

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

Third Report and Order – WC Docket No. 18-89

**Background:**

America’s communications networks have become the indispensable infrastructure of our economy, education, health care, and our everyday lives. The COVID-19 pandemic has demonstrated as never before the importance of these networks. It is therefore imperative that we continue to safeguard this critical infrastructure from potential security threats. In the *2020 Supply Chain Order*, the Commission created the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) to reimburse providers of advanced communications services for costs reasonably incurred in removing, replacing, and disposing of communications equipment and services in their networks that pose an unacceptable risk to national security and the security and safety of United States persons. The Commission established rules for the Reimbursement Program pursuant to the Secure and Trusted Communications Networks Act of 2019.

In the Consolidated Appropriations Act, 2021, Congress appropriated \$1.895 billion for the Reimbursement Program and provided additional guidance for and directed changes to several of its provisions. With this *Report and Order*, we incorporate these changes into our Reimbursement Program rules.

**What the Third Report and Order Would Do:**

- Increase the customer eligibility cap for participation in the Reimbursement Program from providers of advanced communications services with two million or fewer customers to those with 10 million or fewer customers.
- Modify the equipment and services eligible for reimbursement to all communications equipment and services produced or provided by Huawei or ZTE.
- Establish June 30, 2020 as the new date by which communications equipment and services must have been obtained to be eligible for Reimbursement Program funds.
- Enact the prioritization scheme expressly provided for in the Consolidated Appropriations Act if demand for Reimbursement Program funding exceeds the \$1.895 billion appropriated by Congress.
- Adopt a definition of “provider of advanced communications services” for the purposes of the Reimbursement Program that is consistent with the definition provided in the Consolidated Appropriations Act.
- Clarify some Reimbursement Program requirements to assist eligible providers as they prepare to seek reimbursement for expenses related to removing, replacing, and disposing of covered communications equipment or services.

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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 REPORT AND ORDER\*

Adopted: []

Released: []

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I. INTRODUCTION

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

\* This document has been circulated for tentative consideration by the Commission at its July 13, 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 C.F.R. §§ 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.

<sup>1</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116–260, § 901, 134 Stat. 1182 (2020) (CAA).

amendments to the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act).<sup>2</sup>

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

## II. BACKGROUND

3. The Commission established the Reimbursement Program to reimburse eligible providers of advanced communications service for "costs reasonably incurred in removing, replacing, and disposing of covered communications equipment and services."<sup>3</sup> It adopted the Reimbursement Program as part of the *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs* proceeding (Supply Chain Proceeding) to address "threats to the security of our nation's communications networks posed by certain communications equipment providers . . ."<sup>4</sup> The program's creation follows a series of steps taken by the Commission, Congress, the Executive Branch, and various government agencies to secure the nation's communications supply chain.

4. In November 2019, the Commission unanimously adopted the *2019 Supply Chain Report and Order, Further Notice of Proposed Rulemaking, and Order (2019 Supply Chain Order)*. The *2019 Supply Chain Order* adopted a rule that prohibits the use of Universal Service Fund (USF) support to purchase or obtain any equipment or services produced or provided by a covered company.<sup>5</sup> The rule also prohibits the use of USF funds to "maintain, improve, modify, or otherwise support any equipment or services" produced or provided by a covered company.<sup>6</sup> Additionally, the *2019 Supply Chain Order* initially designated Huawei Technologies Company (Huawei)<sup>7</sup> and ZTE Corporation (ZTE),<sup>8</sup> and their subsidiaries, parents, and affiliates, as "covered companies" for the purposes of this new rule, established processes for finalizing these initial designations, and allowed for the designation of additional covered companies in the future.<sup>9</sup>

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<sup>2</sup> Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) (Secure Networks Act).

<sup>3</sup> *Wireline Competition Bureau Seeks Comment on Secure and Trusted Communications Networks Reimbursement Program Application Filings and Process*, Public Notice, DA 21-607 (WCB May 24, 2021) (*Reimbursement Process PN*).

<sup>4</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Notice of Proposed Rulemaking, 33 FCC Rcd 4058, 4058, para. 1 (2018) (*2018 Supply Chain Notice*).

<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) (*2019 Supply Chain Order*), *aff'd*, *Huawei Technologies USA v. FCC*, No. 19-60896 (5th Cir.).

<sup>6</sup> 47 CFR § 54.9(a).

<sup>7</sup> *2019 Supply Chain Order*, 34 FCC Rcd at 11442, para. 47.

<sup>8</sup> *Id.* at 11447, para. 59.

<sup>9</sup> *Id.* at 11449, paras. 64-65.

5. In the *2019 Supply Chain Further Notice*, which accompanied the *2019 Supply Chain Order*, the Commission sought comment on a proposal to “require as a condition on the receipt of any USF support that eligible telecommunications carriers not use or agree not to use within a designated period of time, communications equipment or services from covered companies.”<sup>10</sup> The Commission also proposed to establish a program to reimburse costs incurred by the eligible telecommunications carriers (ETCs) who would be required to remove and replace covered equipment and services.<sup>11</sup>

6. The *2019 Supply Chain Order* also included an initiative to assess the needs of carriers with covered equipment or services by requiring ETCs and their affiliates and subsidiaries to report whether they use or own Huawei or ZTE equipment or services in their networks and to estimate the cost of removing and replacing such equipment and services.<sup>12</sup> The Wireline Competition Bureau and Office of Economics and Analytics released the results of that information collection in September 2020, reporting that respondents estimated it would cost \$1.837 billion to remove and replace Huawei and ZTE equipment in their networks.<sup>13</sup>

7. The Commission also followed through with the designation of covered companies begun in the *2019 Supply Chain Order*. On June 30, 2020, the Commission’s Public Safety and Homeland Security Bureau issued final designations of Huawei and ZTE (collectively, the *Designation Orders*), as covered companies, meaning that, as of June 30, 2020, USF support 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, or their subsidiaries, parents, or affiliates.<sup>14</sup>

8. Congress also moved to establish laws to protect the nation’s communications networks. On March 12, 2020, four months after the Commission proposed a reimbursement program in the *2019 Supply Chain Further Notice*, the Secure Networks Act was signed into law and several provisions of that legislation interact with rules adopted in the Commission’s Supply Chain Proceeding.<sup>15</sup> Section 2 directs the Commission to publish a list of “covered” communications equipment and services (the Covered List).<sup>16</sup> Section 3(a) of the Secure Networks Act imposes a prohibition on the use of “[a] Federal subsidy that is made available through a program administered by the Commission and that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service . . .” to purchase, rent, lease, obtain, or maintain “covered communications equipment or service[s].”<sup>17</sup> Section 4

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<sup>10</sup> *Id.* at 11470-71, para. 122.

<sup>11</sup> *Id.* The Wireline Competition Bureau issued a Public Notice seeking comment on a preliminary cost catalog for equipment and services eligible for the Reimbursement Program. See *Wireline Competition Bureau Seeks Comment on a Report and Preliminary Cost Catalog and Replacement List to Help Providers Participate in the Supply Chain Reimbursement Program*, Public Notice, DA 21-355 (WCB Mar. 25, 2021). The preliminary cost catalog lists various expense categories, including access, core, and distribution layer equipment, engineering and testing, and National Environmental Policy Act and National Historic Preservation Act expenses, for which Reimbursement Program participants may be eligible for reimbursement.

<sup>12</sup> *Id.* at 11481-82, paras. 162-63.

<sup>13</sup> See *Wireline Competition Bureau and Office of Economics and Analytics Release Results from Supply Chain Security Information Collection*, WC Docket No. 18-89, Public Notice, 35 FCC Rcd 9471, 9472 (WCB 2020) (*Information Collection Results Public Notice*).

<sup>14</sup> See 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*) (collectively, *Designation Orders*).

<sup>15</sup> Secure Networks Act.

<sup>16</sup> See *id.* § 2.

<sup>17</sup> *Id.* § 3(a)(1).

establishes the Reimbursement Program to reimburse providers of advanced communications services for the removal, replacement, and disposal of covered communications equipment and services from their networks.<sup>18</sup> Section 5 requires all providers of “advanced communications service” to submit annual reports to the Commission “regarding whether such provider has purchased, rented, leased, or otherwise obtained any covered communications equipment or service . . . .”<sup>19</sup> Section 7 provides the Commission with authority to enforce the provisions of the Secure Networks Act.<sup>20</sup> Finally, section 9 provides definitions for certain terms in the Secure Networks Act, including one for “provider of advanced communications service.”<sup>21</sup>

9. One month after the Secure Networks Act became law, the Wireline Competition Bureau released in April 2020 a Public Notice seeking comment on how to modify the proposed reimbursement program in light of section 4 of the Secure Networks Act.<sup>22</sup> In July 2020, the Commission adopted and released the *2020 Supply Chain Declaratory Ruling and Second Further Notice*, which found that the Commission’s existing prohibition on the use of USF support for covered communications equipment and services, codified at 47 CFR § 54.9, is “consistent with and substantially implements the prohibition required by subsection 3(a) of the Secure Networks Act.”<sup>23</sup> In the *2020 Supply Chain Second Further Notice*, the Commission sought comment on how other provisions of the Secure Networks Act impacted the rules adopted in the Supply Chain Proceeding.<sup>24</sup>

10. On December 10, 2020, the Commission adopted the *Supply Chain Second Report and Order (2020 Supply Chain Order)*.<sup>25</sup> In that Order, the Commission enacted rules to: (1) create and maintain the Covered List, which identifies communications equipment and services that pose an unacceptable risk to the national security of the United States or the security and safety of United States persons;<sup>26</sup> (2) prohibit the use of Federal subsidies made available through a program administered by the Commission that provides funds for the capital expenditures necessary for the provision of advanced communications service to purchase, rent, lease, or otherwise obtain any covered communications equipment and service;<sup>27</sup> (3) require recipients of reimbursement funds under the Reimbursement

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<sup>18</sup> See *id.* § 4. The Secure Networks Act further provided that the reimbursement program would be “separate” from the USF programs. Section 1603(j), *Separate from Federal universal service programs*, provides that the “[t]he Program shall be separate from any Federal universal service program established under section 254 of this title.” 47 U.S.C. § 1603(j).

<sup>19</sup> See Secure Networks Act § 5(a).

<sup>20</sup> See *id.* § 7.

<sup>21</sup> See *id.* § 9(10).

<sup>22</sup> See *Wireline Competition Bureau Seeks Comment on the Applicability of Section 4 of the Secure and Trusted Communications Networks Act of 2019 to the Commission’s Rulemaking on Protecting Against National Security Threats to the Communications Supply Chain*, WC Docket No. 18-89, Public Notice, 35 FCC Rcd 3494 (WCB 2020).

<sup>23</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 7821, 7826-27, para. 20 (2020) (*2020 Supply Chain Declaratory Ruling and Second Further Notice*).

<sup>24</sup> See *id.* at 7828-39, paras. 23-60.

<sup>25</sup> See *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*).

<sup>26</sup> *Id.* at 14311-25, paras. 57-92; see also Secure Networks Act § 2(c).

<sup>27</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14326, para. 95; see also Secure Networks Act § 3(a). This prohibition, codified at 47 CFR § 54.10, applies to several subsidies made available through a program administered by the Commission where funds are used for capital expenditures necessary for the provision of advanced communications service, including the Emergency Connectivity Fund and the COVID-19 Telehealth Program. See *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order,

(continued....)

Program and ETCs receiving USF support to remove and replace from their network and operations environments equipment and services included on the Covered List;<sup>28</sup> (4) establish the Reimbursement Program to reimburse the costs reasonably incurred by providers of advanced communications service to permanently remove, replace, and dispose of covered communications equipment and services from their networks;<sup>29</sup> (5) implement a new data collection applying to all providers of advanced communications service that requires these providers to annually report on covered communications equipment and services in their networks;<sup>30</sup> and (6) define “advanced communications service.”<sup>31</sup> The Commission conditioned certain requirements in the *2020 Supply Chain Order*, including the remove-and-replace rule and the Reimbursement Program, upon the receipt of a congressional appropriation to fund efforts to remove, replace, and dispose of covered communications equipment and services.<sup>32</sup>

11. On December 27, 2020, the CAA became law. 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>33</sup> In addition to providing the funding for the Reimbursement Program, section 901 of the CAA modified sections 4 and 9 of the Secure Networks Act. Specifically, Congress amended section 4(b)(1) of the Secure Networks Act to increase the eligibility criteria for participation in the Reimbursement Program from those providers of advanced communications service with two million or fewer customers to those with 10 million or fewer customers.<sup>34</sup> Congress also 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 . . . as identified in the [2019 *Supply Chain Order* and *Designation Orders*].”<sup>35</sup> The CAA amended section 4(c)(2)(A) of the Secure Networks Act to prohibit Reimbursement Fund recipients from using these funds to remove, replace, or dispose of any equipment or services purchased after June 30, 2020,<sup>36</sup> and also established a different prioritization scheme than the one adopted by the Commission in the *2020 Supply Chain Order* to help the Commission allocate money appropriated for the Reimbursement Fund if demand exceeded available funds.<sup>37</sup> Finally, the CAA amended section 9(10) of the Secure Networks Act by changing the definition of “provider of advanced communications service” to include educational broadband providers and certain schools and libraries that provide broadband service.<sup>38</sup>

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FCC 21-58, para. 47 (May 10, 2021); *see also COVID-19 Telehealth Program, Promoting Telehealth for Low Income Consumers*, WC Docket Nos. 20-89, 18-213, Report and Order and Order on Reconsideration, FCC 21-39, para. 57 (Mar. 30, 2021).

<sup>28</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14290, para. 18.

<sup>29</sup> *Id.* at 14330-68, paras. 106-208.

<sup>30</sup> *Id.* at 14368-71, paras. 209-17.

<sup>31</sup> *Id.* at 14332-34, paras. 110-16.

<sup>32</sup> *Id.* at 14285, 14290-91, 14293, 14348, paras. 1, 18, 22, 154.

<sup>33</sup> CAA § 906. Section 906 provides that “[t]here is appropriated to the Federal Communications Commission, out of amounts in the Treasury not otherwise appropriated, for fiscal year 2021, to remain available until expended— . . . (2) \$1,900,000,000 to carry out the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1601 et seq.), of which \$1,895,000,000 shall be used to carry out the program established under section 4 of that Act (47 U.S.C. 1603).”

<sup>34</sup> *Id.* § 901.

<sup>35</sup> *Id.*

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

<sup>37</sup> *Id.*

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

12. On February 17, 2021, the Commission adopted a *Third Further Notice of Proposed Rulemaking* and sought comment on proposals to amend the Reimbursement Program rules to incorporate the CAA's changes to the Secure Networks Act.<sup>39</sup> In that *Notice*, we proposed to allow reimbursement only for those equipment and services produced or provided by covered companies subject to the *Designation Orders*.<sup>40</sup>

### III. REPORT AND ORDER

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

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

14. We first amend our rules to allow providers of advanced communications service with 10 million or fewer customers to participate in the Reimbursement Program, consistent with the Secure Networks Act, as amended by the CAA.<sup>41</sup> Prior to enactment of the CAA, our rules limited Reimbursement Program eligibility to providers of advanced communications service with two million or fewer customers, in line with the participation restriction in section 4(b)(1) of the Secure Networks Act.<sup>42</sup> In the CAA, however, Congress amended the Secure Networks Act to expand eligibility to providers of advanced communications service with 10 million or fewer customers.<sup>43</sup> The rule revisions we adopt today align eligibility for participation in the Reimbursement Program with the congressional directives in the CAA. This approach is also supported by comments in the record.<sup>44</sup>

15. In the *2020 Supply Chain Order*, the Commission defined "customer" of a provider of advanced communications service as the customer of such provider as well as the customer of any affiliate of such provider.<sup>45</sup> The Commission further defined "affiliate" as "a person that (directly or

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<sup>39</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Further Notice of Proposed Rulemaking, FCC 21-26 (Feb. 22, 2021) (*2021 Supply Chain Further Notice*).

<sup>40</sup> *2021 Supply Chain Further Notice* at 3-5, paras. 10-14.

<sup>41</sup> Secure Networks Act § 4(b)(1), as amended by CAA § 901(1)(A).

<sup>42</sup> 47 CFR § 1.50004(a); Secure Networks Act § 4(b)(1).

<sup>43</sup> CAA § 901(1)(A).

<sup>44</sup> See CCA Comments at 3 (agreeing that the Commission should change the Reimbursement Program eligibility cap to 10 million or fewer customers); Mediacom Comments at 2 (supporting the Commission's proposal to raise the subscriber cap for Reimbursement Program eligibility to align the Commission's rules with congressional intent); Comments of Niki N. (express comment filed in ECFS) (stating that the eligibility cap for the Reimbursement Program should be raised to allow providers with 10 million or fewer customers to participate); QCommunications Reply at 1 (supporting the Commission's proposal to raise the eligibility cap from two million to 10 million). No commenters disagreed with this proposal.

<sup>45</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14333-34, paras. 113-15. The *2020 Supply Chain Order* defines "providers of advanced communications service" as providers of advanced telecommunications capability as defined in section 706 of the Telecommunications Act of 1996, which in turn is defined "without regard to any transmission media or technology, 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." *Id.* at 14332, para. 110.

indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.”<sup>46</sup> We maintain the definition of “customer” as interpreted in the *2020 Supply Chain Order* as those taking advanced communications service from the provider and/or its affiliate.<sup>47</sup> As such, eligibility in the Reimbursement Program shall continue to be determined based on the number of customers to the specific advanced communications service offered by the provider and/or its affiliate, as set forth in the *2020 Supply Chain Order*.<sup>48</sup>

16. Increasing the number of providers of advanced communications service eligible for the Reimbursement Program has important benefits. First, it will advance the Commission’s goals of removing vulnerable equipment and services from our nation’s communications networks by eliminating covered equipment and services from the networks of more providers. LATAM Telecommunications, LLC (LATAM) agrees, arguing that by expanding eligibility, in conjunction with the CAA’s reimbursement prioritization scheme, “Congress has given the Commission flexibility” to secure a greater number of networks throughout the communications ecosystem.<sup>49</sup> While the vast majority of providers of advanced communications service participating in the Reimbursement Program are expected to have fewer than two million customers,<sup>50</sup> increasing the number of providers eligible for reimbursement will ensure the removal of covered equipment and services from a broader swath of our nation’s communications networks. Furthermore, eligibility expansion will also reduce the likelihood that insecure equipment and services will remain in domestic communications networks.

17. We reject the argument that raising the cap would extend reimbursement eligibility to larger companies that “do not need government assistance,” and we decline to use a different metric, such as revenue or net income, to determine eligibility for participation in the Reimbursement Program.<sup>51</sup> From an administrative standpoint, utilizing customer count as the sole eligibility metric allows prospective participants and the Commission to easily determine participants’ eligibility in the Reimbursement Program. We also note that a variety of entities have identified Huawei and ZTE equipment and services in their networks, indicating that until such equipment and services are removed, those networks are at risk, regardless of size.<sup>52</sup> Furthermore, we find that our decision to expand eligibility for the Reimbursement Program is consistent not only with the statutory directive but also with the Commission’s stated goals of the Reimbursement Program.<sup>53</sup> Although we anticipate that expanding participant eligibility will increase Reimbursement Program applications and demand, doing so does not frustrate our ability to administer a program that effectively and efficiently distributes funds in accordance

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<sup>46</sup> *Id.* at 14333, para. 113; *see also* Secure Networks Act § 9(6)(B); 47 U.S.C. § 153(2). The definition of affiliate further states “[f]or purposes of this paragraph, the term ‘own’ means to own an equity interest (or the equivalent thereof) of more than 10 percent.” 47 U.S.C. § 153(2).

<sup>47</sup> We likewise continue to utilize the definition of “affiliate” as set forth in the *2020 Supply Chain Order*. *2020 Supply Chain Order*, 35 FCC Rcd at 14333, paras. 113-14.

<sup>48</sup> *Id.*

<sup>49</sup> LATAM Comments at 4.

<sup>50</sup> *See infra* Section III.D.1.

<sup>51</sup> *See* Comments of Will Garlington (express comment filed in ECFS).

<sup>52</sup> *See Information Collection Results Public Notice*, 35 FCC Rcd at 9473.

<sup>53</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14344, para. 142 (stating the Commission’s goals in developing a reimbursement program as: (1) creating “a simple and straightforward process, providing certainty to participants while minimizing the costs associated with reimbursement and the administrative burden;” (2) facilitating “prompt and efficient distribution of funds for the expeditious removal, replacement, and disposal of covered communications equipment and services;” and (3) “fairly cover[ing] the eligible costs reasonably incurred for reimbursement and includ[ing] measures to prevent waste, fraud, and abuse”).



with congressional directives.<sup>54</sup> By allowing more providers to participate in the Reimbursement Program, the Commission will further its goal of ensuring that insecure equipment and services are promptly removed from provider networks, thus improving the security and reliability of our nation's communications systems.

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

18. Consistent with the CAA, we modify our rules to limit the equipment and services for which recipients may use Reimbursement Program funding to the removal, replacement, or disposal of communications equipment and services produced or provided by Huawei or ZTE that are on the Covered List. Because the Covered List includes all communications equipment and services produced or provided by Huawei or ZTE, all such equipment and services are eligible for reimbursement.

19. The CAA's amendments to the Secure Networks Act changed the scope of equipment and services eligible for reimbursement from the Reimbursement Program. Specifically, the CAA's amendments to the Secure Networks Act make "covered communications equipment and services," as further specified by the *2019 Supply Chain Order* or *Designation Orders*, eligible for reimbursement.<sup>55</sup> We are bound by the statutory language, and find that the Secure Networks Act, as amended, requires us to limit the acceptable use of Reimbursement Program funds to the removal, replacement, and disposal of eligible equipment and services that are both: (1) on the Covered List published pursuant to section 2(a) of the Secure Networks Act; and (2) as captured by the definition of equipment or services established in the *2019 Supply Chain Order*, or as determined by the process set forth in section 54.9 of the Commission's rules and in the *Designation Orders*.<sup>56</sup> In practice, as we explain below, that means that *all* communications equipment or services produced or provided by Huawei and ZTE, the companies that are both included on the Covered List and subject to the *Designation Orders*, are eligible for reimbursement. We also revise the scope of our section 54.11 remove-and-replace rule to require ETCs receiving USF support and recipients of Reimbursement Program funding to remove all Huawei and ZTE communications equipment and services from their networks, consistent with the scope of equipment and services eligible for reimbursement.

20. *Covered List.* The rules adopted in the *2020 Supply Chain Order* limit the use of Reimbursement Program funding to the removal, replacement, and disposal of covered communications equipment or services as published on the Covered List,<sup>57</sup> consistent with section 4(c) of the Secure Networks Act before it was amended by the CAA.<sup>58</sup> To be included on the Covered List, equipment and services must meet three requirements. First, they must be communications equipment, which the

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<sup>54</sup> See RWA Comments at 2-3; RWA Reply at 2 (although not disputing the CAA's expansion of eligibility from two million to 10 million customers, advocating that the Commission revise its estimates for reimbursement demand and seek additional funding from Congress, in light of the increase in number of eligible participants in the Reimbursement Program).

<sup>55</sup> See 47 U.S.C. § 1603(c)(1).

