

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF RURAL WIRELESS BROADBAND COALITION**

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## SUMMARY

The record in response to the Commission's Notice of Proposed Rulemaking in WC Docket No. 18-89 supports the Commission's conclusion that there are serious issues concerning potential national security risks to the communications supply chain. Commenters strongly object, however, to the Commission's proposed rule. The proposal, apparently prompted in part by congressional calls to bar suppliers posing national security threats from the American market, would prohibit the use of Universal Service Fund support to purchase equipment or services from targeted suppliers or providers identified as posing a national security risk to communications networks or the communications supply chain.

Instead of any significant support for the proposed rule, there is support for adoption of a best practices regime as recommended by Rural Wireless Broadband Coalition (formerly Rural Broadband Alliance). A best practices regime has the capability to incorporate risk assessment and mitigation methods that utilize intelligence-gathering to evaluate potential threats, and then take steps to reduce or manage identified risks to telecommunications networks and the communications supply chain. The objective of this approach is to avoid any need to invest "trust" in particular vendors, and instead rely on a collaborative process that produces best practices tailored to the telecommunications sector.

The record supports the Commission's engaging in this collaborative process by continuing its coordination efforts with other Federal agencies with national security expertise, as well as with industry stakeholders, to ensure that communications supply chain risk avoidance policies are designed and administered in a holistic manner.

In contrast to evidence in the record supporting a best practices approach to addressing

communications supply chain security risks, numerous commenters object to the Commission's proposed rule, because the Commission fails to assess the benefits and costs of the rule, the costs imposed by the rule on small rural carriers receiving USF support would be substantial, and the Commission does not articulate any benefits the rule might provide.

The record provides abundant documentation that small rural carriers would be overwhelmed by the costs that would be imposed by the proposed rule, with one commenter concluding that the rule would put some carriers out of business and disrupt the services provided by other carriers. Numerous commenters agree with the Coalition that the rule would force many small rural carriers to replace network infrastructure, at enormous cost, because of a lack of interoperability between existing equipment purchased from targeted suppliers and new or upgraded equipment obtained from other suppliers.

The Coalition agrees with many commenters that, if the Commission—against the weight of the evidence in the record—decides to adopt its proposed rule, then the Commission should also adopt several measures that would mitigate the negative impact of the rule on small rural carriers. The measures would include narrowing the scope of the proposed rule, providing additional funding to carriers required to comply with the rule, applying the rule only to direct spending on the purchase of equipment from targeted suppliers, and giving USF recipients a 10-year transition period to comply with the requirements of the rule.

Commenters also urge the Commission to issue a further notice of proposed rulemaking seeking comment on a more detailed and better-explained proposal, arguing that such a step would help to quell the chilling effect that the Commission's vague proposed rule has had across the telecommunications industry.

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Rural Wireless Broadband Coalition (“Coalition”),<sup>1</sup> by counsel and pursuant to the Commission’s Notice of Proposed Rulemaking<sup>2</sup> hereby provides reply comments in the above-captioned proceeding.

**I. INTRODUCTION.**

The Commission has garnered strong support in the record for its commitment to dealing with national security risks that, if left unaddressed, could threaten to seriously disrupt and

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<sup>1</sup> Coalition members include Union Wireless, Viaero Wireless, Bristol Bay Cellular, Pine Cellular Phones, Inc., SI Wireless, LLC, United Wireless Communications, and AST Telecom. The Coalition was formerly known as the Rural Broadband Alliance (“RBA”), and filed comments in this proceeding on June 1, 2018, using that name. For convenience, references in these Reply Comments to the comments filed by RBA are cited as Coalition comments.

<sup>2</sup> *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Notice of Proposed Rulemaking, FCC-18-42, (Apr. 18, 2018) (“*Notice*”). See FEDERAL REGISTER, 83 Fed. Reg. 19196 (May 2, 2018) (specifying July 2, 2018, as the deadline for filing reply comments).

damage the nation's telecommunications networks. The *Notice* has identified important national security issues affecting the communications supply chain, which require an effective, coordinated response.

Commenters also convincingly demonstrate, however, that the Commission's proposed rule would not be an effective way to manage the issues the Commission has identified. The conclusion to be drawn from the record is that, given the shortcomings of the proposed rule, the best choice now for the Commission is to make a mid-course correction. Specifically, the Commission should adopt a further notice of proposed rulemaking, focusing on a proposal advanced by the Coalition for establishing a best practices regime to address national security threats to the communications supply chain. Several reasons support this approach.

First, from a procedural perspective, a further notice makes sense. The *Notice* has been criticized for proposing a vague rule that raises many more questions than it answers. This vagueness has caused considerable uncertainty that, in turn, is having a chilling effect on carriers' operations and planning. Expedient action by the Commission to adopt a further notice, presenting a detailed and well-supported proposal for a best practices regime, would cure these problems caused by the *Notice*.

