

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Protecting Against National Security Threats to the
Communications Supply Chain Through FCC
Programs
WC Docket No. 18-89

ORDER

Adopted: September 22, 2023

Released: September 22, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses a Petition filed by Stealth Communications Services, LLC (Stealth) requesting an extension of its removal, replacement, and disposal term under the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). For the reasons stated below, the Bureau grants Stealth’s extension request pursuant to Commission rule 1.50004(h)(2). The Bureau thus extends the term for Stealth from September 29, 2023 to March 29, 2024, as requested.

II. BACKGROUND

2. As directed by the Secure and Trusted Communications Networks Act of 2019, as amended (Secure Networks Act), the Commission established the Reimbursement Program to reimburse providers of advanced communications services with ten million or fewer customers for reasonable costs incurred in the removal, replacement, and disposal of covered communications equipment or services from their networks that pose a national security risk, i.e., communications equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE), that were obtained by providers on or before June 30, 2020. The Reimbursement Program was later funded by a

1 Request of Stealth for Extension of Time, WC Docket No. 18-89 (filed Aug. 5, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1080531483482 (Stealth Petition).

2 47 CFR § 1.50004(h)(2) (explaining that “[t]he Wireline Competition Bureau may grant an extension for up to six months after finding that due to no fault of [a] recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the [removal, replacement, and disposal] term.”).

3 Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, § 4(a)-(c), 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–09) (defining “advanced communications services,” by reference to 47 U.S.C. § 1302(d)(1), as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology”). The Commission adopted rules implementing the Secure Networks Act on December 10, 2020. Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020) (2020 Supply Chain Order). On July 13, 2021, the Commission amended its rules, consistent with amendments to the Secure Networks Act included in the Consolidated Appropriations Act, 2021. Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, WC Docket No. 18-89, Third Report and Order, 36 FCC Rcd 11958, 11959, Appx. A (July 13, 2021) (2021 Supply Chain Order). The Commission later clarified that, for purposes of the Reimbursement Program, covered communications equipment or services is limited to the communications

(continued....)

\$1.9 billion congressional appropriation,⁴ less than the \$5.6 billion in collective funds requested by applicants.⁵ Because demand exceeded available funding, the Secure Networks Act required the Bureau to implement a prioritization scheme where funding was allocated first to approved applicants with 2,000,000 or fewer customers (Priority 1 applicants).⁶ Demand from Priority 1 applicants alone exceeded the congressional appropriation, and these applicants consequently received a partial, pro-rated funding allocation of approximately 39.5% of their reasonable and supported estimated costs for removing, replacing, and disposing of covered communications equipment and services.⁷

3. Consistent with the Secure Networks Act, the Commission's rules require that Reimbursement Program recipients complete the removal, replacement, and disposal of covered communications equipment and services within one year from the initial disbursement of funds to the recipient.⁸ Pursuant to section 4(d)(6)(C) of the Secure Networks Act, the Commission may grant recipients extensions of this term on an individual basis.⁹ The Commission delegated authority to the Bureau to grant or deny individual petitions for an extension.¹⁰ According to Commission rule 1.50004(h)(2), a recipient may petition the Bureau for an extension of time prior to the expiration of their term, and the Bureau "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."¹¹ The Commission noted that extensions will be granted only where a recipient "demonstrates the delay is due to factors beyond its control" and directed the Bureau "to be guided by the Commission's precedent in dealing with similar requests involving wireless facilities under section 1.946

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equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE) that were obtained by providers on or before June 30, 2020. *See 2021 Supply Chain Order*, 36 FCC Rcd at 11965, Appx. A; *see also generally Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, Order, 35 FCC Rcd 6604 (PSHSB 2020) (*Huawei Designation Order*); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633 (PSHSB 2020) (*ZTE Designation Order*).

⁴ 47 U.S.C. § 1603(k) ("In carrying out [the Reimbursement Program], the Commission may not expend more than \$1,900,000,000.").

⁵ *See Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, at 1-2 (WCB July 18, 2022) (*SCRIP Granted Applications Public Notice*) (explaining that "[e]ach applicant was required to include in its application estimates for the costs that it will reasonably incur for the permanent removal, replacement, and disposal of covered communications equipment and services" and identifying that, across all filed applications, applicants sought a total of "approximately \$5.6 billion in gross program support").