<sup>56</sup> See CAA § 901.

<sup>57</sup> 47 CFR § 1.50005(a); *2020 Supply Chain Order*, 35 FCC Rcd at 14334, para. 117; see also *Public Safety and Homeland Security Bureau Announces Publication of the List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, WC Docket No. 18-89, Public Notice, DA 21-309 (PSHSB Mar. 12, 2021) (*Covered List Public Notice*).

<sup>58</sup> Secure Networks Act § 4(c) (limiting use of Reimbursement Program funds to the removal, replacement, and disposal of covered communications equipment and services on the Covered List). As defined in the *2020 Supply Chain Order*, "covered" equipment and services are those equipment and services placed on the Covered List. See *2020 Supply Chain Order*, 35 FCC Rcd at 14311, para. 57 ("Section 2(a) of the Secure Networks Act directs the Commission to publish, no later than March 12, 2021, a list of covered communications equipment and services (Covered List). The Covered List, which will be publicly available, will serve as a reference for interested parties to indicate the communications equipment and services that certain providers must remove from their networks . . .").

Commission defined in the *2020 Supply Chain Order* to include “all equipment or services used in fixed and mobile broadband networks, provided they include or use electronic components.”<sup>59</sup> Second, the equipment and services must be identified as posing “an unacceptable risk to the national security of the United States or the security and safety of United States persons” by sources enumerated in section 2(c) of the Secure Networks Act.<sup>60</sup> Third, the equipment and services must be capable of satisfying the criteria in section 2(b)(2)(A)-(C) of the Secure Networks Act.<sup>61</sup> As discussed in more detail below, all communications equipment and services produced or provided by Huawei and ZTE are included on the Covered List.<sup>62</sup>

21. *Designation Orders.* The *Designation Orders* prohibit the use of USF support for all equipment and services produced or provided by Huawei and ZTE because of their designations as covered companies under section 54.9 of the Commission’s rules.<sup>63</sup> As a result, some equipment and services identified pursuant to those section 54.9 designations may not be eligible for reimbursement under the rules of the Reimbursement Program if they do not meet the three requirements and therefore are not “covered communications equipment and services,” even though they are subject to the USF prohibition in section 54.9.<sup>64</sup>

22. *Effect of CAA Amendments.* We find that further analysis of the effect of the CAA’s amendments on section 4 of the Secure Networks Act compels us to slightly diverge from our original proposal in the *2021 Supply Chain Further Notice*. In that *Notice*, we proposed to modify the scope of communications equipment and services eligible for reimbursement to those equipment and services produced or provided by covered companies subject to the *Designation Orders*.<sup>65</sup> While there is record support for our original proposal,<sup>66</sup> it overlooked the requirement in section 4(c) of the Secure Networks Act, as amended, to limit equipment and services eligible for reimbursement to those that are “covered communications equipment and services,” defined as communications equipment and services found on

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<sup>59</sup> See *2020 Supply Chain Order*, 35 FCC Rcd at 14309, para. 52.

<sup>60</sup> Secure Networks Act § 2(c); see *2020 Supply Chain Order*, 35 FCC Rcd at 14311-12, para. 58.

<sup>61</sup> Secure Networks Act § 2(b)(2)(A)-(C) (“The Commission shall place on the list published under subsection (a) any communications equipment or service, if and only if such equipment or service . . . (2) is capable of—(A) routing or redirecting user data traffic or permitting visibility into any user data or packets that such equipment or service transmits or otherwise handles; (B) causing the network of a provider of advanced communications service to be disrupted remotely; or (C) otherwise posing an unacceptable risk to the national security of the United States or the security and safety of United States persons.”); see *2020 Supply Chain Order*, 35 FCC Rcd at 14315-16, 14321, paras. 67-69, 82.

<sup>62</sup> See *infra* paras. 29-30.

<sup>63</sup> See 47 CFR § 54.9; *2019 Supply Chain Order*, 34 FCC Rcd at 11449-50, paras. 66-69.

<sup>64</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14301-14302, paras. 34-35 (“To the extent there is equipment or service that is prohibited under section 54.9 but is not on the Covered List, it is not subject to the remove-and-replace requirement . . . .”); see also 47 CFR § 54.9(a) (prohibiting the use of USF support to purchase, maintain, improve, modify, operate, manage, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain).

<sup>65</sup> *2021 Supply Chain Further Notice* at 3-5, paras. 10-14.

<sup>66</sup> See *Mediacom Comments* at 6-7 (agreeing with the Commission’s interpretation of section 901 of the CAA that “Congress intended 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*, meaning all Huawei and ZTE equipment”); *RWA Comments* at 3-4 (agreeing “that the Commission should limit the use of reimbursement funds to reimbursement only for costs associated with the replacement, removal, and disposal of all Huawei and ZTE equipment and services, as proposed in the [*2021 Supply Chain Further Notice*]”).

the Covered List.<sup>67</sup> We accordingly find, based on a further review of the Secure Networks Act, as amended by the CAA, that Congress intended to limit the scope of equipment and services eligible for Reimbursement Program funding to a subset of equipment and services identified on the Covered List *and* that are either defined in the *2019 Supply Chain Order* or designated in the *Designation Orders*. As such, we amend our rules consistent with the CAA.<sup>68</sup>

23. Congress, in amending section 4(c) of the Secure Networks Act, modified the scope of equipment and services eligible for reimbursement but did not revise the definition of “covered communications equipment or service” found in section 9 of the Secure Networks Act, which defines “covered communications equipment and services” as equipment and services found on the Covered List.<sup>69</sup> As a result, the Secure Networks Act, as amended, allows reimbursement for equipment and services from the companies designated as national security threats pursuant to section 54.9 of the Commission’s rules that are *also* included on the Covered List.<sup>70</sup> We interpret the CAA’s amendment as maintaining the Covered List as the baseline source for eligibility for the Reimbursement Program, but altering the scope of covered communications equipment and services to those equipment and services on the Covered List that are either defined in the *2019 Supply Chain Order* or designated in the *Designation Orders* and through the designation process in section 54.9 of the Commission’s rules. To align our Reimbursement Program rules with the modified scope of eligible covered communications equipment and services, we therefore revise our eligibility rules to specify that the equipment and services eligible for reimbursement are limited to communications equipment and services produced or provided by Huawei and ZTE, as they are covered companies designated in the *Designation Orders* under section 54.9 of the Commission’s rules whose communications equipment is also on the Covered List.<sup>71</sup>

24. The record generally supports our interpretation of the CAA amendments to section 4(c) of the Secure Networks Act.<sup>72</sup> As the Rural Wireless Association, Inc. (RWA) states, the CAA’s amendment to section 4(c) of the Secure Networks Act makes clear Congress’s intent “that it did not mean to cover *all* equipment and services later placed on the Covered List,” instead choosing to limit reimbursement funding to Huawei and ZTE communications equipment and services.<sup>73</sup> Both RWA and Mediacom argue that the Commission’s proposals are supported by provisions in the CAA that further align the scope of reimbursement with the equipment and services identified by the *2019 Information Collection Order*, which sought data on Huawei and ZTE equipment and services contained in ETCs’

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<sup>67</sup> 47 U.S.C. § 1604(c).

<sup>68</sup> See CAA § 901 (amending section 4(c) of the Secure Networks Act to limit the use of reimbursement funds “solely for the purposes of . . . removing covered communications equipment or services purchased, rented, leased, or otherwise obtained” as defined in the *2019 Supply Chain Order* or as determined to be covered through the Commission’s designation process).

<sup>69</sup> Secure Networks Act § 9(5).

<sup>70</sup> 47 CFR § 54.9(a).

<sup>71</sup> See *id.* § 54.9(a)-(b); see also RWA Comments at 4 (requesting that the Commission clarify that all Huawei and ZTE equipment and services should be eligible for reimbursement, “given the national security threat concerns”).

<sup>72</sup> RWA Comments at 3-4 (agreeing that the Commission should limit reimbursement funding to Huawei and ZTE equipment and services “rather than be expanded to include *all* costs associated with equipment and services published on the Covered List which could eventually include other unsecure equipment and services”); see also Huawei Technologies Co., Ltd., and Huawei Technologies USA, Inc. Comments at 3 (Huawei) (acknowledging that the CAA “amended certain provisions of the Secure Networks Act to expand . . . the scope of equipment” eligible for reimbursement under Section 4 of the Secure Networks Act); RWA Reply at 2-3 (limiting use of reimbursement funding to costs associated with removal, replacement, and disposal of Huawei and ZTE equipment aligns with congressional intent).

<sup>73</sup> RWA Comments at 3-4.

and their subsidiaries and affiliates, networks.<sup>74</sup> We concur that this alignment supports our interpretation that Congress intended to narrow the scope of eligible equipment and services to Huawei and ZTE communications equipment and services, as covered companies established in the *Designation Orders*. Furthermore, the CAA's revision to set the cutoff date for equipment and services eligible for reimbursement as the effective date of the *Designation Orders*, June 30, 2020, likewise indicates Congress's intent to synchronize the Reimbursement Program eligibility with the scope of equipment and services designated pursuant to section 54.9 of the Commission's rules.<sup>75</sup>

25. The Competitive Carriers Association (CCA), NTCA – The Rural Broadband Association (NTCA), and the Secure Networks Coalition offer slightly varied interpretations of the CAA's amendment to section 4(c) of the Secure Networks Act.<sup>76</sup> CCA argues that the CAA's amendment demonstrates Congress's "intent to allow the use of Reimbursement Program funds to remove, replace, and dispose of equipment and services subject either to the Covered List *or* the Designation Orders, rather than including only equipment and services subject both to the Covered List *and* the Designation Orders."<sup>77</sup> NTCA mischaracterizes the Commission's proposal, instead supporting revising the equipment and services subject to removal and reimbursement "to encompass *all* equipment and services produced or provided by entities identified on the Commission's Covered List."<sup>78</sup> The Secure Networks Coalition's similarly misconstrues the section 4(c) amendments. The Secure Networks Coalition argues that the CAA requires the Reimbursement Program to fund the replacement of all equipment, software, and services included on the Covered List.<sup>79</sup> The Secure Networks Coalition claims that because Congress allocated funding to remove network equipment posing a national security risk to the nation's communications networks, the Commission must allow for the removal and replacement of any hardware or software from companies on the Covered List in order to meet Congress's mandate to mitigate risks to national security.<sup>80</sup>

26. While we agree with commenters' conclusions that Congress intended to include Huawei and ZTE communications equipment and services in the scope of products eligible for reimbursement, we reject CCA, NTCA, and the Secure Network Coalition's interpretations of the CAA. Section 901 of the CAA amends section 4(c) of the Secure Networks Act by replacing the entire text of sections 4(c)(1)(A)(i) & (ii) to revise the scope of equipment and services eligible for reimbursement from those that are either published on the initial Covered List or subsequently placed on the Covered List, to those that are defined by the *2019 Supply Chain Order* or as determined by the designation process in section 54.9 of the Commission's rules and the *Designation Orders* designating Huawei and ZTE as covered companies.<sup>81</sup> Section 901 does not, however, amend section 4(c)(1)(A), which limits reimbursement funding to the permanent removal of covered communications equipment or services, nor does it amend the definition of "covered communications equipment or service" in section 9(5) of the Secure Networks

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<sup>74</sup> Mediacom Comments at 7 ("[A]llowing reimbursement for all Huawei and ZTE equipment and services would be consistent with the Commission's 2020 data collection efforts."); RWA Comments at 4 ("Congress made its intent clear — that it did not mean to cover all equipment and services later placed on the Covered List — as Congress based its funding solely on the Information Collection Results, and imposed a matching \$1.9 billion funding limitation."); *see also* RWA Reply at 3-4.

<sup>75</sup> *See infra* Section III.C.

<sup>76</sup> *See* CCA Comments at 5-6; NTCA – The Rural Broadband Association Comments at 2 (NTCA); Secure Networks Coalition Reply at 4.

<sup>77</sup> CCA Comments at 5.

<sup>78</sup> NTCA Comments at 2.

<sup>79</sup> Secure Networks Coalition Reply at 4.

<sup>80</sup> *Id.* at 4-5.

<sup>81</sup> CAA § 901.

Act, which means any communications equipment or service on the Covered List.<sup>82</sup>

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

28. Therefore, CCA’s interpretation, that Congress intended to allow reimbursement funds to be used for eligible equipment and services on either the Covered List or produced or provided by designated companies in the *Designation Orders*, does not comport with the structure of the amended section 4 of the Secure Networks Act. The amended section 4 still preserves the Covered List as the baseline source for eligible equipment and services but *then* limits eligibility to those such equipment and services as defined by the *2019 Supply Chain Order* or as determined by the designation process in section 54.9 of the Commission’s rules and the *Designation Orders* designating Huawei and ZTE as covered companies.<sup>83</sup> Nor do NTCA and the Secure Networks Coalition’s interpretations supporting eligibility for all equipment and services on the Covered List reconcile with the CAA’s amendments to section 4(c)(1) of the Secure Networks Act.<sup>84</sup> Congress intended to limit eligibility to a subset of equipment and services on the Covered List by amending sections 4(c)(1)(A)(i) & (ii) to replace the original text, which referenced the Covered List, with a reference the *2019 Supply Chain Order*, the *Designation Orders*, and the Commission’s process for designations under section 54.9 of its rules.

29. *Analysis of Covered List.* Consistent with the Commission’s previous interpretation of the scope of Huawei and ZTE equipment and services included in the Covered List, we interpret the CAA’s revised scope of equipment and services eligible for reimbursement to include all communications equipment and services produced or provided by Huawei or ZTE.<sup>85</sup> Section 2(b) of the Secure Networks Act requires the Commission to add to the Covered List communications equipment and services that satisfy certain functional capabilities, as determined by specific sources enumerated in section 2(c).<sup>86</sup> In the *2020 Supply Chain Order*, the Commission acknowledged that section 889(f)(3) of the 2019 NDAA is

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<sup>82</sup> *Id.*; see Secure Networks Act §§ 4(c)(1)(A), 9(5).

<sup>83</sup> See CCA Comments at 5.

<sup>84</sup> See NTCA Comments at 2; Secure Networks Coalition Reply at 4.

<sup>85</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14315-16, paras. 66-67.

<sup>86</sup> Secure Networks Act § 2(b) (“The Commission shall place on the list published under subsection (a) any communications equipment or service, if and only if such equipment or service—(1) is produced or provided by an entity, if, based exclusively on the determinations described in paragraphs (1) through (4) of subsection (c), such equipment or service produced or provided by such entity poses an unacceptable risk to the national security of the United States or the security and safety of United States persons; and (2) is capable of—(A) routing or redirecting user data traffic or permitting visibility into any user data or packets that such equipment or service transmits or otherwise handles; (B) causing the network of a provider of advanced communications service to be disrupted remotely; or (C) otherwise posing an unacceptable risk to the national security of the United States or the security and safety of United States persons.”); see *id.* § 2(c) (specifying the enumerated sources for reliance on determinations for equipment and services contained on the Covered List).

one of the enumerated sources in section 2(c) for including equipment and services on the Covered List. Section 889(f)(3) defines “covered telecommunications equipment and services” to include “(A) telecommunications equipment produced or provided by Huawei or ZTE; [and] (C) telecommunications or video surveillance services provided by such entities or using such equipment.”<sup>87</sup> Notably, the Commission rejected arguments that it should have added a narrower list of equipment and services to the Covered List, based upon a separate section of the 2019 NDAA, section 889(a)(2)(B), that limited the “covered telecommunications equipment or services” in the statute to equipment and services that can “route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.”<sup>88</sup> The Commission found that Congress explicitly limited the scope of its procurement restrictions to Huawei and ZTE equipment in subsections (a) and (b) of the 2019 NDAA to equipment capable of routing or permitting network visibility, but did not include such a limitation in paragraph 889(f)(3), which governs the determination the Commission must add on the Covered List.<sup>89</sup> Therefore, consistent with the Secure Networks Act statutory obligation, the Commission placed on the Covered List the determination found in section 889(f)(3)(A), that is, “telecommunications equipment produced or provided by Huawei or ZTE” capable of the functions outlined in sections 2(b)(2)(A), (B), or (C) of the Secure Networks Act.<sup>90</sup>

30. We find that the Commission’s prior interpretation of the 2019 NDAA provisions means that Huawei and ZTE communications equipment and services need not be capable of the functions listed in sections 2(b)(2)(A) or (B) of the Secure Networks Act to be on the Covered List. The Commission determined in the *2020 Supply Chain Order* that Congress chose to specifically include the broader definition of eligible equipment and services in section 889(f)(3), and the Commission concluded that section 889(f)(3) incorporated all such Huawei and ZTE communications equipment and services into the Covered List.<sup>91</sup> Furthermore, in dismissing arguments to limit inclusion to only Huawei or ZTE equipment and services capable of the functionality enumerated in section 889(a)(2)(B) of the 2019 NDAA, the Commission interpreted the inclusion of section 2(b)(2)(C) of the Secure Networks Act, that is, including equipment and services capable of “otherwise posing an unacceptable risk to the national security of the United States or the security and safety of United States persons,” as indicative of Congress’s intent to encompass on the Covered List equipment and services beyond the narrower list of enumerated functions.<sup>92</sup> As the Commission stated in the *2020 Supply Chain Order*, “[t]o limit the NDAA determination to equipment capable of routing or permitting network visibility would both ignore the plain text of the NDAA and read section 2(b)(2)(C) out of the Secure Networks Act, which lists the capabilities of communications equipment and services that warrant inclusion on the Covered List.”<sup>93</sup> Section 901 of the CAA is consistent with this interpretation. It carves out the equipment and services

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<sup>87</sup> National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, 132 Stat. 1636, § 889(f)(3)(A)-(C) (2019 NDAA). Section § 889(f)(3)(B) does not cover Huawei or ZTE equipment or services.

<sup>88</sup> *Id.* § 889(a)(2)(B) (limiting the restriction on the procurement of “covered telecommunications equipment or services” to equipment and services that can “route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles”); *see also 2020 Supply Chain Order*, 35 FCC Rcd at 14315-16, paras. 66-67.

<sup>89</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14315-16, para. 67.

<sup>90</sup> *Id.*; Federal Communications Commission, *List of Equipment and Services Covered By Section 2 of The Secure Networks Act*, <https://www.fcc.gov/supplychain/coveredList> (last visited June 21, 2021) (FCC Covered List). The Commission also placed on the Covered List video surveillance and telecommunications equipment produced by Hytera, Hikvision, and Dahua capable of the functions outlined in section 2(b)(2)(A)-(C) of the Secure Networks Act. *2020 Supply Chain Order*, 35 FCC Rcd at 14316, paras. 68-69.

<sup>91</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14315-16, para. 67.

<sup>92</sup> *Id.*; *see also* Secure Networks Act § 2(b)(2)(C).

<sup>93</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14315, para. 67.

eligible for reimbursement into a limited subset of the Covered List, that is, only communications equipment and services as defined in the *2019 Supply Chain Order* or as determined by the process in section 54.9 of the Commission's rules and the *Designation Orders*.<sup>94</sup> The *Designation Orders* prohibited the use of USF support for all Huawei and ZTE equipment and services. We thus find Congress in the CAA intended reimbursement eligibility for all Huawei and ZTE equipment and services found on the Covered List, that is, all Huawei and ZTE communications equipment and services.

31. Our decision today also advances the Commission's goals of developing a simple and straightforward reimbursement process that facilitates the expeditious removal, replacement, and disposal of equipment and services that threaten the security of our nation's communications systems.<sup>95</sup> We agree with RWA that clarifying the scope of equipment and services eligible for reimbursement as Huawei and ZTE communications equipment and services, rather than all equipment and services on the Covered List, which currently includes three other companies and potentially others should the Commission add more, creates a bright line for Reimbursement Program participants to clearly identify what equipment and services are eligible, thus easing administrative costs for eligible providers and the Commission.<sup>96</sup> By revising the scope of equipment and services eligible for reimbursement, we provide clarity to providers of advanced communications service as to the expectations for participation in the Reimbursement Program and assurance as to what costs associated with the removal, replacement, and disposal of covered equipment and services they can expect to be reimbursed, if accepted.

32. We further interpret the CAA amendments to determine that other equipment and services on the Covered List are not automatically eligible for reimbursement.<sup>97</sup> Only equipment and services on the Covered List that are also defined in the *2019 Supply Chain Order* or that are produced or provided by covered companies designated under section 54.9 of the Commission's rules as posing a national security threat to the integrity of communications networks or the communications supply chain are eligible for reimbursement under the Reimbursement Program based on the CAA.<sup>98</sup> We agree with CCA and Mediacom that the CAA amends section 4(c) of the Secure Networks Act to permit eligibility of such equipment and services from other designated companies, should the Public Safety and Homeland Security Bureau make such a determination pursuant to the process set forth in section 54.9 of the Commission's rules.<sup>99</sup> Section 901 of the CAA amends section 4(c) of the Secure Networks Act to allow reimbursement funding to be used for the removal, replacement, and disposal of equipment and services as defined by the *2019 Supply Chain Order*, which adopted the process for designating covered companies that pose a national security threat to the integrity of communications networks or the

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<sup>94</sup> CAA § 901.

<sup>95</sup> See *2020 Supply Chain Order*, 35 FCC Rcd at 14344, para. 142.

<sup>96</sup> RWA Comments at 3-4 (arguing Congress's intent that it did not mean to cover all equipment and services placed on the Covered List and stating that clarifying all Huawei and ZTE equipment and services are eligible for reimbursement "would also lessen administrative costs for both eligible providers and the Commission in deciphering which Huawei or ZTE equipment components are eligible for reimbursement"); see also RWA Reply at 2-4.

<sup>97</sup> See RWA Comments at 4 ("Other equipment or services that may be added to the Covered List in the future were clearly not contemplated by Congress in its amendment to the Secure Networks Act.").

<sup>98</sup> To date, only Huawei and ZTE have been designated as covered companies and are also on the Covered List. See *Designation Orders*; FCC Covered List, <https://www.fcc.gov/supplychain/coveredlist> (last visited June 21, 2021).