Second, a best practices regime, unlike the Commission's flawed proposal, does not "trust" some communications equipment suppliers while targeting suppliers that are deemed

untrustworthy. Some Members of Congress have said that if a supplier presents a national security threat, it should be barred from the American market.<sup>3</sup> The implication is that telecommunications carriers serving the United States market should only purchase equipment from trusted suppliers. This point of view incorrectly assumes that equipment purchased from any supplier can be trusted. It also incorrectly assumes that taking actions that will put targeted companies out of business will increase our national security by limiting the market to suppliers considered to be good actors.

As the record amply demonstrates, the telecommunications supply chain is extraordinarily complex, component parts flowing through the chain are sourced throughout the world, and even so-called “trusted” companies sometimes source both components and finished products from factories operated by targeted companies. Every single person with access to a part, at every place in the supply chain, presents a risk, irrespective of whether the finished equipment is sold by a good actor or a bad one. Targeting specific companies and using small carriers receiving universal service support as leverage does nothing to increase security, while harming rural consumers who depend on these small carriers for service.

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<sup>3</sup> See, e.g., Press Release of Senator Tom Cotton (June 13, 2018) (stating that certain targeted suppliers specified in the *Notice* “have proven themselves to be untrustworthy, and at this point I think the only fitting punishment would be to give them the death penalty—that is, to put them out of business in the United States”), available at [https://www.cotton.senate.gov/?p=press\\_release&id=960](https://www.cotton.senate.gov/?p=press_release&id=960). See NCTA—The Internet & Television Association (“NCTA”) Comments at 1 n.3 (citing Letter from Tom Cotton, U.S. Senator, et. al, to Ajit Pai, Chairman, FCC (Dec. 20, 2017)).

In a statement supporting a draft of the *Notice*, Chairman Pai proposed to “prohibit the FCC’s \$8.5 billion Universal Service Fund from being used to purchase equipment or services from any company that poses a national security threat to the integrity of communications networks or their supply chains.” FCC Statement, “Chairman Pai Statement on Proposal to Help Protect Security of U.S. Communications Networks and Their Supply Chains, Proposal Seeks to Bar Use of Universal Service Funds to Purchase Equipment or Services from Companies that Pose National Security Risk,” (Mar. 26, 2018), available at [https://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2018/db0326/DOC-349894A1.pdf](https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0326/DOC-349894A1.pdf).



If the Commission is serious about assisting the whole of the Federal Government in increasing the security of our communications networks, then the element of “trust” must be removed from the process and replaced with a best practices regime incorporating risk assessment and mitigation methods that utilize intelligence-gathering to evaluate potential threats, enabling the Commission to reduce or manage identified risks to telecommunications networks and the communications supply chain.

*Third*, adopting a best practices regime, after coordination with other Federal agencies and industry stakeholders, as a main line of defense against national security threats to the communications supply chain would provide several advantages. For example, there is evidence in the record that adopting and implementing best practices has been an effective strategy for guarding against national security risks to communications networks and equipment.

In addition, options for the use of best practices are already being examined by the Federal Government. In fact, Working Group 3 of the Commission’s Communications, Security, Reliability, and Interoperability Council (“CSRIC”) VI has been focusing on examining best practices for wireless protocols and making recommendations to reduce security risks. In addition, the Department of Homeland Security (“DHS”), through its Cyber Supply Chain Risk Management initiative, is examining supply chain risk issues and could serve as a source of information and analysis regarding best practices options.

*Fourth*, a best practices regime strikes an appropriate and necessary balance between national security concerns and the statutory principles that govern the Commission’s administration of its universal service support programs. Although no one doubts the importance of addressing national security risks, the record in this proceeding highlights that the Commission

should strive to fashion solutions to supply chain risks that are practical and effective, but that also harmonize with—rather than endanger—the Commission’s efforts to advance its statutory universal service mandate.

And, *fifth*, a best practices regime is a better alternative than the Commission’s seriously flawed proposed rule. Commenters observe that the Commission did not undertake any cost-benefit analysis of its proposed rule prior to adopting the *Notice*, but the record makes clear what the outcome of such analysis would be. For example, although the Commission proposes to apply the rule only prospectively,<sup>4</sup> numerous commenters explain that many small rural carriers, in order to retain universal service support, would be forced to replace much of their network infrastructure, at enormous expense, because of a lack of interoperability between equipment previously acquired from targeted suppliers and newly acquired or upgraded equipment obtained from other suppliers.

In addition, small rural carriers’ equipment costs would be driven up because, in order to retain their universal service support, they would forego access to equipment supplied by targeted vendors who generally price their equipment more affordably than equipment sold by other suppliers.

The record also illustrates that the effectiveness of the Commission’s proposed rule would be minimized by the fact that, given the limited scope of the Commission’s jurisdiction, the rule would apply only to those carriers receiving universal service support, leaving all other

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<sup>4</sup> *Notice* at para. 17.

carriers (even those receiving other forms of public support) free to use the equipment or services of targeted suppliers.

Significantly, numerous commenters make a convincing case that the proposed rule cannot be reconciled with the Commission's advancing its universal service goals and principles. The proposed rule would make it difficult for many small rural carriers to maintain their existing levels of service and coverage, shrinking consumers' access to voice and broadband services.