⁶ *See* 47 U.S.C. § 1603(d)(5)(C); *see also* 47 C.F.R. § 1.50004(f)(1) (requiring the Bureau to "issue full funding allocations for all eligible providers in the Priority 1 prioritization category before issuing funding allocations in any subsequent prioritization categories"); *SCRIP Granted Applications Public Notice* at 2-3.

⁷ *See* 47 CFR § 1.50004(f)(1) (stating that "[i]f there is insufficient funding to fully fund all requests in a particular prioritization category, then the Wireline Competition Bureau will pro-rate the available funding among all eligible providers in that prioritization category."); *see also SCRIP Granted Applications Public Notice* at 2-3 (noting that Priority 1 applicants received a pro-rated 39.5% share of their reasonable and supported estimated costs for carrying out their removal, replacement, and disposal).

⁸ *2020 Supply Chain Order*, 35 FCC Rcd at 14331, para. 169 (establishing a one-year timeline for removal, replacement, and disposal).

⁹ *See* Secure Networks Act § 4(d)(6)(C); *see also* 47 CFR § 1603(d)(6)(C).

¹⁰ 47 CFR § 1.50004(h)(2).

¹¹ *Id.*; *see also 2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173.

of the Commission's rules,"¹² which requires licensees of wireless spectrum to meet certain construction and coverage requirements within specified time periods.¹³

4. As of September 14, 2023, six recipients had filed requests for extension of their removal, replacement, and disposal term.¹⁴ Among these, Stealth has the earliest expiring removal, replacement, and disposal term. This Order addresses only Stealth's request, and the Bureau intends to address other filed extension requests through subsequent action.

5. *Stealth Petition.* On August 5, 2023, Stealth filed its petition in ECFS requesting an extension of its removal, replacement, and disposal term, from September 29, 2023 to March 29, 2024.¹⁵ Stealth requests that the Commission withhold portions of its petition from public inspection pursuant to sections 0.457 and 0.459 of the Commission's rules.¹⁶ In the petition, Stealth states that its progress has been delayed due to ongoing supply chain issues and issues related to {{ [REDACTED] }} and {{ [REDACTED] }}.¹⁷

6. Stealth claims that "[t]he supply chain has been slower than anticipated, . . . despite [its] best efforts to expedite the process."¹⁸ Specifically, Stealth claims that it is still awaiting {{ [REDACTED] }} from {{ [REDACTED] }} and notes that it is dependent {{ [REDACTED] }}.¹⁹ Stealth also claims that an extension is necessary due to two issues not directly related to supply chain or funding shortfall matters that require it to coordinate with third parties. Specifically, Stealth claims that the extension is required for it to complete "{{ [REDACTED] }}" and {{ [REDACTED] }} that {{ [REDACTED] }} our {{ [REDACTED] }} to {{ [REDACTED] }} with the {{ [REDACTED] }}," a process which it claims requires {{ [REDACTED] }} with multiple {{ [REDACTED] }}.²⁰ Second, Stealth states that its crews are engaged in {{ [REDACTED] }}

¹² *2020 Supply Chain Order*, 35 FCC Rcd at 14356, para. 173 and n.501 (citing 47 CFR § 1.946(e) (allowing for an extension of time "if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control" and establishing that requests will not be granted (1) "for failure to meet a construction or coverage deadline due to delays caused by a failure to obtain financing, to obtain an antenna site, or to order equipment in a timely manner"; (2) "because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization"; or (3) "solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct"))).

¹³ Section 1.946 is generally enforced when a wireless licensee has applied to build a microwave link. *See generally* 47 CFR § 1.946. *See also* 47 CFR § 1.946(a)-(b), (e) (describing requirements related to construction and coverage periods and deadlines). The rule permits the Wireless Telecommunications Bureau (WTB) to extend a licensee's construction or coverage period when the licensee shows that additional time is needed due to "causes beyond its control." *See* 47 CFR § 1.946(e)(1); *see also* 47 CFR § 1.946(e)(4). In determining whether to grant such requests, WTB looks to see if the delay is caused by circumstances beyond the licensee's control and whether the licensee has acted diligently.

¹⁴ The recipients are Stealth Communications, James Valley Cooperative Telephone Company, Mediacom Communications Corporation, Virginia Everywhere, LLC, NE Colorado Cellular Inc. and WorldCell Solutions, LLC.