<sup>99</sup> CCA Comments at 5-6 (expressing belief that the CAA's amendment to section 4(c) of the Secure Networks Act permits Reimbursement Program eligibility of equipment and services from other companies designated as posing a national security threat); Mediacom Comments at 7 (supporting allowing reimbursement for equipment and services on the Covered List "if and when the companies that provide those equipment and services are designated as posing a national security threat between now and the conclusion of the Reimbursement Program").

communications supply chain found in section 54.9 of the Commission's rules.<sup>100</sup> By listing the *2019 Supply Chain Order* in the CAA amendment, we find that Congress intended that the Commission's designation process serve as a source for identifying future equipment and services eligible for reimbursement from the broader Covered List; otherwise, Congress could have merely stated that the *Designation Orders* alone set the eligibility parameters. Therefore, should future companies be designated as posing a national security threat pursuant to section 54.9 of the Commission's rules, we may consider costs associated with the removal, reimbursement, or disposal of equipment and services produced or provided by those covered companies eligible for reimbursement under the Reimbursement Program, provided that such equipment and services are also on the Covered List and the Reimbursement Program has an open filing window and adequate funding.<sup>101</sup>

33. We next find that, to the extent there are future designations, equipment and services from such companies would be eligible for reimbursement from the Reimbursement Program without needing an additional appropriation from Congress.<sup>102</sup> Congress has currently appropriated \$1.9 billion for the Reimbursement Program, which is very close to the number the Commission publicly identified in the 2019 information collection, as well as presented to Congress, as the cost to replace Huawei and ZTE equipment.<sup>103</sup> The CAA also amends the eligibility cutoff date for covered equipment and services for reimbursement to align with the date that the *Designation Orders* were released, June 30, 2020.<sup>104</sup> Both actions indicate Congress's intent to limit the eligibility of the current Reimbursement Program to the scope of such Huawei and ZTE equipment and services on the Covered List.<sup>105</sup> Yet despite the signals that Congress intended this current appropriation to fund the removal, replacement, and disposal of such Huawei and ZTE equipment and services on the Covered List through the Reimbursement Program, Congress did not restrict funding to only those equipment and services,<sup>106</sup> nor did it limit any future eligibility to specific appropriations. Therefore, as discussed herein, we will continue to administer the Reimbursement Program in accordance with the prioritization scheme set forth in the CAA and adopted in this *Report and Order*.<sup>107</sup>

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<sup>100</sup> CAA § 901(1)(B)(i) (amending Secure Networks Act § 4(c)(1)(A)(i)); 47 CFR § 54.9; *2019 Supply Chain Order*, 34 FCC Rcd at 11433, paras. 26-27.

<sup>101</sup> See CCA Comments at 5-6 (discussing concerns about the amount of available funding for equipment and services offered by future designated companies); Mediacom Comments at 7 (supporting reimbursement for future designations if such designations occur between now and the conclusion of the Reimbursement Program).

<sup>102</sup> As such, we disagree with RWA's argument that services and equipment from future designated companies should not be eligible for reimbursement, to the extent that such eligibility must be tied to a specific appropriation by Congress. See RWA Comments at 4 ("In the event that equipment and services, outside of Huawei and ZTE equipment and services, are added to the Covered List, before the Reimbursement Program concludes, such equipment and services should not be eligible for reimbursement under this program and should be subject to a specific additional appropriation of funds by Congress."); see also RWA Reply at 3-4 (arguing that the Commission should not "hold back any of the funds appropriated by Congress for the Reimbursement Program for *potential* future designations that are currently unforeseen . . ."). Such equipment and services would require a filing window to accept applications to participate in the Reimbursement Program if one is not already open when the Commission issues the further designations. If there is funding remaining from the \$1.9 billion appropriation, the Commission would need not seek an additional appropriation before moving forward with the filing window.

<sup>103</sup> *Information Collection Results Public Notice*, 35 FCC Rcd at 9472.

<sup>104</sup> CAA § 901; see also *Designation Orders*.

<sup>105</sup> See RWA Comments at 4 ("Congress made its intent clear — that it did not mean to cover all equipment and services later placed on the Covered List — as Congress based its funding solely on the Information Collection Results, and imposed a matching \$1.9 billion funding limitation.").

<sup>106</sup> See CAA § 901(1)(B)(i) (amending Secure Networks Act § 4(c)(1)(A)(i)).

<sup>107</sup> See *infra* Section III.D.1.



34. To maintain consistency within the Reimbursement Program, we also extend the revised scope of equipment and services eligible for reimbursement throughout our rules related to the administration of the Reimbursement Program. Specifically, we extend this revised scope to all references to “covered communications equipment or service” contained in section 4 of the Secure Networks Act, and the Commission’s rules implementing that section.<sup>108</sup> As noted herein, while the CAA amends the scope of equipment and services eligible for reimbursement from those solely on the Covered List to those also either defined in the *2019 Supply Chain Order* or subject to the Huawei and ZTE *Designation Orders* and any future designated entities identified under our designation process established in the *2019 Supply Chain Order*,<sup>109</sup> it does not revise the definition of “covered communications equipment or service” found in section 9 of the Secure Networks Act, which defines “covered communications equipment and services” as equipment and services found on the Covered List.<sup>110</sup> As such, other references to “covered communications equipment or service” in section 4 of the Secure Networks Act do not reflect the revised scope of eligible equipment and services as amended by the CAA. This incongruity could lead to discrepancies between the equipment and services participants are required to remove and dispose of and the equipment and services for which they are permitted to spend reimbursement funding for removal, replacement, and disposal. We believe that Congress intended to make reimbursement funds available for all such equipment and services participants are required to remove. To reconcile any potential conflicts wherein Reimbursement Program participants are required to permanently remove and dispose of equipment and services from the Covered List as set forth in their plans as obligated by their participation, we interpret the scope of covered communications equipment and services referenced throughout section 4 of the Secure Networks Act as aligning with the scope of equipment and services eligible for reimbursement, that is, such equipment and services on the Covered List that are as defined by the *2019 Supply Chain Order* or as determined by the process established in the *2019 Supply Chain Order* and in the *Designation Orders*.<sup>111</sup>

35. We emphasize that the CAA’s amendment and our subsequent modification to the Commission’s rules apply only to the Reimbursement Program and do not implicate other sections of the Secure Networks Act.<sup>112</sup> Congress narrowly limited its amendment to section 4 of the Secure Networks Act and as such, we limit its applicability to the corresponding sections of the Commission’s rules. The Covered List, published and maintained pursuant to section 2 of the Secure Networks Act, is still in full effect as applicable to the section 3 prohibition on the use of Federal subsidies and the section 5 information reporting requirement, and to the Commission’s rules implementing those provisions of the Secure Networks Act.<sup>113</sup> Furthermore, the modification does not impact or revise the prohibition on the use of USF support for equipment or services produced or provided by covered companies, pursuant to section 54.9(a) of the Commission’s rules. The Public Safety and Homeland Security Bureau may still designate companies which pose a national security threat via the process set forth in section 54.9(b) of

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<sup>108</sup> See Secure Networks Act § 4(d)(4)(A) (requiring an applicant to certify that it has developed a plan for the permanent removal, replacement, and disposal of any covered communications equipment or services in its networks); *id.* § 4(d)(6) (setting a one-year deadline for the permanent removal, replacement, and disposal of any covered communications equipment or services set forth in the applicant’s plan); *id.* § 4(d)(7) (requiring the Commission to include regulations for the disposal of covered communications equipment or service identified in the applicant’s plan); *see also* 47 CFR § 1.50004(a) & (h).

<sup>109</sup> CAA § 901.

<sup>110</sup> Secure Networks Act § 9(5).

<sup>111</sup> See CAA § 901(1)(B)(1).

<sup>112</sup> See Huawei Comments at 5 (“[T]he CAA did not amend Section 2 of the Secure Networks Act regarding how the Covered List shall be developed. Nor did it alter Section 3 of the Secure Networks Act, *i.e.*, the prohibition on use of Commission subsidies to purchase or otherwise obtain covered equipment or services.”) (footnote omitted).

<sup>113</sup> Secure Networks Act §§ 2, 3, 5; 47 CFR §§ 1.50002, 1.50003, 1.50007, 54.10.

the Commission's rules, to which the prohibition in section 54.9(a) would apply.<sup>114</sup>

36. We next determine that the modification to the scope of equipment and services eligible for reimbursement is effective 60 days after publication in the Federal Register, as applied to prospective applicants to the Reimbursement Program. All providers of advanced communications service that participate in the Reimbursement Program must remove, replace, and dispose of all such communications equipment and services from Huawei and ZTE, in accordance with the deadlines set forth in the Reimbursement Program rules.<sup>115</sup> To the extent future designations may identify additional companies from the Covered List that pose a national security threat to the integrity of communications networks and the communications supply chain after the initial application period for the Reimbursement Program, we direct the Wireline Competition Bureau, in consultation with the Office of the Managing Director, to issue further guidance clarifying the procedure for seeking reimbursement for removal, replacement, and disposal costs associated with eligible equipment and services, should the Reimbursement Program be accepting applications and sufficient reimbursement funding be available.<sup>116</sup>

37. *Remove-and-Replace Rule.* We further revise the remove-and-replace rule adopted by the Commission in the *2020 Supply Chain Order* to align the scope of equipment and services required for removal and replacement with the scope of equipment and services now eligible for reimbursement through the Reimbursement Program.<sup>117</sup> Therefore, recipients of funding through the Reimbursement Program and ETCs receiving USF support must remove and replace equipment and services from the Covered List that are defined in the *2019 Supply Chain Order* or subject to the *Designation Orders* and the process for designating companies that pose a national security threat to the integrity of communications networks or the communications supply chain, as set forth in the *2019 Supply Chain Order*. Because the Commission currently has only designated Huawei and ZTE as covered companies from the list of five companies found on the Covered List, Reimbursement Program funding recipients and ETCs receiving USF support must remove and replace Huawei and ZTE communications equipment and services from their networks.<sup>118</sup>

38. In the *2020 Supply Chain Order*, the Commission adopted section 54.11, requiring that ETCs receiving USF support and recipients of Reimbursement Program funding remove and replace all covered communications equipment and services on the Covered List from their networks.<sup>119</sup> The

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<sup>114</sup> See 47 CFR § 54.9.

<sup>115</sup> *Id.* § 1.50004(h) (Reimbursement Program recipients must complete the permanent removal, replacement, and disposal of covered communications equipment or service within one year of receiving the initial draw down disbursement from their funding allocation); see also *2020 Supply Chain Order*, 35 FCC Rcd at 14354, para. 169.

<sup>116</sup> See Mediacom Comments at 7 (“To the extent there are equipment and services on the Covered List from companies that are not subject to the Designation Orders, Mediacom supports allowing reimbursement for them if and when the companies that provide those equipment and services are designated as posing a national security threat between now and the conclusion of the Reimbursement Program.”).

<sup>117</sup> See *2020 Supply Chain Order*, 35 FCC Rcd at 14299-14302, paras. 32-35.

<sup>118</sup> This is modified from the scope of equipment and services required for removal under section 54.11 set forth in the *2020 Supply Chain Order*, i.e., the Covered List, which in addition to telecommunications equipment produced by Huawei and ZTE includes video surveillance and telecommunications equipment produced by Hytera, Hangzhou, and Dahua, to the extent it is used for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes. See *id.* at 14299-14300, para. 32; FCC Covered List, <https://www.fcc.gov/supplychain/coveredlist> (last visited June 21, 2021). As costs to remove, replace, and dispose of video surveillance and telecommunications equipment produced by Hytera, Hangzhou, and Dahua are not eligible for reimbursement under the Reimbursement Program at the moment based on the CAA's amendments to the Reimbursement Program, equipment and services from these companies are not currently subject to the remove and replace rule.

<sup>119</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14290-14308, paras. 17-50.

Commission made compliance with the remove-and-replace requirement contingent upon an appropriation from Congress to the Reimbursement Program.<sup>120</sup> Reimbursement Program recipients must certify compliance as a condition to their participation, as required by various provisions of the Secure Networks Act.<sup>121</sup> ETC recipients of USF support must certify that they have complied with section 54.11 after the Reimbursement Program opens, and subsequently certify compliance before receiving USF support each funding year.<sup>122</sup>

39. Our decision is consistent with the Commission’s prior approach to requiring removal of vulnerable equipment and services from the nation’s communications networks.<sup>123</sup> Upon adoption of the remove-and-replace rule, the Commission stated its intent to align the scope of equipment and services subject to section 54.11 of the Commission’s rules with the scope of equipment and services eligible for reimbursement under the Reimbursement Program.<sup>124</sup> Doing so, the Commission found, “better aligns compliance with removal and replacement obligations to the administration of the Reimbursement Program and creates a bright-line determination for ETCs receiving USF support and reimbursement recipients to easily identify equipment and services to remove and replace from their networks.”<sup>125</sup> Because we find the CAA amends the Secure Networks Act to modify the equipment and services eligible for reimbursement from solely those on the Covered List to those on the Covered List and also defined in the *2019 Supply Chain Order* or subject to the designation process in section 54.9 of the Commission’s rules and the *Designation Orders*, we modify the remove-and-replace rule to preserve the alignment of the equipment and services subject to removal under section 54.11 and through the Reimbursement Program. We find that using the equipment and services on the Covered List that are defined in the *2019 Supply Chain Order* or subject to the designation process in section 54.9 of the Commission’s rules and the *Designation Orders* to determine both the equipment and services subject to the remove-and-replace requirement and the equipment and services eligible for reimbursement through the Reimbursement Program creates a bright-line determination for entities complying with section 54.11 and those participating in the Reimbursement Program. Therefore, we find that it should not be overly burdensome for entities to identify the equipment and services in their networks required for removal and replacement.<sup>126</sup>

40. The record supports our decision to align the scope of equipment and services required for removal under section 54.11 with the scope of equipment and services eligible for reimbursement through the Reimbursement Program.<sup>127</sup> As NTCA claims, this revision “eliminates the incongruity

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<sup>120</sup> *Id.* at 14290-91, para. 18.

<sup>121</sup> *Id.* at 14308, para. 49; *see also* Secure Networks Act § 4(d)(4)(B)(i) (requiring applicants for reimbursement funds to certify compliance with a prohibition from purchasing, renting, leasing, or otherwise obtaining covered equipment or services with reimbursement funds or any other funding, including private funds, beginning on the date of approval of its application for reimbursement); *id.* § 4(e)(4)(A)(iii) (requiring a similar final certification from reimbursement recipients). Recipients must also certify that they have fully complied, or are in the process of complying, with all terms and conditions of the Reimbursement Program, all commitments made in the application, and the timeline submitted with the application. *Id.* § 4(e)(4)(A)(i), (ii), (iv).

<sup>122</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14308, para. 49.

<sup>123</sup> *See* Mediacom Comments at 8 (“[A]lignment of the ‘rip-and-replace’ requirement with reimbursement is the best way to achieve the primary objective of this proceeding – securing U.S. communications networks.”).

<sup>124</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14299-14300, para. 32.

<sup>125</sup> *Id.*

<sup>126</sup> *See* NTCA Comments at 3 (the CAA’s elimination of the distinction between equipment and services subject to remove-and-replace and equipment and services eligible for reimbursement “provides much needed equity and clarity to all providers”).

<sup>127</sup> Mediacom Comments at 8 (supporting “the Commission’s proposal to amend its ‘rip-and-replace’ rule consistent with its proposed changes to the scope of the equipment and services that would be eligible for reimbursement under

(continued....)

created by the Commission's prior rules and the Secure Networks Act wherein the scope of equipment and services that [ETCs] were required to remove and replace exceeded the equipment and services eligible for reimbursement."<sup>128</sup> We further concur with NTCA and Mediacom that modifying the scope of the remove-and-replace requirement to match the scope of eligible equipment and services in the Reimbursement Program provides clarity to providers, thus ultimately easing administrative burdens as providers work to remove Huawei and ZTE equipment and services from their networks.<sup>129</sup>

41. We reject Huawei's argument that because the Commission lacks authority to mandate removal and replacement, it likewise has no authority to modify the scope of the equipment and services subject to the requirement.<sup>130</sup> As discussed at length in response to similar arguments Huawei raised in the *2020 Supply Chain Order*, the Commission found that several statutory provisions provided appropriate authority for adoption of the remove-and-replace rule.<sup>131</sup> Section 4 of the Secure Networks Act requires recipients of Reimbursement Program funding to permanently remove and replace all covered communications equipment and services from their networks as a condition of receiving the funding, and to certify to that effect throughout the reimbursement process.<sup>132</sup> The Commission also found that provisions of the Communications Act, including those related to its authority governing universal service, provided legal authority for the application of the remove-and-replace rule to ETCs that receive USF support.<sup>133</sup> Nothing in the CAA or the record changes the Commission's previous finding that we have authority to require recipients of Reimbursement Program funding and ETCs receiving USF support to remove and replace covered equipment and services. While we acknowledge that section 901 of the CAA amends some provisions of the Secure Networks Act, including the scope of the equipment and services eligible for reimbursement, the CAA does not disturb the provisions that authorize the Commission's mandate, as discussed in the *2020 Supply Chain Order*.<sup>134</sup> On the contrary, the CAA's amendments to the Secure Networks Act bolster our position that the Commission has authority to require the removal of equipment and services from covered companies designated pursuant to section 54.9 of the Commission's rules. First, Congress incorporated the Commission's designation process and current designations of Huawei and ZTE as covered companies into its limitation on the use of Reimbursement Program funds.<sup>135</sup> Second, Congress revised the cutoff date for equipment and services eligible for

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the Reimbursement Program."); RWA Comments at 5 (agreeing with the Commission "that it should revise its Removal and Replacement Mandate to include only Huawei and ZTE equipment and services") (footnote omitted).

<sup>128</sup> NTCA Comments at 2.

<sup>129</sup> See Mediacom Comments at 8 (arguing that requiring providers to only remove and replace equipment and services for which they will receive reimbursement "will promote consistency and clarity as well as reduce burdens on providers"); NTCA Comments at 3 ("[T]he CAA's elimination of this distinction provides much needed equity and clarity to all providers.").

<sup>130</sup> Huawei Comments at 3-4 ("No provision of the Secure Networks Act (including Section 4) mandates the removal and replacement of covered equipment outside of the context of a *voluntary* exchange of reimbursement funds for the removal of covered equipment or services. And as Huawei has previously explained at length, no other statute . . . provides authority for the Commission to mandate removal and replacement of covered equipment. Because the Commission lacks statutory authority to impose a removal-and-replacement mandate in the first instance, the Commission has no authority to expand its already unlawful rule.") (footnote omitted).

<sup>131</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14296-99, paras. 26-31.

<sup>132</sup> Secure Networks Act § 4(d)(6)(A), (e)(4)(A)(iii). The Secure Networks Act also prohibits recipients of reimbursement funds from purchasing, renting, leasing, or otherwise obtaining covered equipment or services with reimbursement funds or any other funding, including private funds. *Id.* § 4(d)(4)(B)(i), (e)(4)(A)(iii).

<sup>133</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14297-98, para. 28; see 47 U.S.C. §§ 254(b), 201(b).

<sup>134</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14296-99, paras. 26-31.

<sup>135</sup> CAA § 901 (amending Secure Networks Act § 4(c)(1)(A)).

reimbursement to June 30, 2020, the date the *Designation Orders* were released.<sup>136</sup> Both actions indicate Congress's support for the Commission's authority to designate Huawei and ZTE as covered companies and are evidence of congressional intent to ensure removal of Huawei and ZTE equipment and services from our nation's communications networks and supply chain. By incorporating the Commission's previous actions as the basis for reimbursement eligibility, the CAA provides even more support for the Commission's position that it was authorized to take that action.<sup>137</sup>

42. We similarly reject Huawei's argument that the CAA does not provide the authority to expand the scope of equipment and services subject to the remove-and-replace requirement.<sup>138</sup> As discussed above, when adopting the remove-and-replace rule, the Commission intended to align the scope of equipment and services subject to the requirement with the scope of equipment and services Congress intended for reimbursement—prior to the CAA's amendments, the Covered List.<sup>139</sup> By amending the scope of equipment and services eligible for reimbursement to a subset of products on the Covered List that are defined in the *2019 Supply Chain Order* or subject to the designation process and *Designation Orders*, the CAA necessitates a corresponding modification to the scope of equipment and services subject to removal and replacement under section 54.11 of the Commission's rules. We find the CAA supports our action to align the scope of equipment and services required for removal with those eligible for reimbursement as set forth by Congress.

43. The modifications to the remove-and-replace requirement adopted herein are limited to the scope of equipment and services subject to removal and do not revise the scope of entities required to comply nor the procedures for certifying compliance. In the *2020 Supply Chain Order*, the Commission stated that both ETCs receiving USF support and recipients of Reimbursement Program funding are required to remove and replace from their networks covered communications equipment and services.<sup>140</sup> While the expansion of eligible participants in the Reimbursement Program now includes providers of advanced communications service with 10 million or fewer customers, which, as stated herein, will encompass the vast majority of providers, participation in the Reimbursement Program remains voluntary. If a provider of advanced communications service decides to apply to the Reimbursement Program, it expressly agrees to permanently remove and dispose of covered communications equipment or services.<sup>141</sup> Similarly, the Tenth Circuit has held that the Commission may “specify what a USF recipient may or must do with the funds,” consistent with the policy principles outlined in section 254(b) of the Communications Act,<sup>142</sup> and designation as an ETC and participation in universal service programs is voluntary. Providers currently designated as ETCs and that participate in USF programs may relinquish their ETC status or decline to participate in USF programs should they wish to avoid compliance with our

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<sup>136</sup> *Id.*

<sup>137</sup> Indeed, the Fifth Circuit expressly rejected Huawei's previous claim that the Secure Networks Act showed the Commission acted unreasonably. Instead, it concluded that the FCC reasonably interpreted its authority under the Communications Act in formulating the 2019 Supply Chain Order. *Huawei Technologies USA v. FCC*, No. 19-60896, 32-36 (5th Cir.). The Court specifically found that the CAA made the SNA “*more consistent*” with the 2019 Supply Chain Order and the Designation Orders) (emphasis original).

<sup>138</sup> Huawei Comments at 4 (“[the CAA] does not provide the Commission with statutory authority to adopt or expand any mandates regarding the removal-and-replacement of covered equipment”).

<sup>139</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14299-14300, para. 32.

<sup>140</sup> *Id.* at 14291, para. 19.

<sup>141</sup> 47 CFR § 1.50004(h) (requiring participants to complete the permanent removal, replacement, and disposal of covered communications equipment and services within one year of receiving the initial draw down disbursement of their funding allocation).

<sup>142</sup> *In re FCC 11-161*, 753 F.3d 1015, 1046 (10th Cir. 2014); *2020 Supply Chain Order*, 35 FCC Rcd at 14297-98, para. 28.

rules.<sup>143</sup>

44. Compliance with our mandate to remove and replace covered communications equipment and services as described herein continues to apply to ETCs receiving USF support, in addition to participants in the Reimbursement Program, as a condition of receiving universal service or reimbursement funding, respectively. The CAA amendments did not modify those obligations. As such, we will continue to require ETC recipients of universal service funding to certify that they have complied with the remove and replace requirement for the new scope of covered equipment and services from the Covered List and as defined in the *2019 Supply Chain Order* or subject to the designation process in section 54.9 of the Commission's rules and the *Designation Orders*, as established in the *2020 Supply Chain Order*.<sup>144</sup>

45. We clarify that the remove-and-replace rule extends only to equipment or services on the Covered List that have also been produced or provided by companies that have been designated by the Public Safety and Homeland Security Bureau as posing a national security threat to the integrity of communications networks or the communications supply chain. Consistent with our original remove-and-replace rule, any future removal-and-replace obligation for additional designations that are included on the Covered List will be contingent on the existence of funding to remove and replace the equipment or services produced or provided by such designated covered company.<sup>145</sup> If the Public Safety and Homeland Security Bureau makes any such future final designations, following any appropriations to fund the removal and replacement of equipment or services produced or provided by those covered companies, we will require ETCs receiving USF support to remove equipment and services produced or provided by designated companies that are on the Covered List before they are next obligated to certify that they have removed all covered equipment and services from their networks on their applications for any USF support.<sup>146</sup> The process for announcing an initial designation provides adequate notice that ETCs receiving USF support may be required to remove equipment and services from that company, should a final designation be issued.