The rule would make it even more difficult for carriers to expand their services to unserved or underserved areas. In other words, the proposed rule would risk shifting the Commission's universal service policies into reverse gear, contrary to the agency's statutory mandate. A best practices regime, on the other hand, would address national security risks to the communications supply chain without undermining statutory universal service principles.

Finally, the Commission fails to articulate any benefits that would result from the proposed rule. In fact, the Commission asks commenters to explain whether the proposed rule would enhance efforts to safeguard telecommunications networks from national security risks, and whether such a benefit could be quantified.<sup>5</sup>

In sum, the record makes a convincing case that the Commission should abandon its proposed rule, adopt a further notice, and develop and implement a coordinated best practices regime, with input from and coordination with Federal agencies having national security expertise.

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<sup>5</sup> *Id.* at para. 33.

**II. COMMENTERS SUPPORT THE COALITION’S PROPOSAL THAT THE COMMISSION DEVELOP A BEST PRACTICES REGIME FOR THE COMMUNICATIONS SUPPLY CHAIN, AND COORDINATE WITH OTHER FEDERAL AGENCIES IN ADDRESSING NATIONAL SECURITY RISKS.**

Many commenters agree with the Coalition’s assessment that the Federal Government has identified important concerns regarding security risks that potentially threaten the communications supply chain, and that the Commission and other Federal agencies should pursue mechanisms that identify and deal with these risks.<sup>6</sup>

The Commission asks whether, apart from its proposed rule,<sup>7</sup> “there [are any] alternative approaches that would better protect the security of the nation’s communications networks at a lower cost ....”<sup>8</sup>

The Coalition has explained in its Comments that there are demonstrably better and more cost-effective alternatives.<sup>9</sup> The record strongly supports this view. Pursuing alternative

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<sup>6</sup> Coalition Comments at 4-5. See NTCA–The Rural Broadband Association (“NTCA”) Comments at 6 (explaining the value of cooperation and coordination of multiple Federal agencies, including DHS and intelligence agencies such as the Department of Justice and the Federal Bureau of Investigation, in observing and evaluating physical and cyber-based national security threats); Telecommunications Industry Association (“TIA”) Comments at 11 (noting that various government entities have raised concerns regarding certain targeted suppliers). The Coalition notes, however, that, as Sagebrush Cellular, Inc. (“Sagebrush”), explains, a particular risk on which the *Notice* focuses, *i.e.*, equipment supplied by Huawei Technologies Company (“Huawei”), may require additional evaluation:

Sagebrush has spent extensive time trying to find one shred of evidence that demonstrates any wrongdoing by Huawei and, to date, has been unable to uncover any hard fact. Should such evidence be presented, Sagebrush would be the first to look for an alternative vendor and financing to begin to replace Huawei.

Sagebrush Comments at 4.

<sup>7</sup> The Commission “propose[s] ... a rule to prohibit, going forward, the use of USF [Universal Service Fund] funds to purchase equipment or services from any communications equipment or service providers identified as posing a national security risk to communications networks or the communications supply chain.” *Notice* at para. 2.

<sup>8</sup> *Id.* at para. 33.

<sup>9</sup> See, *e.g.*, Coalition Comments at 11.

approaches is important and appropriate, in part, because, as Competitive Carriers Association (“CCA”) indicates, “[a]ll indications suggest that the Commission [in advancing its proposed rule] is rushing to do something to address a problem that is little understood, or at least a problem that has not been explained to stakeholders and other members of the regulated public.”<sup>10</sup>

Commenters agree with the Coalition’s position that it would be advisable for the Commission to pursue and participate in a coordinated, inter-agency approach aimed at addressing national security threats to the communications supply chain.<sup>11</sup>

**A. The Commission Has Limited Authority to Address National Security Risks to Communications Networks.**

A fundamental concern expressed by several commenters is that the Commission lacks authority to adopt its proposed rule, or that, if such authority exists, it is too narrow to enable the Commission to be effective in seeking solutions to national security threats involving the communications supply chain.

CCA, for example, explains that the Commission’s proposed rule is fundamentally flawed because:

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<sup>10</sup> CCA Comments at 40. The Coalition demonstrates in Section III.A., *infra*, that the Commission, in its rush to do something, has neglected to engage in any cost-benefit analysis of its proposed rule.

<sup>11</sup> Although TIA supports the Commission’s proposed rule, the Coalition nonetheless agrees with TIA’s arguments that “the Commission has a critical responsibility to take steps to protect [USF-funded networks] from national security threats posed by certain suppliers[,]” TIA Comments at 7, and that “the Commission has a duty to ensure to the best of its ability that funds are being spent responsibly in the public interest, and that networks and services paid for by the American public are procured with security in mind.” *Id.* at 8. As discussed in these Reply Comments, however, the record convincingly demonstrates that the Commission’s proposed rule is not the best means to address national security threats to the communications supply chain. Moreover, as the Coalition will discuss, the Commission must strike a balance between the means to address national security threats and the Commission’s commitment to statutory universal service principles.

[t]he Commission’s general rulemaking authority must be exercised in accordance with the “[u]niversal service principles” set forth in Section 254(b). The proposed rule, however, *conflicts* with these principles. Whereas the principles emphasize the importance of preserving and expanding service for Americans in rural or underserved areas, the proposed rule will restrict and, in some cases, eliminate service for the very people the universal service mandate is intended to protect.<sup>12</sup>

Moreover, AT&T Services, Inc. (“AT&T”), observes that “[t]he Notice identifies no clear authority that would allow the Commission to address national security threats to the communications supply chain outside the USF context[,]”<sup>13</sup> and even TIA, a proponent of the Commission’s proposed rule, concedes that “invoking national security involves ... important considerations that limit the reach of the Commission’s authority.”<sup>14</sup>

As the Coalition shows in the next section, the record points to a “work around” that will enable the Commission to avoid legal entanglements over its jurisdiction and legal authority, while providing a more effective solution to the national security issues identified in the *Notice*.

**B. Adopting a Best Practices Regime and Coordinating with Other Federal Agencies with Expertise in Identifying and Addressing National Security Threats Is the Best Approach for Protecting Communications Networks.**

The Coalition advocated in its Comments that the Commission would be well-advised to abandon its proposed rule and instead focus on developing a system of best practices that would enable carriers receiving USF support to monitor, identify, and address potential threats, and to take actions involving their procurement, installation, and use of equipment that would

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<sup>12</sup> CCA Comments at 15 (emphasis in original). *See id.* at 16-28; ITTA—The Voice of America’s Broadband Providers (“ITTA”) Comments at 2-3 (explaining that the security risks the Commission seeks to address in the *Notice* largely involve cyber security, but the Commission has no authority to adopt cyber security requirements).

<sup>13</sup> AT&T Comments at 4.

<sup>14</sup> TIA Comments at 25.

ensure that the use of acquired equipment would be free of any potential national security threats.<sup>15</sup> The record supports this approach.

**1. The Record Supports Adopting a Best Practices Regime to Address National Security Issues Relating to the Communications Supply Chain.**

The Coalition and Domain5<sup>16</sup> argue that, instead of adopting the proposed rule, the Commission should adopt a set of best practices to address national security risks to the communications supply chain.<sup>17</sup> Domain5 provides a number of best practices recommendations by which the Commission would embrace “an approach to security that focuses on the interconnected nature of people, processes, and technology. The objective is to create an environment which obviates the need for carriers to ‘trust’ vendors, but rather to more fully trust the technology solutions delivered for deployment into production networks.”<sup>18</sup> Domain5 explains the rationale and advantage of such an approach:

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<sup>15</sup> Coalition Comments at 11-14.

<sup>16</sup> Domain5, a company specializing in developing solutions to cyber security problems, has prepared a white paper that was included with the Coalition’s Comments. See Coalition Comments, Attachment, Domain5, “Advancing U.S. Telecommunications Network Security: A Response to FCC Notice of Proposed Rulemaking in the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, FCC 18-42” (“Domain5 White Paper”).

<sup>17</sup> Pine Belt Cellular, Inc. (“Pine Belt”), has advanced a variation of the best practices regime recommended by the Coalition:

A more reasonable approach [than the Commission’s proposed rule] to protecting national security through telecommunications networks is to encourage and even require via a funded mandate that carriers adopt consistent and standardized network intrusion detection and mitigation policies and systems. The significant, and possibly devastating, burden of complying with such an overbroad, harmful and ineffective rule as proposed in the NPRM should not be placed on small rural telecommunications carriers who are dependent on USF funds to carry out their mission of serving unserved and underserved rural areas of America.

Pine Belt Comments at 9. The Coalition addresses the burdens referenced by Pine Belt in Section III.B., *infra*.

<sup>18</sup> Coalition Comments at 11 (emphasis in original). See *id.* at 11-14; Domain5 White Paper at 7-9.

The security of U.S. telecommunications networks is not entirely reliant of the pedigree of hardware and software. Security is best achieved through a balanced combination of managed secure technology, people, and processes; all three components are necessary to enhance security. We fully support the FCC’s goal of advancing and improving the security of U.S. communications networks.... However, the FCC’s proposal to eliminate specific vendors by denying carriers access to USF as a means to improve the security of U.S. communications networks is a risk avoidance strategy that ultimately will not produce the desired outcome. Rather, a risk-management-based approach based on the ... recommendations [developed and presented by Domain5] would have a more significant impact on improving the security of critical U.S. telecommunications networks.<sup>19</sup>

Other commenters also focus on the advantages of a best practices approach, contrasting it with the problematic rule proposed by the Commission. NTCA criticizes the *Notice* as “a prescriptive approach [that is a] stark departure from the risk-management approach to supply chain security as specified by industry best practices, other Federal agency reports, and the Commission record[,]”<sup>20</sup> pointing to findings made by the National Institute of Standards and Technology (“NIST”) that supply chain risk management is a critical organizational function for addressing supply chain risks.<sup>21</sup>

NTCA agrees with the Coalition that a best practices approach would work better than a blanket country-of-origin ban. “Given the nature of the threat,” NTCA explains, “supply chain security can only be addressed via risk assessment and mitigation practices which seek to evaluate threats based upon current intelligence and then mitigate or manage risks to a level that is

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<sup>19</sup> Domain5 White Paper at 10.

<sup>20</sup> NTCA Comments at 10. NTCA also observes that, “ironically the FCC’s proposed action is in direct opposition to other various cybersecurity best practices. For instance, network diversity, particularly regarding equipment, is a security best practice, while this proposal, if enacted, would result in more homogenous networks.” *Id.* at 21.

<sup>21</sup> *Id.* at 10.



acceptable as defined by the individual company’s risk tolerance, resources, and customer needs.”<sup>22</sup>

In addition, Satellite Trade Associations explain that they have been active in developing and adopting best practices to deal with cyber security issues.<sup>23</sup> Noting the increasing threat to communications network supply chains in the United States, the Associations indicate that they “have recently updated these cyber security best practices to specifically address the threat to the nation’s supply chain.”<sup>24</sup> Satellite Trade Associations argue that their success in developing industry-wide best practices shows that “collaboration, not regulation, is the best way to manage cyber risks. Accordingly, the ... Associations urge the FCC to consider the important role that best practices [can play], ... [as] it considers the role of regulation in protecting the nation’s communications network supply chain.”<sup>25</sup>

Best practices for addressing national security threats to the communications supply chain could best be addressed by folding such an inquiry into the ongoing CSRIC process. The Coalition has explained that CSRIC VI—and especially Working Group 3—has been active in examining network reliability and security risk reduction, with Working Group 3 having released a report in March of this year focusing on best practices and recommendations to mitigate security risks to wireless protocols.<sup>26</sup>

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<sup>22</sup> *Id.* at 17.

<sup>23</sup> Satellite Industry Association, Global VSAT Forum, and EMEA Satellite Operators Association (collectively, “Satellite Trade Associations” or “Associations”) at 2.

<sup>24</sup> *Id.*

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

<sup>26</sup> Coalition Comments at 5. *See Notice* at para. 9; CTIA<sup>®</sup> Comments at 15; NCTA Comments at 6; NTCA Comments at 11-12. NTCA also notes that a March 2016 report issued by CSRIC V Working Group 6 “recommended voluntary recommendations and best practices to enhance the security of hardware and

The Coalition agrees with CTIA that “CSRIC’s efforts over the past several years have forged a productive relationship between the Commission and industry, with valuable input by DHS, and thus provide an important foundation for this proceeding—and also for broader inter-agency efforts that this proceeding should endeavor to complement.”<sup>27</sup> Working through CSRIC to develop best practices along the lines recommended by the Coalition and Domain5 would be an effective approach because, as USTelecom has discussed, CSRIC “develops best practices through collaborative and voluntary efforts with cybersecurity and technology professionals[,]”<sup>28</sup> and currently is engaged in an “effort to adapt the general NIST Cyber Risk Management Framework to the communications sector.”<sup>29</sup>

The Coalition suggests that the Commission, after working through these CSRIC processes, should implement the results to the extent it has jurisdiction to do so. At the same time, the Commission should seek to coordinate with other agencies and industry stakeholders both in connection with implementing best practices regimes to protect communications supply chains, and in developing and in enhancing awareness of supply chain threats.

**2. Numerous Commenters Urge the Commission to Coordinate with Other Federal Agencies, Congress, and Industry Stakeholders to Develop Holistic Solutions to Communications Supply Chain National Security Issues.**

The Coalition favors the Commission’s working with DHS, with other agencies primarily

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software in the core public communications network—principles which were designed to be accessible for organizations of all sizes.” *Id.* at 12 (footnote omitted).

<sup>27</sup> CTIA Comments at 16.

<sup>28</sup> USTelecom–The Broadband Association (“USTelecom”) Comments at 4.

<sup>29</sup> *Id.* at 5 (footnote omitted).

responsible for cyber security, with Congress, and with industry stakeholders to implement policies and processes to guard against national security risks.<sup>30</sup> These coordination efforts could proceed in conjunction with the Commission’s development of best practices, based on recommendations made in the record and discussed in the preceding section, and also should be a condition precedent to any Commission consideration of a rule to ban USF recipients from purchasing or using infrastructure equipment from specific targeted suppliers.<sup>31</sup>

The record widely supports the Commission’s engagement in these coordination efforts.

NCTA sums up the advantages of such an approach:

The breadth and depth of Congressional and Executive Branch activities on supply chain issues underscores the importance of a coordinated Federal approach. While the FCC has a targeted role to play in ensuring the security and integrity of the communications network supply chain, that role should be carried out in concert with efforts already underway elsewhere across the Federal government. Piecemeal approaches by multiple agencies, each of which addresses only a portion of the issue, risk creating inconsistent policy implementation and overlapping or redundant regulatory burdens. Supply chain security policy should be administered in a holistic manner ....<sup>32</sup>

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<sup>30</sup> See Coalition Comments at 13 (urging the Commission to convene an interagency group of experts to examine these problems related to national security threats to the communications supply chain, “determine what best practices should be implemented, under what authority, and how best to do so”).

<sup>31</sup> See Section V.B., *infra*. On this latter point, Computer & Communications Industry Association (“CCIA”) argues that “the Commission should coordinate its efforts across all Federal Government initiatives to create a more comprehensive policy, allowing other agencies with expertise to weigh in and help ensure that there are not competing or conflicting ‘blacklists’ of communications equipment or service providers. CCIA Comments at 6.

<sup>32</sup> NCTA Comments at 9. See *id.* at 7; CCA Comments at 47 (noting that “the FCC must engage in a more focused dialogue with national security expert agencies to effectively address communications supply chain concerns to attack the problem holistically”); CTIA Comments at 5 (indicating that “[t]he wireless industry has a close and longstanding partnership with DHS, involving both information sharing and operational coordination”); *id.* at 7-8; *id.* at 13-14 (noting that Commission actions also should be consistent with related legislative initiatives); NCTA Comments at 23 (indicating that only after coordinating “with the whole of the Federal government” should the Commission “seek to contemplate targeted action to address any gaps or tackle more specific issues as they relate to telecommunications network

The Coalition agrees with TIA that one important reason for the Commission to commit to coordination is that the Commission “should be careful to avoid making national security judgments of its own.”<sup>33</sup> TIA argues that, “[i]stead, both precedent and statutory text show that the Commission’s efforts to further national defense have relied upon determinations made by Congress, by the President, or by executive branch agencies with appropriate staffing and expertise who are presumed to act in the President’s name.”<sup>34</sup> Commission policies and decisions concerning national security risks to the communications supply chain can be best informed by coordination with expert Federal agencies.

Another reason for coordination is that a lot is happening. USTelecom explains that “[t]he Commission’s efforts to identify and mitigate supply chain risk in the communications sector are just one initiative in an increasingly complex federal landscape addressing the problem[,]”<sup>35</sup> leading USTelecom to argue that “the Commission must stay fully informed of, and engaged with, other federal entities that are also undertaking efforts to address risk in the communications supply chain.”<sup>36</sup>

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service providers”); TIA Comments at 78 (footnote omitted) (stating that “the Commission should commit to continued coordination with other federal agencies and Congress to ensure that federal policy evolves in a uniform manner”).

<sup>33</sup> TIA Comments at 25.

<sup>34</sup> *Id.* at 25-26.

<sup>35</sup> USTelecom Comments at 5. *See* CTIA Comments at 9, 12-13.

<sup>36</sup> USTelecom Comments at 5. As examples, USTelecom states that, the day after the Commission adopted the *Notice*, NIST released an update to its Cybersecurity Framework that included a section on managing cyber security within the supply chain, and, in May of this year, DHS “briefed the communications sector on upcoming efforts to conduct a general and specific communications supply chain risk assessment.” *Id.* at 6 (footnote omitted). USTelecom concludes that the Commission:

must view its proposals in the context of a dynamic and complicated environment that includes concerns regarding security, commerce, and American global competitiveness.

The Coalition agrees with other commenters that the Commission’s working with DHS is particularly important because DHS is extensively involved in supply chain risk issues in the telecommunications sector. NCTA explains, for example, that DHS has established a Cyber Supply Chain Risk Management initiative, “which evolved through the Department’s collaboration with the Department of Defense and the intelligence community and is designed to identify and mitigate supply chain threats and vulnerabilities to High Value Assets.”<sup>37</sup> NCTA also notes that, “[i]n conjunction with those efforts, DHS recently launched a two-pronged initiative to address both general and targeted supply chain risks, with a specific focus on the telecommunications sector.”<sup>38</sup>

Finally, WTA—Advocates for Rural Broadband (“WTA”) agrees that coordination should include industry stakeholders.<sup>39</sup> WTA observes that, “for a policy to be as effective as possible[,] ... substantial input must be collected from the industry, the Commission, and other agencies such as the Rural Utilities Service, with which WTA members regularly collaborate.”<sup>40</sup>

### **III. THE RECORD SHOWS THAT THE PROPOSED RULE WOULD PURSUE NEGLIGIBLE BENEFITS WHILE IMPOSING STAGGERING COSTS.**

The Commission poses this question in the *Notice*: “Does our proposed rule promote

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Failure to do so could lead to the Commission either undermining other federal interests, or to not representing the latest developments in supply chain risk and leaving a hole that affects the security of our communications networks.

*Id.* at 8.

<sup>37</sup> NCTA Comments at 7 (footnote and quotation marks omitted).

<sup>38</sup> *Id.* at 7-8 (footnote omitted).

<sup>39</sup> See Coalition Comments at 6-7.

<sup>40</sup> WTA Comments at 8. WTA states that its “members are concerned that rural providers will not be engaged in the decision-making process, which will result in government action being additionally burdensome for stakeholders.” *Id.* (footnote omitted).

our goals of ensuring that USF funds are used consistently with our national security interests while simultaneously continuing our universal service mission of making communications services available to all Americans?”<sup>41</sup>

The answer provided in the record is “no.”<sup>42</sup> As numerous commenters state, the proposed rule would provide only marginal benefits, at best, because the rule would not serve as an effective or efficient means of promoting national security interests.

**A. The Commission Fails to Present Any Analysis of Costs and Benefits in the Notice of Proposed Rulemaking.**

Because the Commission avoided any solicitation of information and analysis from interested parties by issuing a notice of inquiry (“NOI”) in this proceeding, it would have been helpful for the Commission to present its own data and analysis in support of its proposal. As NTCA explains, “[i]t is unclear how the Commission intends to define and enforce a prospective-only ban on equipment based upon a to-be-defined threshold of national security concerns.”<sup>43</sup>

NTCA observes that “the Notice of Proposed Rulemaking ... poses a series of initial questions that require extensive study and discussion—more in the nature of a Notice of Inquiry than an NPRM.”<sup>44</sup> NTCA concludes that, “[w]ithout foundational information as to what the FCC proposes precisely and how it might both serve national security interests and affect services upon which rural Americans depend, NTCA is unable to determine if the Commission’s proposal is a sensible and a

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<sup>41</sup> *Notice* at para. 33.

<sup>42</sup> *See, e.g.*, ITTA Comments at 4 (citing the Commission’s question specifically, and answering it directly).

<sup>43</sup> NTCA Comments at 1.

<sup>44</sup> *Id.* The *Notice* asks commenters to respond to 87 separate questions. CCA Comments at 48.

prudent method to address national security risks.”<sup>45</sup>

CCA voices similar concerns, stating that, “[u]nfortunately, the proposed rule imposes costs and detrimental impacts on carriers, consumers and markets and therefore the benefit of those actions could only be justified in the public interest if the reasons are unambiguous, convincing and actually promote nationwide solutions to the national security threat. It does not do this.”<sup>46</sup>

Another reason that issuing an NOI, instead of skipping to a notice of proposed rulemaking, would have been a more prudent step, is that the *Notice*, in which the Commission has advanced a controversial proposal with virtually no support or explanation, has had an unwarranted and avoidable chilling effect on the operations of small rural carriers receiving universal

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<sup>45</sup> NTCA Comments at 1 (emphasis in original). NTCA raises similar concerns regarding the Initial Regulatory Flexibility Analysis (“IRFA”) that accompanies the *Notice*:

Despite the potential substantial impact of the proposed rules on numerous small businesses, the NPRM’s IRFA is no more than a perfunctory checking of the box. The Commission dedicated a mere six paragraphs to the substance of its IRFA. While the Commission seeks comment on impacts and costs, the law requires it to gather that information *prior* to proposing new rules. The Commission offers no description of the compliance requirements, no projection of the cost of credit, no description of alternatives being considered, and despite the multitude of overlapping rules and regulations in place and being considered, the Commission’s one-word response to “Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules” is “None.”

*Id.* at 19 (emphasis in original). See CCA Comments at 30 (footnotes omitted) (explaining that “[t]he Commission recognized that thousands of small entities—carriers, healthcare providers, schools, and others—will be affected by the proposed rule. But the Commission has not even attempted a preliminary estimate of the costs those small entities will shoulder if the proposed rule is adopted. In performing the analysis required by the Regulatory Flexibility Act, the FCC should carefully consider not just the direct impacts on small carriers, but also the trickle-down effects on other small entities in rural areas, including network outages and potential increases in carrier rates necessary to recoup a portion of the losses caused by the proposed rule. In light of these potentially crippling costs, the Commission has a further obligation ‘to minimize the significant economic impact’ the proposed rule will impose on small entities, such as by adopting measures that might mitigate the harm the proposed rule will cause.”).

<sup>46</sup> CCA Comments at 30.

service support.<sup>47</sup> Facts now in the record regarding the impact and deficiencies of the proposed rule, build a strong case for its rejection.

**B. The Record Provides Ample and Convincing Evidence That Small Rural Carriers Would Be Buried in Costs by the Proposed Rule.**

The Commission asks this question: “Does this proposed rule affect our continuing goal of ensuring that all Americans have access to communications services? If so, how?”<sup>48</sup> The record in response to the *Notice* demonstrates convincingly that the proposed rule would make this continuing goal much more difficult to achieve.

**1. Barring USF Recipients from Using Equipment and Services of Certain Foreign Companies Would Upend Universal Service Principles.**

The Coalition agrees with ITTA that the proposed rule would “lead to increased costs and less access to telecommunications and information services, especially in rural and high-cost areas, all in contravention of the first three principles of Section 254(b) [of the Communications Act of 1934], which are designed to preserve and advance universal service.”<sup>49</sup>

CCA explains that a purpose of USF “is to help smaller and often rural carriers shoulder the economic burden of building out networks to reach the underserved and to provide products and services at affordable prices.”<sup>50</sup> The problem with the proposed rule, CCA observes, is

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<sup>47</sup> See *id.*, Declaration of Steven K. Berry, President and Chief Executive Officer of CCA (“Berry Declaration”), at 6 (para. 12) (explaining that “[r]ural carriers’ capital investment in the next generation of technology has already been chilled. Capital investments by CCA’s carrier members have declined substantially in the first quarter of 2018, in large part because of anticipated tighter restrictions on carriers’ access to equipment and services provided by certain foreign companies.”).

