



PUBLIC NOTICE

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**WIRELINE COMPETITION BUREAU SEEKS COMMENT ON
THE APPLICABILITY OF SECTION 4 OF THE SECURE AND TRUSTED
COMMUNICATIONS NETWORKS ACT OF 2019 TO THE COMMISSION'S
RULEMAKING ON PROTECTING AGAINST NATIONAL SECURITY THREATS TO
THE COMMUNICATIONS SUPPLY CHAIN**

WC Docket 18-89

Comment Date: [[15 days after publication in the Federal Register]]

Reply Comment Date: [[30 days after publication in the Federal Register]]

With this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on how Section 4 of the recently enacted Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act),¹ signed into law on March 12, 2020, applies to proposals under consideration in the Commission's *Protecting Against National Security Threats to the Communications Supply Chain* rulemaking and related proceedings.²

On November 26, 2019, the Commission adopted the *Report and Order*, which prohibits the use of Universal Service Fund support to purchase equipment or services from any company identified as posing a national security risk to communications networks or the communications supply chain.³ In the *Report and Order*, the Commission also initially designated Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE), and their subsidiaries, parents, or affiliates, as companies that may pose such a risk to the communications networks and supply chain, and established a process for future designations of other companies posing such a risk.⁴ In the *Further Notice of Proposed Rulemaking*, the Commission sought comment on a reimbursement program proposal that would require eligible telecommunications carriers (ETCs)

¹ Pub. L. 116-124, 133 Stat. 158 (2020) (Secure Networks Act).

² The Public Safety and Homeland Security Bureau previously sought comment on the effect of the Secure Networks Act on the initial designation proceedings of Huawei and ZTE. See *Public Safety and Homeland Security Bureau Seeks Comment on Applicability of Secure and Trusted Communications Networks Act of 2019 to Initial Designation Proceedings of Huawei and ZTE*, PS Dockets 19-351, 19-352, Public Notice, DA 20-267 (PSHSB Mar. 13, 2020).

³ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11433, para. 26 (2019) (*Report and Order, Further Notice of Proposed Rulemaking, and Information Collection Order*).

⁴ See *id.* at 11438-48, paras. 43-63.

to remove and replace communications equipment and services from finally designated companies in their networks and would reimburse ETCs for the cost of doing so.⁵ Finally, in the *Information Collection Order*, the Commission required ETCs, and their subsidiaries or affiliates, to report whether they had Huawei or ZTE equipment in their networks and to estimate the cost to replace such equipment.⁶

Reimbursement Program. Section 4 of the Secure Networks Act is largely consistent with the Commission’s proposals in the *Further Notice of Proposed Rulemaking*, which proposed a reimbursement program for ETCs to replace potentially prohibited equipment and services. Section 4 directs the Commission to establish a reimbursement program for “providers of advanced communications service” replacing covered communications equipment or services.⁷ The legislation, *inter alia*, limits program eligibility to providers with two million or fewer customers and restricts funding to the permanent replacement of covered equipment and services obtained before August 14, 2018 so long as the equipment and services replaced are identified as “covered” on the initial list issued by the Commission pursuant to Section 2 of the Secure Networks Act.⁸ If equipment or services are subsequently added to the initial list, then providers may use the funds to replace equipment and services obtained no more than 60 days after the date the equipment or services were added to the list.⁹ We seek comment on whether the Commission should modify the reimbursement program proposed in the *Further Notice of Proposed Rulemaking* to implement these new statutory requirements. Commenters should also specifically address how the Commission should interpret “providers of advanced communications service.”¹⁰

The Secure Networks Act directs the Commission on how to structure the reimbursement program application filing and review process, and describes a process that largely resembles the application process proposed in the *Further Notice of Proposed Rulemaking*.¹¹ Specifically, under the statute, the Commission must: (1) require applicants to provide initial reimbursement cost estimates; (2) act on applications within 90 days of submission unless a 45 day extension is warranted; (3) provide applicants an opportunity to cure a deficiency; (4) require certifications as to the applicant’s plan and timeline; and (4) “make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants.”¹² We seek comment on any modifications the Commission should apply to the process proposed in the *Further Notice of Proposed Rulemaking*, if any, to implement these requirements.

⁵ *Id.* at 11470-71, para. 122.

⁶ *Id.* at 11481-82, paras. 162-67.

⁷ *See* Secure Networks Act § 4.

⁸ *Id.* at § 4(b)-(c). Section 2 of the Secure Networks Act requires the Commission to “publish on its website a list of covered equipment and services,” based on “determinations” by other statutes or agencies and features of the equipment. *See id.* at § 2.

⁹ *Id.* at § 4(c); *see also* § 9(1) (stating the term “advanced communications service” means the same as “advanced telecommunications capability in section 706 of the Telecommunications Act of 1996 (47 U.S.C. [§] 1302)”).

¹⁰ *See id.* at § 9(10) (defining “provider of advanced communications service” as “a person who provides advanced communications service to United States customers”).

¹¹ *Id.* at § 4(d)(2)-(5); *Further Notice of Proposed Rulemaking*, 34 FCC Rcd at 11478-79, paras. 149-50.

¹² Secure Networks Act § 4(d)(2)-(5).

The statute also requires program recipients to complete the “removal, replacement, and disposal of any covered communications equipment or services” within one year after the Commission distributes reimbursement funds to the recipient.¹³ The Commission can, however, grant a six month general extension of time to all recipients and individual extensions for up to six months “if the Commission finds that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal.”¹⁴ What challenges, if any, will carriers face in replacing equipment and services in the timeframes required by the Secure Networks Act? Is the Commission able to grant both general and individual extensions under the statute or does the grant of a general extension prohibit us from granting additional individual extensions? Can the Commission grant multiple extensions to an individual recipient if the circumstances warrant such action? Separately, if the Commission proceeds with having a reimbursement process similar to the one used in the broadcast incentive auction proceeding, how would the deadline for completing the removal and replacement process be structured if the Commission uses initial disbursement allocations based on cost estimates before actually issuing support payments as expenses are incurred?¹⁵

The statute requires the Commission to include disposal requirements for covered equipment that “prevent such equipment or services” from being used in other providers’ networks.¹⁶ The Secure Networks Act mandates that reimbursement recipients provide regular status updates to the Commission and that these status updates be posted on the Commission’s website.¹⁷ The statute further requires that the Commission take “all necessary steps” to prevent waste, fraud, and abuse, including by conducting audits and random field investigations of recipients and by requiring recipients to provide regular reports on how they have spent reimbursement funds.¹⁸ We seek comment on these provisions and the extent of the changes needed, if any, to the proposals in the *Further Notice of Proposed Rulemaking* to implement the legislation.

The reimbursement program created by the Secure Networks Act appears to require an express appropriation from Congress. The Secure Networks Act, however, does not provide funding for the reimbursement program and states that the program must be “separate from any Federal universal service program established under section 254 of the Communications Act of 1934, as amended.”¹⁹ We seek comment on our reading of these provisions.

List of Suggested Replacements. Section 4(d)(1) of the Secure Networks Act directs the Commission to “develop a list of suggested replacements of both physical and virtual communications equipment, applications and management software, and services or categories of replacements of both physical and virtual communications equipment, applications and management software, and services.”²⁰ The list must be “technology neutral and may not

¹³ *Id.* at § 4(d)(6)(A).

¹⁴ *Id.* at § 4(d)(6)(B)-(C).

¹⁵ *See Further Notice of Proposed Rulemaking*, 34 FCC Rcd at 11478, para. 149.

¹⁶ *See* Secure Networks Act § 4(d)(7).

¹⁷ *Id.* at § 4(d)(8).

¹⁸ *Id.* at § 4(e).

¹⁹ *Id.* at § 4(j).

²⁰ *Id.* at § 4(1)(A).

advantage the use of reimbursement funds for capital expenditures over operational expenditures, to the extent that the Commission determines that communications services can serve as an adequate substitute for the installation of communications equipment.”²¹

How should the Commission develop a list of suggested replacement communications equipment and services? What are possible sources of this information? How often should the Commission update this list? What is the most efficient method of seeking public input on appropriate equipment and services for this list? Can the list simply include all equipment and services from certain companies, or must it include the precise names of the equipment and services from those companies that are eligible for reimbursement? Should this list include suppliers of virtual network equipment and services?

Interested parties are invited to file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission. **Filings will not be accepted via hand or messenger delivery.**

- Commercial deliveries (not including those sent using the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service First-Class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice, 202-418-0432 (tty)).

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be

²¹ *Id.* at § 4(1)(B).

²² See 47 CFR §§ 1.1200 *et seq.*

found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).²³ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information, contact Brian Cruikshank of the Wireline Competition Bureau at (202) 418-3617 or brian.cruikshank@fcc.gov.

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²³ *Id.* § 1.1206(b).