### C. Timing Requirement for the Reimbursement Program

46. We next amend the Reimbursement Program rules to allow recipients to use reimbursement funds to remove, replace, or dispose of any equipment or services that were purchased, rented, leased, or otherwise obtained on or before June 30, 2020, consistent with the CAA's amendments to the Secure Networks Act.<sup>147</sup> Currently, pursuant to section 4(c)(2)(A) of the original Secure Networks Act, our rules prohibit Reimbursement Program recipients from using such funds to remove, replace, or

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<sup>143</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14305-14306, para. 43.

<sup>144</sup> *Id.* at 14308, paras. 49-50. As a reminder, the first certification will be required one year after the Wireline Competition Bureau issues a Public Notice announcing the acceptance of applications filed during the initial filing window to participate in the Reimbursement Program. Once the one-year period has expired, ETC recipients of USF support must then certify going forward that they are not using equipment or services subject to the *Designation Orders* before receiving USF support each funding year. 47 CFR § 54.11(a), (c); *2020 Supply Chain Order*, 35 FCC Rcd at 14308, para. 49. Participants in the Reimbursement Program will not need to certify compliance with the remove-and-replace rule until after the expiration of their removal, replacement, and disposal term. *2020 Supply Chain Order*, 35 FCC Rcd at 14308, n.156.

<sup>145</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14290-91, para. 18.

<sup>146</sup> If an initial designation is unopposed, the effective date of the designation shall be 31 days after the issuance of the initial notice of designation. If any party opposes the initial designation, the designation shall take effect only if the Commission determines such designation is warranted. In either situation, the Commission shall issue a second public notice announcing its final designation and the effective date of that final designation, to be set no later than 120 days after release of the initial designation notice, absent an extension for good cause. *2019 Supply Chain Order*, 34 FCC Rcd at 11438, para. 40.

<sup>147</sup> Secure Networks Act § 4(c)(2)(A), as amended by CAA § 901(1)(B)(ii).

dispose of equipment and services obtained, in the case of any covered communications equipment or service that is on the initial Covered List published pursuant to section 2(a) of the Secure Networks Act, on or after August 14, 2018, or, in the case of any covered communications equipment or service that is not on the initial Covered List published pursuant to section 2(a), the date that is 60 days after the date on which the Commission places such equipment or service on the Covered List.<sup>148</sup> The CAA however, amends the Secure Networks Act to allow recipients of Reimbursement Program funding to use such funding on equipment and services purchased before June 30, 2020, the date that the Public Safety and Homeland Security Bureau issued the *Designation Orders*.<sup>149</sup> We amend our rules to satisfy the new timing for eligible equipment and services set forth in the CAA amendments.

47. The clear language of the CAA's amendment to section 4(c)(2)(A) of the Secure Networks Act establishing June 30, 2020 as the eligibility cutoff date compels us to modify our rules. The amended cutoff date for eligible equipment and services is also consistent with the Public Safety and Homeland Security Bureau's orders designating Huawei and ZTE as companies that pose a national security threat to the integrity of communications networks or the communications supply chain. Following initial designations adopted in the *2019 Supply Chain Order*, the Public Safety and Homeland Security Bureau issued final designations of Huawei and ZTE on June 30, 2020, pursuant to section 54.9 of the Commission's rules.<sup>150</sup> When setting the effective date of Huawei's final designation as immediately upon release of the *Huawei Designation Order*, the Public Safety and Homeland Security Bureau concluded that "the risks to our national communications networks and communications supply chain posed by Huawei's equipment necessitate immediate implementation of our designation."<sup>151</sup> The Public Safety and Homeland Security Bureau relied on a similar justification for the immediate effective date of ZTE's final designation.<sup>152</sup> Therefore, as of June 30, 2020, USF support could no longer be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by Huawei or ZTE.

48. In addition to being statutorily mandated, the June 30, 2020 cutoff date for equipment and services initially eligible for removal, replacement, and disposal under the Reimbursement Program advances the Commission's goals of removing vulnerable equipment from our nation's communications networks. Additional equipment and services from designated companies that may have been legally purchased or deployed into networks between 2018 and June 30, 2020 are now eligible for reimbursement, thus ensuring their effective removal from the networks of participants in the Reimbursement Program. Furthermore, by amending the eligibility cutoff to June 30, 2020, Congress intended to establish the *Designation Orders* as a clear delineation for what equipment and services would be eligible for reimbursement.<sup>153</sup> Consistent with the Commission's rules, Congress did not intend to allow providers to seek reimbursement for equipment purchased after the Public Safety and Homeland Security Bureau issued the final *Designation Orders*. Therefore, we revise our rules for the Reimbursement Program to limit reimbursement to equipment and services purchased on or before the *Designation Orders* were released, consistent with the CAA.

49. Commenters support our proposal to modify the cutoff date for reimbursement eligibility

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<sup>148</sup> 47 CFR § 1.50004(i)(1); *see also* Secure Networks Act § 4(c)(2)(A).

<sup>149</sup> CAA § 901(1)(B)(ii).

<sup>150</sup> *See 2019 Supply Chain Order*, 34 FCC Rcd at 11439-40, para. 43; *Designation Orders*.

<sup>151</sup> *Huawei Designation Order*, 35 FCC Rcd at 6631, para. 63.

<sup>152</sup> *ZTE Designation Order*, 35 FCC Rcd at 6646-47, para. 29 (making a similar conclusion in support of an immediate effective date for ZTE's final designation).

<sup>153</sup> *See* Mediacom Comments at 9 (arguing that the June 30, 2020 cutoff date is "consistent with Congress' intent to make all equipment and services subject to the *Designation Orders* eligible for reimbursement" and will ease administrative burdens by identifying a "single, certain date" for identifying eligible equipment and services).

for equipment and services.<sup>154</sup> RWA argues that retaining the previous cutoff date, August 14, 2018, would be “inequitable to eligible carriers who at that time were not even aware of the availability of a reimbursement program,” which was first introduced in the Secure Networks Act in 2019 and later incorporated into the Commission’s rules in the *2020 Supply Chain Order*.<sup>155</sup> Northern Michigan University posits that adjusting the date to align with the effective date of the *Designation Orders* will “facilitate a more timely replacement program” and ensure that systems will be replaced with modern, secure facilities.<sup>156</sup> We agree with commenters that amending our Reimbursement Program rules to set a June 30, 2020 cutoff date will help program participants to recover costs associated with the removal, replacement, and disposal of such Huawei and ZTE equipment and services at the time the *Designation Orders* were released, thus fairly ensuring the timely and effective removal and replacement of such vulnerable equipment from our communications systems.

50. As discussed above, we find that the current scope of the Reimbursement Program is limited to such communications equipment and services produced or provided by the current covered companies, i.e., Huawei and ZTE. As a result, costs associated with the removal, replacement, and disposal of all such Huawei and ZTE telecommunications equipment or services purchased prior to June 30, 2020, will be eligible for reimbursement.<sup>157</sup> This result is further supported by Congress’s establishment of June 30, 2020, the release date of the *Designation Orders* designating Huawei and ZTE as covered companies, as the cutoff date.<sup>158</sup> Furthermore, Mediacom supports using a “single, certain date” to ease administrative burdens in determining whether purchased equipment or services falls within the deadlines for reimbursement, rather than continually monitoring whether such products that may be added to the Covered List are eligible under the previous rules.<sup>159</sup> We agree that establishing June 30, 2020 as a bright-line date for equipment and services eligible for reimbursement will help to ease administrative burdens by allowing participating providers to more easily identify such Huawei and ZTE equipment and services as eligible for removal, replacement, and disposal. Aligning the cutoff date with

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<sup>154</sup> See CCA Comments at 6 (noting that the CAA “amended the timing requirement for the Reimbursement Program to allow recipients to use the funds to remove, replace, or dispose of any equipment or services that were purchased, rented, leased, or otherwise obtained on or before June 30, 2020”); Mark Twain Communications Co. Comments at 2-3 (MTCC) (supporting adoption of the Commission’s proposal to provide reimbursement for covered equipment purchased on or before June 30, 2020); NTCA Reply at 4 (agreeing with commenters in support of the Commission’s proposal); QCommunications Reply at 1 (supporting the Commission’s proposal).

<sup>155</sup> RWA Comments at 5-6; see also NTCA Reply at 4 (supporting RWA’s argument that, prior to June 30, 2020, “even those providers who were aware the Commission was considering adopting rules that would require providers to remove and replace Huawei and ZTE equipment and services could not remove such equipment or services without breaching their contracts and incurring prohibitive replacement costs”).

<sup>156</sup> Northern Michigan University Comments at 3-4.

<sup>157</sup> We acknowledge that several carriers may have purchased such communications equipment or services prior to the cutoff date but, after issuance of the *Designation Orders* or other Commission actions, have declined to deploy or use such equipment or services in their networks for the provision of advanced communications services. We find that these carriers may still submit costs associated with these purchased but unused equipment and services for reimbursement so that we can further our goal to remove, replace, and dispose of all covered communications equipment and services from communications networks. This is consistent with the scope of equipment and services that ETCs were required to report in response to the information collection the Commission undertook in 2019, which informed the Commission’s estimates for the costs associated with the removal, replacement, and disposal of Huawei and ZTE equipment and services and presented to Congress. See *2019 Supply Chain Order*, 34 FCC Rcd at 11482, para. 164 (seeking information on “all equipment and services from Huawei and ZTE that are used or owned by ETCs”); see also *Information Collection Results Public Notice*, 35 FCC Rcd at 9471 (releasing results of the information collection that required ETCs to report whether they “own equipment or services from [Huawei] and [ZTE], or their respective subsidiaries, parents, or affiliates”).

<sup>158</sup> See *Designation Orders*.

<sup>159</sup> Mediacom Comments at 9.



the release date for the Huawei and ZTE *Designation Orders* also signals to Reimbursement Program participants that such Huawei and ZTE equipment and services purchased prior to June 30, 2020 are eligible for reimbursement at this time.

51. CCA supports modifying the timing cutoff for eligible equipment and services yet asks that the Commission ensure that its rule be “flexible enough to encompass dates related to a subsequent designation of equipment or services manufactured by companies that pose a security threat.”<sup>160</sup> We find that, since Congress intended for equipment and services on the Covered List produced or provided by companies designated pursuant to section 54.9 of the Commission’s rules to be eligible for reimbursement funding, further clarification as to the eligible cutoff date for such equipment and services designated in the future is warranted.

52. Prior to its amendment, section 4(c) of the Secure Networks Act established an alternative effective date of 60 days after any covered communications equipment or services are added to the Covered List; however, the CAA removes this provision and is ultimately silent as to the eligible date for equipment and services should the Public Safety and Homeland Security Bureau designate additional companies on the Covered List as national security threats under section 54.9 of the Commission’s rules. Similar to the original provision in the Secure Networks Act, we adopt a comparable period of 60 days before the effect of any subsequent designation. Therefore, communications equipment or services produced or provided by such covered companies designated under section 54.9 that are subsequently added to the Covered List will become eligible 60 days after the date on which the Commission places such equipment or service on the Covered List.<sup>161</sup> Reimbursement Program participants will similarly be prohibited from using reimbursement funding to remove, replace, or dispose of such equipment or services purchased, rented, leased, or otherwise obtained more than 60 days after such designation is final. The process by which the Public Safety and Homeland Security Bureau designates companies as posing a national security threat to the integrity of communications networks or the communications supply chain involves several opportunities for notice prior to the final designation going into effect.<sup>162</sup> Given the precedent for a 60-day effective period in the Secure Networks Act and the notice provided through the designation process, establishing this time frame for the effective date of any equipment or services from the Covered List that are produced or provided by companies covered under subsequent designations is reasonable for providers to identify newly eligible equipment and services. This effective period is also consistent with the 60-day time period in sections 3 and 5 that remains in the Secure Networks Act following the CAA amendments.<sup>163</sup>

#### **D. Prioritization if Reimbursement Program Demand Exceeds Supply**

53. We next amend our Reimbursement Program rules to replace the prioritization scheme adopted in the *2020 Supply Chain Order* with the prioritization paradigm Congress expressly adopted in the CAA. These prioritizations will govern the allocation of funds in the event requests for reimbursement funding exceed the appropriated money available for such reimbursement.

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<sup>160</sup> CCA Comments at 6.

<sup>161</sup> Conversely, should the Public Safety and Homeland Security Bureau designate a company that produces or provides equipment or services on the Covered List, such equipment or services will become eligible for reimbursement funding 60 days after such designation is final.

<sup>162</sup> See *supra* para. 45 & n.146; 47 CFR § 54.9(b).

<sup>163</sup> See Secure Networks Act § 3 (prohibiting the use of Federal subsidy that is made available through a program administered by the Commission, and that provides funds to be used for the capital expenditures necessary for the provision of advanced communication services, to purchase, rent, lease, or otherwise obtain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained); *id.* § 5 (requiring providers of advanced communications service to submit an annual report to the Commission, regarding whether such provider has purchased, rented, leased, or otherwise obtained any covered communications equipment or service).

54. The Commission, in the *2019 Information Collection Order*, directed ETCs to report whether they use or own Huawei or ZTE equipment or services in their networks, or the networks of their affiliates and subsidiaries, and to report the cost of removing and replacing such equipment and services.<sup>164</sup> The Wireline Competition Bureau and the Office of Economics and Analytics released the results of this information collection in September 2020, finding that it would cost an estimated \$1.837 billion to remove and replace Huawei and ZTE equipment in respondents' networks.<sup>165</sup> In releasing the estimate, the Wireline Competition Bureau and the Office of Economics and Analytics noted that not all providers of advanced communications service that may be eligible for reimbursement under the Secure Networks Act participated in the information collection.<sup>166</sup> Following the information collection, Congress appropriated \$1.9 billion to the Commission to "carry[] out" the Secure Networks Act, including \$1.895 billion for the Reimbursement Program.<sup>167</sup>

55. In the *2020 Supply Chain Order*, issued before the congressional appropriation, the Commission adopted a prioritization paradigm that would take effect should "the estimated costs for replacement submitted by the providers during the initial or any subsequent filing window in the aggregate exceed the total amount of funding available as appropriated by Congress for reimbursement requests."<sup>168</sup> The Commission decided to first allocate funding to ETCs subject to a remove-and-replace requirement under the Commission's rules.<sup>169</sup> If funding is insufficient to meet total demand from this category, the Commission would prioritize "funding for transitioning the core networks of these eligible providers before allocating funds to non-core network related expenses."<sup>170</sup> If funding was available after fully funding the prior category, the Commission would then prioritize non-ETCs that provided cost estimates as part of the *2019 Information Collection*, with the same priority for replacing core network equipment over non-core equipment.<sup>171</sup> Finally, if money remained after funding reimbursement requests for the first two groups, the Commission would disburse funding to other qualified non-ETC providers of advanced communications services, with the same priority for replacing core network equipment.<sup>172</sup> The Commission decided to prorate the available funding equally across all requests in an individual category if "available funding is insufficient to satisfy all requests in a certain prioritization category."<sup>173</sup>

56. When Congress enacted the CAA, however, it provided its own prioritization paradigm for the Reimbursement Program.<sup>174</sup> We sought comment on how the CAA's prioritization differed from the one we adopted in the *2020 Supply Chain Order* and whether, in light of these changes, we should modify the existing Reimbursement Program rules.<sup>175</sup> After reviewing the record, we adopt the prioritization paradigm Congress expressly provided in the CAA and discard the one previously adopted in the *2020 Supply Chain Order*.

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<sup>164</sup> *2019 Supply Chain Order*, 34 FCC Rcd at 11481-82, paras. 162-63.

<sup>165</sup> *See Information Collection Results Public Notice*, 35 FCC Rcd at 9472.

<sup>166</sup> *Id.*

<sup>167</sup> CAA § 906.

<sup>168</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14349, para. 156.

<sup>169</sup> *Id.* at 14349, para. 157; 47 CFR § 54.10.

<sup>170</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14349, para. 157.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> CAA § 901(1)(C).

<sup>175</sup> *2021 Supply Chain Further Notice* at 6, para. 23.

## 1. CAA Prioritization

57. The CAA directs that “the Commission shall allocate sufficient reimbursement funds . . . , first, to approved applications that have 2,000,000 or fewer customers . . . , [then] to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services . . . [and] health care providers and libraries providing advanced communications service, [then] to any remaining approved applicants determined to be eligible for reimbursement under the [Reimbursement] Program.”<sup>176</sup>

58. Congress’s intent was clear that the CAA should replace the Commission’s prioritization paradigm with its own. In the *2020 Supply Chain Order*, we created our own prioritization paradigm because, in the Secure Networks Act, “Congress did not provide for, or expressly prohibit, any funding prioritization scheme.”<sup>177</sup> That is no longer the case. We find that we have no discretion to deviate from the CAA’s provided prioritization paradigm. The record supports our conclusion. For example, USTelecom notes that “Congress left the Commission no discretion in this regard.”<sup>178</sup> CCA also agrees that the “Commission should implement Congress’ prioritization scheme to ensure funding is distributed first to smaller carriers with 2 million or fewer customers”<sup>179</sup> and argues that the “success of the Reimbursement Program hinges on rigorous adherence to this prioritization scheme.”<sup>180</sup> Mediacom also supports this change because “not only is the revised schedule consistent with the CAA, but it also . . . recognizes that those providers [with two million or fewer customers] need the greatest assistance because they have more limited resources.”<sup>181</sup> Mediacom adds that “the funds appropriated by the CAA . . . are finite and rely on data that was collected primarily from providers with two million or fewer subscribers. The Commission must therefore ensure that the limited funds are allocated to those who need it most and on whose costs the funds are based.”<sup>182</sup> NTCA expresses support for the new prioritization process as “consistent with the CAA as well as the [Secure Networks Act]”<sup>183</sup> and because “[s]maller providers already operate on razor thin margins [and] adding the financial cost of replacing existing equipment outside of its normal upgrade cycle or losing universal service funding would be a crushing burden.”<sup>184</sup> We agree with these commenters and adopt, as expressly provided, the prioritization paradigm in the CAA to replace the one the Commission created in the *2020 Supply Chain Order*.

59. Under this paradigm, we will first allocate funding to providers of advanced communications service with two million or fewer customers. We will then allocate funding to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services and health care providers and libraries providing

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<sup>176</sup> CAA § 901(1)(C)(ii).

<sup>177</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14348, para. 155.

<sup>178</sup> USTelecom Comments at 2.

<sup>179</sup> CCA Comments at 3.

<sup>180</sup> *Id.* at 6; *see also* QCommunications Reply at 1 (supporting the Commission’s proposal to replace the prioritization scheme with the prioritization categories set forth in the CAA).

<sup>181</sup> Mediacom Comments at 2-3.

<sup>182</sup> *Id.* at 1-2.

<sup>183</sup> NTCA Comments at 3-4.

<sup>184</sup> *Id.* at 4-5; *see also* Northern Michigan University Comments at 4 (supporting “the Commission’s efforts to adopt the CAA’s prioritization scheme as it finalizes rules for the Supply Chain Report and Order”); USTelecom Reply at 4 (“adher[ence] to the prioritization scheme set forth in the CAA allows those most heavily affected by the requirement to replace covered equipment to receive the funding necessary to secure their networks in a timely manner”).

advanced communications service. We will then allocate funding to any remaining applicants determined to be eligible for reimbursement under the Reimbursement Program.

## 2. Other Considered Prioritization Categories

60. The CAA's amendments did not set forth how the Commission should allocate funding within a particular category if funding was insufficient to meet demand.<sup>185</sup> If, for example, demand for reimbursement funding among qualified applicants with two million or fewer customers exceeds \$1.895 billion, we will not be able to fully fund all applicants. After reviewing the record, we find that the most equitable solution, and the one that is consistent with the Secure Networks Act direction that the "Commission make reasonable efforts to treat all applicants on a just and fair basis,"<sup>186</sup> requires the Commission to adopt a pro-rata distribution system in the event demand exceeds supply at any given prioritization level. Thus, if available funding is insufficient to satisfy all requests in a prioritization category, we will prorate the available funding equally across all requests in this category. Applicants with accepted applications to participate in the Reimbursement Program will be funded at a percentage proportional to the estimated amount included in the application. We therefore discard any sub-prioritization levels adopted in the *2020 Supply Chain Order*. As USTelecom explains in support of this position, "the Commission should decline to sub-prioritize within the prioritization categories established by Congress."<sup>187</sup> USTelecom warns that "if any sub-prioritization had any effect, it would be to reduce funding to one or more applications in favor of others notwithstanding Congress's expectation that they would be treated equally."<sup>188</sup> We agree and note, as USTelecom argues, "Congress had knowledge of the prioritization scheme that the Commission was going to use for its reimbursement program . . . [but] intentionally set new, and different, priorities."<sup>189</sup>

### a. Decline to Prioritize Core Network Equipment

61. When we adopted our previous prioritization paradigm, the Commission reasoned that "replacing the core network is the logical first step in a network transition and may have the greatest impact on eliminating a national security risk from the network."<sup>190</sup> Thus, in the *2020 Supply Chain Order*, the Commission held that if funding is insufficient to meet total demand from a particular category, the Commission would prioritize "funding for transitioning the core networks of these eligible providers before allocating funds to non-core network related expenses."<sup>191</sup> Though we have seen nothing in the record to convince us otherwise, and some commenters, such as Mediacom "support[] prioritizing core equipment over non-core equipment,"<sup>192</sup> the prioritization scheme in the CAA does not indicate a preference for core network equipment over non-core equipment. The CAA paradigm only asks us to first consider applications from providers with two million or fewer customers. It does not address any preference to replace certain types of covered equipment in telecommunications networks. Neither the CAA nor the Secure Networks Act provides the Commission with guidance to determine which specific communications equipment and services would comprise any "core network." Thus, to ensure that "reimbursement funds are distributed equitably across all applicants . . .,"<sup>193</sup> and to ease

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<sup>185</sup> *2021 Supply Chain Further Notice* at 6-7, para. 24.

<sup>186</sup> Secure Networks Act § 4(d)(5)(A).

<sup>187</sup> USTelecom Comments at 3.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14352, para. 162.

<sup>191</sup> *Id.* at 14349, para. 157.

<sup>192</sup> Mediacom Comments at 5.

<sup>193</sup> Secure Networks Act § 4(d)(5)(A).

administrative burdens, we will not prioritize core equipment over any other type of equipment. We find that discarding this sub-prioritization category will provide more clear guidance to the fund administrator and applicants during the Reimbursement Program funding allocation process.

62. We reach the same conclusion in considering Mavenir's suggestion that we prioritize Open Radio Access Network (O-RAN) reimbursement requests over those from carriers that choose to use traditional or proprietary RAN.<sup>194</sup> Mavenir commented that the Commission should allow for a priority for O-RAN technology because such technology may be more secure than traditional network technology,<sup>195</sup> may allow United States-based vendors to compete on a more level playing field with foreign counterparts,<sup>196</sup> and will allow for easier and cheaper network upgrades in the future.<sup>197</sup> We are mindful of the potential benefits associated with a transition to more virtual networks but nevertheless decline to establish a preference for such equipment and services. The CAA's prioritization paradigm expressly provides for no such preference for O-RAN or any other type of equipment or service, so we similarly decline to do so. We emphasize that Reimbursement Program recipients may choose to replace their existing covered equipment and services with O-RAN equipment and services, and we recommend that providers participating in the Reimbursement Program consider all potential vendors, including O-RAN providers, before selecting their replacement equipment and services.

**b. Decline to Prioritize Eligible Telecommunications Carrier Status**

63. In the *2020 Supply Chain Order*, we reasoned that ETCs, who are required to remove covered equipment and services from their networks, "face greater consequences than non-ETC providers" so "there is a greater urgency to expeditiously accommodate the transition of ETC networks over other applicants."<sup>198</sup> We thus explicitly prioritized ETC applicants over non-ETC applicants, who are not required to remove covered equipment and services unless they participate in the Reimbursement Program.<sup>199</sup> However, the CAA does not indicate a preference for ETC applicants over non-ETC applicants. Instead, it directs the Commission to prioritize smaller carriers first, then schools, health care providers, and libraries, and then larger carriers. We therefore reconsider and revise our prior prioritization scheme to remove any preference for ETC applicants for the same reasons we decline to prioritize the replacement of core network equipment and services. To ensure Reimbursement Program funding is distributed equitably, and to provide clear guidance to Reimbursement Program applicants, we will implement the prioritization scheme as provided by Congress in the CAA.

64. The record supports this decision. Mediacom argues that the old preference for ETCs "was inconsistent with the Secure Networks Act and contrary to the public interest."<sup>200</sup> Mediacom contends that many non-ETCs made "significant investments in removing and replacing their equipment and services based on the belief, supported by the Secure Networks Act, that they would be reimbursed for those costs. The Commission should not punish those providers that acted early and have been proactively attempting to comply with the statute."<sup>201</sup> PTA-FLA also writes that "Congress plainly did not envision ETCs receiving all or virtually all of the funds available since it stressed that funds should be made available equitably to all applicants, a command that would not be heeded if non-ETCs are

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<sup>194</sup> Mavenir Systems Inc. Reply at 2 (Mavenir).

<sup>195</sup> *Id.* at 2.

<sup>196</sup> *Id.* at 2-3.

<sup>197</sup> *Id.* at 2.

<sup>198</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14351, para. 160.

<sup>199</sup> *Id.*

<sup>200</sup> Mediacom Comments at 3.

<sup>201</sup> *Id.*

effectively precluded from receiving any funds.”<sup>202</sup> PTA-FLA argues ETCs should receive funding, “but not to the exclusion of other worthy recipients who have not had the advantage of receiving USF money to fund their build-outs and operations.”<sup>203</sup>

65. RWA contends that the CAA “does not prohibit such prioritization, and such prioritization is consistent with the CAA.”<sup>204</sup> RWA argues that, “[c]onsidering the USF constitutes the source of much of ETCs’ funding as opposed to non-ETCs, limiting those funds has significantly hampered the ability of many rural ETCs to maintain their networks.”<sup>205</sup> RWA asserts that “the FCC already acknowledged the importance of ETC networks in its Second Report and Order as it agreed that ETCs should be allocated reimbursement funds first.”<sup>206</sup> Further, “[i]f there is not enough funding to go around initially, the Commission must prioritize, and there are substantial public interest reasons for prioritizing ETCs over non-ETCs. Non-ETCs should still be reimbursed; it may just take longer.”<sup>207</sup>

66. We acknowledge that, in the *2020 Supply Chain Order*, the Commission used a similar justification to fund ETCs over non-ETCs. However, we adopted that priority before Congress expressly provided its own prioritization scheme. While the CAA does not explicitly prohibit the Commission from including additional sub-prioritization categories, without express direction to further sub-prioritize we conclude that doing so would frustrate our charge, from the Secure Networks Act, to ensure that Reimbursement Program funds are equitably distributed amongst all applications. As a result, we adopt the paradigm advanced by Congress and will not prioritize funding to ETCs over non-ETCs. If available funding is insufficient to satisfy all requests in any individual category, we will prorate the available funding equally across all requests in this category.

### c. Decline to Prioritize Information Collection Participants

67. In choosing to adopt a pro-rata distribution method for the limited funds available in the Reimbursement Program, we acknowledge a departure from earlier rules that prioritized non-ETCs who responded to the *2019 Information Collection Order*.<sup>208</sup> The results of the information collection showed that ETCs with two million or fewer customers required \$1.62 billion to remove and replace Huawei and ZTE equipment from their networks.<sup>209</sup> This figure did not account for other providers of advanced communications service that may be eligible to participate in the Reimbursement Program. Non-ETCs who voluntarily submitted cost estimates to remove and replace Huawei and ZTE equipment in their networks estimated they would require approximately \$200 million to do so.<sup>210</sup> The total estimated amount needed to remove and replace Huawei and ZTE equipment from the networks of ETCs and non-ETCs who voluntarily submitted cost estimates is \$1.837 billion, a figure closely aligned with the actual amount appropriated by Congress in the CAA.

68. In the *2020 Supply Chain Order*, the Commission prioritized non-ETCs who voluntarily submitted cost estimates over other non-ETC providers of advanced communications services.<sup>211</sup> The

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<sup>202</sup> PTA-FLA, Inc. Comments at 1-2 (PTA-FLA).

<sup>203</sup> *Id.*

<sup>204</sup> RWA Comments at 6.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 7.

<sup>207</sup> RWA Reply at 5.

<sup>208</sup> See *2020 Supply Chain Order*, 35 FCC Rcd at 14344, para. 141.

<sup>209</sup> See *Information Collection Results Public Notice*, 35 FCC Rcd at 9472.

<sup>210</sup> See *Id.*

<sup>211</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14349-50, para. 157.

Commission found that it would be “inequitable” to allow these providers to go without funding simply because “the costs of non-participating non-ETCs were not reported and thus not considered.”<sup>212</sup> However, the CAA was enacted after we adopted the *2020 Supply Chain Order*, and we sought comment on whether the language in the CAA permitted us to adopt a preference to fund non-ETCs who responded to the *2019 Information Collection Order*.<sup>213</sup> After reviewing the record, we find that the CAA does not require such a preference and we decline to implement one for the same reason that we decline to prioritize ETCs or the replacement of core network equipment and services. Congress created a clear prioritization program that does not express a preference to fund non-ETCs who voluntarily submitted cost estimates over those that, for whatever reason, did not.

69. Mediacom “strongly supports the Commission’s proposed prioritization schedule” in part because “prioritizing non-ETCs that responded to the data collection over those that did not was arbitrary and unfair.”<sup>214</sup> Mediacom argues that many smaller providers, especially while dealing with the COVID-19 pandemic, “simply did not have the resources necessary to evaluate their entire network and respond to what they understood was a *voluntary* data collection while still meeting customer demands.”<sup>215</sup>

70. PTA-FLA and RWA assert that we should maintain this preference for non-ETCs who submitted cost estimates as part of the information collection. PTA-FLA argues that “Congress based its calculation of how much money to appropriate for the Reimbursement Program on the estimated expenses submitted by both ETCs and non-ETCs during the cost estimate process.”<sup>216</sup> PTA-FLA thus claims ETCs and non-ETCs should be prioritized for funding “to the extent of the estimates they submitted last year.”<sup>217</sup> PTA-FLA argues that this prioritization would “recognize[] the fundamental fairness of prioritizing funding to parties who went to the expense and effort of creating a solid record to support Congressional funding.”<sup>218</sup> If the appropriated funds were insufficient to meet the demand for these groups, “all parties would have to seek additional funding from Congress to make up the difference.”<sup>219</sup> RWA claims that, “once ETCs receive their funding allocations, non-ETCs who participated in the Commission’s information collection process should be next in line to be allocated funds . . . .”<sup>220</sup> RWA asserts that the non-ETCs who voluntarily submitted cost estimates did so “in reliance on the Commission’s indication that non-ETC estimates would assist in soliciting Congressional funding.”<sup>221</sup> RWA argues the Commission should continue to prioritize these carriers who “demonstrated candor before the Commission in presenting their costs, and most importantly, prioritized network security despite regulatory uncertainty.”<sup>222</sup> RWA proposes a new prioritization paradigm that allocates funds first to ETCs up to the original cost estimates, then to non-ETCs who submitted cost estimates up to those estimates, then to those providers who did not submit cost estimates.<sup>223</sup> RWA’s proposal would allow non-ETCs who participated in the information collection to receive funding allocations immediately after

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<sup>212</sup> *Id.* at 14351-52, para. 161.

<sup>213</sup> See *2021 Supply Chain Further Notice* at 6-7, para. 24.

<sup>214</sup> Mediacom Comments at 2-4.

<sup>215</sup> *Id.* at 5.

<sup>216</sup> PTA-FLA Comments at 2.

<sup>217</sup> *Id.* at 3.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> RWA Comments at 8.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

we allocate funding to ETCs with two million or fewer customers.<sup>224</sup>

71. We reject these arguments as inconsistent with our mandate to distribute Reimbursement Program funds equitably amongst all applications.<sup>225</sup> Although we appreciate the time and expense that non-ETCs undertook to prepare their voluntarily replies to the 2019 information collection, Congress created a scheme that declined to prioritize these carriers. We must comply with the statute as written and decline to prioritize non-ETCs who voluntarily submitted cost estimates.

**d. Decline to Prioritize Equipment Posing Elevated National Security Risks**

72. In the *2021 Supply Chain Further Notice*, we sought comment on whether to “prioritiz[e], within each category, the removal and reimbursement of certain equipment or services at particular locations identified as posing an elevated national security risk by the Commission or other federal agencies or interagency bodies . . . .”<sup>226</sup> We asked whether certain national security threats warranted swift action to remove and replace equipment and services at various locations around the country.<sup>227</sup> We also sought comment on whether national security concerns would justify the Commission prioritizing the removal and replacement of equipment and services at certain locations ahead of its prioritization in the CAA.<sup>228</sup>

73. After reviewing the record, we decline to adopt a prioritization for certain equipment and services at particular locations that may pose an elevated national security risk. We do not find express support for such a prioritization in the CAA and, as PTA-FLA commented, “if Congress had intended to prioritize the removal and reimbursement of certain equipment or services at particular locations . . . it would have said so rather than setting explicit priority categories. . . .”<sup>229</sup> USTelecom and Niki N. agree. USTelecom argues the Commission would “clearly violate the CAA and frustrate the intent of Congress if, for any reason, it prioritizes any equipment or services in a lower priority category ahead of . . . a higher prioritization category.”<sup>230</sup> Niki N. contends that they do not “believe the Commission should prioritize equipment and services at locations that pose a heightened national security risk in a lower priority category ahead of any equipment and services in a higher prioritization category.”<sup>231</sup>

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

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

75. The Secure Networks Act directed the Commission to “establish [the Reimbursement Program] . . . to make reimbursements to providers of advanced communications service to replace

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<sup>224</sup> RWA Reply at 6. RWA also argues in its Reply that “Mediacom and others should have been well aware that funding had been allocated for ETCs based on the results of the data collection.” *Id.* at 5.

<sup>225</sup> Secure Networks Act § 4(d)(5)(A).

<sup>226</sup> *2021 Supply Chain Further Notice* at 7, para. 25.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> PTA-FLA Comments at 3-4.

<sup>230</sup> USTelecom Comments at 2-3.

<sup>231</sup> Comments of Niki N. (express comment filed in ECFS).



covered communications equipment or services.”<sup>232</sup> We now add a definition of “provider of advanced communications service” in our program rules to match the definition Congress enacted in the Secure Networks Act, as amended by the CAA. This definition will clarify which entities are eligible to participate in the Reimbursement Program.

76. 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>233</sup> Congress defined “advanced communications service” as “the meaning given the term ‘advanced telecommunications capability’ in section 706 of the Telecommunications Act of 1996 (Telecommunications Act).”<sup>234</sup> In the Telecommunications Act, “advanced telecommunications capability,” means “without regard to any transmission media or technology, . . . high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”<sup>235</sup>

77. The Commission has historically interpreted “high-speed, switched, broadband telecommunications capability” to include facilities-based providers, whether fixed or mobile, with a broadband connection to end users with at least 200 kbps in one direction.<sup>236</sup> In the *2020 Supply Chain Order*, we used this guidance to adopt a definition of “advanced communications service” for the Reimbursement Program.<sup>237</sup> As a result, participation in the Reimbursement Program is limited to providers of “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction.”<sup>238</sup> We also clarified that, “for purposes of the Reimbursement Program, a school, library or health care provider, or consortium thereof, may also qualify as a provider of advanced communications service, and therefore be eligible to participate in the Reimbursement Program, if it provisions facilities-based broadband connections of at least 200 kbps in one direction to end users . . . .”<sup>239</sup>

78. In the CAA, Congress amended its definition of “provider of advanced communications service” to specifically include “accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service as defined in section 27.4 of the Commission’s rules,” and “health care providers and libraries providing advanced communications services.”<sup>240</sup> Accordingly, we explicitly include, in our definition of “provider of advanced telecommunications service,” “accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service as defined in Part 27, Subpart M of the Commission’s rules,” and “health care providers and libraries providing advanced communications

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<sup>232</sup> Secure Networks Act § 4(a).

<sup>233</sup> *Id.* § 9(10).

<sup>234</sup> *Id.* § 9(1).

<sup>235</sup> 47 U.S.C. § 1302(d)(1).

<sup>236</sup> See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2406, para. 20 (1999) (stating, in relevant part, that “broadband” and “advanced telecommunications capability” “hav[e] the capability of supporting, in both the provider-to-consumer (downstream) and the consumer-to-provider (upstream) directions, a speed . . . in excess of 200 [kbps] in the last mile”).

<sup>237</sup> 47 CFR § 1.50001(a).

<sup>238</sup> *Id.*

<sup>239</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14332-33, para. 112.

<sup>240</sup> CAA § 901.

services.”<sup>241</sup> Such entities are thus eligible for participation in the Reimbursement Program, provided they comply with all other relevant requirements, and are included in the first prioritization category if they have fewer than 2 million customers. No commenters disagreed with this proposal, and Northern Michigan University comments that “[it] support[s] the amendment to the CAA by Congress to include accredited public or private noncommercial educational institutions providing their own facilities-based educational broadband service.”<sup>242</sup> QCommunications, LLC also “agrees, concurs and supports the Commission’s proposal to . . . [r]edefine the term ‘provider of advanced communications service,’ adding: libraries, healthcare, [and] accredited noncommercial education . . . .”<sup>243</sup>

79. We also clarify that we limit the term “educational broadband service as defined under part 27 of the Commission’s rules” to solely reference licensees in the Commission’s Educational Broadband Service (EBS).<sup>244</sup> Commenters support this interpretation. For instance, Northern Michigan University argues that “Congress’s intent in the CAA is to allow EBS licensees who actively provide advanced communications services with the means to receive equipment replacement funds through the Supply Chain Reimbursement Program.”<sup>245</sup> USTelecom agrees that “the definition of educational broadband service is limited, as indicated by the CAA unambiguously, to EBS licensees. The CAA derives its definition from 47 CFR § 27.4 which includes the licensing requirement as part of the definition.”<sup>246</sup> We agree with these commenters that this limitation accurately reflects Congress’s intent to limit participation in the Reimbursement Program to entities already licensed for certain frequency bands.

80. We reject USTelecom’s position that “[a]lthough it might be argued that an EBS licensee with fewer than 2 million ‘customers’ could be in category 1, it is apparent that such a result could not have been Congress’s intent.”<sup>247</sup> USTelecom argues that all EBS licensees, even those with two million or fewer customers, should be prioritized after funding is distributed to all other advanced communications service providers with two million or fewer customers.<sup>248</sup> This interpretation of the CAA is contrary to the plain language of the statute, which tasks the Commission with first funding all advanced communications service providers with two million or fewer customers, and defines “providers of advanced communications service” to include such EBS licensees. We interpret the word “all” to include these EBS licensees who are otherwise eligible for participation in the Reimbursement Program, even if there currently exist no such providers who can claim more than two million customers.

81. We do not expect the addition to the existing Reimbursement Program rules of a definition of “provider of advanced communications service” to have any practical effect on the number or type of carriers eligible to participate in the Reimbursement Program. The *2020 Supply Chain Order* already provided that “accredited public or private non-commercial educational institutions providing

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<sup>241</sup> *Id.*

<sup>242</sup> Northern Michigan University Comments at 4.

<sup>243</sup> QCommunications Reply at 1.

<sup>244</sup> We note that the Commission has revised the rules for the Educational Broadband Service to eliminate the educational eligibility restrictions that formerly applied in the band. *See Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (2019). Because the CAA requires that an EBS licensee be an accredited public or private non-commercial educational institution in order to meet the definition of “provider of advanced communications service,” current EBS licensees that would not have complied with the old eligibility restrictions will not fall within this particular part of the definition. *See* 47 CFR § 27.1201 (2019) (limiting EBS eligibility to, *inter alia*, accredited institutions engaged in the formal education of enrolled students).

<sup>245</sup> Northern Michigan University Comments at 5. We note that no commenters disagreed with this approach.

<sup>246</sup> USTelecom Comments at 4.

<sup>247</sup> *Id.* at 4-5.

<sup>248</sup> *Id.*

their own facilities-based educational broadband service as defined in section 27.4 of the Commission's rules," and "health care providers and libraries providing advanced communications services" would be eligible for participation.<sup>249</sup> Nevertheless, we will amend our definition to explicitly include these providers.

82. The Secure Networks Act further limited eligibility in the Reimbursement Program to "providers of advanced communications service . . . [with] . . . customers."<sup>250</sup> The word "customers" is defined as either customers of the provider of advanced communications services<sup>251</sup> or the customers of any affiliate of a providers of advanced communications service.<sup>252</sup> LATAM claims that Congress, by expanding the definition of "provider of advanced communications service" in the CAA, intended to "better capture all the networks that may be used for the provision of advanced communications services to consumers," including intermediate providers, who carry traffic for other carriers only, and neither originate nor terminate that traffic.<sup>253</sup> It also argues that, from a policy perspective, "it does not make sense to exclude intermediate providers from participation in the Reimbursement Program since the security concerns would be similar to providers of advanced communications services."<sup>254</sup>

83. We agree, but do not think our existing rules prohibit such intermediate providers from participation in the Reimbursement Program. Our existing definition did not limit eligibility to providers who offer service to end users. Rather, it extended eligibility to providers of "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction."<sup>255</sup> Intermediate providers, such as LATAM, likely provide such a service to their customers, notwithstanding whether those customers are carrier customers or end-user customers. We intend to include intermediate providers in the Reimbursement Program because, by doing so, we can secure against "potential vulnerabilities to the broader network."<sup>256</sup> Our goal is to ensure the safety and security of the entire network, not only to those portions that provide service to end users. Thus, we clarify that intermediate providers are eligible for participation in the Reimbursement Program.

84. Finally, we reiterate that the adopted changes to the definition of "provider of advanced communication services" apply only to the Reimbursement Program. We do not amend the term as it is defined in any other section of our rules.

## **F. Reimbursement Program Clarifications**

85. We next clarify various other aspects of the Reimbursement Program adopted in the *2020 Supply Chain Order*.<sup>257</sup> Specifically, we clarify: (1) the "costs reasonably incurred" standard adopted for determining eligible reimbursement expenses with technology upgrades; (2) the initial application filing window; (3) the consideration of requests for individual extensions of the removal, replacement, and disposal term; (4) additional expectations for and obligations of Reimbursement Program participants regarding reimbursement claim requests and the filing of final spending reports and final certification updates; (5) the process by which to account for removal, replacement, and disposal of covered

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<sup>249</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14332-33, para. 112.

<sup>250</sup> Secure Networks Act § 4(a)-(b)(1).

<sup>251</sup> *See id.* § 9(6)(A).

<sup>252</sup> *See id.* § 9(6)(B).

<sup>253</sup> LATAM Comments at 2-3.

<sup>254</sup> *Id.* at 4.

<sup>255</sup> 47 CFR § 1.50001(a).

<sup>256</sup> LATAM Comments at 4.

<sup>257</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14330-14363, paras. 106-96.

equipment and services; (6) parameters when accounting for reimbursement funds; and (7) delegation of financial oversight to the Office of the Managing Director (OMD).

86. *Costs Reasonably Incurred Standard – Technology Upgrades.* We clarify the “costs reasonably incurred” standard adopted in the *2020 Supply Chain Order* and provide additional guidance as to the types of replacement options that would be considered comparable facilities and technology upgrades. As adopted in the *2020 Supply Chain Order*, the Reimbursement Program will reimburse costs reasonably incurred for the removal, replacement, and disposal of covered equipment and services in accordance with the Secure Networks Act.<sup>258</sup> In the *2020 Supply Chain Order*, the Commission considered as reasonable “replacement facilities comparable to the facilities in use by the provider prior to the removal, replacement, and disposal of covered communications equipment or service.”<sup>259</sup> The Commission further acknowledged, however, that replacing older technology inevitably involves a certain amount of technology upgrade and as a result expressly allowed for the replacement of older mobile wireless networks with 4G LTE equipment or service that is 5G ready.<sup>260</sup> The Commission cautioned, however, that providers electing “to purchase optional equipment capability or make other upgrades’ . . . must do so using their own funds.”<sup>261</sup>

87. Providers considering replacement options have expressed interest in changing their technology path and have asked for clarification regarding what is considered comparable and eligible for reimbursement and what is considered a technology upgrade and ineligible for reimbursement.<sup>262</sup> For example, providers may want to transition from older mobile wireless technologies to 5G or move from fixed wireless to fiber.<sup>263</sup> We therefore provide additional guidance on what is considered a technology upgrade, how to estimate cost for the Reimbursement Program for a technology upgrade, and how the Commission will allocate funding for such requests.

88. As a policy matter, we encourage providers to upgrade their networks and to transition to efficient, scalable, and secure technology, thereby providing more choices and capabilities to end users. The Reimbursement Program is, however, limited in funding and focused on assisting “small communications providers with the costs of removing prohibited equipment and services from their networks and replacing prohibited equipment with more secure communications equipment and

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<sup>258</sup> *Id.* at 14334-35, para. 118.

<sup>259</sup> *Id.* at 14336, para. 122.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 14338, para. 126.

<sup>262</sup> *See, e.g.*, Triangle Communication System, Inc. Comments at 3 (Triangle) (“Another concern Triangle has is that it would like to have the flexibility to replace its existing 4G fixed wireless WISP equipment with a mixture of non-4G/5G equipment and 4G/5G equipment. . . . Triangle seeks a Commission determination that non-4G/5G and WISP equipment and software is considered ‘comparable equipment’ and that such equipment would be considered reimbursable under the ‘rip and replace’ program.”); Letter from Tamber Ray, Regulatory Counsel, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-89, at 1 (filed Feb. 8, 2021) (discussing “providers’ flexibility to transition technologies in connection with replacement of covered equipment pursuant to the rules set forth in the Commission’s *2020 Supply Chain Order*”).