¹⁵ *See generally* Stealth Petition. On August 5, 2023, Stealth filed its request in the Reimbursement Program Online Portal, available at <https://fccprod.servicenow.services.com/scrp>, and a redacted copy of the request in the Commission's Electronic Comment Filing System (ECFS).

¹⁶ Request of Stealth for Confidential Treatment, WC Docket No. 18-89 (filed Aug. 7, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/1080531483482>; *see also* Stealth Petition at 1.

¹⁷ Stealth Petition at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

}} additional {{ [REDACTED] }} and {{ [REDACTED] }}, which it claims needs to be coordinated with {{ [REDACTED] }} and {{ [REDACTED] }} to limit any downtime.²¹

III. DISCUSSION

7. We find that Stealth has established that supply chain issues have impacted it so 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” as set forth in Commission rule 1.50004(h)(2).²² We grant Stealth’s extension request on this ground. To the extent Stealth raises additional, independent bases in support of its request, we find it unnecessary to address their merits at this time.²³

8. Stealth explains that supply chain issues have rendered it unable to take specific necessary actions towards the completion of its removal, replacement, and disposal processes. In this regard, we recognize Stealth’s representations that it is “still awaiting {{ [REDACTED] }} from {{ [REDACTED] }}.”²⁴ We find this is a critical and vital aspect of a recipient’s removal, replacement, and disposal process and that the described supply chain issues are impeding the timely completion of that process.²⁵ Accordingly, we conclude that Stealth, due to supply chain issues, is unable to complete the removal, replacement, and disposal by the end of its current removal, replacement, and disposal term.²⁶

9. In addition, we find that Stealth bears no fault for its failure to comply with its removal, replacement, and disposal obligations by its current removal replacement, and disposal term because Stealth has acted diligently to mitigate delays caused by the supply chain issues outlined in its extension request. For example, Stealth explains that its work has been slowed despite its efforts to expedite the process as it awaits the {{ [REDACTED] }}.²⁷ We agree with Stealth that it lacks control over delays stemming from its interactions with third parties and find that Stealth has demonstrated that the delays are due to factors beyond its control.²⁸

10. Stealth’s quarterly status updates provide additional context for the supply chain issues it has faced and support its claim of supply chain issues impeding its ability to meet its current removal, replacement, and disposal term. In its status updates, Stealth reported that supply chain complications were delaying deliveries of equipment.²⁹

²¹ *Id.*

²² 47 CFR § 1.50004(h)(2).

²³ Stealth Petition at 2 (arguing that an extension is warranted due to issues it has faced related to {{ [REDACTED] }} and {{ [REDACTED] }}).

²⁴ Stealth Petition at 2.

²⁵ We acknowledge Stealth’s contention that service would be interrupted during their current removal replacement, and disposal terms due to the lack of replacement equipment caused by supply chain delays. *See* Stealth Petition at 2.

²⁶ 47 CFR § 1.50004(h)(2).

²⁷ Stealth Petition at 2.

²⁸ We note that granting Stealth the requested extension on the basis of the supply chain issues is consistent with the principles of Commission rule 1.946. 47 CFR § 1.946. For the reasons already described above, we find that Stealth has established that it requires additional time to meet its removal, replacement, and disposal obligations due to “causes beyond its control” despite having acted diligently in an attempt to meet its obligations within its originally assigned removal, replacement, and disposal term. *See* 47 CFR § 1.946(e)(1)-(2), (4).

²⁹ Stealth Reimbursement Program Status Update, at 3 (Dec. 13, 2022), <https://www.fcc.gov/sites/default/files/scrp-stealth-communications-12132022.pdf>.

11. Accordingly, for these reasons, we conclude that Stealth has established, based on the ongoing supply chain issues, 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” as required by Commission rule 1.50004(h)(2). We grant Stealth’s extension request on this ground.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), and sections 0.204, 0.291, and 1.50004(h)(2) of the Commission’s rules, 47 CFR §§ 0.204, 0.291, 1.50004(h)(2), the Petitions for Extensions of term filed by Stealth is GRANTED.

13. IT IS FURTHER ORDERED that the removal, replacement, and disposal term for Stealth under 47 CFR 1.50004(h)(2) IS EXTENDED to March 29, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau