA and read section 2(b)(2)(C) out of the Secure Networks Act, which lists the capabilities of communications equipment and services that warrant inclusion on the Covered List.” Section 901 of the CAA is consistent with this interpretation. It carves out the equipment and services eligible for reimbursement into a limited subset of the Covered List, that is, only communications equipment and services as defined in the *2019 Supply Chain Order* or as determined by the process in

section 54.9 of the Commission's rules and the *Designation Orders*. The *Designation Orders* prohibited the use of USF support for all Huawei and ZTE equipment and services. The Commission thus finds Congress in the CAA intended reimbursement eligibility for all Huawei and ZTE equipment and services found on the Covered List, that is, all Huawei and ZTE communications equipment and services.

21. Its decision today also advances the Commission's goals of developing a simple and straightforward reimbursement process that facilitates the expeditious removal, replacement, and disposal of equipment and services that threaten the security of its nation's communications systems. The Commission agrees with RWA that clarifying the scope of equipment and services eligible for reimbursement as Huawei and ZTE communications equipment and services, rather than all equipment and services on the Covered List, which currently includes three other companies and potentially others should the Commission add more, creates a bright line for Reimbursement Program participants to clearly identify what equipment and services are eligible, thus easing administrative costs for eligible providers and the Commission. By revising the scope of equipment and services eligible for reimbursement, the Commission provides clarity to providers of advanced communications service as to the expectations for participation in the Reimbursement Program and assurance as to what costs associated with the removal, replacement, and disposal of covered equipment and services they can expect to be reimbursed, if accepted.

22. The Commission further interprets the CAA amendments to determine that other equipment and services on the Covered List are not automatically eligible for reimbursement. Only equipment and services on the Covered List that are also defined in the *2019 Supply Chain Order* or that are produced or provided by covered companies designated under section 54.9 of the Commission's rules as posing a national security threat to the integrity of communications networks or the communications supply chain are eligible for reimbursement under the Reimbursement Program based on the CAA. The Commission agrees with CCA and Mediacom that the CAA amends section 4(c) of the Secure Networks Act to permit eligibility of such equipment and services from other designated companies, should the Public Safety and Homeland Security Bureau make such a determination pursuant to the process set forth in section 54.9 of the Commission's rules. Section 901 of the CAA amends section 4(c) of the Secure Networks Act to allow reimbursement funding to be used for the removal, replacement, and disposal of equipment and

services as defined by the *2019 Supply Chain Order*, which adopted the process for designating covered companies that pose a national security threat to the integrity of communications networks or the communications supply chain found in section 54.9 of the Commission's rules. By listing the *2019 Supply Chain Order* in the CAA amendment, the Commission finds that Congress intended that the Commission's designation process serve as a source for identifying future equipment and services eligible for reimbursement from the broader Covered List; otherwise, Congress could have merely stated that the *Designation Orders* alone set the eligibility parameters. Therefore, should future companies be designated as posing a national security threat pursuant to section 54.9 of the Commission's rules, the Commission may consider costs associated with the removal, reimbursement, or disposal of equipment and services produced or provided by those covered companies eligible for reimbursement under the Reimbursement Program, provided that such equipment and services are also on the Covered List and the Reimbursement Program has an open filing window and adequate funding.

23. The Commission next finds that, to the extent there are future designations, equipment and services from such companies would be eligible for reimbursement from the Reimbursement Program without needing an additional appropriation from Congress. Congress has currently appropriated \$1.9 billion for the Reimbursement Program, which is very close to the number the Commission publicly identified in the 2019 information collection, as well as presented to Congress, as the cost to replace Huawei and ZTE equipment. The CAA also amends the eligibility cutoff date for covered equipment and services for reimbursement to align with the date that the *Designation Orders* were released, June 30, 2020. Both actions indicate Congress's intent to limit the eligibility of the current Reimbursement Program to the scope of such Huawei and ZTE equipment and services on the Covered List. Yet despite the signals that Congress intended this current appropriation to fund the removal, replacement, and disposal of such Huawei and ZTE equipment and services on the Covered List through the Reimbursement Program, Congress did not restrict funding to only those equipment and services, nor did it limit any future eligibility to specific appropriations. Therefore, as discussed herein, the Commission will continue to administer the Reimbursement Program in accordance with the prioritization scheme set forth in the CAA and adopted in this *Third Report and Order*.

24. To maintain consistency within the Reimbursement Program, the Commission also extends

the revised scope of equipment and services eligible for reimbursement throughout its rules related to the administration of the Reimbursement Program. Specifically, the Commission extends this revised scope to all references to “covered communications equipment or service” contained in section 4 of the Secure Networks Act, and the Commission’s rules implementing that section. As noted herein, while the CAA amends the scope of equipment and services eligible for reimbursement from those solely on the Covered List to those also either defined in the *2019 Supply Chain Order* or subject to the Huawei and ZTE *Designation Orders* and any future designated entities identified under its designation process established in the *2019 Supply Chain Order*, it does not revise the definition of “covered communications equipment or service” found in section 9 of the Secure Networks Act, which defines “covered communications equipment and services” as equipment and services found on the Covered List. As such, other references to “covered communications equipment or service” in section 4 of the Secure Networks Act do not reflect the revised scope of eligible equipment and services as amended by the CAA. This incongruity could lead to discrepancies between the equipment and services participants are required to remove and dispose of and the equipment and services for which they are permitted to spend reimbursement funding for removal, replacement, and disposal. The Commission believes that Congress intended to make reimbursement funds available for all such equipment and services participants are required to remove. To reconcile any potential conflicts wherein Reimbursement Program participants are required to permanently remove and dispose of equipment and services from the Covered List as set forth in their plans as obligated by their participation, the Commission interprets the scope of covered communications equipment and services referenced throughout section 4 of the Secure Networks Act as aligning with the scope of equipment and services eligible for reimbursement, that is, such equipment and services on the Covered List that are as defined by the *2019 Supply Chain Order* or as determined by the process established in the *2019 Supply Chain Order* and in the *Designation Orders*.

25. The Commission emphasizes that the CAA’s amendment and its subsequent modification to the Commission’s rules apply only to the Reimbursement Program and do not implicate other sections of the Secure Networks Act. Congress narrowly limited its amendment to section 4 of the Secure Networks Act and as such, the Commission limits its applicability to the corresponding sections of the Commission’s rules. The Covered List, published and maintained pursuant to section 2 of the Secure

Networks Act, is still in full effect as applicable to the section 3 prohibition on the use of Federal subsidies and the section 5 information reporting requirement, and to the Commission's rules implementing those provisions of the Secure Networks Act. Furthermore, the modification does not impact or revise the prohibition on the use of USF support for equipment or services produced or provided by covered companies, pursuant to section 54.9(a) of the Commission's rules. The Public Safety and Homeland Security Bureau may still designate companies which pose a national security threat via the process set forth in section 54.9(b) of the Commission's rules, to which the prohibition in section 54.9(a) would apply.

26. The Commission next determines that the modification to the scope of equipment and services eligible for reimbursement is effective 60 days after publication in the Federal Register, as applied to prospective applicants to the Reimbursement Program. All providers of advanced communications service that participate in the Reimbursement Program must remove, replace, and dispose of all such communications equipment and services from Huawei and ZTE, in accordance with the deadlines set forth in the Reimbursement Program rules. To the extent future designations may identify additional companies from the Covered List that pose a national security threat to the integrity of communications networks and the communications supply chain after the initial application period for the Reimbursement Program, the Commission directs the Wireline Competition Bureau, in consultation with the Office of the Managing Director, to issue further guidance clarifying the procedure for seeking reimbursement for removal, replacement, and disposal costs associated with eligible equipment and services, should the Reimbursement Program be accepting applications and sufficient reimbursement funding be available.

27. *Remove-and-Replace Rule.* The Commission further revises the remove-and-replace rule adopted by the Commission in the *2020 Supply Chain Order* to align the scope of equipment and services required for removal and replacement with the scope of equipment and services now eligible for reimbursement through the Reimbursement Program. Therefore, recipients of funding through the Reimbursement Program and ETCs receiving USF support must remove and replace equipment and services from the Covered List that are defined in the *2019 Supply Chain Order* or subject to the *Designation Orders* and the process for designating companies that pose a national security threat to the

integrity of communications networks or the communications supply chain, as set forth in the *2019 Supply Chain Order*. Because the Commission currently has only designated Huawei and ZTE as covered companies from the list of five companies found on the Covered List, Reimbursement Program funding recipients and ETCs receiving USF support must remove and replace Huawei and ZTE communications equipment and services from their networks.

28. In the *2020 Supply Chain Order*, the Commission adopted section 54.11, requiring that ETCs receiving USF support and recipients of Reimbursement Program funding remove and replace all covered communications equipment and services on the Covered List from their networks. The Commission made compliance with the remove-and-replace requirement contingent upon an appropriation from Congress to the Reimbursement Program. Reimbursement Program recipients must certify compliance as a condition to their participation, as required by various provisions of the Secure Networks Act. ETC recipients of USF support must certify that they have complied with section 54.11 after the Reimbursement Program opens, and subsequently certify compliance before receiving USF support each funding year.

29. Its decision is consistent with the Commission's prior approach to requiring removal of vulnerable equipment and services from the nation's communications networks. Upon adoption of the remove-and-replace rule, the Commission stated its intent to align the scope of equipment and services subject to section 54.11 of the Commission's rules with the scope of equipment and services eligible for reimbursement under the Reimbursement Program. Doing so, the Commission found, "better aligns compliance with removal and replacement obligations to the administration of the Reimbursement Program and creates a bright-line determination for ETCs receiving USF support and reimbursement recipients to easily identify equipment and services to remove and replace from their networks." Because the Commission finds the CAA amends the Secure Networks Act to modify the equipment and services eligible for reimbursement from solely those on the Covered List to those on the Covered List and also defined in the *2019 Supply Chain Order* or subject to the designation process in section 54.9 of the Commission's rules and the *Designation Orders*, the Commission modifies the remove-and-replace rule to preserve the alignment of the equipment and services subject to removal under section 54.11 and through the Reimbursement Program. The Commission finds that using the equipment and services on

the Covered List that are defined in the *2019 Supply Chain Order* or subject to the designation process in section 54.9 of the Commission's rules and the *Designation Orders* to determine both the equipment and services subject to the remove-and-replace requirement and the equipment and services eligible for reimbursement through the Reimbursement Program creates a bright-line determination for entities complying with section 54.11 and those participating in the Reimbursement Program. Therefore, the Commission finds that it should not be overly burdensome for entities to identify the equipment and services in their networks required for removal and replacement.

30. The record supports its decision to align the scope of equipment and services required for removal under section 54.11 with the scope of equipment and services eligible for reimbursement through the Reimbursement Program. As NTCA claims, this revision "eliminates the incongruity created by the Commission's prior rules and the Secure Networks Act wherein the scope of equipment and services that [ETCs] were required to remove and replace exceeded the equipment and services eligible for reimbursement." The Commission further concurs with NTCA and Mediacom that modifying the scope of the remove-and-replace requirement to match the scope of eligible equipment and services in the Reimbursement Program provides clarity to providers, thus ultimately easing administrative burdens as providers work to remove Huawei and ZTE equipment and services from their networks.