<sup>263</sup> *See* NTCA PN Catalog Comments at 2 (“NTCA encourages the Commission to make clear that while providers must remove and dispose of all covered equipment, these same providers can choose the equipment and technology to install in their networks. [E.g.,] a provider of fixed wireless services could choose to replace covered fixed wireless equipment with a fiber network solution.”); Rural Wireless Broadband Coalition PN Catalog Comments at 3 (“The Commission did not specify whether for the purposes the Reimbursement Program fiber backhaul facilities can constitute 4G LTE replacement equipment that is 5G-ready.”); Santel Communications Cooperative Inc. PN Catalog Comments at 2 (“Santel . . . asks . . . the Commission to further clarify . . . acknowledging that replacing covered equipment with other advanced communications services equipment, specifically including [Fiber to the Premises], qualifies for reimbursement under the Supply Chain Reimbursement Program.”).

services.”<sup>264</sup> Additionally, Congress specifically stated that the Commission is expected “to preclude network upgrades that go beyond the replacement of covered communications equipment or services from eligibility.”<sup>265</sup> We thus interpret the “costs reasonably incurred” standard to make providers responsible for the additional incremental cost of funding upgrades that exceed what is reasonably necessary to transition to a comparable replacement.<sup>266</sup> That said, and as the Commission previously acknowledged, replacing older technology inevitably involves a certain level of upgrade as the equipment and services currently available in the marketplace typically contain features and capabilities not present in the legacy equipment and services no longer offered.<sup>267</sup> Accordingly, a certain degree of upgrade may be entirely reasonable, and eligible for reimbursement, depending on the comparable replacements available in the marketplace.<sup>268</sup>

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

90. As a general matter, we do not consider replacing microwave backhaul with fiber backhaul or replacing last-mile fixed wireless links with fiber-to-the-premises (FTTP) necessary for the removal, replacement, and disposal of such communications equipment or service produced or provided by Huawei and ZTE that is listed on the Covered List.<sup>269</sup> The Rural Wireless Broadband Coalition states that higher-capacity fiber backhaul is needed to support the replacement of older technology networks with 5G ready equipment that is subsequently made 5G operable by a provider.<sup>270</sup> Santel “would like” to

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<sup>264</sup> H.R. Rep. No. 116-352, at 8 (2019).

<sup>265</sup> *Id.* at 13.

<sup>266</sup> See *2020 Supply Chain Order*, 35 FCC Rcd at 14338, para. 126. This interpretation is consistent with the approach taken by the Commission with the C-Band relocation. See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2422-23 para. 194 (2020) (stating that the Commission expects incumbents to “obtain the equipment that most closely replaces their existing equipment,” and defines “reasonable” relocation costs as “those necessitated by the relocation in order to ensure that incumbent space station operators continue to be able to provide substantially the same or better service to incumbent earth station operators, and that incumbent earth station operators continue to be able to provide substantially the same service to their customers after the relocation compared to what they were able to provide before” and “[s]o long as the costs for which incumbents are seeking reimbursement are reasonably necessary to complete the transition in a timely manner (and reasonable in cost), such expenses would be compensable”).

<sup>267</sup> See *2020 Supply Chain Order*, 35 FCC Rcd at 14336, para. 122 (“We recognize, however, when replacing older technology that a certain level of technological upgrade is inevitable.”).

<sup>268</sup> This is consistent with our expectation that reimbursement support reflects the “lowest-cost equipment that most closely replaces [the provider’s] existing equipment.” *Id.* at 14337, para. 125 (quoting *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6822, para. 624 (2014) (*Incentive Auction Order*)).

<sup>269</sup> See NTCA PN Catalog Comments at 2; Rural Wireless Broadband Coalition PN Catalog Comments at 7; Santel Communications Cooperative Inc. PN Catalog Comments at 2; FCC Covered List, <https://www.fcc.gov/supplychain/coveredlist> (last visited June 21, 2021).

<sup>270</sup> Rural Wireless Broadband Coalition PN Catalog Comments at 4-6.

replace its four transmitters with an FTTP wireline network serving 850 customers to provide a far better quality service that “even exceeds 5G wireless solutions.”<sup>271</sup> In either case, we fail to see how such expenses are reasonably necessary to the removal, replacement, and disposal of covered communications equipment or services eligible for reimbursement. Moreover, the cost of replacing microwave with fiber backhaul and fixed wireless links to end users with FTTP would likely greatly exceed the cost of other wireless alternatives. As the Commission stated in the C-Band proceeding, relocation support is not intended “to provide a means of funding [an] incumbent[’s] . . . transition to fiber” and “while a transition to fiber in some cases may be a more efficient or desirable approach for certain . . . operators, incumbents would only be reimbursed for the reasonable costs of relocating existing services. . . .”<sup>272</sup> This same rationale applies to the Reimbursement Program. Accordingly, we will generally view fiber link replacements as a technology upgrade and not a reasonable, comparable replacement.

91. Participants may obtain Reimbursement Program support for an amount equivalent to the cost estimate of a comparable replacement. If, however, a participant ultimately decides to upgrade to a higher quality, more advanced, non-comparable replacement, then the program participant will bear the difference in cost between the comparable replacement and the technology upgrade solution chosen.<sup>273</sup> When Reimbursement Program participants seek to replace eligible covered communications equipment or service with a technology upgrade in excess of the costs of a comparable replacement, they will need to provide price quotes for the comparable replacement with their Application Request for Funding Allocation and may not rely on the cost estimates contained in the Catalog of Eligible Expenses (Catalog).<sup>274</sup> This approach is consistent with the Commission’s treatment of situations where the estimated cost is not provided in the Catalog, and the applicant must provide additional documentation to support the identified cost estimate.<sup>275</sup> They will also need to separately certify, as already required by the Commission’s rules, that the estimated cost is made in good faith.<sup>276</sup>

92. Price quotes will provide a more accurate estimation of costs for funding allocations than using the Catalog when participants request a technology upgrade and will help address concerns about inflated cost estimates and the over allocation of support. We anticipate the Catalog largely reflects list prices, and not the amount providers will actually pay after any purchasing discounts are applied. While the Catalog reduces burdens for the applicant during the submission process, reliance on it in some

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<sup>271</sup> Santel Communications Cooperative Inc. PN Catalog Comments at 2-3.

<sup>272</sup> *Application of ACA Connects—America’s Communications Assoc. for Review of the Public Notice of the Wireless Telecommunications Bureau Setting Lump-Sum Payment Amounts*, GN Docket No. 18-122, Memorandum Opinion and Order, 35 FCC Rcd 13582, 13590, para. 16 (2020).

<sup>273</sup> A similar approach was taken in the Commission’s incentive and C-Band auction proceedings. See *Incentive Auction Order*, 29 FCC Rcd at 6822, para. 624 (“Eligible [operators] may elect to purchase optional equipment capability or make other upgrades at their own cost, but only the cost of the equipment without optional upgrades is a reimbursable expense.”); *Expanding Flexible Use in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Report and Order, Order Proposing Modification, 35 FCC Rcd 2343, 2422-23, para. 194 (2020) (“In contrast, we do not anticipate allowing reimbursement for equipment upgrades beyond what is necessary to clear the band. For example, if an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation”).

<sup>274</sup> See FCC Covered List, <https://www.fcc.gov/supplychain/coveredlist> (last visited June 21, 2021).

<sup>275</sup> See 47 CFR § 1.50004(c)(1) (“Eligible providers that submit their own cost estimates must submit supporting documentation and certify that the estimate is made in good faith.”); see also *2020 Supply Chain Order*, 35 FCC Rcd at 14346, para. 149 (“If an applicant believes the predetermined cost estimate does not fully account for its specific circumstance or a predetermined cost estimate is not provided in the Catalog of Eligible Expenses for the cost identified by the applicant, the applicant can provide its own individualized cost estimate.”).

<sup>276</sup> 47 CFR § 1.50004(c)(1)(i).

circumstances could result in the overestimation of cost, and the over-allocation of support.<sup>277</sup> Accordingly, to ensure more accurate cost estimates and to minimize the over-allocation of funding, we clarify that we will treat requests for reimbursement towards a technology upgrade as outside the scope of the Catalog. Applicants seeking support when completing a technology upgrade will need to provide their own cost estimates for a comparable replacement with price quotes.<sup>278</sup>

93. *Costs Reasonably Incurred – Handset Upgrades.* We reject RWA’s request that the Commission add VoLTE compatible replacement subscriber handsets to its Catalog and permit recipients of the Reimbursement Program to replace consumer handsets.<sup>279</sup> RWA argues that the subscribers of some potential applicants of the Reimbursement Program have only CDMA-capable handset devices and those devices would need to be replaced because the handsets will not be compatible with a newer technology replacement network.<sup>280</sup> RWA thus seeks reimbursement for the replacement cost of non-Huawei and ZTE handsets that will no longer be compatible with replacement networks.<sup>281</sup> We find CDMA-capable handsets not produced or provided by Huawei or ZTE ineligible for reimbursement under the Reimbursement Program rules because replacing such handsets with VoLTE compatible subscriber handsets is not reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service.

94. The Reimbursement Program has limited funding aimed at securing our nation’s communication networks from national security threats. Expanding the scope of reimbursement eligibility to include subscriber mobile handheld devices not produced or provided by Huawei or ZTE threatens to detract substantial funding away from the core mission of securing the nation’s networks. Handsets and other customer premises equipment, including Internet of Things devices, used by end users to access and utilize advanced communications services are distinctly different from the cell sites, backhaul, core network, etc. used to operate a network and provide advanced communications services. Consumers typically choose on their own to upgrade their mobile handsets every two years on average absent any network transition, and newer comparable replacement networks are often backward compatible with older technology handsets with some limited exceptions.<sup>282</sup> Accordingly, we find the replacement of non-Huawei or ZTE mobile devices not reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service. Additionally, without detailed information as to the handset models end users own, it is unclear whether a transition to a newer technology network will prevent those users from accessing the network. Similar to any network upgrade, we anticipate providers will assist their customers with incompatible handsets to upgrade as

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<sup>277</sup> Any concerns about the over-allocation of funds by using the Catalog cost estimates are largely addressed through the reimbursement claim invoicing process, which ensures funds are only disbursed for actual costs incurred. Even if there is an over-allocation of support based on inflated cost estimates, the Reimbursement Program will only disburse funds for reasonable costs actually incurred.

<sup>278</sup> See *id.* § 1.50004(c)(1) (“Eligible providers that submit their own cost estimates must submit supporting documentation and certify that the estimate is made in good faith.”).

<sup>279</sup> See Letter from Carri Bennet, General Counsel, Rural Wireless Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-89, at 2 (filed June 1, 2021) (RWA *Ex Parte*); FCC Covered List, <https://www.fcc.gov/supplychain/coveredlist> (last visited June 21, 2021).

<sup>280</sup> RWA *Ex Parte* at 1.

<sup>281</sup> See *id.*

<sup>282</sup> See Abigail Ng, Smartphone Users are Waiting Longer Before Upgrading – Here’s Why, CNBC (May 17, 2019) (“In 2016, American smartphone owners used their phones for 22.7 months on average before upgrading. By 2018, that number had increased to 24.7.”), <https://www.cnbc.com/2019/05/17/smartphone-users-are-waiting-longer-before-upgrading-heres-why.html>; see, e.g., Best Buy, <https://www.bestbuy.com/site/motorola-one-5g-ace-2021-unlocked-128gb-memory-frosted-silver/6441181.p?skuId=6441181> (stating Motorola One 5G Ace is 4G LTE, 2G, 3G, CDMA, GSM, and 5G compatible) (last visited June 21, 2021).

necessary to mitigate any disruptions in service if for some reason their handsets are not compatible with the new network.

95. *Filing Window.* Consistent with the Secure Networks Act, we established an application process for Reimbursement Program participation in the *2020 Supply Chain Order*.<sup>283</sup> To participate in the Reimbursement Program, eligible providers are required to submit initial estimates of the costs to be reasonably incurred for the removal, replacement, and disposal of covered communications equipment or services to participate in the Program.<sup>284</sup> In the *2020 Supply Chain Order*, we directed the Wireline Competition Bureau to establish an initial 30-day filing window for the submission of cost estimates and to establish additional filing windows as necessary.<sup>285</sup> The accompanying rules adopted, however, do not specify a period of time for the filing window.<sup>286</sup> Given the complexity of the Reimbursement Program, we want to ensure that applicants have sufficient opportunity to familiarize themselves with and utilize the application filing portal. Therefore, we clarify that the Wireline Competition Bureau has discretion to establish an initial filing window that provides sufficient time for applicants to submit cost estimates, which may be for a period longer than 30 days if a longer window is needed to help applicants navigate the application filing portal or to compile the necessary documentation required for the filing requirements.<sup>287</sup>

96. *Individual Extensions.* We further clarify the factors the Wireline Competition Bureau, with the assistance of the Fund Administrator, will consider when evaluating whether to grant an individual extension of the removal, replacement, and disposal term available to program participants.<sup>288</sup> Program participants are required to complete the removal, replacement and disposal of the equipment within one year of the initial disbursement.<sup>289</sup> Our rules permit participants to petition the Wireline Competition Bureau for an extension of the removal, replacement, and disposal term prior to the expiration of the term.<sup>290</sup> The Wireline Competition Bureau will generally review such requests on a case-by-case basis, and may grant an extension for up to six months after finding that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term.<sup>291</sup> The Wireline Competition Bureau may grant more than one extension request to a recipient if circumstances warrant.<sup>292</sup>

97. We acknowledge that there are circumstances that may increase the difficulty of a Reimbursement Program participant's ability to complete removal, replacement, and disposal within the one-year term. For example, we understand that some replacement options, such as O-RAN or virtual RAN, may require additional time for system integration.<sup>293</sup> For program participants choosing an O-RAN or virtual RAN replacement option, we direct the Wireline Competition Bureau, when evaluating an extension request, to consider the high likelihood of additional time needed as a significant factor

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<sup>283</sup> Secure Networks Act § 4(d)(2)(A)-(B).

<sup>284</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14346, para. 148.

<sup>285</sup> *Id.*

<sup>286</sup> *See* 47 CFR § 1.50004(b).

<sup>287</sup> *See id.* § 1.50004(p) (delegating authority to the Wireline Competition Bureau to “set filing deadlines”).

<sup>288</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14354-55, para. 171.

<sup>289</sup> *See* 47 CFR § 1.50004(h).

<sup>290</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14354-55, para. 171.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.* at 14355-56, para. 173.

<sup>293</sup> *See* Triangle Comments at 2; *see also* QCommunications Reply at 1 (discussing how replacement options may delay the removal, replacement, and disposal process).



favoring an extension.<sup>294</sup> Additionally, we understand the concern some commenters raise regarding the availability of replacement technology and semiconductors.<sup>295</sup> USTelecom requests that the Commission acknowledge that the current shortage of semiconductors could impact the availability of replacement equipment, thereby warranting a waiver.<sup>296</sup> RWA goes a step beyond and urges the Commission to strongly consider a blanket waiver should equipment delivery delays occur as a result of the semiconductor shortage.<sup>297</sup> NTCA highlights delays in obtaining equipment that are impacting providers of all sizes, but especially smaller providers who are forced to further compete with larger operators for labor and equipment.<sup>298</sup> We agree with these commenters and direct the Wireline Competition Bureau to consider limited availability of the replacement options as a factor for whether to grant an individual extension request, including impacts caused by a shortage of semiconductors.

98. Vantage Point Solutions also identifies possible delays caused by equipment availability, weather considerations for construction, and cash flow and replacement funding distribution timing that may specifically impact providers in Alaska. It asks the Commission to consider extensions of time for these providers to complete the removal, replacement, and disposal of covered equipment beyond the term set by the Reimbursement Program.<sup>299</sup>

99. We acknowledge that certain locations will have challenges meeting the term deadline due to weather or other issues. We further recognize that the claims raised by USTelecom and others regarding the availability of semiconductors are valid, and that certain situations may impact smaller or rural providers such that they are unable to meet the timing requirements for removal, replacement, and disposal through the Reimbursement Program. The examples included in this item are not an exhaustive list of factors that the Wireline Competition Bureau will consider in the event a provider files an individual extension request. We direct the Wireline Competition Bureau to consider all factors included in an individual extension request when evaluating the request.<sup>300</sup> Additionally, we direct the Wireline Competition Bureau to review individual extension requests on a case-by-case basis. As the Commission found in the *2020 Supply Chain Order*, however, the Secure Networks Act authorizes the Commission to grant extensions of time to allow providers of advanced communications services to complete the removal, replacement, and disposal of covered communications equipment and services, either as a “general” six-month extension to all recipients of reimbursement funding, or as individual extensions on a case-by-case basis.<sup>301</sup> In the event circumstances regarding the availability of equipment do not improve, or if there is sufficient justification to warrant an extension, such information may influence the Wireline Competition Bureau’s consideration of a six-month extension, whether for all program participants or on an individual, case-by-case basis.<sup>302</sup>

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<sup>294</sup> See Triangle Comments at 2.

<sup>295</sup> USTelecom Comments at 5-6.

<sup>296</sup> *Id.*; see also QCommunications Reply at 1 (availability of resources, including personnel and equipment, may factor into timing and costs of replacement projects).

<sup>297</sup> RWA Reply at 7.

<sup>298</sup> NTCA Reply at 3-4.

<sup>299</sup> Vantage Point Solutions Reply at 3-4.

<sup>300</sup> This is not an exhaustive list of issues considered when reviewing such an extension request.

<sup>301</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14354-55, para. 171. The general extension provision authorizes the Commission to issue *sua sponte* a one-time six-month extension to all program recipients. *Id.* at 14355, para. 172.

<sup>302</sup> *Id.* at 14354-55, para. 171 (“[T]he Commission may grant a ‘general’ six-month extension ‘to all recipients of reimbursements . . . if the Commission: (i) finds that the supply of replacement communications equipment or services needed by the recipients to achieve the purposes of the Program is inadequate to meet the needs of the recipients; and (ii) provides notice and a detailed justification for granting the extension to’ Congress.”).

100. *Removal, Replacement and Disposal Term – Reimbursement Claims.* We clarify that only reasonable expenses incurred before the expiration of the removal, replacement, and disposal term are eligible for reimbursement. Reimbursement Program participants have one year from the initial disbursement to complete the permanent removal, replacement, and disposal of covered communications equipment or services.<sup>303</sup> As a result, program participants may only submit reimbursement claims for costs incurred within one year of the initial disbursement date.<sup>304</sup> If a program participant requests, and the Wireline Competition Bureau grants, a term extension according to our rules, all reimbursement claims must cover eligible expenses incurred prior to the term end date as adjusted by the granted extension.<sup>305</sup> Any expenses incurred after the term ends will be ineligible for reimbursement.<sup>306</sup> Additionally, any expenses incurred while an individual extension request is pending will not be reimbursable if the request is ultimately denied and the expenses were incurred outside of the one-year term.<sup>307</sup>

101. *Final Certification Update Timing.* Within 10 days following the expiration of the removal, replacement, and disposal term, Reimbursement Program recipients are required to file a final certification with the Commission indicating, among other things, whether or not the recipient has fully complied with all terms of program participation.<sup>308</sup> Program participants stating in their final certification that they have not “fully complied” are then required by both the Secure Networks Act and the 2020 *Supply Chain Order* to file an updated final certification “when the recipient has fully complied.”<sup>309</sup> Both the Secure Networks Act and the 2020 *Supply Chain Order* are silent as to a deadline for filing the final certification update.<sup>310</sup>

102. Program participants are required to complete the permanent removal, replacement, and disposal of the equipment or services, and thus the terms of program participation, before the expiration of the removal, replacement, and disposal term. We recognize that unforeseen delays may extend the removal, replacement, and disposal process beyond the one-year term, and we expect program participants who anticipate they will not complete removal, replacement, and disposal by the end of their term will request an individual extension from the Wireline Competition Bureau before the end of that term.<sup>311</sup>

103. If a program participant fails to timely submit a final certification, the program participant may be subject to forfeitures as provided for under the Communications Act of 1934, as amended.<sup>312</sup> Further, if a program participant files a final certification indicating that it has not “fully complied” with the terms of the program, but subsequently fails to file an updated final certification indicating full compliance within 60 days after the final certification deadline, the program participant may be subject to forfeitures as provided for under the Communications Act of 1934, as amended.<sup>313</sup>

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<sup>303</sup> *Id.* at 14331, para. 109 (establishing a one-year timeline for removal, replacement, and disposal).

<sup>304</sup> *See id.*

<sup>305</sup> *Id.* at 14354, para. 171 (discussing term extensions).

<sup>306</sup> *See id.* at 14331, para. 109.

<sup>307</sup> *Id.* at 14355-56, para. 173.

<sup>308</sup> 47 U.S.C. § 1603(e)(4)(A); 47 CFR § 1.50004(m)(1).

<sup>309</sup> *See* 47 U.S.C. § 1603(e)(4)(B); 47 CFR § 1.50004(m)(2).

<sup>310</sup> *Id.*

<sup>311</sup> 47 CFR § 1.50004(h)(2); *see also* 2020 *Supply Chain Order*, 35 FCC Rcd at 14354-55, paras. 171-73. There is no direct limit to the number of individual extensions that may be requested and granted. *Id.*

<sup>312</sup> 47 CFR § 1.50005(a).

<sup>313</sup> *Id.*

Additionally, program participants found in violation of the Secure Networks Act, the Commission's rules implementing the statute, or the commitments made by the recipient in the application for reimbursement may be: (1) required to repay reimbursement funds; (2) barred from further participation in the Reimbursement Program; (3) referred to all appropriate law enforcement agencies or officials for further action under applicable criminal and civil law; and (4) barred from participation in other programs of the Commission, including the Federal universal service support programs established under section 254 of the Communications Act of 1934, as amended.<sup>314</sup> The aforementioned penalties are within the Commission's jurisdiction. We note that applicants that commit fraud may separately be subject to the False Claims Act or other legal action as provided by existing statutes.<sup>315</sup>

104. *Final Spending Report Timing.* Under the Reimbursement Program rules, program recipients must file their final spending report after the final certification.<sup>316</sup> The Commission was silent, however, as to the deadline for filing the final spending report. We clarify the timeframe and expect program participants to submit the final spending report no later than 60 days following the expiration of the program participant's reimbursement claim deadline.<sup>317</sup> If a program participant has not submitted a final spending report within 60 days of the expiration of the reimbursement claim deadline, the matter may be referred to the Enforcement Bureau for further investigation.

105. *Accounting for Removal, Replacement, and Disposal of Covered Equipment.* Some program participants participating in other funding programs or subject to rate regulation could receive duplicate recovery for support received from the Reimbursement Program for network changes. As a result, we clarify provider requirements with respect to maintaining books of account using the Uniform System of Accounts contained in Part 32 of the Commission's rules (USOA carriers).<sup>318</sup> To the extent a USOA carrier has purchased and installed covered equipment, that equipment should currently be recognized as an investment in the USOA carrier's telecommunications plant and subject to retirement and depreciation rules which require the carrier to establish estimated lives and ratable depreciation of the assets.<sup>319</sup> Because we are requiring recipients of reimbursement funds under the Reimbursement Program and ETCs receiving USF support to remove and replace from their network and operations environments equipment and services included on the Covered List, and as defined in the *2019 Supply Chain Order* or as designated pursuant to section 54.9 of the Commission's rules and in the *Designation Orders*, we also must address the accounting treatment of USOA carriers' retirement of covered equipment.

106. To ensure consistent accounting treatment, and to prevent the removal, replacement, and disposal of covered equipment by USOA carriers from unduly depleting such carriers' depreciation reserve,<sup>320</sup> such carriers may treat the removal, replacement and disposal of covered equipment as an "extraordinary retirement," subject to the amortization schedule that we provide below. For an event to be considered an extraordinary retirement, it must satisfy three requirements: (1) the impending retirement was not adequately considered in setting past depreciation rates; (2) the charging of the retirement against the reserve will unduly deplete that reserve; and (3) the retirement is unusual such that

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<sup>314</sup> *Id.* The penalties shall not apply to a recipient unless: (1) the Commission, the Wireline Competition Bureau, or the Enforcement Bureau provides the recipient with notice of the violation; and (2) the recipient fails to cure the violation within 180 days after such notice. *Id.* § 1.50005(b).

<sup>315</sup> 31 U.S.C. §§ 3729 – 3733.

<sup>316</sup> 47 CFR § 1.50004(1)(2).

<sup>317</sup> *See id.* § 1.50004(g)(2).

<sup>318</sup> *Id.* part 32.

<sup>319</sup> *Id.* § 32.2000(g).

<sup>320</sup> The "depreciation reserve" is the accumulated depreciation associated with the category of depreciable plant investment.

similar retirements are not likely to recur in the future.<sup>321</sup>

107. We find that the first and third of these requirements are met for retirements made in accordance with the *2019 Supply Chain Order*.<sup>322</sup> Carriers that purchased covered equipment could not have anticipated that the Commission and Congress would require retirement of covered equipment and that Congress would make reimbursement funds available to replace covered equipment. As a result, early retirements resulting from Commission and congressional action were not and could not have been considered in setting past depreciation rates. Furthermore, given the unusual circumstances that led to these retirements, it is highly unlikely that similar retirements will occur again in the future.

108. Regarding the second prong, the question of whether charging a retirement against a particular carrier's reserve would unduly deplete that reserve is normally determined on a case-by-case basis.<sup>323</sup> The retirements at issue here, however, are compulsory, and we find that conducting case-by-case reviews for each carrier would be unduly burdensome for the Commission and for the carriers, particularly given the critical importance of these retirements for ensuring the security of the nation's infrastructure. Accordingly, on our own motion,<sup>324</sup> we find there is good cause to waive the second prong<sup>325</sup> to allow a USOA carrier to treat the retirements required by this docket as extraordinary retirements. We therefore establish a uniform process for addressing significant reserve deficiencies.

109. As part of this process, we direct USOA carriers that take advantage of the waiver to credit Account 3100, Accumulated Depreciation,<sup>326</sup> and charge Account 1438, Deferred Maintenance, retirements and other deferred charges,<sup>327</sup> with the unprovided-for loss in service value resulting from the actions we have taken in this docket.<sup>328</sup> The amount of the unprovided-for loss in service value is recorded in Account 1438 and shall be amortized to Account 6561, Depreciation expense—Telecommunications plant in service,<sup>329</sup> or Account 6562, Depreciation expense—property held for future telecommunications use.<sup>330</sup> This treatment will reflect the amortization of the amounts in Account 1438 as depreciation expenses, thereby allowing carriers to include those amounts in their revenue requirement.

110. The asset category for the type of equipment subject to removal, replacement, and disposal is largely circuit equipment, and has an expected life in the 10-year range.<sup>331</sup> To mitigate the effects of any excess depletion in the depreciation expense, we waive our rules to allow carriers to use the following amortization schedules for covered equipment they are required to retire. First, if the expected

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<sup>321</sup> 47 CFR § 32.2000(g)(4)(i).

<sup>322</sup> *2019 Supply Chain Order*, 34 FCC Rcd at 11424, para. 3.

<sup>323</sup> 47 CFR § 32.2000(g)(5).

<sup>324</sup> Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3; *see also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*) ("The Commission may exercise its discretion to waive a rule where the specific facts would make strict compliance inconsistent with the public interest."). Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>325</sup> 47 CFR § 32.2000(g)(4)(i)(B).

<sup>326</sup> *Id.* § 32.3100.

<sup>327</sup> *Id.* § 32.1438.

<sup>328</sup> This represents the amount of the asset value that has not been expensed during the actual life of the asset.

<sup>329</sup> 47 CFR § 32.6561.

<sup>330</sup> *Id.* § 32.6562.

<sup>331</sup> United States Department of Agriculture, Rural Utilities Service, Notice of Depreciation Rates for Telecommunications Plant, 85 Fed. Reg. 9454, 9455 (Feb. 19, 2020).

remaining service life of the covered equipment being retired is two years or less, a USOA carrier may amortize one-half of the balance from Account 1438 each of the next two years. Second, if the covered equipment being retired has an expected remaining service life of between three and five years, the USOA carrier may amortize one-third of the balance from Account 1438 each of the next three years. If the covered equipment being retired has an expected remaining service life of more than six years, the USOA carrier will may amortize one-fourth of the balance from Account 1438 each of the next four years.

111. *Accounting for Reimbursement.* The Reimbursement Program will reimburse providers for some or all of the costs of removal, replacement, and disposal of covered communications equipment or services.<sup>332</sup> We clarify that, consistent with the limitation on reimbursements, USOA carriers should account for reimbursed amounts as contributions by crediting the asset account charged with the reimbursed amount of the plant or equipment.<sup>333</sup> This accounting treatment is appropriate because the contributions are not investor-supplied funds and should not be accorded a return on investment. This approach also conforms with the treatment of contribution to capital addressed in section 32.2000(a)(2) of the Commission's rules,<sup>334</sup> and is consistent with how the accounting was handled for support payments awarded in the 2012 BTOP/BIP stimulus funding.<sup>335</sup>

112. *Delegation to the Office of the Managing Director.* In the *2020 Supply Chain Order*, we directed OMD to develop a system to audit the Reimbursement Program.<sup>336</sup> In this *Report and Order*, we delegate financial oversight of the Reimbursement Program to the Commission's Office of the Managing Director and direct OMD to work in coordination with the Wireline Competition Bureau to ensure that all financial aspects of the program have adequate internal controls. These duties fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance.<sup>337</sup> Such financial oversight must be consistent with this *Report and Order* and the rules adopted in the *2020 Supply Chain Order*.<sup>338</sup> OMD performs this role with respect to the Universal Service Administrative Company's administration of the Commission's Universal Service programs,<sup>339</sup> the COVID-19 Telehealth program,<sup>340</sup> and the Emergency Broadband Benefit Program,<sup>341</sup> and we

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<sup>332</sup> 47 CFR § 1.50004(a).

<sup>333</sup> *Id.* § 32.2000(a)(2).

<sup>334</sup> *Id.*

<sup>335</sup> *In the Matter of Connect America Fund, et. al.*, WC Docket No. 10-90, et. al, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4667, paras. 363-64 (2011).

<sup>336</sup> *2020 Supply Chain Order*, 35 FCC Rcd at 14362, para. 193.

<sup>337</sup> 47 CFR § 0.11(a)(3)-(4) (stating that OMD will “[a]ssist the Chairman in carrying out the administrative and executive responsibilities” and “[a]dvice the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest”); *id.* § 0.11(a)(8) (stating that OMD's current responsibility is to “[p]lan and manage the administrative affairs of the Commission with respect to the functions of . . . budget and financial management”); *id.* § 0.5(e) (requiring Bureau and Office coordination with OMD on recommendations “that may affect agency compliance with Federal financial management requirements”).

<sup>338</sup> *See id.* §§ 1.50000-50007.

<sup>339</sup> *See, e.g.*, Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Dec. 19, 2018) <https://www.fcc.gov/sites/default/files/usac-mou.pdf> (stating that the Commission is responsible for the effective and efficient management and oversight of the USF, including USF policy decisions, and USAC is responsible for the effective administration of the programs).

<sup>340</sup> *COVID-19 Telehealth Program*, WC Docket No. 20-89, Report and Order, 36 FCC Rcd 1613, 1615, para. 8 (2021).

anticipate that OMD will leverage existing policies and procedures, to the extent practicable and consistent with section 904,<sup>342</sup> to ensure the efficient and effective management of the program. Finally, we note that OMD is required to consult with the Wireline Competition Bureau on any policy matters affecting the program, consistent with section 0.91(a) of the Commission's rules. OMD, in coordination with the Wireline Competition Bureau, may issue additional directions to Program Administrator Ernst and Young LLC (Ernst & Young)<sup>343</sup> and program participants in furtherance of its responsibilities.

#### G. Cost-Benefit Analysis

113. Based on presently available information obtained from the 2019 information collection, we estimated the cost of the removal, replacement, and disposal of Covered List equipment and services subject to the *Designation Orders* and the process set forth in the *2019 Supply Chain Order* to be \$1.62 billion for ETCs with two million or fewer customers, and at least \$1.837 billion for providers with 10 million or fewer customers.<sup>344</sup> As the Commission recognized in the *Information Collection Results Public Notice*, there may be “other providers of advanced communications [who] may not have participated in the information collection and yet still be eligible for reimbursement under the terms of [the Secure Networks] Act.”<sup>345</sup> Though Congress appropriated \$1.895 billion to the Reimbursement Program in the CAA, it also expanded the eligibility criteria for participation in the Reimbursement Program.<sup>346</sup> We do not have cost estimates for the cost of the removal, replacement, and disposal of eligible equipment for the entire potential pool of eligible providers.

114. Nevertheless, this *Report and Order* implements requirements from the CAA, and we have no discretion to ignore such congressional direction. We also conclude that even if the total replacement cost exceeds the \$1.837 billion reported by providers with 10 million or fewer customers, that cost will be far exceeded by the benefits obtained in addressing the important national security concerns posed by the equipment and services eligible for reimbursement. The \$1.895 billion reimbursement appropriation suggest that Congress anticipated great costs and even greater benefits would be generated by the Secure Networks Act. As the Commission explained in the *2019 Supply Chain Order*, the benefits of removing covered equipment and services “extend to [hard] to quantify matters, such as preventing untrustworthy elements in the communications network from impacting our nation's defense, public safety, and homeland security operations, our military readiness, and our critical infrastructure, let alone the collateral damage such as loss of life that may occur with any mass disruption to our nation's communications networks.”<sup>347</sup> Any increasing costs due to the CAA's expansion of the eligibility criteria for participation in the Reimbursement Program will be exceeded by the benefits of removing, replacing, and disposing of even more insecure equipment and services from U.S. networks.

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

<sup>341</sup> *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29, para. 153 (Feb. 26, 2021).

<sup>342</sup> Examples of differences between the programs with respect to fiscal matters include the fact that while the Universal Service Fund is a permanent indefinite appropriation and has a temporary exemption from the Antideficiency Act, the funds appropriated for the Reimbursement Program are definite in amount and are subject to the Antideficiency Act, which is codified as amended at 31 U.S.C. §§ 1341, 1342, 1351, and 1517.

<sup>343</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Public Notice, DA-21-490 (Apr. 28, 2021) (announcing Ernst & Young as the Reimbursement Program Administrator).

<sup>344</sup> See *Information Collection Results Public Notice*, 35 FCC Rcd at 9472.

<sup>345</sup> *Id.*

<sup>346</sup> CAA § 901.

<sup>347</sup> *2019 Supply Chain Order*, 34 FCC Rcd at 11465-66, para. 109.

#### IV. PROCEDURAL MATTERS

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

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

117. *Congressional Review Act.* The Commission will submit this draft *Third Report and Order* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Third Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

118. *Contact Person.* For further information about this proceeding, please contact Brian Cruikshank, FCC Wireline Competition Bureau, 45 L Street, N.E., Washington, D.C. 20554, at (202) 418-3623 or [brian.cruikshank@fcc.gov](mailto:brian.cruikshank@fcc.gov).

#### V. ORDERING CLAUSES

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

120. IT IS FURTHER ORDERED that Parts 1 and 54 of the Commission’s rules ARE AMENDED as set forth in Appendix A.

121. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission’s rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this Third Report and Order SHALL BE EFFECTIVE 60 days after publication of this Third Report and Order in the Federal Register.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**

**Final Rules**

**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) introductory text, (a)(1), (a)(2), (f), and (i) and adding paragraph (q) to read as follows:

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

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

(1) as defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19-121; WC Docket No. 18-89; adopted November 22, 2019 (in this section referred to as the ‘Report and Order’); or

(2) as determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20-690; PS Docket No. 19-351; adopted June 30, 2020) (DA 20-691; PS Docket No. 19-352; adopted June 30, 2020) (in this section collectively referred to as the ‘Designation Orders’);

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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>Prioritization Schedule</b>
<p><b>Priority 1</b></p> <p>Advanced communication service providers with 2 million or fewer customers.</p>
<p><b>Priority 2</b></p> <p>Advanced communications service providers that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service, as defined</p>



<p>in Part 27, Subpart M of title 47, Code of Federal Regulations, or any successor regulation and health care providers and libraries providing advanced communications service.</p>
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<p><b>Priority 3</b></p>
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<p>Any remaining approved applicants determined to be eligible for reimbursement under the Program.</p>
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(i)\*\*\*\*\*

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

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

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

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

(A) accredited public or private non-commercial educational institutions, providing their own facilities-based educational broadband service, as defined in Part 27, Subpart M 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 paragraphs (b), (c), and (d) to read as follows:

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

(1) as defined in the Report and Order of the Commission in the matter of Protecting Against National

Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19-121; WC Docket No. 18-89; adopted November 22, 2019 (in this section referred to as the ‘Report and Order’); or

(2) as determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20-690; PS Docket No. 19-351; adopted June 30, 2020) (DA 20-691; PS Docket No. 19-352; adopted June 30, 2020) (in this section collectively referred to as the ‘Designation Orders’).

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

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

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## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Third Further Notice of Proposed Rulemaking (*2021 Supply Chain Further Notice*) in this proceeding.<sup>1</sup> The Commission sought written comment on the proposals in the *2021 Supply Chain Further Notice*, including comment on the accompanying IRFA. The present Final Regulatory Flexibility Analysis (FRFA) addresses comments received on the IRFA and conforms to the RFA.<sup>2</sup>

**A. Need for, and Objectives of, the Rules**

2. As directed by the Secure and Trusted Communications Networks Act of 2019<sup>3</sup> (Secure Networks Act) and the Consolidated Appropriations Act, 2021<sup>4</sup> (CAA), and in light of increasing concern about ensuring communications supply chain integrity, and consistent with our obligation to be responsible stewards of the public funds used in Universal Service Fund (USF) programs, the Third Report and Order (Order) adopts rules to modify the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) according to sections 901 and 906 of the CAA.

3. Specifically, the Commission increases the eligibility cap to allow providers of advanced communications services with 10 million or fewer customers to participate in the Reimbursement Program. Additionally, the Commission modifies the equipment and services eligible for reimbursement through the Reimbursement Program and amends our rules to allow Reimbursement Fund participants to use such funds to remove, replace, or dispose of equipment or services from the Covered List that are defined in the *2019 Supply Chain Order*<sup>5</sup> or subject to the *Designation Orders*<sup>6</sup> and the process for designating companies that pose a national security threat to the integrity of communications networks or the communications supply chain, as set forth in the *2019 Supply Chain Order*, and were purchased, rented, leased, or otherwise obtained on or before June 30, 2020. The Commission also alters our prioritization scheme that will guide fund allocation if demand for reimbursement funds exceeds the \$1.895 billion appropriated by Congress. The new prioritization scheme will first fund reimbursement claims from eligible providers with two million or fewer customers. Next, it will fund claims from approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services. Last, it will fund eligible providers

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<sup>1</sup> See Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. § 603. The RFA, see 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. § 604.

<sup>3</sup> Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), Pub. L. No. 116-124, 134 Stat. 158 (2020).

<sup>4</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division N-Additional Coronavirus Response and Relief, Title IX-Broadband Internet access Service, §§ 901, 906, 134 Stat. 1182, 2120- 2121, 2144 (2020) (Consolidated Appropriations Act, 2021 or CAA).

<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) (*2019 Supply Chain Order*), *aff'd. Huawei Technologies USA v. FCC*, No. 19-60896 (5th Cir.).

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

with 10 million or fewer customers. The Commission also alters the definition of “provider of advanced communications services” to mirror the definition provided in the CAA. Finally, the Commission clarifies (1) the “costs reasonably incurred” standard adopted for determining eligible reimbursement expenses with technology upgrades; (2) the initial application filing window; (3) the consideration of requests for individual extensions of the removal, replacement, and disposal term; (4) additional expectations for and obligations of Reimbursement Program participants regarding reimbursement claim requests and the filing of final spending reports and final certification updates; (5) the process by which to account for removal, replacement, and disposal of covered equipment and services; (6) parameters when accounting for reimbursement funds; and (7) delegation of financial oversight to the Office of the Managing Director (OMD).

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

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

5. The Competitive Carriers Association supports the Commission’s adoption of the prioritization scheme expressly provided for in the CAA.<sup>7</sup> CCA argued that “[t]hose provider with 2 million or fewer customers include the small and rural carriers that serve some of the most remote and expensive areas of the country and are bridging the digital divide by bringing service to places where there would not be a business case to offer service absent support . . . . Loss of funding would have an immediate and detrimental effect on the carriers’ ability to provide services and, thus, access to rural America.”<sup>8</sup> Mediacom supports the Commission’s new prioritization schedule because “those providers need the greatest assistance because they have more limited resources.”<sup>9</sup> NTCA agrees, writing that “[s]maller providers already operate on razor thin margins; adding the financial cost of replacing existing equipment outside of its normal upgrade cycle or losing universal service funding would be a crushing burden.”<sup>10</sup> While some commenters quibble about additional prioritization categories, there is broad support in the record for offering first priority to Reimbursement Program funding to those providers with two million or fewer customers.<sup>11</sup> We agree and find that our new prioritization paradigm will target those smaller providers who are most affected by any remove-and-replace requirement.

6. Northern Michigan University (NMU) supports the Commission’s decision to “modify the acceptable use of reimbursement funds for the removal, replacement, and disposal of covered equipment obtained prior to July 1, 2020 . . . .”<sup>12</sup> NMU writes that “[m]oving the eligible replacement equipment date to June 30, 2020 accounts for the additional expenses providers have incurred in maintaining robust internet services to customers and ensures that these systems will be replaced with more modern, secure facilities.”<sup>13</sup> NMU also believes that this action will help smaller providers who “often lack the cash reserves typically required for large construction projects. In the case of Supply Chain wholesale equipment replacement, portions of systems deemed ineligible for replacement funds

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<sup>7</sup> Competitive Carriers Association Comments at 6 (CCA).

<sup>8</sup> *Id.* at 6-7.

<sup>9</sup> Mediacom Communications Corp. Comments at 3 (Mediacom).

<sup>10</sup> NTCA - The Rural Broadband Association Comments at 4-5 (NTCA).

<sup>11</sup> *See* Rural Wireless Association Comments at 6 (RWA) (“RWA supports the FCC’s proposed prioritization schedule as an accurate reflection of the priority schedule set out in the CAA.”); *see also* PTA-FLA, Inc. Comments at 1 (PTA-FLA) (“PTA generally supports the Commission’s proposals regarding the prioritization of the distribution of funds.”).

<sup>12</sup> Northern Michigan University Comments at 3 (NMU).

<sup>13</sup> *Id.*

may delay their replacement until the required finances are available.”<sup>14</sup> Mark Twain Communications Company also supports this action because “the costs associated with the replacement of existing networks equipment which in the future is determined to violate the proposed rule imposes a significant and unreasonable financial burden on rural telecommunications companies.”<sup>15</sup>

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

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>16</sup>

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

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

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted pursuant to the Order.<sup>17</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>18</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>19</sup> A “small business concern” is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>20</sup>

10. *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>21</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 Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>22</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.<sup>23</sup>

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<sup>14</sup> *Id.* at 3-4.

<sup>15</sup> Mark Twain Communications Company Comments at 3 (MTCC).

<sup>16</sup> 5 U.S.C. § 604 (a)(3).

<sup>17</sup> *Id.* § 604(a) (4).

<sup>18</sup> *Id.* § 601(6).

<sup>19</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” set forth in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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.”

<sup>20</sup> 15 U.S.C. § 632.

<sup>21</sup> *See* 5 U.S.C. § 601(3)-(6).

<sup>22</sup> *See* Small Business Administration, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

<sup>23</sup> *Id.*

11. 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>24</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>25</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>26</sup>

12. 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>27</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>28</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>29</sup> Of this number there were 36,931 general purpose governments (county<sup>30</sup>, municipal and town or township<sup>31</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>32</sup> with enrollment

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<sup>24</sup> 5 U.S.C. § 601(4).

<sup>25</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,”

<https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard> (Last updated Apr. 30, 2021). We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>26</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-ao-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>27</sup> 5 U.S.C. § 601(5).

<sup>28</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>29</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>30</sup> See *id.* at 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.

<sup>31</sup> See *id.* at 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>32</sup> See *id.* at 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.

populations of less than 50,000.<sup>33</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>34</sup>

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

### 1. Schools and Libraries

14. As noted, “small entity” includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school, that provides elementary education, as determined under state law.”<sup>35</sup> A secondary school is generally defined as “a non-profit institutional day or residential school . . . , that provides secondary education, as determined under state law,” and not offering education beyond grade 12.<sup>36</sup> A library includes “(1) [a] public library; (2) [a] public elementary school or secondary school library; (3) [a]n academic library; (4) [a] research library . . . ; and (5) [a] private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.”<sup>37</sup> For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.<sup>38</sup> Certain other statutory definitions apply as well.<sup>39</sup> The SBA has defined for-profit, elementary and secondary schools having \$12 million or less in annual receipts, and libraries having \$16.5 million or less in annual receipts, as small entities.<sup>40</sup> In funding year 2007, approximately 105,500 schools and 10,950 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA’s size standard, we estimate that fewer than 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

### 2. Healthcare Providers

15. *Offices of Physicians (except Mental Health Specialists)*. This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical

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<sup>33</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>34</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>35</sup> 47 CFR § 54.500.

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

<sup>37</sup> *Id.*

<sup>38</sup> 47 CFR § 54.501(a), (b).

<sup>39</sup> *Id.*

<sup>40</sup> 13 CFR § 121.201; NAICS codes 611110 and 519120 (NAICS code 519120 was previously 514120).

centers.<sup>41</sup> The SBA has created a size standard for this industry, which is annual receipts of \$12 million or less.<sup>42</sup> According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry.<sup>43</sup> Of that number, 147,718 had annual receipts of less than \$10 million, while 3,108 firms had annual receipts between \$10 million and \$24,999,999.<sup>44</sup> Based on this data, we conclude that a majority of firms operating in this industry are small under the applicable size standard.

16. *Offices of Physicians, Mental Health Specialists.* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of psychiatry or psychoanalysis. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>45</sup> The SBA has established a size standard for businesses in this industry, which is annual receipts of \$12 million dollars or less.<sup>46</sup> The 2012 U.S. Economic Census indicates that 8,809 firms operated throughout the entire year in this industry.<sup>47</sup> Of that number 8,791 had annual receipts of less than \$10 million, while 13 firms had annual receipts between \$10 million and \$24,999,999.<sup>48</sup> Based on this data, we conclude that a majority of firms in this industry are small under the applicable standard.

17. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry.<sup>49</sup> The SBA has established a size standard for that industry of annual receipts of \$8 million or less.<sup>50</sup> The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry

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<sup>41</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621111 Offices of Physicians (except Mental Health Specialists)"* <https://www.census.gov/naics/?input=621111&year=2017&details=621111>.

<sup>42</sup> See 13 CFR § 121.201, NAICS Code 621111.

<sup>43</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621111, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621111&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>44</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$12 million or less.

<sup>45</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621112 Offices of Physicians, Mental Health Specialists"*, <https://www.census.gov/naics/?input=621112&year=2017&details=621112>.

<sup>46</sup> See 13 CFR § 121.201, NAICS Code 621112.

<sup>47</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621112, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621112&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>48</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 \$12 million or less.

<sup>49</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621210 Offices of Dentists"*, <https://www.census.gov/naics/?input=621210&year=2017&details=621210>.

<sup>50</sup> See 13 CFR § 121.201, NAICS Code 621210.



throughout the entire year.<sup>51</sup> Of that number 114,417 had annual receipts of less than \$5 million, while 651 firms had annual receipts between \$5 million and \$9,999,999.<sup>52</sup> Based on this data, we conclude that a majority of business in the dental industry are small under the applicable standard.

18. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>53</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>54</sup> The 2012 U.S. Economic Census statistics show that in 2012, 33,940 firms operated throughout the entire year.<sup>55</sup> Of that number 33,910 operated with annual receipts of less than \$5 million per year, while 26 firms had annual receipts between \$5 million and \$9,999,999.<sup>56</sup> Based on this data, we conclude that a majority of chiropractors are small.

19. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses.<sup>57</sup> The SBA has established a size standard for businesses operating in this industry, which is annual receipts of \$8 million or less.<sup>58</sup> The 2012 Economic Census indicates that 18,050 firms operated the entire year.<sup>59</sup> Of that number, 17,951

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<sup>51</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621210, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621210&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>52</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$8 million or less.

<sup>53</sup> See U.S. Census Bureau, 2017 NAICS Definition, “621310 “Offices of Chiropractors”, <https://www.census.gov/naics/?input=621310&year=2017&details=621310>.

<sup>54</sup> See 13 CFR § 121.201, NAICS Code 621310.

<sup>55</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621310, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621310&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>56</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.

<sup>57</sup> See U.S. Census Bureau, *2017 NAICS Definition “621320 Offices of Optometrists”*, <https://www.census.gov/naics/?input=621320&year=2017&details=621320>.

<sup>58</sup> See 13 CFR § 121.201, NAICS Code 621320.

<sup>59</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621320, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621320&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

had annual receipts of less than \$5 million, while 70 firms had annual receipts between \$5 million and \$9,999,999.<sup>60</sup> Based on this data, we conclude that a majority of optometrists in this industry are small.

20. *Offices of Mental Health Practitioners (except Physicians)*. This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>61</sup> The SBA has created a size standard for this industry, which is annual receipts of \$8 million or less.<sup>62</sup> The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year.<sup>63</sup> Of that number, 15,894 firms received annual receipts of less than \$5 million, while 111 firms had annual receipts between \$5 million and \$9,999,999.<sup>64</sup> Based on this data, we conclude that a majority of mental health practitioners who do not employ physicians are small.

21. *Offices of Physical, Occupational and Speech Therapists and Audiologists*. This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>65</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>66</sup> The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year.<sup>67</sup> Of this number, 20,047 had annual receipts of less than \$5 million, while 270 firms had annual receipts between \$5 million and \$9,999,999.<sup>68</sup> Based on this data, we conclude that a majority of businesses in this industry are small.

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<sup>60</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.

<sup>61</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621330 Offices of Mental Health Practitioners (except Physicians)"*, <https://www.census.gov/naics/?input=621330&year=2017&details=621330>.

<sup>62</sup> See 13 CFR § 121.201, NAICS Code 621330.

<sup>63</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621330, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>64</sup> *Id.* The available U.S. Census data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>65</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621340 Offices of Physical, Occupational and Speech Therapists and Audiologists"*, <https://www.census.gov/naics/?input=621340&year=2017&details=621340>.

<sup>66</sup> See 13 CFR § 121.201, NAICS Code 621340.

<sup>67</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621340, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>68</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 \$8 million or less.

22. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>69</sup> The SBA has established a size standard for businesses in this industry, which is annual receipts of \$8 million or less.<sup>70</sup> The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year.<sup>71</sup> Of that number, 7,545 firms had annual receipts of less than \$5 million, while 22 firms had annual receipts between \$5 million and \$9,999,999.<sup>72</sup> Based on this data, we conclude that a majority of firms in this industry are small.

23. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.<sup>73</sup> The SBA has established a size standard for this industry, which is annual receipts of \$8 million or less.<sup>74</sup> The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year.<sup>75</sup> Of that number, 11,374 firms had annual receipts of less than \$5 million, while 48 firms had annual receipts between \$5 million and \$9,999,999.<sup>76</sup> Based on this data, we conclude the majority of firms in this industry are small.

24. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy.<sup>77</sup> The SBA has established a size standard for this industry, which is annual receipts of \$12 million or less.<sup>78</sup> The 2012 Economic Census indicates that 1,286 firms in

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<sup>69</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621391 Offices of Podiatrists”, <https://www.census.gov/naics/?input=621391&year=2017&details=621391>.

<sup>70</sup> See 13 CFR § 121.201, NAICS Code 621391.

<sup>71</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621391, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621391&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>72</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 \$8 million or less.

<sup>73</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621399 Offices of All Other Miscellaneous Health Practitioners”, <https://www.census.gov/naics/?input=621399&year=2017&details=621399>.

<sup>74</sup> See 13 CFR § 121.201, NAICS Code 621399.

<sup>75</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621399, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621399&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>76</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.

<sup>77</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621410 Family Planning Centers”, <https://www.census.gov/naics/?input=621410&year=2017&details=621410>.

<sup>78</sup> See 13 CFR § 121.201, NAICS Code 621410.

this industry operated throughout the entire year.<sup>79</sup> Of that number 1,237 had annual receipts of less than \$10 million, while 36 firms had annual receipts between \$10 million and \$24,999,999.<sup>80</sup> Based on this data, we conclude that the majority of firms in this industry is small.

25. *Outpatient Mental Health and Substance Abuse Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary.<sup>81</sup> The SBA has established a size standard for this industry, which is \$16.5 million or less in annual receipts.<sup>82</sup> The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year.<sup>83</sup> Of that number, 4,069 had annual receipts of less than \$10 million while 286 firms had annual receipts between \$10 million and \$24,999,999.<sup>84</sup> Based on this data, we conclude that a majority of firms in this industry are small.

26. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies.<sup>85</sup> The SBA has established a size standard for this industry, which is \$35 million or less in annual receipts.<sup>86</sup> The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year.<sup>87</sup> Of that number, 5 firms had annual receipts of less than \$25 million, while 1 firm had annual receipts

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<sup>79</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621410, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621410&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>80</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 \$12 million or less.

<sup>81</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621420 Outpatient Mental Health and Substance Abuse Centers”, <https://www.census.gov/naics/?input=621420&year=2017&details=621420>.

<sup>82</sup> See 13 CFR § 121.201, NAICS Code 621420.

<sup>83</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621420, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621420&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>84</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.

<sup>85</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621491 HMO Medical Centers”, <https://www.census.gov/naics/?input=621491&year=2017&details=621491>.

<sup>86</sup> See 13 CFR § 121.201, NAICS Code 621491.

<sup>87</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621491, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621491&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

between \$25 million and \$99,999,999.<sup>88</sup> Based on this data, we conclude that approximately one-third of the firms in this industry are small.

27. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (e.g., orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (e.g., setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment.<sup>89</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>90</sup> The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year.<sup>91</sup> Of that number, 3,222 firms had annual receipts of less than \$10 million, while 289 firms had annual receipts between \$10 million and \$24,999,999.<sup>92</sup> Based on this data, we conclude that a majority of firms in this industry are small.

28. *All Other Outpatient Care Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (i.e., Doctor of Medicine and Doctor of Dental Medicine) are included in this industry.<sup>93</sup> The SBA has established a size standard for this industry, which is annual receipts of \$22 million or less.<sup>94</sup> The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year.<sup>95</sup> Of this number, 4,269 firms had annual receipts of less than \$10 million, while 389 firms had annual receipts between \$10 million and \$24,999,999.<sup>96</sup> Based on this data, we conclude that a majority of firms in this industry are small.

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<sup>88</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.

<sup>89</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621493 Freestanding Ambulatory Surgical and Emergency Centers”, <https://www.census.gov/naics/?input=621493&year=2017&details=621493>.

<sup>90</sup> See 13 CFR § 121.201, NAICS Code 621493.

<sup>91</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621493, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621493&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>92</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.

<sup>93</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621498 All Other Outpatient Care Centers”, <https://www.census.gov/naics/?input=621498&year=2017&details=621498>.

<sup>94</sup> See 13 CFR § 121.201, NAICS Code 621498.

<sup>95</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621498, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621498&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>96</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.

29. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs.<sup>97</sup> The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less.<sup>98</sup> The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year.<sup>99</sup> Of that number, 235 operated with annual receipts of less than \$25 million, while 41 firms had annual receipts between \$25 million and \$49,999,999.<sup>100</sup> Based on this data, we conclude that approximately three-quarters of firms that operate in this industry are small.

30. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks).<sup>101</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>102</sup> The 2012 U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year.<sup>103</sup> Of that number, 2,318 had annual receipts of less than \$10 million, while 56 firms had annual receipts between \$10 million and \$24,999,999.<sup>104</sup> Based on this data, we conclude that a majority of the firms in this industry is small.

31. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner.<sup>105</sup> The SBA has established a size standard for this industry, which is annual receipts of \$35 million or less.<sup>106</sup> The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year.<sup>107</sup>

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<sup>97</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621991 Blood and Organ Banks"*, <https://www.census.gov/naics/?input=621991&year=2017&details=621991>.

<sup>98</sup> See 13 CFR § 121.201, NAICS Code 621991.

<sup>99</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621991, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621991&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>100</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.

<sup>101</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621999 All Other Miscellaneous Ambulatory Health Care Services"*, <https://www.census.gov/naics/?input=621999&year=2017&details=621999>.

<sup>102</sup> See 13 CFR § 121.201, NAICS Code 621999.

<sup>103</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621999, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621999&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>104</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.

<sup>105</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621511 Medical Laboratories"*, <https://www.census.gov/naics/?input=621511&year=2017&details=621511>.

<sup>106</sup> See 13 CFR § 121.201, NAICS Code 621511.

<sup>107</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621511, <https://www.census.gov/naics/?input=621511&year=2017&details=621511>.

Of this number, 2,465 had annual receipts of less than \$25 million, while 60 firms had annual receipts between \$25 million and \$49,999,999.<sup>108</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

32. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner.<sup>109</sup> The SBA has established size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>110</sup> The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year.<sup>111</sup> Of that number, 3,876 firms had annual receipts of less than \$10 million, while 228 firms had annual receipts between \$10 million and \$24,999,999.<sup>112</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

33. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.<sup>113</sup> The SBA has established a size standard for this industry, which is annual receipts of \$16.5 million or less.<sup>114</sup> The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year.<sup>115</sup> Of that number, 16,822 had annual receipts of less than \$10 million, while 590 firms had annual receipts between \$10 million and \$24,999,999.<sup>116</sup> Based on this data, we conclude that a majority of firms that operate in this industry are small.

34. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel.<sup>117</sup> The SBA has established a size

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<sup>108</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.

<sup>109</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621512 Diagnostic Imaging Centers"*, <https://www.census.gov/naics/?input=621512&year=2017&details=621512>.

<sup>110</sup> See 13 CFR § 121.201, NAICS Code 621512.

<sup>111</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012, NAICS Code 621512*, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621512&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>112</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.

<sup>113</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621610 Home Health Care Services"*, <https://www.census.gov/naics/?input=621610&year=2017&details=621610>.

<sup>114</sup> See 13 CFR § 121.201, NAICS Code 621610.

<sup>115</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012, NAICS Code 621610*, <https://www.census.gov/naics/?input=621991&year=2017&details=6214991>.

<sup>116</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.

<sup>117</sup> See U.S. Census Bureau, *2017 NAICS Definition, "621910 Ambulance Services"*, <https://www.census.gov/naics/?input=621910&year=2017&details=621910>.

standard for this industry, which is annual receipts of \$16.5 million or less.<sup>118</sup> The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year.<sup>119</sup> Of that number, 2,926 had annual receipts of less than \$15 million, while 133 firms had annual receipts between \$10 million and \$24,999,999.<sup>120</sup> Based on this data, we conclude that a majority of firms in this industry is small.

35. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services.<sup>121</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>122</sup> The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year.<sup>123</sup> Of that number, 379 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999.<sup>124</sup> Based on this data, we conclude that a majority of firms in this industry are small.

36. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services.<sup>125</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>126</sup> The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year.<sup>127</sup>

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<sup>118</sup> See 13 CFR § 121.201, NAICS Code 621910.

<sup>119</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621910, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621910&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>120</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.

<sup>121</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “621492 Kidney Dialysis Centers”, <https://www.census.gov/naics/?input=621492&year=2017&details=621492>.

<sup>122</sup> See 13 CFR § 121.201, NAICS Code 621492.

<sup>123</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 621492, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=621492&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>124</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.

<sup>125</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “622110 General Medical and Surgical Hospitals”, <https://www.census.gov/naics/?input=622110&year=2017&details=622110>.

<sup>126</sup> See 13 CFR § 121.201, NAICS Code 622110.

<sup>127</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622110, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622110&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.



Of that number, 877 has annual receipts of less than \$25 million, while 400 firms had annual receipts between \$25 million and \$49,999,999.<sup>128</sup> Based on this data, we conclude that approximately one-quarter of firms in this industry are small.

37. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services.<sup>129</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>130</sup> The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year.<sup>131</sup> Of that number, 185 had annual receipts of less than \$25 million, while 107 firms had annual receipts between \$25 million and \$49,999,999.<sup>132</sup> Based on this data, we conclude that more than one-half of the firms in this industry are small.

38. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services.<sup>133</sup> The SBA has established a size standard for this industry, which is annual receipts of \$41.5 million or less.<sup>134</sup> The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year.<sup>135</sup> Of that number, 146 firms had annual receipts of less than \$25 million,

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<sup>128</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 \$41.5 million or less.

<sup>129</sup> See U.S. Census Bureau, *2017 NAICS Definition, "622210 Psychiatric and Substance Abuse Hospitals"*, <https://www.census.gov/naics/?input=622210&year=2017&details=622210>.

<sup>130</sup> See 13 CFR § 121.201, NAICS Code 622210.

<sup>131</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622210, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622210&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>132</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.

<sup>133</sup> See U.S. Census Bureau, *2017 NAICS Definition, "622310 Specialty (Except Psychiatric and Substance Abuse) Hospitals"*, <https://www.census.gov/naics/?input=622310&year=2017&details=622310>.

<sup>134</sup> See 13 CFR § 121.201 NAICS Code 622310.

<sup>135</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 622310,

(continued....)

while 79 firms had annual receipts between \$25 million and \$49,999,999.<sup>136</sup> Based on this data, we conclude that more than one-half of the firms in this industry are small.

39. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (e.g., wars).<sup>137</sup> The SBA has established a size standard for this industry which is annual receipts of \$35 million or less.<sup>138</sup> The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year.<sup>139</sup> Of that number, 509 had annual receipts of less than \$25 million, while 7 firms had annual receipts between \$25 million and \$49,999,999.<sup>140</sup> Based on this data, we conclude that a majority of firms in this industry are small.

### 3. Providers of Telecommunications and Other Services

#### a. Telecommunications Service Providers

40. *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>141</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>142</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.<sup>143</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>144</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>145</sup> Of this total, an estimated 1,006 have 1,500 or

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<https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=622310&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false&vintage=2012>.

<sup>136</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.

<sup>137</sup> See U.S. Census Bureau, *2017 NAICS Definition, "624230 Emergency and Other Relief Services"*, <https://www.census.gov/naics/?input=624230&year=2017&details=624230>.

<sup>138</sup> See 13 CFR § 121.201, NAICS Code 624230.

<sup>139</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the U.S.: 2012*, NAICS Code 624230, <https://data.census.gov/cedsci/table?text=EC1262SSSZ4&n=624230&tid=ECNSIZE2012.EC1262SSSZ4&hidePreview=false>.

<sup>140</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.

<sup>141</sup> See, U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>142</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>143</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>144</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.

<sup>145</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).

fewer employees.<sup>146</sup> Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

41. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers<sup>147</sup> and under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>148</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.<sup>149</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>150</sup> Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>151</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.<sup>152</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>153</sup> Also, 72 carriers have reported that they are Other Local Service Providers.<sup>154</sup> Of this total, 70 have 1,500 or fewer employees.<sup>155</sup> Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

42. *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>156</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>157</sup> U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.<sup>158</sup> Of that number, 3,083 operated with fewer than 1,000

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<sup>146</sup> *Id.*

<sup>147</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>148</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>149</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>150</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.

<sup>151</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>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>157</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>158</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*,

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employees.<sup>159</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>160</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>161</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

43. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers.<sup>162</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>163</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>164</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>165</sup> Thus under this size standard, the Commission estimates that the majority of firms in this industry are small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services.<sup>166</sup> Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.<sup>167</sup> Consequently, the Commission estimates that the majority of operator service providers are small entities.

44. *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>168</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>169</sup>

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<https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>159</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.

<sup>160</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>161</sup> *Id.*

<sup>162</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers",  
<https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>163</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>164</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>165</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.

<sup>166</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>167</sup> *Id.*

<sup>168</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers",  
<https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>169</sup> See 13 CFR § 121.201, NAICS Code 517911.

U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year.<sup>170</sup> Of that number, all operated with fewer than 1,000 employees.<sup>171</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>172</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>173</sup> Consequently, the Commission estimates that the majority of local resellers are small entities.

45. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>174</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>175</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>176</sup> 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that year.<sup>177</sup> Of that number, 1,341 operated with fewer than 1,000 employees.<sup>178</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>179</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>180</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

46. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as

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<sup>170</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 517911, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>171</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.

<sup>172</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>173</sup> See *id.*

<sup>174</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers”, <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>175</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>176</sup> *Id.*

<sup>177</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 517911, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>178</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>179</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>180</sup> See *id.*

“establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over Internet protocol (VoIP) services; wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>181</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>182</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>183</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>184</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

47. *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>185</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>186</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>187</sup> Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.<sup>188</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.

48. 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>189</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect

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<sup>181</sup> See 13 CFR § 120.201. 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/naics/?input=517911&year=2017&details=517911>.

<sup>182</sup> See 13 CFR § 120.201, NAICS Code 517311.

<sup>183</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

<sup>184</sup> *Id.*

<sup>185</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>186</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>187</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>188</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.

<sup>189</sup> See Federal Communications Commission, *Universal Licensing System*, <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

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>190</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>191</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

49. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).<sup>192</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>193</sup> For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>194</sup> Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.<sup>195</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>196</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>197</sup> Therefore, more than half of these entities can be considered small.

50. *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>198</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>199</sup> For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.<sup>200</sup> Of this total, 299 firms had annual

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<sup>190</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>191</sup> See *id.*

<sup>192</sup> See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>193</sup> See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

<sup>194</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>195</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.

<sup>196</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>197</sup> *Id.*

<sup>198</sup> See U.S. Census Bureau, 2017 NAICS Definition, “517410 Satellite Telecommunications”, <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

<sup>199</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>200</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>.

receipts of less than \$25 million.<sup>201</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

51. *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>202</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>203</sup> Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>204</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>205</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>206</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>207</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**

52. *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>208</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>209</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>210</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>211</sup> Of this total, 3,083 operated with fewer than

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<sup>201</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.

<sup>202</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>206</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>207</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.

<sup>208</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>209</sup> *Id.*

<sup>210</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>211</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>.



1,000 employees.<sup>212</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

53. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications.<sup>213</sup> The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less.<sup>214</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>215</sup> Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>216</sup> Consequently, under this size standard a majority of firms in this industry can be considered small.

### c. Vendors and Equipment Manufacturers

54. *Vendors of Infrastructure Development or “Network Buildout.”* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are “Radio and Television Broadcasting and Wireless Communications Equipment” with a size standard of 1,250 employees or less<sup>217</sup> and “Other Communications Equipment Manufacturing” with a size standard of 750 employees or less.<sup>218</sup> U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year.<sup>219</sup> Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees.<sup>220</sup> For Other Communications

<sup>212</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.

<sup>213</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications”*, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>214</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>215</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>216</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.

<sup>217</sup> See 13 CFR § 121.201, NAICS Code 334220; see also U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>218</sup> See 13 CFR § 121.201, NAICS Code 334290; see also U.S. Census Bureau, *2017 NAICS Definition, “334290 Other Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>219</sup> See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334220&vintage=2012&hidePreview=false>.

<sup>220</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or

(continued....)

Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for the year.<sup>221</sup> Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.<sup>222</sup> Based on this data, we conclude that the majority of Vendors of Infrastructure Development or “Network Buildout” are small.

55. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.<sup>223</sup> These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.<sup>224</sup> The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees.<sup>225</sup> U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year.<sup>226</sup> Of this total, 262 operated with fewer than 1,000 employees.<sup>227</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

56. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and

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services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

<sup>221</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334290&vintage=2012&hidePreview=false>.

<sup>222</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 750 or fewer employees. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

<sup>223</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

<sup>224</sup> *Id.*

<sup>225</sup> See 13 CFR § 121.201, NAICS Code 334210.

<sup>226</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334210, <https://data.census.gov/cedsci/table?n=334210&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

<sup>227</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees.

television broadcast and wireless communications equipment.<sup>228</sup> Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>229</sup> The SBA has established a small business size standard for this industry of 1,250 or fewer employees.<sup>230</sup> U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.<sup>231</sup> Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.<sup>232</sup> Based on this data, we conclude that a majority of manufacturers in this industry are small.

57. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).<sup>233</sup> Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.<sup>234</sup> The SBA has established a size standard for this industry as all such firms having 750 or fewer employees.<sup>235</sup> U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year.<sup>236</sup> Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.<sup>237</sup> Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

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

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

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<sup>228</sup> See U.S. Census Bureau, *2017 NAICS Definitions*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”, <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>229</sup> *Id.*

<sup>230</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>231</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

<sup>232</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.

<sup>233</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334290 Other Communications Equipment Manufacturing”, <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>234</sup> *Id.*

<sup>235</sup> See 13 CFR 121.201, NAICS Code 334290.

<sup>236</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334290&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>.

<sup>237</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.

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

59. The RFA requires an agency to describe the steps the agency has taken to minimize the significant economic impact on small entities of the final rule, consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons in support of the final rule, and why any significant alternatives to the rule considered by the agency and which affect the impact on small entities were rejected.<sup>238</sup>

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

**G. Report to Congress**

61. The Commission will send a copy of the Third Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>239</sup> In addition, the Commission will send a copy of the Third Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Third Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>240</sup>

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<sup>238</sup> See 5 U.S.C. § 604(a)(6).

<sup>239</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>240</sup> See 5 U.S.C. § 604(b).