

**FACT SHEET\***  
**Protecting Against National Security Threats to the Communications Supply Chain  
Through FCC Programs**

Third Further Notice of Proposed Rulemaking – WC Docket No. 18-89

**Background:**

Now more than ever, the stability of the U.S. economy depends on the reliability, security, and integrity of the nation’s communications networks. The COVID-19 pandemic has increased our reliance on these networks, and the rapid shift to online work, school, and health care has elevated the risk of cyber threats to our country. The damage from the recent SolarWinds software breach has further emphasized the need for a multifaceted and strategic approach to protecting our networks from all threats. Today, we take targeted steps to advance Congressional and Commission objectives to secure the nation’s communications networks by proposing to modify our rules consistent with recently passed legislation to expedite removal of harmful equipment and services from these networks.

**What the Third Further Notice of Proposed Rulemaking Would Do:**

- Seek comment on a proposal to raise the cap on eligibility for participation in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) to providers of advanced communications service with 10 million or fewer customers.
- Seek comment on a proposal to modify the acceptable use of reimbursement funds to include the removal, replacement, and disposal of equipment and services subject to the Huawei and ZTE *Designation Orders*.
- Seek comment on a proposal to modify our rules to allow Reimbursement Program recipients to use reimbursement funds to remove, replace, or dispose of equipment or services that were purchased, rented, leased, or otherwise obtained on or before June 30, 2020.
- Seek comment on a proposal to replace the prioritization scheme the Commission adopted in the *Supply Chain Second Report and Order* with the prioritization categories set forth in the Consolidated Appropriations Act, 2021 if demand for Reimbursement Program funds exceeds the \$1.895 billion appropriated by Congress.
- Align the definition of “provider of advanced communications service” in our rules with the broader definition set forth in the Consolidated Appropriations Act, 2021.

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\* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or to its staff, including by email, must be filed in WC Docket No. 18-89, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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

THIRD FURTHER NOTICE OF PROPOSED RULEMAKING\*

Adopted: [] Released: []

Comment Date: [21 days after date of publication in the Federal Register]
Reply Comment Date: [35 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. In this proceeding, the Commission takes steps to advance Congressional and Commission objectives to secure the nation’s communications networks. Through the Consolidated Appropriations Act, 2021 (CAA), Congress appropriated \$1.9 billion to the Commission to implement the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act),1 of which \$1.895 billion must be used to remove and replace communications equipment and services that pose a national security risk and reimburse eligible providers for the cost of doing so.2 This Third Notice of Proposed Rulemaking proposes to modify our rules consistent with the CAA to expedite removal of harmful equipment and services from our nation’s communications networks.

2. In particular, we propose to raise the cap on eligibility for participation in the Reimbursement Program consistent with the requirements of the CAA. We also propose to modify the acceptable use of reimbursement funds and to amend our rules to allow recipients to use reimbursement funds to remove, replace, or dispose of equipment or services that were purchased, rented, leased, or otherwise obtained on or before June 30, 2020. We propose to replace the prioritization scheme adopted

\* This document has been circulated for tentative consideration by the Commission at its February 2021 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Acting Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 Pub. L. 116-124, 133 Stat. 158 (2020), codified at 47 U.S.C. § 1601 et seq (Secure Networks Act).

2 Pub. L. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet access Service, §§ 901, 906, 134 Stat. 1182 (2020) (Consolidated Appropriations Act, 2021 or CAA). All further references to the CAA refer to Division N, Title IX of the CAA.

in the Commission's *Supply Chain Second Report and Order*<sup>3</sup> with the prioritization categories set forth in the CAA. Finally, we take this opportunity to align the definition of "provider of advanced communications service" in our rules with the broader definition set forth in the CAA.<sup>4</sup>

3. Now more than ever, the stability of the U.S. economy depends on the reliability, security, and integrity of the nation's networks. The COVID-19 pandemic has increased our nation's reliance on the Internet, and the rapid shift to online work, school, and health care has elevated the risk of cyber threats to our country. Moreover, the damage from recent and highly sophisticated supply chain attacks, such as the SolarWinds software breach, has further emphasized the need for a multifaceted and strategic approach to protecting our networks from all threats. The targeted actions we take today are consistent with congressional efforts in the CAA to hasten the removal of insecure equipment and services from our networks, which is an important element of secure communications.

## II. BACKGROUND

4. In November 2019, the Commission adopted the *Supply Chain First Report and Order*, which enacted section 54.9 of the Commission's rules, prohibiting the use of "universal service support . . . to purchase or obtain any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain."<sup>5</sup> The Commission also initially designated Huawei and ZTE and their subsidiaries, parents, and affiliates, as companies that pose a national security threat to the integrity of communications networks and the communications supply chain, and established a process for finalizing such designations and issuing new designations. Consistent with that process, on June 30, 2020, the Public Safety and Homeland Security Bureau (PSHSB) issued final designations of Huawei and ZTE (collectively, the *Designation Orders*), meaning that Universal Service Fund (USF) support as of that date may not be used to purchase, maintain, improve, modify, operate, manage, or otherwise support any equipment or services produced or provided by Huawei or ZTE.<sup>6</sup>

5. On March 12, 2020, the Secure Networks Act became law. The Secure Networks Act directed the Commission to take several actions to secure the nation's communications networks, including by establishing the Reimbursement Program to remove, replace, and dispose of covered communications equipment and services from the networks of providers of advanced communications service, and to publish a list of covered communications equipment and services (Covered List).<sup>7</sup> Congress, however, did not appropriate funds to implement the Reimbursement Program.

6. On December 10, 2020, the Commission adopted the *Supply Chain Second Report and Order*, which among other things, promulgated rules for the Reimbursement Program and adopted a rule to require Eligible Telecommunications Carriers (ETCs) to remove and replace equipment and services

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<sup>3</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, Second Report and Order*, 35 FCC Rcd 14284, 14349-50, para. 157 (2020) (*Supply Chain Second Report and Order*).

<sup>4</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 7829-30, paras. 27-28; CAA § 901.

<sup>5</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11433, para. 26 (2019) (*Supply Chain First Report and Order*), appeal pending in *Huawei Technologies USA v. FCC*, No. 19-60896 (5th Cir.).

<sup>6</sup> See *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); *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) (collectively, *Designation Orders*).

<sup>7</sup> See generally Secure Networks Act §§ 2, 3, 4, 5.

published on the Covered List.<sup>8</sup> The Commission explained that the Reimbursement Program would not accept applications until Congress appropriated funds, and conditioned certain requirements, including the remove-and-replace rule, upon a congressional appropriation to fund the Reimbursement Program.<sup>9</sup>

7. On December 27, 2020, the President signed into law the CAA.<sup>10</sup> Section 906 of the CAA appropriated \$1.9 billion to the Commission to “carry out” the Secure Networks Act, of which \$1.895 billion must be used for the Reimbursement Program.<sup>11</sup> In addition, section 901 of the CAA modified sections 4 and 9 of the Secure Networks Act, which establish the Reimbursement Program and the definitions for the statute. These congressional modifications to sections 4 and 9 impacted some of the Commission’s rules adopted in the *Supply Chain Second Report and Order*.

### III. THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

8. We seek comment on how to incorporate the provisions of the CAA into our rules. Specifically, we seek comment on changes to our rules regarding eligibility for participation in the Reimbursement Program, acceptable uses of Reimbursement Program disbursements, the eligibility of certain equipment and services for the Reimbursement Program, and a prioritization paradigm in the event applications for the Reimbursement Program exceed the \$1.895 billion appropriated by Congress.

#### A. Eligibility for Participation in the Reimbursement Program

9. We propose to raise the cap on eligibility for participation in the Reimbursement Program to providers of advanced communications services with 10 million or fewer customers and seek comment on this proposal. Prior to enactment of the CAA, section 4(b)(1) of the Secure Networks Act restricted eligibility under the Reimbursement Program to providers of advanced communication service with two million or fewer customers,<sup>12</sup> and in the *Supply Chain Second Report and Order*, the Commission so restricted the program.<sup>13</sup> In the CAA, however, Congress amended section 4(b)(1) of the Secure Networks Act to increase the eligibility criteria to those providers with 10 million or fewer customers.<sup>14</sup> We propose to change our rules and allow providers with 10 million or fewer customers to participate in the Reimbursement Program. We seek comment on this proposal and any implications that it may have for participation in the Reimbursement Program.

#### B. Equipment and Services Eligible for Reimbursement

10. We next propose to modify the acceptable use of Reimbursement Program funds to include only the removal, replacement, and disposal of equipment and services subject to the *Designation Orders*, consistent with the CAA.

11. Before it was amended by the CAA, section 4(c) of the Secure Networks Act specified that a participant in the Reimbursement Program may only use Reimbursement Program funding to remove, replace, and dispose of “covered communications equipment or services” published on the Covered List.<sup>15</sup> In the *Supply Chain Second Report and Order*, the Commission adopted a rule prohibiting Reimbursement Program funding recipients from “using reimbursement funds to remove, replace, or dispose of covered communications equipment or service purchased, rented, leased, or

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<sup>8</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14330-63, paras. 106-96.

<sup>9</sup> *See Supply Chain Second Report and Order*, 35 FCC Rcd at 14384, 14290-91, 14293, 14348, paras. 1, 18, 22, 154.

<sup>10</sup> CAA § 901.

<sup>11</sup> CAA § 906.

<sup>12</sup> Secure Networks Act § 4(b)(1).

<sup>13</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14385, para. 3.

<sup>14</sup> CAA § 901.

<sup>15</sup> Secure Networks Act § 4(c).

otherwise obtained after these statutory cutoff dates.”<sup>16</sup> The *Supply Chain Second Report and Order*, consistent with the Secure Networks Act before amendment, defined covered communications equipment or services as those published on the Covered List.<sup>17</sup> To be published on the Covered List, equipment and services must fulfill three requirements. First, they must be communications equipment, which the Commission defined in the *Supply Chain Second Report and Order* as all equipment and services used in fixed and mobile broadband networks, provided they include or use electronic components.<sup>18</sup> Second, the equipment and services must be identified as “an unacceptable risk to the national security of the United States or the security and safety of United States persons” to by specifically enumerated sources listed in section 2(c) of the Secure Networks Act.<sup>19</sup> Finally, the equipment and services must be capable of the criteria in section 2(b)(2)(A)-(C) of the Secure Networks Act.<sup>20</sup> On the other hand, the *Designation Orders* encompassed all equipment and services produced or provided by Huawei and ZTE.<sup>21</sup> In the *Supply Chain Second Report and Order*, the Commission acknowledged that some equipment and services covered by the *Designation Orders* would not be eligible for reimbursement, even though they were subject to the Universal Service Fund prohibition in section 54.9 of the Commission’s rules.<sup>22</sup>

12. In section 901 of the CAA, however, Congress amended section 4(c) of the Secure Networks Act to limit the use of reimbursement funds:

solely for the purposes of permanently removing covered communications equipment or services purchased, rented, leased or otherwise obtained 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) . . . or as determined to be covered by both the process of the [Supply Chain] First Report and Order and the Designations 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).

13. We believe this amendment demonstrates Congressional intent to change the scope of equipment and services eligible for reimbursement from the equipment and services on the Covered List to the equipment and services subject to the *Designation Orders*. We seek comment on this interpretation. Do the amendments revise the eligibility criteria for reimbursement such that all equipment and services produced or provided by Huawei and ZTE are now eligible for reimbursement, consistent with the scope of section 54.9 of the Commission’s rules? Would limiting the use of Reimbursement Program funds solely for the purposes of removing, replacing, or disposing of communications equipment or services produced or provided by Huawei or ZTE or their subsidiaries, parents, and affiliates align with the language of the CAA? Consistent with the Commission’s reasoning in the *Supply Chain First Report and Order*, would reimbursement for all Huawei and ZTE equipment better ensure the security of U.S. communications networks than a narrower scope of reimbursement?<sup>23</sup> After the amendments, are equipment or services published on the Covered List pursuant to section 2 of the Secure Networks Act but manufactured by companies not subject to the *Designation Orders* eligible

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<sup>16</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14334, para. 117.

<sup>17</sup> See 47 CFR § 1.50002.

<sup>18</sup> See *Supply Chain Second Report and Order*, 35 FCC Rcd at 14309, para. 52.

<sup>19</sup> Secure Networks Act § 2(c). See *Supply Chain Second Report and Order*, 35 FCC Rcd at 14311-12, para. 58.

<sup>20</sup> Secure Networks Act § 2(b)(2)(A)-(C). See *Supply Chain Second Report and Order*, 35 FCC Rcd at 14315-16, 14321, paras. 67-69, 82.

<sup>21</sup> See 47 CFR § 54.9; *Supply Chain First Report and Order*, 34 FCC Rcd at 11449-50, paras. 66-69.

<sup>22</sup> See *Supply Chain Second Report and Order*, 35 FCC Rcd at 14301-02, paras. 34-35.

<sup>23</sup> See *Supply Chain First Report and Order*, 34 FCC Rcd at 11449-50, paras. 66-69.

for reimbursement?<sup>24</sup> If other companies are designated as posing a national security threat to the integrity of communications networks or the communications supply chain between now and the conclusion of the Reimbursement Program, would those companies' equipment and services be eligible under the Reimbursement Program?

14. We seek comment on alternative interpretations. Did Congress intend to limit the use of Reimbursement Program funds to removal, replacement, and disposal of equipment and services subject to both the *Designation Orders* and the Covered List, rather than including all equipment and services subject to the *Designation Orders*? Are there other potential interpretations of the statutory language?

15. *Remove-and-Replace Rule.* We also propose to modify the remove-and-replace rule adopted by the Commission in the *Supply Chain Second Report and Order* to change the scope of the equipment and services covered from those on the Covered List to those subject to the *Designation Orders*. We seek comment on this proposal.

16. In adopting the remove-and-replace rule in the *Supply Chain Second Report and Order*, the Commission explained that it intended to align the scope of equipment and services subject to the remove-and-replace rule contained in section 54.11 of the Commission's rules with the scope of equipment and services eligible for reimbursement under the Reimbursement Program.<sup>25</sup> As the CAA appears to modify the equipment and services eligible for reimbursement from those on the Covered List to those subject to the *Designation Orders*, we propose to accordingly revise the equipment and services subject to removal to encompass all equipment and services produced or provided by Huawei and ZTE. To do so would be consistent with the Commission's findings in the *Supply Chain First Report and Order* about the potential vulnerabilities of all types of equipment.<sup>26</sup> Are there other aspects of the remove-and-replace rule that should be modified in light of the CAA or other considerations?

### C. Timing Requirement for the Reimbursement Program

17. We propose to amend our rules to allow Reimbursement Program recipients to use such funds to remove, replace, or dispose of any equipment or services that was purchased, rented, leased, or otherwise obtained on or before June 30, 2020. We seek comment on this proposal.

18. Section 4(c)(2)(A) of the Secure Networks Act prohibited Reimbursement Program recipients from using such funds to "remove, replace, or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained on or after, in the case of covered any communications equipment or service that is on the initial list published under section 2(a), August 14, 2018, or in the case of any covered communications equipment that is not on the initial list published under section 2(a), the date that is 60 days after the date on which the Commission places such equipment or service on the list . . . ."<sup>27</sup> In the *Supply Chain Second Report and Order*, the Commission adopted a rule prohibiting Reimbursement Program funding recipients from "using reimbursement funds to remove, replace, or dispose of covered communications equipment or service purchased, rented, leased, or otherwise obtained after these statutory cutoff dates."<sup>28</sup>

19. In the CAA, Congress amended section 4(c)(2)(A) of the Secure Networks Act to prohibit Reimbursement Fund recipients from using such funds to "remove, replace, or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained on or after publication of the [*Supply Chain First Report and Order*]; or in the case of any covered communications

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<sup>24</sup> See *Supply Chain Second Report and Order*, 35 FCC Rcd at 14316, para. 68.

<sup>25</sup> *Id.* at 14299-14300, para. 32.

<sup>26</sup> See *Supply Chain First Report and Order*, 34 FCC Rcd at 11449-50, paras. 66-69.

<sup>27</sup> Secure Networks Act § 4(c)(2)(A).

<sup>28</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14334, para. 117.

equipment that only became covered pursuant to the *Designations Orders*, June 30, 2020 . . . .”<sup>29</sup> Consistent with the statutory language and the statutory language discussed above that appears to make all equipment and services subject to the *Designation Orders* eligible for reimbursement, we propose to amend our rules to make all equipment and services obtained on or before June 30, 2020 to be eligible for reimbursement. Are there are other potential interpretations of this language

#### **D. Allocation of Reimbursement Funds**

20. We propose to replace the prioritization scheme adopted in the *Supply Chain Second Report and Order* with the prioritization categories adopted in the CAA. We seek comment on that proposal. Additionally, we seek comment on whether we can further prioritize reimbursement within the prioritization subcategories.

21. Before enactment of the CAA, the Secure Networks Act was silent on whether or how reimbursement funds should be prioritized in the event requests for reimbursement funding exceeded the appropriated money available for such reimbursement.<sup>30</sup> In the *Supply Chain Second Report and Order*, the Commission established a “prioritization paradigm in the event 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.”<sup>31</sup> The Commission adopted a scheme that first allocates funding to eligible providers that are eligible telecommunications carriers (ETCs) subject to a remove-and-replace requirement under the Commission’s rules and, if funding is insufficient to meet the total demand from that group of ETCs, the program will prioritize funding for transitioning the core networks of these eligible providers before allocating funds to non-core network related expenses.<sup>32</sup> If, however, funding is still available after all demand from ETCs in the first category is satisfied, the Commission’s rules allocate funding to non-ETC eligible providers, prioritizing those non-ETCs that provided cost estimate data in response to the Commission’s Supply Chain Security Information Collection over other non-ETCs.<sup>33</sup> Finally, the Commission’s rules further prioritize funding for core network transition costs over non-core network transition costs within each non-ETC category.<sup>34</sup>

22. The CAA, however, established a prioritization paradigm for the Reimbursement Program that differs from the model the Commission adopted in the *Supply Chain Second Report and Order*. Under the CAA, “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 . . . , [then] to any remaining applicants determined to be eligible for reimbursement under the Program.”<sup>35</sup>

23. We propose to adopt the CAA’s prioritization scheme as an overarching replacement to the prioritization scheme adopted in the *Supply Chain Second Report and Order*. Thus, we propose to first allocate funds to approved applications with 2 million or fewer customers. Once applications meeting that requirement are funded, we propose to allocate funds to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based

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<sup>29</sup> CAA § 901.

<sup>30</sup> Secure Networks Act § 4.

<sup>31</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14349, para. 156.

<sup>32</sup> *Id.* at 14349-50, para. 157.

<sup>33</sup> *Id.* See FCC, Identifying Potentially Prohibited Communications Supply Chain Equipment and Services, [www.fcc.gov/supplychain](http://www.fcc.gov/supplychain).

<sup>34</sup> *Id.*

<sup>35</sup> CAA § 901.

educational broadband services. After those applicants are fully funded, we propose to allocate funds to any remaining applicants determined to be eligible for reimbursement under the Program. We seek comment on this proposal.

24. While we propose to change the three reimbursement prioritization categories consistent with the CAA, the CAA is silent on how the Commission should further prioritize funding within the three main categories. If funding within a particular category is insufficient to meet demand, how should the Commission allocate funding within that particular category? Can the Commission still prioritize certain equipment or providers within an individual category if funding is insufficient to fund all applications within that prioritization category? When the Commission adopted the prioritization scheme in the *Supply Chain Second Report and Order*, the Commission found 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.<sup>36</sup> This is unlikely to have changed since the Commission adopted the *Supply Chain Second Report and Order* on December 10, 2020. We seek comment on whether the language of the CAA allow the Commission to maintain a prioritization for core network transition costs over non-core network transitions costs the categories established by the CAA?<sup>37</sup> We also seek comment on reducing funding on a pro rata basis for all recipients within a prioritization category as defined by the CAA. Are there any other methods of allocating funding equitably across a specific category if remaining funding is insufficient to fund all of the remaining requests?

25. Similarly, we seek comment on other potential sub-prioritization categories. Recognizing the national security threats to communications networks or the communications supply chain that remain even while the Commission works to remove covered equipment and services, we seek comment on prioritizing, 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 as defined in section 2(c) of the Secure Networks Act.<sup>38</sup> We believe prioritizing equipment and services at particular locations with an elevated national security risk is consistent with the CAA, because we would only prioritize equipment and services within the same prioritization category. Building on this idea, can the Commission 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?<sup>39</sup> Are there other methods for prioritizing any other equipment or services within a reimbursement prioritization category? We seek comment on any other methods consistent with the CAA prioritization structure.

#### **E. Definition of “Provider of Advanced Communications Service”**

26. In the Secure Networks Act, Congress defined “provider of advanced communications service” as “a person who provides advanced communications service to United States customers.”<sup>40</sup> Congress amended this definition in the CAA to “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 service.”<sup>41</sup> In the *Supply Chain Second Report and Order*, the Commission explained that “for purposes of the Reimbursement Program, a school, library, or health care provider, or

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<sup>36</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14352, para. 162.

<sup>37</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14349-50, para. 157.

<sup>38</sup> See Secure Networks Act § 2(c).

<sup>39</sup> See Secure Networks Act § 2(c).

<sup>40</sup> Secure Networks Act § 9(10).

<sup>41</sup> CAA § 901.



consortium thereof, may also qualify as a provider of advanced communications service, and therefore be eligible to participate in the Reimbursement Program . . .”<sup>42</sup>

27. Consistent with the CAA, we propose to change the definition of provider of advanced communications service to incorporate the new, broader definition. We seek comment on this proposal. While we believe the Commission’s interpretation in the *Second Report and Order* is consistent with the amendments to the Secure Networks Act, we propose to update our rules to follow Congress’ direction in the CAA. We also seek comment on whether the term “educational broadband service as defined under Part 27 of the Commission’s rules” is intended to solely reference licensees in the Commission’s Education Broadband Service, or whether this term has a different meaning.<sup>43</sup> Consistent with the *Supply Chain Second Report and Order*, we propose to modify the definition of “provider of advanced communications service” only for purposes of the Reimbursement Program and not for any other provision of the Secure Networks Act or the Commission’s rules.<sup>44</sup> We seek comment on this proposal.

#### **F. Other Revisions to Our Rules**

28. Finally, we seek comment on whether the amendments to the Secure Networks Act enacted by Congress in the CAA require revision to any other provisions or rules adopted by the Commission in the *Supply Chain Second Report and Order*. Are other changes to our rules mandated or necessary as a result of the CAA?

#### **G. Cost-Benefit Analysis**

29. This Third Further Notice of Proposed Rulemaking seeks comment on proposals to implement the requirements of the CAA, and we have no discretion to ignore such congressional direction. In addition, the CAA provides funding to reimburse eligible providers for their costs to remove and replace harmful equipment and services from their networks. Moreover, the Commission already completed an Information Collection to determine the costs to ETCs to remove and replace Huawei and ZTE equipment and services from their networks.<sup>45</sup> Accordingly, we tentatively conclude that our proposals in this *Third Further Notice of Proposed Rulemaking* will impose no additional costs to those who are required to participate in the reimbursement program. We seek comment on this tentative conclusion.

### **IV. PROCEDURAL MATTERS**

30. *Ex Parte Presentations.* This proceeding is a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>46</sup> 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 presenter’s 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 found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission

<sup>42</sup> *Supply Chain Second Report and Order*, 35 FCC Rcd at 14332-33, para. 112.

<sup>43</sup> See 47 CFR §§ 27.1200 *et seq.*

<sup>44</sup> See *Supply Chain Second Report and Order*, 35 FCC Rcd at 14332-33, para. 112.

<sup>45</sup> See FCC, Identifying Potentially Prohibited Communications Supply Chain Equipment and Services, [www.fcc.gov/supplychain](http://www.fcc.gov/supplychain).

<sup>46</sup> 47 CFR §§ 1.1200 *et seq.*

staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) 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). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

31. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, as amended (RFA),<sup>47</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice of Proposed Rulemaking. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.<sup>48</sup>

32. *Paperwork Reduction Act Analysis.* This document may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501 through 3520). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the *Federal Register* inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

33. *Filing of Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may 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). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- 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 overnight courier, or by first-class or overnight U.S. Postal Service mail.<sup>49</sup> All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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<sup>47</sup> 5 U.S.C. § 603.

<sup>48</sup> *Id.* § 603(a).

<sup>49</sup> Due to the COVID-19 pandemic, the Commission closed its hand-delivery filing location at FCC Headquarters effective March 19, 2020. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing, Public Notice, DA 20-304, 35 FCC Rcd 2788 (2020). As a result, hand or messenger delivered filings in response to this Notice of Proposed Rulemaking will not be accepted. Parties are encouraged to take full advantage of the Commission's various electronic filing systems for filing applicable documents. Except when the filer requests that materials be withheld from public inspection, any document may be submitted electronically through the Commission's ECFS. *See* 47 CFR § 1.49(f)(3). Persons that need to submit confidential filings to the Commission should follow the instructions provided in the Commission's March 31, 2020 public notice regarding

(continued....)

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) 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 45 L Street, NE, Washington, DC 20554.

34. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate our internal review process.

35. *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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

36. *Contact Person.* For further information about this proceeding, contact Brian Cruikshank, FCC Wireline Competition Bureau, 45 L. Street, NE, Washington, DC 20554, (202) 418-3623, [brian.cruikshank@fcc.gov](mailto:brian.cruikshank@fcc.gov).

## V. ORDERING CLAUSES

37. 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 and 503, sections 2, 3, 4, and 9 of the Secure Networks Act, 47 U.S.C. §§ 1601, 1602, 1603, and 1608, Division N, Title IX, sections 901 and 906 of the Consolidated Appropriations Act, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1 and 1.412, this Third Further Notice of Proposed Rulemaking IS ADOPTED.

38. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

39. IT IS FURTHER ORDERED that this Third Further Notice of Proposed Rulemaking will be EFFECTIVE upon publication in the Federal Register, with comment dates indicated therein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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the procedures for submission of confidential materials. See *FCC Provides Further Instructions Regarding Submission of Confidential Materials*, Public Notice, DA 20-361, 35 FCC Rcd 2973 (2020).

APPENDIX A

Draft Proposed Rules for Public Comment

Part 1 – Practice and Procedure

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

1. Section 1.50004 is amended by revising paragraphs (a), (a)(1), (a)(2), (f), and (i) and adding (q) to read as follows:

**§ 1.50004 Secure and Trusted Communications Networks Reimbursement Program**

(a) *Eligibility.* Providers of advanced communications service with ~~two~~ 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) ~~the covered communications equipment or service was added to the Covered List per section 1.50003, then no later than 60 days after the date of addition to the Covered List~~ 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’);

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(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:

<b>Table 1 to Paragraph (f)–Prioritization Schedule</b>	
<b>Priority 1</b> Advanced communication service providers with <del>2</del> 2 million or fewer customers that <del>are Eligible Telecommunication Carriers subject to section [54.11] (new removal and replacement requirement).</del>	<b>Priority 1a</b> <del>Costs reasonably incurred for transitioning core network(s).</del>
	<b>Priority 1b</b> <del>Costs reasonably incurred for non-core network transition.</del>
<b>Priority 2</b>	<b>Priority 2a*</b>

<p><del>Non-ETC providers of advanced communications service with 2 million or fewer customers that participated in the Supply Chain Security Information Collection, OMB Control No. 3060-1270. 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 section 27.4 of title 47, Code of Federal Regulations, or any successor regulation.</del></p>	<p>Costs reasonably incurred for transitioning core network(s):</p>
	<p><b>Priority 2b*</b></p> <p>Costs reasonably incurred for non-core network transition.</p>
<p><b>Priority 3</b></p> <p><del>Other non-Eligible Telecommunication Carriers that are providers of advanced communication service with 2 million or fewer customers. Any remaining approved applicants determined to be eligible for reimbursement under the Program</del></p>	<p><b>Priority 3a</b></p> <p>Costs reasonably incurred for transitioning core network(s):</p>
	<p><b>Priority 3b</b></p> <p>Costs reasonably incurred for non-core network transition.</p>

(i)\*\*\*\*\*

(i) on or after publication of the Report and Order August 14, 2018 if on the initial Covered List published per section 1.50002; or

(ii) ~~on or after 60 days after the date of addition to the Covered List if the communications equipment or services were subsequently added to the Covered List per section 1.50003 (ii)~~ in the case of any covered communications equipment that only became covered pursuant to the Designation Orders, June 30, 2020; or

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(k) *Provider of Advanced Communications Services.* For purposes of the Secure and Trusted Communications Networks Reimbursement Program, 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 section 27.4 of title 47, Code of Federal Regulations, or any successor regulation; and
  - (B) health care providers and libraries providing advanced communications service.

**Part 54 – Universal Service**

2. 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.

3. Section 54.11 is amended by revising paragraph 54.11(b) to read as follows:

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(b) For purposes of paragraph (a), covered communications equipment or services means any communications equipment or service produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain.

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**APPENDIX B****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Third Further Notice of Proposed Rulemaking (FNPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**2. Need for, and Objectives of, the Proposed Rules**

2. Consistent with our obligation to be responsible stewards of the public funds used in the Universal Service Fund (USF) programs and increasing concern about ensuring communications supply chain integrity, the FNPRM proposes and seeks comment on rules to implement Division N, Title IX, section 901 of the Consolidated Appropriations Act, 2021<sup>4</sup> and their applicability to the Commission's ongoing efforts to secure the communications supply chain.

3. Specifically, the Commission proposes to amend the rules regarding provider eligibility for participation in the Reimbursement Program, the equipment and services eligible for Reimbursement Program disbursements, and the prioritization of Reimbursement Program Funds.

**A. Legal Basis**

4. The proposed action is authorized under 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 and 503, Division N, Title IX, section 901 of the Consolidated Appropriations Act, 47 U.S.C. §§ 1603 and 1608.

**B. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. 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 proposed rules, if adopted.<sup>5</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>6</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>7</sup> A small business

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> Pub. L. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet access Service, § 901, 134 Stat. 1182 (2020).

<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> 5 U.S.C. § 601(6).

<sup>7</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>8</sup>

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>9</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>10</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>11</sup>

7. 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."<sup>12</sup> Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).<sup>13</sup>

8. 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."<sup>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number there were 36,931 general purpose governments (county<sup>17</sup>, municipal and town or township<sup>18</sup>) with populations of

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<sup>8</sup> See 15 U.S.C. § 632.

<sup>9</sup> See 5 U.S.C. § 601(3)–(6).

<sup>10</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>11</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?" [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>12</sup> 5 U.S.C. § 601(4).

<sup>13</sup> Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: "Registered Nonprofit Organizations"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results."

<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>16</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>17</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.



less than 50,000 and 12,040 special purpose governments - independent school districts<sup>19</sup> with enrollment populations of less than 50,000.<sup>20</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>21</sup>

9. Small entities potentially affected by the proposals 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. Providers of Telecommunications and Other Services

### a. Telecommunications Service Providers

10. *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.<sup>22</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>23</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.<sup>24</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>25</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our 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.<sup>26</sup> Of this total, an estimated 1,006 have 1,500 or

(Continued from previous page) \_\_\_\_\_

<sup>18</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06].

<https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>19</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10].

<https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>20</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

<sup>22</sup> See, U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>23</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>24</sup> See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>25</sup> *Id.*

<sup>26</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

fewer employees.<sup>27</sup> Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

11. *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.<sup>28</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>29</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>30</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>31</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>32</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>33</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities

12. *Competitive Access Providers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers and under the size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>35</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>36</sup> Consequently, the Commission estimates that most competitive access providers are small businesses that may be affected by our actions. According to Commission data in the *2010 Trends in Telephone Service Report*, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.<sup>37</sup> Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186

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<sup>27</sup> *Id.*

<sup>28</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>29</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>30</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>31</sup> *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

<sup>32</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*). [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>33</sup> *Id.*

<sup>34</sup> See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>35</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>36</sup> *Id.*

<sup>37</sup> See *Trends in Telephone Service* at Table 5.3, page 5.5.

have more than 1,500 employees.<sup>38</sup> Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

13. *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 NAICS Code category is Wired Telecommunications Carriers.<sup>39</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>40</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>41</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>42</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>43</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>44</sup> Consequently, the Commission estimates that the majority of OSPs are small entities.

14. *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.<sup>45</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>46</sup> 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>47</sup> 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.<sup>48</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>49</sup> Consequently, the Commission estimates that the majority of local resellers are small

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<sup>38</sup> *Id.*

<sup>39</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>40</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>41</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>42</sup> *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

<sup>43</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*). [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Census Bureau, *517911 Telecommunications Resellers*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited Jan. 10, 2020).

<sup>46</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>47</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

<sup>48</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>49</sup> See *id.*

entities that may be affected by the rules adopted.

15. *Toll Resellers.* The SBA has not developed a small business size standard specifically 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.<sup>50</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>51</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>52</sup> The 2012 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.<sup>53</sup> 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.<sup>54</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>55</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

16. *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 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.”<sup>56</sup> 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.<sup>57</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>58</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>59</sup> Thus, under

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<sup>50</sup> U.S. Census Bureau, *517911 Telecommunications Resellers*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited Jan. 10, 2020).

<sup>51</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>52</sup> *Id.*

<sup>53</sup> U.S. Census Bureau, *American FactFinder*, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table) (last visited Jan. 10, 2020).

<sup>54</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>55</sup> *Id.*

<sup>56</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>57</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>58</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>59</sup> *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

this size standard, the majority of firms in this industry can be considered small.

17. *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.<sup>60</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>61</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>62</sup> Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.<sup>63</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

18. 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 our actions.<sup>64</sup> 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.<sup>65</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>66</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

19. *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.”<sup>67</sup> 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.<sup>68</sup> For this category, U.S. Census Bureau data for 2012 show

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<sup>60</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search>.

<sup>61</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>62</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

<sup>63</sup> *Id.* Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1000 employees or more.”

<sup>64</sup> See <http://wireless.fcc.gov/uls>. For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>65</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>66</sup> See *id.*

<sup>67</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

<sup>68</sup> See 13 CFR § 121.201, NAICS Code 517410.

that there were a total of 333 firms that operated for the entire year.<sup>69</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>70</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

20. *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.<sup>71</sup> 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.<sup>72</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>73</sup> 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.<sup>74</sup> For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.<sup>75</sup> 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.<sup>76</sup> Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

#### b. Internet Service Providers

21. *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.<sup>77</sup> 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.<sup>78</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>79</sup> U.S. Census Bureau data for 2012 show that

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<sup>69</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012>.

<sup>70</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$35 million or less.

<sup>71</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>75</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>76</sup> *Id.*

<sup>77</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>78</sup> *Id.*

<sup>79</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

there were 3,117 firms that operated that year.<sup>80</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>81</sup> Consequently, under this size standard the majority of firms in this industry can be considered small..

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

22. The FNPRM proposes rules that: raise the eligibility threshold in the Reimbursement Program for providers of advanced communications service from two million to ten million customers, restrict the use of Reimbursement Program funds to equipment or services produced or provided by any company deemed to pose a national security threat to the integrity of communications networks or the communications supply chain, make equipment and services obtained on or before June 30, 2020 eligible for reimbursement, and revise a prioritization scheme to award Reimbursement Program funding. We seek comment on these proposals, and their likely costs and benefits, as well as on alternative approaches and any other steps we should consider taking.

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

23. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>82</sup>

24. In compliance with the CAA, the FNPRM proposes to increase the pool of eligible participants in the Reimbursement Program to all providers of advanced communications services with ten million or fewer customers, limit the use of Reimbursement Program funding to remove, replace, and dispose of to allow Reimbursement Program allocations to be used to remove, replace, and dispose of equipment or services produced or provided by any company deemed to pose a national security threat to the integrity of communications networks or the communications supply chain, make equipment and services obtained on or before June 30, 2020 eligible for reimbursement, and revise the prioritization scheme to prioritize advanced communications service providers with two million or fewer customers, then public or private non-commercial educational institutions providing their own facilities-based educational broadband services, and then to any remaining eligible applicants.

25. We expect to take into account the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching our final conclusions and promulgating rules in this proceeding. The FNPRM generally seeks comment on how to adopt enacted legislation that mandates action by the Commission and seeks specific comment on how to mitigate the impact on small entities.

**E. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

26. None.

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<sup>80</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>81</sup> *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

<sup>82</sup> See 5 U.S.C. § 603(c).