31. The Commission rejects Huawei's argument that because the Commission lacks authority to mandate removal and replacement, it likewise has no authority to modify the scope of the equipment and services subject to the requirement. As discussed at length in response to similar arguments Huawei raised in the *2020 Supply Chain Order*, the Commission found that several statutory provisions provided appropriate authority for adoption of the remove-and-replace rule. Section 4 of the Secure Networks Act requires recipients of Reimbursement Program funding to permanently remove and replace all covered communications equipment and services from their networks as a condition of receiving the funding, and to certify to that effect throughout the reimbursement process. The Commission also found that provisions of the Communications Act, including those related to its authority governing universal service, provided legal authority for the application of the remove-and-replace rule to ETCs that receive USF support. Nothing in the CAA or the record changes the Commission's previous finding that the Commission has authority to require recipients of Reimbursement Program funding and ETCs receiving

USF support to remove and replace covered equipment and services. While the Commission acknowledges that section 901 of the CAA amends some provisions of the Secure Networks Act, including the scope of the equipment and services eligible for reimbursement, the CAA does not disturb the provisions that authorize the Commission's mandate, as discussed in the *2020 Supply Chain Order*. On the contrary, the CAA's amendments to the Secure Networks Act bolster its position that the Commission has authority to require the removal of equipment and services from covered companies designated pursuant to section 54.9 of the Commission's rules. First, Congress incorporated the Commission's designation process and current designations of Huawei and ZTE as covered companies into its limitation on the use of Reimbursement Program funds. Second, Congress revised the cutoff date for equipment and services eligible for reimbursement to June 30, 2020, the date the *Designation Orders* were released. Both actions indicate Congress's support for the Commission's authority to designate Huawei and ZTE as covered companies and are evidence of congressional intent to ensure removal of Huawei and ZTE equipment and services from its nation's communications networks and supply chain. By incorporating the Commission's previous actions as the basis for reimbursement eligibility, the CAA provides even more support for the Commission's position that it was authorized to take that action.

32. The Commission similarly rejects Huawei's argument that the CAA does not provide the authority to expand the scope of equipment and services subject to the remove-and-replace requirement. As discussed above, when adopting the remove-and-replace rule, the Commission intended to align the scope of equipment and services subject to the requirement with the scope of equipment and services Congress intended for reimbursement—prior to the CAA's amendments, the Covered List. By amending the scope of equipment and services eligible for reimbursement to a subset of products on the Covered List that are defined in the *2019 Supply Chain Order* or subject to the designation process and *Designation Orders*, the CAA necessitates a corresponding modification to the scope of equipment and services subject to removal and replacement under section 54.11 of the Commission's rules. The Commission finds the CAA supports its action to align the scope of equipment and services required for removal with those eligible for reimbursement as set forth by Congress.

33. The modifications to the remove-and-replace requirement adopted herein are limited to the scope of equipment and services subject to removal and do not revise the scope of entities required to

comply nor the procedures for certifying compliance. In the *2020 Supply Chain Order*, the Commission stated that both ETCs receiving USF support and recipients of Reimbursement Program funding are required to remove and replace from their networks covered communications equipment and services. While the expansion of eligible participants in the Reimbursement Program now includes providers of advanced communications service with 10 million or fewer customers, which, as stated herein, will encompass the vast majority of providers, participation in the Reimbursement Program remains voluntary. If a provider of advanced communications service decides to apply to the Reimbursement Program, it expressly agrees to permanently remove and dispose of covered communications equipment or services. Similarly, the Tenth Circuit has held that the Commission may “specify what a USF recipient may or must do with the funds,” consistent with the policy principles outlined in section 254(b) of the Communications Act, and designation as an ETC and participation in universal service programs is voluntary. 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 its rules.

34. Compliance with its mandate to remove and replace covered communications equipment and services as described herein continues to apply to ETCs receiving USF support, in addition to participants in the Reimbursement Program, as a condition of receiving universal service or reimbursement funding, respectively. The CAA amendments did not modify those obligations. As such, the Commission will continue to require ETC recipients of universal service funding to certify that they have complied with the remove and replace requirement for the new scope of covered equipment and services from the Covered List and as defined in the *2019 Supply Chain Order* or subject to the designation process in section 54.9 of the Commission’s rules and the *Designation Orders*, as established in the *2020 Supply Chain Order*.

35. The Commission clarifies that the remove-and-replace rule extends only to equipment or services on the Covered List that have also been produced or provided by companies that have been designated by the Public Safety and Homeland Security Bureau as posing a national security threat to the integrity of communications networks or the communications supply chain. Consistent with its original remove-and-replace rule, any future remove-and-replace obligation for additional designations that are included on the Covered List will be contingent on the existence of funding to remove and replace the

equipment or services produced or provided by such designated covered company. If the Public Safety and Homeland Security Bureau makes any such future final designations, following any appropriations to fund the removal and replacement of equipment or services produced or provided by those covered companies, the Commission will require ETCs receiving USF support to remove equipment and services produced or provided by designated companies that are on the Covered List before they are next obligated to certify that they have removed all covered equipment and services from their networks on their applications for any USF support. The process for announcing an initial designation provides adequate notice that ETCs receiving USF support may be required to remove equipment and services from that company, should a final designation be issued.

C. Timing Requirement for the Reimbursement Program

36. The Commission next amends the Reimbursement Program rules to allow recipients to use reimbursement funds to remove, replace, or dispose of any equipment or services that were purchased, rented, leased, or otherwise obtained on or before June 30, 2020, consistent with the CAA's amendments to the Secure Networks Act. Currently, pursuant to section 4(c)(2)(A) of the original Secure Networks Act, its rules prohibit Reimbursement Program recipients from using such funds to remove, replace, or dispose of equipment and services obtained, in the case of any covered communications equipment or service that is on the initial Covered List published pursuant to section 2(a) of the Secure Networks Act, on or after August 14, 2018, or, in the case of any covered communications equipment or service that is not on the initial Covered List published pursuant to section 2(a), the date that is 60 days after the date on which the Commission places such equipment or service on the Covered List. The CAA however, amends the Secure Networks Act to allow recipients of Reimbursement Program funding to use such funding on equipment and services purchased before June 30, 2020, the date that the Public Safety and Homeland Security Bureau issued the *Designation Orders*. The Commission amends its rules to satisfy the new timing for eligible equipment and services set forth in the CAA amendments.

37. The clear language of the CAA's amendment to section 4(c)(2)(A) of the Secure Networks Act establishing June 30, 2020 as the eligibility cutoff date compels the Commission to modify its rules. The amended cutoff date for eligible equipment and services is also consistent with the Public Safety and Homeland Security Bureau's orders designating Huawei and ZTE as companies that pose a national

security threat to the integrity of communications networks or the communications supply chain. Following initial designations adopted in the *2019 Supply Chain Order*, the Public Safety and Homeland Security Bureau issued final designations of Huawei and ZTE on June 30, 2020, pursuant to section 54.9 of the Commission's rules. When setting the effective date of Huawei's final designation as immediately upon release of the *Huawei Designation Order*, the Public Safety and Homeland Security Bureau concluded that "the risks to its national communications networks and communications supply chain posed by Huawei's equipment necessitate immediate implementation of its designation." The Public Safety and Homeland Security Bureau relied on a similar justification for the immediate effective date of ZTE's final designation. Therefore, as of June 30, 2020, USF support could no longer be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by Huawei or ZTE.

38. In addition to being statutorily mandated, the June 30, 2020 cutoff date for equipment and services initially eligible for removal, replacement, and disposal under the Reimbursement Program advances the Commission's goals of removing vulnerable equipment from its nation's communications networks. Additional equipment and services from designated companies that may have been legally purchased or deployed into networks between 2018 and June 30, 2020 are now eligible for reimbursement, thus ensuring their effective removal from the networks of participants in the Reimbursement Program. Furthermore, by amending the eligibility cutoff to June 30, 2020, Congress intended to establish the *Designation Orders* as a clear delineation for what equipment and services would be eligible for reimbursement. Consistent with the Commission's rules, Congress did not intend to allow providers to seek reimbursement for equipment purchased after the Public Safety and Homeland Security Bureau issued the final *Designation Orders*. Therefore, the Commission revises its rules for the Reimbursement Program to limit reimbursement to equipment and services purchased on or before the *Designation Orders* were released, consistent with the CAA.

39. Commenters support its proposal to modify the cutoff date for reimbursement eligibility for equipment and services. RWA argues that retaining the previous cutoff date, August 14, 2018, would be "inequitable to eligible carriers who at that time were not even aware of the availability of a reimbursement program," which was first introduced in the Secure Networks Act in 2019 and later

incorporated into the Commission's rules in the *2020 Supply Chain Order*. Northern Michigan University posits that adjusting the date to align with the effective date of the *Designation Orders* will "facilitate a more timely replacement program" and ensure that systems will be replaced with modern, secure facilities. The Commission agrees with commenters that amending its Reimbursement Program rules to set a June 30, 2020 cutoff date will help program participants to recover costs associated with the removal, replacement, and disposal of such Huawei and ZTE equipment and services at the time the *Designation Orders* were released, thus fairly ensuring the timely and effective removal and replacement of such vulnerable equipment from its communications systems.

40. As discussed above, the Commission finds that the current scope of the Reimbursement Program is limited to such communications equipment and services produced or provided by the current covered companies, i.e., Huawei and ZTE. As a result, costs associated with the removal, replacement, and disposal of all such Huawei and ZTE telecommunications equipment or services purchased prior to June 30, 2020, will be eligible for reimbursement. This result is further supported by Congress's establishment of June 30, 2020, the release date of the *Designation Orders* designating Huawei and ZTE as covered companies, as the cutoff date. Furthermore, Mediacom supports using a "single, certain date" to ease administrative burdens in determining whether purchased equipment or services falls within the deadlines for reimbursement, rather than continually monitoring whether such products that may be added to the Covered List are eligible under the previous rules. The Commission agrees that establishing June 30, 2020 as a bright-line date for equipment and services eligible for reimbursement will help to ease administrative burdens by allowing participating providers to more easily identify such Huawei and ZTE equipment and services as eligible for removal, replacement, and disposal. Aligning the cutoff date with the release date for the Huawei and ZTE *Designation Orders* also signals to Reimbursement Program participants that such Huawei and ZTE equipment and services purchased prior to June 30, 2020 are eligible for reimbursement at this time.

41. CCA supports modifying the timing cutoff for eligible equipment and services yet asks that the Commission ensure that its rule be "flexible enough to encompass dates related to a subsequent designation of equipment or services manufactured by companies that pose a security threat." The Commission finds that, since Congress intended for equipment and services on the Covered List produced

or provided by companies designated pursuant to section 54.9 of the Commission's rules to be eligible for reimbursement funding, further clarification as to the eligible cutoff date for such equipment and services designated in the future is warranted.

42. Prior to its amendment, section 4(c) of the Secure Networks Act established an alternative effective date of 60 days after any covered communications equipment or services are added to the Covered List; however, the CAA removes this provision and is ultimately silent as to the eligible date for equipment and services should the Public Safety and Homeland Security Bureau designate additional companies on the Covered List as national security threats under section 54.9 of the Commission's rules. Similar to the original provision in the Secure Networks Act, the Commission adopts a comparable period of 60 days before the effect of any subsequent designation. Therefore, communications equipment or services produced or provided by such covered companies designated under section 54.9 that are subsequently added to the Covered List will become eligible 60 days after the date on which the Commission places such equipment or service on the Covered List. Reimbursement Program participants will similarly be prohibited from using reimbursement funding to remove, replace, or dispose of such equipment or services purchased, rented, leased, or otherwise obtained more than 60 days after such designation is final. The process by which the Public Safety and Homeland Security Bureau designates companies as posing a national security threat to the integrity of communications networks or the communications supply chain involves several opportunities for notice prior to the final designation going into effect. Given the precedent for a 60-day effective period in the Secure Networks Act and the notice provided through the designation process, establishing this time frame for the effective date of any equipment or services from the Covered List that are produced or provided by companies covered under subsequent designations is reasonable for providers to identify newly eligible equipment and services. This effective period is also consistent with the 60-day time period in sections 3 and 5 that remains in the Secure Networks Act following the CAA amendments.

D. Prioritization if Reimbursement Program Demand Exceeds Supply

43. The Commission next amends its Reimbursement Program rules to replace the prioritization scheme adopted in the *2020 Supply Chain Order* with the prioritization paradigm Congress expressly adopted in the CAA. These prioritizations will govern the allocation of funds in the event requests for

reimbursement funding exceed the appropriated money available for such reimbursement.

44. The Commission, in the *2019 Information Collection Order*, directed ETCs to report whether they use or own Huawei or ZTE equipment or services in their networks, or the networks of their affiliates and subsidiaries, and to report the cost of removing and replacing such equipment and services. The Wireline Competition Bureau and the Office of Economics and Analytics released the results of this information collection in September 2020, finding that it would cost an estimated \$1.837 billion to remove and replace Huawei and ZTE equipment in respondents' networks. In releasing the estimate, the Wireline Competition Bureau and the Office of Economics and Analytics noted that not all providers of advanced communications service that may be eligible for reimbursement under the Secure Networks Act participated in the information collection. Following the information collection, Congress appropriated \$1.9 billion to the Commission to "carry[] out" the Secure Networks Act, including \$1.895 billion for the Reimbursement Program.

45. In the *2020 Supply Chain Order*, issued before the congressional appropriation, the Commission adopted a prioritization paradigm that would take effect should "the estimated costs for replacement submitted by the providers during the initial or any subsequent filing window in the aggregate exceed the total amount of funding available as appropriated by Congress for reimbursement requests." The Commission decided to first allocate funding to ETCs subject to a remove-and-replace requirement under the Commission's rules. If funding is insufficient to meet total demand from this category, the Commission would prioritize "funding for transitioning the core networks of these eligible providers before allocating funds to non-core network related expenses." If funding was available after fully funding the prior category, the Commission would then prioritize non-ETCs that provided cost estimates as part of the *2019 Information Collection*, with the same priority for replacing core network equipment over non-core equipment. Finally, if money remained after funding reimbursement requests for the first two groups, the Commission would disburse funding to other qualified non-ETC providers of advanced communications services, with the same priority for replacing core network equipment. The Commission decided to prorate the available funding equally across all requests in an individual category if "available funding is insufficient to satisfy all requests in a certain prioritization category."

46. When Congress enacted the CAA, however, it provided its own prioritization paradigm for

the Reimbursement Program. The Commission sought comment on how the CAA’s prioritization differed from the one the Commission adopted in the *2020 Supply Chain Order* and whether, in light of these changes, the Commission should modify the existing Reimbursement Program rules. After reviewing the record, the Commission adopts the prioritization paradigm Congress expressly provided in the CAA and discard the one previously adopted in the *2020 Supply Chain Order*.

1. CAA Prioritization

47. The CAA directs that “the Commission shall allocate sufficient reimbursement funds . . . , first, to approved applications that have 2,000,000 or fewer customers . . . , [then] to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services . . . [and] health care providers and libraries providing advanced communications service, [then] to any remaining approved applicants determined to be eligible for reimbursement under the [Reimbursement] Program.”

48. Congress’s intent was clear that the CAA should replace the Commission’s prioritization paradigm with its own. In the *2020 Supply Chain Order*, the Commission created its own prioritization paradigm because, in the Secure Networks Act, “Congress did not provide for, or expressly prohibit, any funding prioritization scheme.” That is no longer the case. The Commission finds that the Commission has no discretion to deviate from the CAA’s provided prioritization paradigm. The record supports its conclusion. For example, USTelecom notes that “Congress left the Commission no discretion in this regard.” CCA also agrees that the “Commission should implement Congress’ prioritization scheme to ensure funding is distributed first to smaller carriers with 2 million or fewer customers” and argues that the “success of the Reimbursement Program hinges on rigorous adherence to this prioritization scheme.” Mediacom also supports this change because “not only is the revised schedule consistent with the CAA, but it also . . . recognizes that those providers [with two million or fewer customers] need the greatest assistance because they have more limited resources.” Mediacom adds that “the funds appropriated by the CAA . . . are finite and rely on data that was collected primarily from providers with two million or fewer subscribers. The Commission must therefore ensure that the limited funds are allocated to those who need it most and on whose costs the funds are based.” NTCA expresses support for the new prioritization process as “consistent with the CAA as well as the [Secure Networks Act]” and because

“[s]maller providers already operate on razor thin margins [and] adding the financial cost of replacing existing equipment outside of its normal upgrade cycle or losing universal service funding would be a crushing burden.” The Commission agrees with these commenters and adopt, as expressly provided, the prioritization paradigm in the CAA to replace the one the Commission created in the *2020 Supply Chain Order*.

49. Under this paradigm, the Commission will first allocate funding to providers of advanced communications service with two million or fewer customers. The Commission will then allocate funding to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services and health care providers and libraries providing advanced communications service. The Commission will then allocate funding to any remaining applicants determined to be eligible for reimbursement under the Reimbursement Program.

2. Other Considered Prioritization Categories

50. The CAA’s amendments did not set forth how the Commission should allocate funding within a particular category if funding was insufficient to meet demand. If, for example, demand for reimbursement funding among qualified applicants with two million or fewer customers exceeds \$1.895 billion, the Commission will not be able to fully fund all applicants. After reviewing the record, the Commission finds 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, the Commission will prorate the available funding equally across all requests in this category. Applicants with accepted applications to participate in the Reimbursement Program will be funded at a percentage proportional to the estimated amount included in the application. The Commission therefore discards any sub-prioritization levels adopted in the *2020 Supply Chain Order*. As USTelecom explains in support of this position, “the Commission should decline to sub-prioritize within the prioritization categories established by Congress.” USTelecom warns 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.” The Commission agrees and notes, as

USTelecom argues, “Congress had knowledge of the prioritization scheme that the Commission was going to use for its reimbursement program . . . [but] intentionally set new, and different, priorities.”

a. Decline to Prioritize Core Network Equipment

51. When the Commission adopted its previous prioritization paradigm, the Commission reasoned that “replacing the core network is the logical first step in a network transition and may have the greatest impact on eliminating a national security risk from the network.” Thus, in the *2020 Supply Chain Order*, the Commission held that if funding is insufficient to meet total demand from a particular category, the Commission would prioritize “funding for transitioning the core networks of these eligible providers before allocating funds to non-core network related expenses.” Though the Commission has seen nothing in the record to convince it otherwise, and some commenters, such as Mediacom “support[] prioritizing core equipment over non-core equipment,” the prioritization scheme in the CAA does not indicate a preference for core network equipment over non-core equipment. The CAA paradigm only asks the Commission to first consider applications from providers with two million or fewer customers. It does not address any preference to replace certain types of covered equipment in telecommunications networks. Neither the CAA nor the Secure Networks Act provides the Commission with guidance to determine which specific communications equipment and services would comprise any “core network.” Thus, to ensure that “reimbursement funds are distributed equitably across all applicants . . .,” and to ease administrative burdens, the Commission will not prioritize core equipment over any other type of equipment. The Commission finds that discarding this sub-prioritization category will provide more clear guidance to the Reimbursement Program Fund Administrator (Fund Administrator) and applicants during the Reimbursement Program funding allocation process.

52. The Commission reaches the same conclusion in considering Mavenir’s suggestion that the Commission prioritizes Open Radio Access Network (O-RAN) reimbursement requests over those from carriers that choose to use traditional or proprietary RAN. Mavenir comments that the Commission should allow for a priority for O-RAN technology because such technology may be more secure than traditional network technology, may allow United States-based vendors to compete on a more level playing field with foreign counterparts, and will allow for easier and cheaper network upgrades in the future. The Commission is mindful of the potential benefits associated with a transition to more virtual

networks but nevertheless decline to establish a preference for such equipment and services. The CAA's prioritization paradigm expressly provides for no such preference for O-RAN or any other type of equipment or service, so the Commission similarly declines to do so. The Commission emphasizes that Reimbursement Program recipients may choose to replace their existing covered equipment and services with O-RAN equipment and services, and the Commission recommends that providers participating in the Reimbursement Program consider all potential vendors, including O-RAN providers, before selecting their replacement equipment and services.

b. Decline to Prioritize Eligible Telecommunications Carriers

53. In the *2020 Supply Chain Order*, the Commission reasoned that ETCs, who are required to remove covered equipment and services from their networks, “face greater consequences than non-ETC providers” so “there is a greater urgency to expeditiously accommodate the transition of ETC networks over other applicants.” The Commission thus explicitly prioritized ETC applicants over non-ETC applicants, who are not required to remove covered equipment and services unless they participate in the Reimbursement Program. However, the CAA does not indicate a preference for ETC applicants over non-ETC applicants. Instead, it directs the Commission to prioritize smaller carriers first, then schools, health care providers, and libraries, and then larger carriers. The Commission therefore reconsiders and revises its prior prioritization scheme to remove any preference for ETC applicants for the same reasons the Commission declines to prioritize the replacement of core network equipment and services. To ensure Reimbursement Program funding is distributed equitably, and to provide clear guidance to Reimbursement Program applicants, the Commission will implement the prioritization scheme as provided by Congress in the CAA.

54. The record supports this decision. Mediacom argues that the old preference for ETCs “was inconsistent with the Secure Networks Act and contrary to the public interest.” Mediacom contends that many non-ETCs made “significant investments in removing and replacing their equipment and services based on the belief, supported by the Secure Networks Act, that they would be reimbursed for those costs. The Commission should not punish those providers that acted early and have been proactively attempting to comply with the statute.” PTA-FLA also writes that “Congress plainly did not envision ETCs receiving all or virtually all of the funds available since it stressed that funds should be made available

equitably to all applicants, a command that would not be heeded if non-ETCs are effectively precluded from receiving any funds.” PTA-FLA argues ETCs should receive funding, “but not to the exclusion of other worthy recipients who have not had the advantage of receiving USF money to fund their build-outs and operations.”

55. RWA contends that the CAA “does not prohibit such prioritization, and such prioritization is consistent with the CAA.” RWA argues that, “[c]onsidering the USF constitutes the source of much of ETCs’ funding as opposed to non-ETCs, limiting those funds has significantly hampered the ability of many rural ETCs to maintain their networks.” RWA asserts that “the FCC already acknowledged the importance of ETC networks in its Second Report and Order as it agreed that ETCs should be allocated reimbursement funds first.” Further, “[i]f there is not enough funding to go around initially, the Commission must prioritize, and there are substantial public interest reasons for prioritizing ETCs over non-ETCs. Non-ETCs should still be reimbursed; it may just take longer.” RWA also argues that “[r]ural ETCs . . . are entirely dependent on [USF] program funding, in addition to business revenue from a sparse number of subscribers in high cost areas,” and, unlike other carriers with access to additional sources of capital, “a 20% - 30% funding reduction would drive small and rural companies out of business.”

56. The Commission acknowledges that, in the *2020 Supply Chain Order*, the Commission used a similar justification to fund ETCs over non-ETCs. However, the Commission adopted that priority before Congress expressly provided its own prioritization scheme, in which it explicitly adopted a scheme that does not prioritize ETCs over all providers of advanced communications services with 2 million customers or fewer. While the CAA does not explicitly prohibit the Commission from including additional sub-prioritization categories, without express direction to further sub-prioritize the Commission concludes that doing so would frustrate its charge, from the Secure Networks Act, to ensure that Reimbursement Program funds are equitably distributed amongst all applications. As a result, the Commission adopts the paradigm advanced by Congress and will not prioritize funding to ETCs over non-ETCs. If available funding is insufficient to satisfy all requests in any individual category, the Commission will prorate the available funding equally across all requests in this category. The Commission finds this scheme is most consistent with congressional intent and that it will allow, as Congress intended, all providers of advanced communications services to begin the necessary work of

removing insecure communications equipment and services from their networks.

c. Decline to Prioritize Information Collection Participants

57. In choosing to adopt a pro-rata distribution method for the limited funds available in the Reimbursement Program, the Commission acknowledges a departure from earlier rules that prioritized non-ETCs who responded to the *2019 Information Collection Order*. The results of the information collection showed that ETCs with two million or fewer customers required \$1.62 billion to remove and replace Huawei and ZTE equipment from their networks. This figure did not account for other providers of advanced communications service that may be eligible to participate in the Reimbursement Program. Non-ETCs who voluntarily submitted cost estimates to remove and replace Huawei and ZTE equipment in their networks estimated they would require approximately \$200 million to do so. The total estimated amount needed to remove and replace Huawei and ZTE equipment from the networks of ETCs and non-ETCs who voluntarily submitted cost estimates is \$1.837 billion, a figure closely aligned with the actual amount appropriated by Congress in the CAA.

58. In the *2020 Supply Chain Order*, the Commission prioritized non-ETCs who voluntarily submitted cost estimates over other non-ETC providers of advanced communications services. The Commission found that it would be “inequitable” to allow these providers to go without funding simply because “the costs of non-participating non-ETCs were not reported and thus not considered.” However, the CAA was enacted after the Commission adopted the *2020 Supply Chain Order*, and the Commission sought comment on whether the language in the CAA permitted it to adopt a preference to fund non-ETCs who responded to the *2019 Information Collection Order*. After reviewing the record, the Commission finds that the CAA does not require such a preference, and the Commission declines to implement one for the same reason that the Commission declines to prioritize ETCs or the replacement of core network equipment and services. Congress created a clear prioritization program that does not express a preference to fund non-ETCs who voluntarily submitted cost estimates over those that, for whatever reason, did not.

59. Mediacom “*strongly* supports the Commission’s proposed prioritization schedule” in part because “prioritizing non-ETCs that responded to the data collection over those that did not was arbitrary and unfair.” Mediacom argues that many smaller providers, especially while dealing with the COVID-19

pandemic, “simply did not have the resources necessary to evaluate their entire network and respond to what they understood was a *voluntary* data collection while still meeting customer demands.”

60. PTA-FLA and RWA assert that the Commission should maintain this preference for non-ETCs who submitted cost estimates as part of the information collection. PTA-FLA argues that “Congress based its calculation of how much money to appropriate for the Reimbursement Program on the estimated expenses submitted by both ETCs and non-ETCs during the cost estimate process.” PTA-FLA thus claims ETCs and non-ETCs should be prioritized for funding “to the extent of the estimates they submitted last year.” PTA-FLA argues that this prioritization would “recognize[] the fundamental fairness of prioritizing funding to parties who went to the expense and effort of creating a solid record to support Congressional funding.” If the appropriated funds were insufficient to meet the demand for these groups, “all parties would have to seek additional funding from Congress to make up the difference.” RWA claims that, “once ETCs receive their funding allocations, non-ETCs who participated in the Commission’s information collection process should be next in line to be allocated funds” RWA asserts that the non-ETCs who voluntarily submitted cost estimates did so “in reliance on the Commission’s indication that non-ETC estimates would assist in soliciting Congressional funding.” RWA argues the Commission should continue to prioritize these carriers who “demonstrated candor before the Commission in presenting their costs, and most importantly, prioritized network security despite regulatory uncertainty.” RWA proposes a new prioritization paradigm that allocates funds first to ETCs up to the original cost estimates, then to non-ETCs who submitted cost estimates up to those estimates, then to those providers who did not submit cost estimates. RWA’s proposal would allow non-ETCs who participated in the information collection to receive funding allocations immediately after the Commission allocates funding to ETCs with two million or fewer customers.

61. The Commission rejects these arguments as inconsistent with its mandate to distribute Reimbursement Program funds equitably amongst all applications. Although the Commission appreciates the time and expense that non-ETCs undertook to prepare their voluntarily replies to the 2019 information collection, Congress created a scheme that declined to prioritize these carriers. The Commission must comply with the statute as written and decline to prioritize non-ETCs who voluntarily submitted cost estimates.

d. Decline to Prioritize Equipment Posing Elevated National Security Risks

62. In the *2021 Supply Chain Further Notice*, the Commission sought comment on whether to “prioritiz[e], within each category, the removal and reimbursement of certain equipment or services at particular locations identified as posing an elevated national security risk by the Commission or other federal agencies or interagency bodies” The Commission asked whether certain national security threats warranted swift action to remove and replace equipment and services at various locations around the country. The Commission also sought comment on whether national security concerns would justify the Commission prioritizing the removal and replacement of equipment and services at certain locations ahead of its prioritization in the CAA.

63. After reviewing the record, the Commission declines to adopt a prioritization for certain equipment and services at particular locations that may pose an elevated national security risk. The Commission does not find express support for such a prioritization in the CAA and, as PTA-FLA commented, “if Congress had intended to prioritize the removal and reimbursement of certain equipment or services at particular locations . . . it would have said so rather than setting explicit priority categories. . . .” USTelecom and Niki N. agree. USTelecom argues the Commission would “clearly violate the CAA and frustrate the intent of Congress if, for any reason, it prioritizes any equipment or services in a lower priority category ahead of . . . a higher prioritization category.” Niki N. contends that they do not “believe the Commission should prioritize equipment and services at locations that pose a heightened national security risk in a lower priority category ahead of any equipment and services in a higher prioritization category.”

64. Just as the Commission declines to sub-prioritize other categories of carriers or equipment and services, the fact that the CAA itself does not expressly prohibit the Commission from including additional sub-prioritization categories for national security does not convince it that doing so is the correct policy decision. Instead, it could expressly frustrate the Secure Network Act's requirement that Reimbursement Program funds be equitably distributed amongst all applications. The Commission thus declines to prioritize equipment or services at particular locations or ahead of the prioritization levels defined by Congress.

E. Definition of “Provider of Advanced Communications Service”

65. The Secure Networks Act directed the Commission to “establish [the Reimbursement Program] . . . to make reimbursements to providers of advanced communications service to replace covered communications equipment or services.” The Commission now adds a definition of “provider of advanced communications service” in its program rules to match the definition Congress enacted in the Secure Networks Act, as amended by the CAA. This definition will clarify which entities are eligible to participate in the Reimbursement Program.

66. In the Secure Networks Act, Congress defined “provider of advanced communications service” as “a person who provides advanced communications service to United States customers.” Congress defined “advanced communications service” as “the meaning given the term ‘advanced telecommunications capability’ in section 706 of the Telecommunications Act of 1996 (Telecommunications Act).” In the Telecommunications Act, “advanced telecommunications capability” means “without regard to any transmission media or technology, . . . high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”

67. The Commission has historically interpreted “high-speed, switched, broadband telecommunications capability” to include facilities-based providers, whether fixed or mobile, with a broadband connection to end users with at least 200 kbps in one direction. In the *2020 Supply Chain Order*, the Commission used this guidance to adopt a definition of “advanced communications service” for the Reimbursement Program. As a result, participation in the Reimbursement Program is limited to providers of “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction.” The Commission also clarified that, “for purposes of the Reimbursement Program, a school, library or health care provider, or consortium thereof, may also qualify as a provider of advanced communications service, and therefore be eligible to participate in the Reimbursement Program, if it provisions facilities-based broadband connections of at least 200 kbps in one direction to end users”

68. In the CAA, Congress amended its definition of “provider of advanced communications

service” to specifically include “accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service as defined in section 27.4 of the Commission’s rules,” and “health care providers and libraries providing advanced communications services.” Accordingly, the Commission explicitly includes, in its definition of “provider of advanced telecommunications service,” “accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service as defined in Part 27, Subpart M of the Commission’s rules,” and “health care providers and libraries providing advanced communications services.” Such entities are thus eligible for participation in the Reimbursement Program, provided they comply with all other relevant requirements, and are included in the first prioritization category if they have fewer than two million customers. No commenters disagreed with this proposal, and Northern Michigan University comments that “[it] support[s] the amendment to the CAA by Congress to include accredited public or private noncommercial educational institutions providing their own facilities-based educational broadband service.” QCommunications, LLC also “agrees, concurs and supports the Commission’s proposal to . . . [r]edefine the term ‘provider of advanced communications service,’ adding: libraries, healthcare, [and] accredited noncommercial education”

69. The Commission also clarifies that it limits the term “educational broadband service as defined in Part 27, Subpart M of the Commission’s rules” to solely reference licensees in the Commission’s Educational Broadband Service (EBS). Commenters support this interpretation. For instance, Northern Michigan University argues that “Congress’s intent in the CAA is to allow EBS licensees who actively provide advanced communications services with the means to receive equipment replacement funds through the Supply Chain Reimbursement Program.” USTelecom agrees that “the definition of educational broadband service is limited, as indicated by the CAA unambiguously, to EBS licensees. The CAA derives its definition from 47 CFR § 27.4 which includes the licensing requirement as part of the definition.” The Commission agrees with these commenters that this limitation accurately reflects Congress’s intent to limit participation in the Reimbursement Program to entities already licensed for certain frequency bands.

70. The Commission rejects USTelecom’s position that “[a]lthough it might be argued that an EBS licensee with fewer than 2 million ‘customers’ could be in category 1, it is apparent that such a result

could not have been Congress’s intent.” USTelecom argues that all EBS licensees, even those with two million or fewer customers, should be prioritized after funding is distributed to all other advanced communications service providers with two million or fewer customers. This interpretation of the CAA is contrary to the plain language of the statute, which tasks the Commission with first funding all advanced communications service providers with two million or fewer customers, and defines “providers of advanced communications service” to include such EBS licensees. The Commission interprets the word “all” to include these EBS licensees who are otherwise eligible for participation in the Reimbursement Program, even if there currently exist no such providers who can claim more than two million customers.

71. The Commission does not expect the addition to the existing Reimbursement Program rules of a definition of “provider of advanced communications service” to have any practical effect on the number or type of carriers eligible to participate in the Reimbursement Program. The *2020 Supply Chain Order* already provided that “accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service as defined in section 27.4 of the Commission’s rules,” and “health care providers and libraries providing advanced communications services” would be eligible for participation. Nevertheless, the Commission will amend its definition to explicitly include these providers.

72. The Secure Networks Act further limited eligibility in the Reimbursement Program to “providers of advanced communications service . . . [with] . . . customers.” The word “customers” is defined as either customers of the provider of advanced communications services or the customers of any affiliate of a providers of advanced communications service. LATAM claims that Congress, by expanding the definition of “provider of advanced communications service” in the CAA, intended to “better capture all the networks that may be used for the provision of advanced communications services to consumers,” including intermediate providers, who carry traffic for other carriers only, and neither originate nor terminate that traffic. It also argues that, from a policy perspective, “it does not make sense to exclude intermediate providers from participation in the Reimbursement Program since the security concerns would be similar to providers of advanced communications services.”

73. The Commission agrees, but do not think its existing rules prohibit such intermediate

providers from participation in the Reimbursement Program. Its existing definition did not limit eligibility to providers who offer service to end users. Rather, it extended eligibility to providers of “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction.” Intermediate providers, such as LATAM, likely provide such a service to their customers, notwithstanding whether those customers are carrier customers or end-user customers. The Commission intends to include intermediate providers in the Reimbursement Program because, by doing so, the Commission can secure against “potential vulnerabilities to the broader network.” Its goal is to ensure the safety and security of the entire network, not only to those portions that provide service to end users. Thus, the Commission clarifies that intermediate providers are eligible for participation in the Reimbursement Program.

74. Finally, the Commission reiterates that the adopted changes to the definition of “provider of advanced communication services” apply only to the Reimbursement Program. The Commission does not amend the term as it is defined in any other section of its rules.

F. Reimbursement Program Clarifications

75. The Commission next clarifies various other aspects of the Reimbursement Program adopted in the *2020 Supply Chain Order*. Specifically, the Commission clarifies: (1) the “costs reasonably incurred” standard adopted for determining eligible reimbursement expenses with technology upgrades; (2) the initial application filing window; (3) the consideration of requests for individual extensions of the removal, replacement, and disposal term; (4) additional expectations for and obligations of Reimbursement Program participants regarding reimbursement claim requests and the filing of final spending reports and final certification updates; (5) the process by which to account for removal, replacement, and disposal of covered equipment and services; (6) parameters when accounting for reimbursement funds; and (7) delegation of financial oversight to the Office of the Managing Director (OMD).

76. *Costs Reasonably Incurred Standard – Technology Upgrades.* The Commission clarifies the “costs reasonably incurred” standard adopted in the *2020 Supply Chain Order* and provide additional guidance as to the types of replacement options that would be considered comparable facilities and

technology upgrades. As adopted in the *2020 Supply Chain Order*, the Reimbursement Program will reimburse costs reasonably incurred for the removal, replacement, and disposal of covered communications equipment and services in accordance with the Secure Networks Act. In the *2020 Supply Chain Order*, the Commission considered as reasonable “replacement facilities comparable to the facilities in use by the provider prior to the removal, replacement, and disposal of covered communications equipment or service.” The Commission further acknowledged, however, that replacing older technology inevitably involves a certain amount of technology upgrade and as a result expressly allowed for the replacement of older mobile wireless networks with 4G LTE equipment or service that is 5G ready. The Commission cautioned, however, that providers electing “to purchase optional equipment capability or make other upgrades’ . . . must do so using their own funds.”

77. Providers considering replacement options have expressed interest in changing their technology path and have asked for clarification regarding what is considered comparable and eligible for reimbursement and what is considered a technology upgrade and ineligible for reimbursement. For example, providers may want to transition from older mobile wireless technologies to 5G or move from fixed wireless to fiber. The Commission therefore provides additional guidance on what is considered a technology upgrade, how to estimate cost for the Reimbursement Program for a technology upgrade, and how the Commission will allocate funding for such requests.

78. As a policy matter, the Commission encourages providers to upgrade their networks and to transition to efficient, scalable, and secure technology, thereby providing more choices and capabilities to end users. The Reimbursement Program is, however, limited in funding and focused on assisting “small communications providers with the costs of removing prohibited equipment and services from their networks and replacing prohibited equipment with more secure communications equipment and services.” Additionally, Congress specifically stated that the Commission is expected “to preclude network upgrades that go beyond the replacement of covered communications equipment or services from eligibility.” The Commission thus interprets the “costs reasonably incurred” standard to make providers responsible for the additional incremental cost of funding upgrades that exceed what is reasonably necessary to transition to a comparable replacement. That said, and as the Commission previously acknowledged, replacing older technology inevitably involves a certain level of upgrade as the equipment and services currently

available in the marketplace typically contain features and capabilities not present in the legacy equipment and services no longer offered. Accordingly, a certain degree of upgrade may be entirely reasonable, and eligible for reimbursement, depending on the comparable replacements available in the marketplace. In particular, the Commission reiterates, as previously stated in the *2020 Supply Chain Order*, that 4G Long Term Evolution (LTE) network equipment or service, which would include VoLTE technology, would be treated as a comparable replacement for an older mobile wireless network for purposes of the Reimbursement Program.

79. Whether an upgrade is treated as a reasonable, comparable replacement necessary for the transition, and thus acceptable, or a technology upgrade ineligible for reimbursement will likely depend on the facts in each case. The Commission expects the Wireline Competition Bureau, with the assistance of the Fund Administrator, will first consider whether the cost is typically incurred when transitioning from covered communications equipment and services to a replacement. Other factors the Wireline Competition Bureau and Fund Administrator may consider when determining whether a change is necessary, reasonable, and comparable are the costs in relation to alternative equipment and services and the capabilities and functions performed by the replacement equipment and services as compared to the equipment and services removed.

80. As a general matter, the Commission does not consider replacing microwave backhaul with fiber backhaul or replacing last-mile fixed wireless links with fiber-to-the-premises (FTTP) necessary for the removal, replacement, and disposal of such communications equipment or service produced or provided by Huawei and ZTE that is listed on the Covered List. The Rural Wireless Broadband Coalition states that higher-capacity fiber backhaul is needed to support the replacement of older technology networks with 5G ready equipment that is subsequently made 5G operable by a provider. Santel “would like” to replace its four transmitters with an FTTP wireline network serving 850 customers to provide a far better quality service that “even exceeds 5G wireless solutions.” In either case, the Commission fails to see how such expenses are reasonably necessary to the removal, replacement, and disposal of covered communications equipment or services eligible for reimbursement. Moreover, the cost of replacing microwave with fiber backhaul and fixed wireless links to end users with FTTP would likely greatly exceed the cost of other wireless alternatives. As the Commission stated in the C-Band proceeding,

relocation support is not intended “to provide a means of funding [an] incumbent[’s] . . . transition to fiber” and “while a transition to fiber in some cases may be a more efficient or desirable approach for certain . . . operators, incumbents would only be reimbursed for the reasonable costs of relocating existing services. . . .” This same rationale applies to the Reimbursement Program. Accordingly, the Commission will generally view fiber link replacements as a technology upgrade and not a reasonable, comparable replacement.

81. Participants may obtain Reimbursement Program support for an amount equivalent to the cost estimate of a comparable replacement. If, however, a participant ultimately decides to upgrade to a higher quality, more advanced, non-comparable replacement, then the program participant will bear the difference in cost between the comparable replacement and the technology upgrade solution chosen. When Reimbursement Program participants seek to replace eligible covered communications equipment or service with a technology upgrade in excess of the costs of a comparable replacement, they will need to provide price quotes for the comparable replacement with their Application Request for Funding Allocation and may not rely on the cost estimates contained in the Catalog of Eligible Expenses (Catalog). This approach is consistent with the Commission’s treatment of situations where the estimated cost is not provided in the Catalog, and the applicant must provide additional documentation to support the identified cost estimate. They will also need to separately certify, as already required by the Commission’s rules, that the estimated cost is made in good faith.

82. Price quotes will provide a more accurate estimation of costs for funding allocations than using the Catalog when participants request a technology upgrade and will help address concerns about inflated cost estimates and the over allocation of support. The Commission anticipates the Catalog largely reflects list prices, and not the amount providers will actually pay after any purchasing discounts are applied. While the Catalog reduces burdens for the applicant during the submission process, reliance on it in some circumstances could result in the overestimation of cost, and the over-allocation of support. Accordingly, to ensure more accurate cost estimates and to minimize the over-allocation of funding, the Commission clarifies that it will treat requests for reimbursement towards a technology upgrade as outside the scope of the Catalog. Applicants seeking support when completing a technology upgrade will need to provide their own cost estimates for a comparable replacement with price quotes.

83. *Costs Reasonably Incurred – Handset Upgrades.* The Commission rejects RWA’s request that the Commission add VoLTE compatible replacement subscriber handsets to its Catalog and permit recipients of the Reimbursement Program to replace consumer handsets. RWA argues that the subscribers of some potential applicants of the Reimbursement Program have only CDMA-capable handset devices and those devices would need to be replaced because the handsets will not be compatible with a newer technology replacement network. RWA thus seeks reimbursement for the replacement cost of non-Huawei and ZTE handsets that will no longer be compatible with replacement networks. The Commission finds CDMA-capable handsets not produced or provided by Huawei or ZTE ineligible for reimbursement under the Reimbursement Program rules because replacing such handsets with VoLTE compatible subscriber handsets is not reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service.

84. The Reimbursement Program has limited funding aimed at securing its nation’s communication networks from national security threats. Expanding the scope of reimbursement eligibility to include subscriber mobile handheld devices not produced or provided by Huawei or ZTE threatens to detract substantial funding away from the core mission of securing the nation’s networks. Handsets and other customer premises equipment, including Internet of Things devices, used by end users to access and utilize advanced communications services are distinctly different from the cell sites, backhaul, core network, etc. used to operate a network and provide advanced communications services. Consumers typically choose on their own to upgrade their mobile handsets every two years on average absent any network transition, and newer comparable replacement networks are often backward compatible with older technology handsets with some limited exceptions. Accordingly, the Commission finds the replacement of non-Huawei or ZTE mobile devices not reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service. Additionally, 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. Similar to any network upgrade, the Commission anticipates providers will assist their customers with incompatible handsets to upgrade as necessary to mitigate any disruptions in service if for some reason their handsets are not compatible with the new network.

85. *Filing Window.* Consistent with the Secure Networks Act, the Commission established an application process for Reimbursement Program participation in the *2020 Supply Chain Order*. To participate in the Reimbursement Program, eligible providers are required to submit initial estimates of the costs to be reasonably incurred for the removal, replacement, and disposal of covered communications equipment or services to participate in the Program. In the *2020 Supply Chain Order*, the Commission directed the Wireline Competition Bureau to establish an initial 30-day filing window for the submission of cost estimates and to establish additional filing windows as necessary. The accompanying rules adopted, however, do not specify a period of time for the filing window. Given the complexity of the Reimbursement Program, the Commission wants to ensure that applicants have sufficient opportunity to familiarize themselves with and utilize the application filing portal. Therefore, the Commission clarifies that the Wireline Competition Bureau has discretion to establish an initial filing window that provides sufficient time for applicants to submit cost estimates, which may be for a period longer than 30 days if a longer window is needed to help applicants navigate the application filing portal or to compile the necessary documentation required for the filing requirements.

86. *Individual Extensions.* The Commission further clarifies the factors the Wireline Competition Bureau, with the assistance of the Fund Administrator, will consider when evaluating whether to grant an individual extension of the removal, replacement, and disposal term available to program participants. Program participants are required to complete the removal, replacement and disposal of the equipment within one year of the initial disbursement. Its rules permit participants to petition the Wireline Competition Bureau for an extension of the removal, replacement, and disposal term prior to the expiration of the term. The Wireline Competition Bureau will generally review such requests on a case-by-case basis, and may grant an extension for up to six months after finding that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term. The Wireline Competition Bureau may grant more than one extension request to a recipient if circumstances warrant.

87. The Commission acknowledges that there are circumstances that may increase the difficulty of a Reimbursement Program participant's ability to complete removal, replacement, and disposal within the one-year term. For example, the Commission understands that some replacement options, such as O-

RAN or virtual RAN, may require additional time for system integration. For program participants choosing an O-RAN or virtual RAN replacement option, the Commission directs the Wireline Competition Bureau, when evaluating an extension request, to consider the high likelihood of additional time needed as a significant factor favoring an extension. Additionally, the Commission understands the concern some commenters raise regarding the availability of replacement technology and semiconductors. USTelecom requests that the Commission acknowledge that the current shortage of semiconductors could impact the availability of replacement equipment, thereby warranting a waiver. NTCA highlights delays in obtaining equipment that are impacting providers of all sizes, but especially smaller providers who are forced to further compete with larger operators for labor and equipment. The Commission agrees 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. A commenter raised another potential factor that may delay completion within the one-year term. Union Telephone Company argues that providers of advanced communications service may need to modify or replace their outdated network infrastructure, including cellular towers, to comply with current structural standards, which will also require federal permitting approval. The Commission directs the Wireline Competition Bureau to consider delays in federal permitting as one potential factor to consider when reviewing requests for extensions of time.

88. Vantage Point Solutions also identifies possible delays caused by equipment availability, weather considerations for construction, and cash flow and replacement funding distribution timing that may specifically impact providers in Alaska. It asks the Commission to consider extensions of time for these providers to complete the removal, replacement, and disposal of covered equipment beyond the term set by the Reimbursement Program.

89. The Commission acknowledges that certain locations will have challenges meeting the term deadline due to weather or other issues. The Commission further recognizes that the claims raised by USTelecom and others regarding the availability of semiconductors are valid, and that certain situations may impact smaller or rural providers such that they are unable to meet the timing requirements for removal, replacement, and disposal through the Reimbursement Program. The examples included in this item are not an exhaustive list of factors that the Wireline Competition Bureau will consider in the event a

provider files an individual extension request. The Commission directs the Wireline Competition Bureau to consider all factors included in an individual extension request when evaluating the request. Additionally, the Commission directs the Wireline Competition Bureau to review individual extension requests on a case-by-case basis. As the Commission found in the *2020 Supply Chain Order*, however, the Secure Networks Act authorizes the Commission to grant extensions of time to allow providers of advanced communications services to complete the removal, replacement, and disposal of covered communications equipment and services, either as a “general” six-month extension to all recipients of reimbursement funding, or as individual extensions on a case-by-case basis. In the event circumstances regarding the availability of equipment do not improve, or if there is sufficient justification to warrant an extension, such information may influence the Wireline Competition Bureau’s consideration of a six-month extension, whether for all program participants or on an individual, case-by-case basis.

90. *General Extension.* The Secure Networks Act authorizes the Commission to grant a six-month extension of the removal, replacement, and disposal term deadline “to all recipients of reimbursements . . . if the Commission finds that the supply of replacement communications equipment or services needed by the recipients to achieve the purposes of the [Reimbursement] Program are inadequate.” Several commenters have recommended that the Commission proactively grant this six-month general extension immediately, citing supply chain and labor shortages and the potential non-availability of semiconductors due to the impacts of the COVID-19 pandemic and the increased demand for scarce resources driven by the requirement to remove, replace, and dispose of covered communications equipment and services. However, the Commission finds such requests to extend a deadline that is not yet established premature, and run counter to the intent of Congress of having a one-year removal, replacement, and disposal term. Accordingly, the Commission rejects these requests.

91. *Removal, Replacement and Disposal Term – Reimbursement Claims.* The Commission clarifies that only reasonable expenses incurred before the expiration of the removal, replacement, and disposal term are eligible for reimbursement. Reimbursement Program participants have one year from the initial disbursement to complete the permanent removal, replacement, and disposal of covered communications equipment or services. As a result, program participants may only submit reimbursement claims for costs incurred within one year of the initial disbursement date. If a program

participant requests, and the Wireline Competition Bureau grants, a term extension according to its rules, all reimbursement claims must cover eligible expenses incurred prior to the term end date as adjusted by the granted extension. Any expenses incurred after the term ends will be ineligible for reimbursement. Additionally, any expenses incurred while an individual extension request is pending will not be reimbursable if the request is ultimately denied and the expenses were incurred outside of the one-year term.

92. *Final Certification Update Timing.* Within 10 days following the expiration of the removal, replacement, and disposal term, Reimbursement Program recipients are required to file a final certification with the Commission indicating, among other things, whether or not the recipient has fully complied with all terms of program participation. Program participants stating in their final certification that they have not “fully complied” are then required by both the Secure Networks Act and the *2020 Supply Chain Order* to file an updated final certification “when the recipient has fully complied.” Both the Secure Networks Act and the *2020 Supply Chain Order* are silent as to a deadline for filing the final certification update.

93. Program participants are required to complete the permanent removal, replacement, and disposal of the equipment or services, and thus the terms of program participation, before the expiration of the removal, replacement, and disposal term. The Commission recognizes that unforeseen delays may extend the removal, replacement, and disposal process beyond the one-year term, and the Commission expects program participants who anticipate they will not complete removal, replacement, and disposal by the end of their term will request an individual extension from the Wireline Competition Bureau before the end of that term.

94. If a program participant fails to timely submit a final certification, the program participant may be subject to forfeitures as provided for under the Communications Act of 1934, as amended. Further, if a program participant files a final certification indicating that it has not “fully complied” with the terms of the program, but subsequently fails to file an updated final certification indicating full compliance within 60 days after the final certification deadline, the program participant may be subject to forfeitures as provided for under the Communications Act of 1934, as amended. Additionally, program participants found in violation of the Secure Networks Act, the Commission’s rules implementing the

statute, or the commitments made by the recipient in the application for reimbursement may be: (1) required to repay reimbursement funds; (2) barred from further participation in the Reimbursement Program; (3) referred to all appropriate law enforcement agencies or officials for further action under applicable criminal and civil law; and (4) barred from participation in other programs of the Commission, including the Federal universal service support programs established under section 254 of the Communications Act of 1934, as amended. The aforementioned penalties are within the Commission's jurisdiction. The Commission notes that applicants that commit fraud may separately be subject to the False Claims Act or other legal action as provided by existing statutes.

95. *Final Spending Report Timing.* Under the Reimbursement Program rules, program recipients must file their final spending report after the final certification. The Commission was silent, however, as to the deadline for filing the final spending report. The Commission clarifies the timeframe and expect program participants to submit the final spending report no later than 60 days following the expiration of the program participant's reimbursement claim deadline. If a program participant has not submitted a final spending report within 60 days of the expiration of the reimbursement claim deadline, the matter may be referred to the Enforcement Bureau for further investigation.

96. *Accounting for Removal, Replacement, and Disposal of Covered Equipment.* Some program participants participating in other funding programs or subject to rate regulation could receive duplicate recovery for support received from the Reimbursement Program for network changes. As a result, the Commission clarifies provider requirements with respect to maintaining books of account using the Uniform System of Accounts contained in Part 32 of the Commission's rules (USOA carriers). To the extent a USOA carrier has purchased and installed covered equipment, that equipment should currently be recognized as an investment in the USOA carrier's telecommunications plant and subject to retirement and depreciation rules which require the carrier to establish estimated lives and ratable depreciation of the assets. Because the Commission is requiring recipients of reimbursement funds under the Reimbursement Program and ETCs receiving USF support to remove and replace from their network and operations environments equipment and services included on the Covered List, and as defined in the *2019 Supply Chain Order* or as designated pursuant to section 54.9 of the Commission's rules and in the *Designation Orders*, the Commission also must address the accounting treatment of USOA carriers'

retirement of covered equipment.

97. To ensure consistent accounting treatment, and to prevent the removal, replacement, and disposal of covered equipment by USOA carriers from unduly depleting such carriers' depreciation reserve, such carriers may treat the removal, replacement and disposal of covered equipment as an "extraordinary retirement," subject to the amortization schedule that the Commission provides below. For an event to be considered an extraordinary retirement, it must satisfy three requirements: (1) the impending retirement was not adequately considered in setting past depreciation rates; (2) the charging of the retirement against the reserve will unduly deplete that reserve; and (3) the retirement is unusual such that similar retirements are not likely to recur in the future.

98. The Commission finds that the first and third of these requirements are met for retirements made in accordance with the *2019 Supply Chain Order*. Carriers that purchased covered equipment could not have anticipated that the Commission and Congress would require retirement of covered equipment and that Congress would make reimbursement funds available to replace covered equipment. As a result, early retirements resulting from Commission and congressional action were not and could not have been considered in setting past depreciation rates. Furthermore, given the unusual circumstances that led to these retirements, it is highly unlikely that similar retirements will occur again in the future.

99. Regarding the second prong, the question of whether charging a retirement against a particular carrier's reserve would unduly deplete that reserve is normally determined on a case-by-case basis. The retirements at issue here, however, are compulsory, and the Commission finds that conducting case-by-case reviews for each carrier would be unduly burdensome for the Commission and for the carriers, particularly given the critical importance of these retirements for ensuring the security of the nation's infrastructure. Accordingly, on its own motion, the Commission finds there is good cause to waive the second prong to allow a USOA carrier to treat the retirements required by this docket as extraordinary retirements. The Commission therefore establishes a uniform process for addressing significant reserve deficiencies.

100. As part of this process, the Commission directs USOA carriers that take advantage of the waiver to credit Account 3100, Accumulated Depreciation, and charge Account 1438, Deferred Maintenance, retirements and other deferred charges, with the unprovided-for loss in service value

resulting from the actions the Commission has taken in this docket. The amount of the unprovided-for loss in service value is recorded in Account 1438 and shall be amortized to Account 6561, Depreciation expense—Telecommunications plant in service, or Account 6562, Depreciation expense—property held for future telecommunications use. This treatment will reflect the amortization of the amounts in Account 1438 as depreciation expenses, thereby allowing carriers to include those amounts in their revenue requirement.

101. The asset category for the type of equipment subject to removal, replacement, and disposal is largely circuit equipment, and has an expected life in the 10-year range. To mitigate the effects of any excess depletion in the depreciation expense, the Commission waives its rules to allow carriers to use the following amortization schedules for covered equipment they are required to retire. First, if the expected remaining service life of the covered equipment being retired is two years or less, a USOA carrier may amortize one-half of the balance from Account 1438 each of the next two years. Second, if the covered equipment being retired has an expected remaining service life of between three and five years, the USOA carrier may amortize one-third of the balance from Account 1438 each of the next three years. If the covered equipment being retired has an expected remaining service life of more than six years, the USOA carrier will may amortize one-fourth of the balance from Account 1438 each of the next four years.

102. *Accounting for Reimbursement.* The Reimbursement Program will reimburse providers for some or all of the costs of removal, replacement, and disposal of covered communications equipment or services. The Commission clarifies that, consistent with the limitation on reimbursements, USOA carriers should account for reimbursed amounts as contributions by crediting the asset account charged with the reimbursed amount of the plant or equipment. This accounting treatment is appropriate because the contributions are not investor-supplied funds and should not be accorded a return on investment. This approach also conforms with the treatment of contribution to capital addressed in section 32.2000(a)(2) of the Commission's rules, and is consistent with how the accounting was handled for support payments awarded in the 2012 BTOP/BIP stimulus funding.

103. *Delegation to the Office of the Managing Director.* In the *2020 Supply Chain Order*, the Commission directed OMD to develop a system to audit the Reimbursement Program. In this *Third*

Report and Order, the Commission delegates financial oversight of the Reimbursement Program to the Commission's Office of the Managing Director and direct OMD to work in coordination with the Wireline Competition Bureau to ensure that all financial aspects of the program have adequate internal controls. These duties fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance. Such financial oversight must be consistent with this *Third Report and Order* and the rules adopted in the *2020 Supply Chain Order*. OMD performs this role with respect to the Universal Service Administrative Company's administration of the Commission's Universal Service programs, the COVID-19 Telehealth program, and the Emergency Broadband Benefit Program, and the Commission anticipates that OMD will leverage existing policies and procedures, to the extent practicable and consistent with section 904, to ensure the efficient and effective management of the program. Finally, the Commission notes that OMD is required to consult with the Wireline Competition Bureau on any policy matters affecting the program, consistent with section 0.91(a) of the Commission's rules. OMD, in coordination with the Wireline Competition Bureau, may issue additional directions to Program Administrator Ernst and Young LLC (Ernst & Young) and program participants in furtherance of its responsibilities.

G. Cost-Benefit Analysis

104. Based on presently available information obtained from the 2019 information collection, the Commission estimated the cost of the removal, replacement, and disposal of Covered List equipment and services subject to the *Designation Orders* and the process set forth in the *2019 Supply Chain Order* to be \$1.62 billion for ETCs with two million or fewer customers, and at least \$1.837 billion for providers with 10 million or fewer customers. As the Commission recognized in the *Information Collection Results Public Notice*, there may be "other providers of advanced communications [who] may not have participated in the information collection and yet still [are] eligible for reimbursement under the terms of [the Secure Networks] Act." Though Congress appropriated \$1.895 billion to the Reimbursement Program in the CAA, it also expanded the eligibility criteria for participation in the Reimbursement Program. The Commission does not have cost estimates for the cost of the removal, replacement, and disposal of eligible equipment for the entire potential pool of eligible providers.

105. Nevertheless, this *Third Report and Order* implements requirements from the CAA, and

the Commission has no discretion to ignore such congressional direction. The Commission also concludes that even if the total replacement cost exceeds the \$1.837 billion reported by providers with 10 million or fewer customers, that cost will be far exceeded by the benefits obtained in addressing the important national security concerns posed by the equipment and services eligible for reimbursement. The \$1.895 billion reimbursement appropriation suggests that Congress anticipated great costs and even greater benefits would be generated by the Secure Networks Act. As the Commission explained in the *2019 Supply Chain Order*, the benefits of removing covered equipment and services “extend to [hard] to quantify matters, such as preventing untrustworthy elements in the communications network from impacting its nation’s defense, public safety, and homeland security operations, its military readiness, and its critical infrastructure, let alone the collateral damage such as loss of life that may occur with any mass disruption to its nation’s communications networks.” Any increasing costs due to the CAA’s expansion of the eligibility criteria for participation in the Reimbursement Program will be exceeded by the benefits of removing, replacing, and disposing of even more insecure equipment and services from U.S. networks.

III. PROCEDURAL MATTERS

106. *Paperwork Reduction Act of 1995 Analysis.* This document does not contain modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

107. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Third Report and Order* on small entities.

108. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Third Further Notice of Proposed Rulemaking (*2021 Supply Chain Further Notice*) in this proceeding. The Commission sought written

comment on the proposals in the *2021 Supply Chain Further Notice*, including comment on the accompanying IRFA. The present Final Regulatory Flexibility Analysis (FRFA) addresses comments received on the IRFA and conforms to the RFA.

A. Need for, and Objectives of, the Rules

109. As directed by the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act) and the Consolidated Appropriations Act, 2021 (CAA), and in light of increasing concern about ensuring communications supply chain integrity, and consistent with its obligation to be responsible stewards of the public funds used in Universal Service Fund (USF) programs, this *Third Report and Order* adopts rules to modify the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) according to sections 901 and 906 of the CAA.

110. Specifically, the Commission increases the eligibility cap to allow providers of advanced communications services with 10 million or fewer customers to participate in the Reimbursement Program. Additionally, the Commission modifies the equipment and services eligible for reimbursement through the Reimbursement Program and amends its rules to allow Reimbursement Fund participants to use such funds to remove, replace, or dispose of equipment or services from the Covered List that are defined in the *2019 Supply Chain Order* or subject to the *Designation Orders* and the process for designating companies that pose a national security threat to the integrity of communications networks or the communications supply chain, as set forth in the *2019 Supply Chain Order*, and were purchased, rented, leased, or otherwise obtained on or before June 30, 2020. The Commission also alters its prioritization scheme that will guide fund allocation if demand for reimbursement funds exceeds the \$1.895 billion appropriated by Congress. The new prioritization scheme will first fund reimbursement claims from eligible providers with two million or fewer customers. Next, it will fund claims from approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services. Last, it will fund eligible providers with 10 million or fewer customers. The Commission also alters the definition of “provider of advanced communications services” to mirror the definition provided in the CAA. Finally, the Commission clarifies (1) the “costs reasonably incurred” standard adopted for determining eligible reimbursement expenses with technology upgrades; (2) the initial application filing window; (3) the consideration of

requests for individual extensions of the removal, replacement, and disposal term; (4) additional expectations for and obligations of Reimbursement Program participants regarding reimbursement claim requests and the filing of final spending reports and final certification updates; (5) the process by which to account for removal, replacement, and disposal of covered equipment and services; (6) parameters when accounting for reimbursement funds; and (7) delegation of financial oversight to the Office of the Managing Director (OMD).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

111. No comments were filed in response to the IRFAs. However, parties did file comments addressing the impact of some proposals on small entities.

112. The Competitive Carriers Association supports the Commission’s adoption of the prioritization scheme expressly provided for in the CAA. CCA argued that “[t]hose provider with 2 million or fewer customers include the small and rural carriers that serve some of the most remote and expensive areas of the country and are bridging the digital divide by bringing service to places where there would not be a business case to offer service absent support Loss of funding would have an immediate and detrimental effect on the carriers’ ability to provide services and, thus, access to rural America.” Mediacom supports the Commission’s new prioritization schedule because “those providers need the greatest assistance because they have more limited resources.” NTCA agrees, writing that “[s]maller providers already operate on razor thin margins; adding the financial cost of replacing existing equipment outside of its normal upgrade cycle or losing universal service funding would be a crushing burden.” While some commenters quibble about additional prioritization categories, there is broad support in the record for offering first priority to Reimbursement Program funding to those providers with two million or fewer customers. The Commission agrees and finds that its new prioritization paradigm will target those smaller providers who are most affected by any remove-and-replace requirement.

113. Northern Michigan University (NMU) supports the Commission’s decision to “modify the acceptable use of reimbursement funds for the removal, replacement, and disposal of covered equipment obtained prior to July 1, 2020” NMU writes that “[m]oving the eligible replacement equipment date to June 30, 2020 accounts for the additional expenses providers have incurred in maintaining robust internet services to customers and ensures that these systems will be replaced with

more modern, secure facilities.” NMU also believes that this action will help smaller providers who “often lack the cash reserves typically required for large construction projects. In the case of Supply Chain wholesale equipment replacement, portions of systems deemed ineligible for replacement funds may delay their replacement until the required finances are available.” Mark Twain Communications Company also supports this action because “the costs associated with the replacement of existing networks equipment which in the future is determined to violate the proposed rule imposes a significant and unreasonable financial burden on rural telecommunications companies.”

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

114. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

115. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

116. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted pursuant to the *Third Report and Order*. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

117. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Its actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of

Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

118. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

119. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

120. Small entities potentially affected by the rules herein include eligible schools and libraries, eligible rural non-profit and public health care providers, and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for telecommunications and broadband networks.

1. Schools and Libraries

121. As noted, “small entity” includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school, that provides elementary education, as determined under state law.” A secondary

school is generally defined as “a non-profit institutional day or residential school . . . , that provides secondary education, as determined under state law,” and not offering education beyond grade 12. A library includes “(1) [a] public library; (2) [a] public elementary school or secondary school library; (3) [a]n academic library; (4) [a] research library . . . ; and (5) [a] private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.” For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools having \$12 million or less in annual receipts, and libraries having \$16.5 million or less in annual receipts, as small entities. In funding year 2007, approximately 105,500 schools and 10,950 libraries received funding under the schools and libraries universal service mechanism. Although the Commission is unable to estimate with precision the number of these entities that would qualify as small entities under SBA’s size standard, the Commission estimates that fewer than 105,500 schools and 10,950 libraries might be affected annually by its action, under current operation of the program.

2. Healthcare Providers

122. *Offices of Physicians (except Mental Health Specialists).* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of \$12 million or less. According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry. Of that number, 147,718 had annual receipts of less than \$10 million, while 3,108 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms operating in this industry are small under the applicable size standard.

123. *Offices of Physicians, Mental Health Specialists.* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of

Osteopathy) primarily engaged in the independent practice of psychiatry or psychoanalysis. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of \$12 million dollars or less. The 2012 U.S. Economic Census indicates that 8,809 firms operated throughout the entire year in this industry. Of that number 8,791 had annual receipts of less than \$10 million, while 13 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small under the applicable standard.

124. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry. The SBA has established a size standard for that industry of annual receipts of \$8 million or less. The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year. Of that number 114,417 had annual receipts of less than \$5 million, while 651 firms had annual receipts between \$5 million and \$9,999,999. Based on this data, the Commission concludes that a majority of business in the dental industry are small under the applicable standard.

125. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less. The 2012 U.S. Economic Census statistics show that in 2012, 33,940 firms operated throughout the entire year. Of that number 33,910 operated with annual receipts of less than \$5 million per year, while 26 firms had annual receipts between

\$5 million and \$9,999,999. Based on this data, the Commission concludes that a majority of chiropractors are small.

126. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses. The SBA has established a size standard for businesses operating in this industry, which is annual receipts of \$8 million or less. The 2012 Economic Census indicates that 18,050 firms operated the entire year. Of that number, 17,951 had annual receipts of less than \$5 million, while 70 firms had annual receipts between \$5 million and \$9,999,999. Based on this data, the Commission concludes that a majority of optometrists in this industry are small.

127. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has created a size standard for this industry, which is annual receipts of \$8 million or less. The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year. Of that number, 15,894 firms received annual receipts of less than \$5 million, while 111 firms had annual receipts between \$5 million and \$9,999,999. Based on this data, the Commission concludes that a majority of mental health practitioners who do not employ physicians are small.

128. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the

following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less. The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year. Of this number, 20,047 had annual receipts of less than \$5 million, while 270 firms had annual receipts between \$5 million and \$9,999,999. Based on this data, the Commission concludes that a majority of businesses in this industry are small.

129. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for businesses in this industry, which is annual receipts of \$8 million or less. The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year. Of that number, 7,545 firms had annual receipts of less than \$5 million, while 22 firms had annual receipts between \$5 million and \$9,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

130. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less. The 2012 U.S. Economic

Census indicates that 11,460 firms operated throughout the entire year. Of that number, 11,374 firms had annual receipts of less than \$5 million, while 48 firms had annual receipts between \$5 million and \$9,999,999. Based on this data, the Commission concludes the majority of firms in this industry are small.

131. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy. The SBA has established a size standard for this industry, which is annual receipts of \$12 million or less. The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year. Of that number 1,237 had annual receipts of less than \$10 million, while 36 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that the majority of firms in this industry is small.

132. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary. The SBA has established a size standard for this industry, which is \$16.5 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year. Of that number, 4,069 had annual receipts of less than \$10 million while 286 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

133. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies. The SBA has

established a size standard for this industry, which is \$35 million or less in annual receipts. The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year. Of that number, 5 firms had annual receipts of less than \$25 million, while 1 firm had annual receipts between \$25 million and \$99,999,999. Based on this data, the Commission concludes that approximately one-third of the firms in this industry are small.

134. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (e.g., orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (e.g., setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment. The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less. The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year. Of that number, 3,222 firms had annual receipts of less than \$10 million, while 289 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

135. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (i.e., Doctor of Medicine and Doctor of Dental Medicine) are included in this industry. The SBA has established a size standard for this industry, which is annual receipts of \$22 million or less. The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year. Of this number, 4,269 firms had annual receipts of less than \$10 million, while 389 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

136. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs. The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less. The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year. Of that number, 235 operated with annual receipts of less than \$25 million, while 41 firms had annual receipts between \$25 million and \$49,999,999. Based on this data, the Commission concludes that approximately three-quarters of firms that operate in this industry are small.

137. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks). The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less. The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year. Of that number, 2,318 had annual receipts of less than \$10 million, while 56 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of the firms in this industry is small.

138. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less. The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year. Of this number, 2,465 had annual receipts of less than \$25 million, while 60 firms had annual receipts between \$25 million and \$49,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

139. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner. The SBA has established size standard for this industry, which is annual receipts of \$16.5 million or less. The 2012 U.S. Economic Census indicates that 4,209 firms operated in

this industry throughout the entire year. Of that number, 3,876 firms had annual receipts of less than \$10 million, while 228 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

140. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less. The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year. Of that number, 16,822 had annual receipts of less than \$10 million, while 590 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

141. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel. The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less. The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year. Of that number, 2,926 had annual receipts of less than \$15 million, while 133 firms had annual receipts between \$10 million and \$24,999,999. Based on this data, the Commission concludes that a majority of firms in this industry is small.

142. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services. The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less. The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year. Of that number, 379 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999. Based on this data, the Commission concludes that a majority of firms in this

industry are small.

143. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services. The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less. The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year. Of that number, 877 has annual receipts of less than \$25 million, while 400 firms had annual receipts between \$25 million and \$49,999,999. Based on this data, the Commission concludes that approximately one-quarter of firms in this industry are small.

144. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less. The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year. Of that number, 185 had annual receipts of less than \$25 million, while 107 firms had annual receipts between \$25 million and \$49,999,999. Based on this data, the Commission concludes that more than one-half of the firms in this industry are small.

145. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services. The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less. The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year. Of that number, 146 firms had annual receipts of less than \$25 million, while 79 firms had annual receipts between \$25 million and \$49,999,999. Based on this data, the Commission concludes that more than one-half of the firms in this industry are small.

146. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (e.g., wars). The SBA has established a size standard for this industry which is annual receipts of \$35 million or less. The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year. Of that number, 509 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999. Based on this data, the Commission concludes that a majority of firms in this industry are small.

3. Providers of Telecommunications and Other Services

a. Telecommunications Service Providers

147. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012

indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

148. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

149. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000

employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

150. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus under this size standard, the Commission estimates that the majority of firms in this industry are small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of operator service providers are small entities.

151. *Local Resellers*. The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities.

152. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

153. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over Internet protocol (VoIP) services; wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

154. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises

establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

155. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018, there are 265 Cellular licensees that will be affected by its actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

156. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

157. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

158. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by its action can be considered small.

b. Internet Service Providers

159. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data,

text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

160. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

c. Vendors and Equipment Manufacturers

161. *Vendors of Infrastructure Development or "Network Buildout."* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are "Radio and Television Broadcasting and Wireless Communications Equipment" with a size standard of 1,250 employees or less and "Other Communications Equipment Manufacturing" with a size standard of 750 employees or less." U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for the year. Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concludes that the majority of Vendors of Infrastructure Development or "Network

Buildout” are small.

162. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

163. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

164. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees.

U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concludes that the majority of Other Communications Equipment Manufacturers are small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

165. *Requirement to Remove and Replace Covered Equipment and Services.* The *Third Report and Order* increases the pool of participants in the Reimbursement Program from those providers of advanced communications services with two million or fewer customers to those with 10 million or fewer customers, but does not change any reporting requirements adopted in previous Commission orders.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

166. The RFA requires an agency to describe the steps the agency has taken to minimize the significant economic impact on small entities of the final rule, consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons in support of the final rule, and why any significant alternatives to the rule considered by the agency and which affect the impact on small entities were rejected.

167. All of the rules in the *Third Report and Order* are adopted pursuant to statutory obligation under the CAA. However, where the Commission has discretion in its interpretation or implementation of the CAA provisions, or adopts rules pursuant to alternative statutory authority, the scope of the rules is narrowly tailored so as to lessen the impact on small entities. The rules adopted in the *Third Report and Order* appropriately consider the burdens on smaller providers against the Commission's goal of protecting its communications networks and communications supply chain from communications equipment and services that pose a national security threat, while facilitating the transition to safer and more secure alternatives.

G. Report to Congress

168. The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission

will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.

169. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Third Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

IV. ORDERING CLAUSES

170. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 201(b), 214, 254, 303(r), 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201(b), 214, 254, 303(r), 403, 503, sections 2, 3, 4, 5, 7 and 9 of the Secure Networks Act, 47 U.S.C. 1601, 1602, 1603, 1604, 1606, and 1608, Division N, Title IX, sections 901 and 906 of the Consolidated Appropriations Act, 2021, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1 and 1.412, this Third Report and Order IS ADOPTED.

171. IT IS FURTHER ORDERED that Parts 1 and 54 of the Commission's rules ARE AMENDED as set forth below.

172. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this Third Report and Order SHALL BE EFFECTIVE [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

173. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Third Report and Order to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

174. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs, Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications, Communications equipment, Internet, Telecommunications.

47 CFR Part 54

Communications common carriers, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION

Marlene. Dortch,
Secretary.

Final Rules

For the reasons set forth above, part 1 of title 47 of the Code of Federal Regulations is amended as follows:

Part 1 – Practice and Procedure

The authority citation for part 1 continues to read as follows:

1. Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.
2. Section 1.50004 is amended by:
 - a. Revising paragraphs (a) introductory text, (a)(1), (a)(2) (f) introductory text, (i)(1)(i), and (ii), and adding paragraph (q) to read as follows:

§ 1.50004 Secure and Trusted Communications Networks Reimbursement Program

(a) *Eligibility.* Providers of advanced communications service with ten million or fewer customers are eligible to participate in the Reimbursement Program to reimburse such providers solely for costs reasonably incurred for the permanent replacement, removal, and disposal of covered communications equipment or services:

- (1) As defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19-121; WC Docket No. 18-89; adopted November 22, 2019 (in this section referred to as the ‘Report and Order’); or
- (2) As determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20-690; PS Docket No. 19-351; adopted June 30, 2020) (DA 20-691; PS Docket No. 19-352; adopted June 30, 2020) (in this section collectively referred to as the ‘Designation Orders’);

(f) *Prioritization of Support.* The Wireline Competition Bureau shall issue funding allocations in accordance with this section after the close of a filing window. After a filing window closes, the Wireline Competition Bureau shall calculate the total demand for Reimbursement Program support submitted by all eligible providers during the filing window period. If the total demand received during the filing window exceeds the total funds available, then the Wireline Competition Bureau shall allocate the available funds consistent with the following priority schedule:

Table 1 to paragraph (f)

Prioritization Schedule
<p>Priority 1</p> <p>Advanced communication service providers with 2 million or fewer customers.</p>
<p>Priority 2</p> <p>Advanced communications service providers that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service, as defined in Part 27, Subpart M of title 47, Code of Federal Regulations, or any successor regulation and health care providers and libraries providing advanced communications service.</p>
<p>Priority 3</p> <p>Any remaining approved applicants determined to be eligible for reimbursement under the Program.</p>

(i)*** (1) ***

(i) on or after publication of the Report and Order; or

(ii) in the case of any covered communications equipment that only became covered pursuant to the Designation Orders, June 30, 2020; or

(q) *Provider of Advanced Communications Services*. For purposes of the Secure and Trusted Communications Networks Reimbursement Program, the term “provider of advanced communications services” is defined as:

(1) A person who provides advanced communications service to United States customers; and includes:

(A) Accredited public or private non-commercial educational institutions, providing their own facilities-based educational broadband service, as defined in 47 CFR part 27, subpart M, or any successor regulation; and

(B) Health care providers and libraries providing advanced communications service.

(2) [Reserved].

Part 54 – Universal Service

3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601-1609, unless otherwise noted.

4. Section 54.11 is amended by revising paragraphs (b), (c), and (d) to read as follows:

(b) For the purposes of this section, covered communications equipment or services means any communications equipment or service that is on the Covered List maintained pursuant to § 1.50002 of this chapter, and:

(1) as defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19-121; WC

Docket No. 18-89; adopted November 22, 2019 (in this section referred to as the ‘Report and Order’); or

(2) as determined to be covered by both the process of the Report and Order and the Designation Orders

of the Commission on June 30, 2020 (DA 20-690; PS Docket No. 19-351; adopted June 30, 2020) (DA 20-691; PS Docket No. 19-352; adopted June 30, 2020) (in this section collectively referred to as the ‘Designation Orders’).

(c) The certification referenced in paragraph (a) of this section is required starting one year after the date the Commission releases a Public Notice announcing that applications are accepted for filing in the corresponding filing window of the Reimbursement Program per § 1.50004(b) for the removal, replacement, and disposal of associated covered communications equipment and services.

(d) Reimbursement Program recipients, as defined in § 1.50001(h) of this chapter, are not subject to paragraph (a) of this section until after the expiration of their corresponding removal, replacement, and disposal term per § 1.50004(h) of this chapter for associated covered communications equipment and services.

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