<sup>48</sup> *Notice* at para. 34.

<sup>49</sup> ITTA Comments at 8-9. The first three principles stated in Section 254(b) relate to service quality and rates, access to advanced services, and access to telecommunications and information service in rural and high-cost areas. 47 U.S.C. § 254(b)(1)-(3).

<sup>50</sup> CCA Comments at 36.



that it “directly contradicts” this USF purpose “by imposing substantial costs on primarily rural carriers to the detriment of underserved populations.”<sup>51</sup>

There can be no disagreement that, if Commission rules or policies hinder the ability of small rural carriers to continue and to expand their provision of service throughout rural America, then the Commission’s goal of ensuring access to all Americans will be adversely affected. The rule or policy, therefore, would negatively “affect [the Commission’s] continuing goal of ensuring that all Americans have access to communications services ....”<sup>52</sup>

This leaves only the question of how the proposed rule would impact the efforts of small rural carriers to use USF support to serve rural consumers. As shown below, the record in this proceeding provides a detailed and convincing answer.

- 2. The Proposed Rule Would Deal a Devastating Blow to Small Rural USF Recipients and Their Customers.**
  - a. Small Rural Carriers Receiving USF Support Operate on Small Margins and Have Limited Access to Affordable Equipment.**

One question relevant to the Commission’s attempt to balance its national security concerns with statutory universal service policy principles<sup>53</sup> is this: Are small rural carriers sufficiently well-positioned to absorb the costs that would be imposed by the proposed rule? The

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<sup>51</sup> *Id.* at 37.

<sup>52</sup> *Notice* at para. 34.

<sup>53</sup> CCA explains the Commission’s obligation to adhere to these policy principles:

Congress directed the Commission to base its universal service rules on an enumerated list of policy principles. Section 254(b) provides that “the Commission *shall* base policies for the preservation and advancement of universal service on [specified] principles” (emphasis added). As the Tenth Circuit has explained, “[t]he plain text of the statute mandates that the FCC ‘shall’ base its universal policies on the principles listed in § 254(b). This language indicates a mandatory duty on the FCC.”

CCA Comments at 16 (footnote omitted).

record shows that they are not.<sup>54</sup>

The economic circumstances of many small rural carriers have led them to rely on targeted companies for infrastructure equipment in part because these carriers do not make purchases in sufficient volume. They fail to qualify for discounted rates that other equipment suppliers offer to larger carriers that purchase an extensive amount of equipment. Sagebrush provides an example of how this actually works in the business world.<sup>55</sup>

In addition, economic circumstances of small rural carriers are defined in large part by the fact that many of these carriers “operate on extremely thin margins ....”<sup>56</sup> The Coalition has explained that its member carriers “have squeezed every possible cost component and correspondingly lived with tight EBITDA [earnings before interest, taxes, depreciation, and amortization] margins that the nation’s largest carriers and their shareholders would never tolerate.”<sup>57</sup>

Market realities in which small rural carriers operate cast doubt on TIA’s observation

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<sup>54</sup> The Coalition observes, however, that, even if it could be shown (which it cannot) that small rural carriers could absorb the substantial costs that would be imposed by the proposed rule, this showing would not provide any basis for adopting the rule, given the rule’s numerous flaws that are well-documented in the record.

<sup>55</sup> Sagebrush Comments at 2 (emphasis in original) (explaining that, when it solicited bids in 2010 for its network, “it found the cost of Lucent equipment to be twice the cost of Huawei equipment and the cost of Ericsson equipment to be nearly four times the cost of Huawei equipment”). See WTA Comments at 4:

[O]ne [WTA] member stated [in response to a query from WTA] that when choosing vendors for their recent 4G deployment it considered several other well-known vendors that sell globally. However, the member noted those vendors were simply unaffordable at two to four times the cost of using Huawei. The member also noted that one prominent alternative vendor did not even give it a price quote for the deployment only stating that a small company “would be unable to afford them.” The WTA member company moved forward with Huawei and has been using Huawei equipment throughout its 4G deployment. The company has spent more than \$25 million on Huawei equipment for its [mobile] wireless network ....

<sup>56</sup> NTCA Comments at 24.

<sup>57</sup> Coalition Comments at 2-3 (footnote omitted).

that, “[t]o the extent there is concern about the proposed rule disrupting the marketplace in a way that would increase equipment and service costs, TIA is confident that USF recipients will continue to benefit from a competitive marketplace for equipment that includes a number of trusted suppliers.”<sup>58</sup>

TIA opines that “[t]he question is whether the [costs] of restricting access to ... equipment [provided by targeted suppliers] is outweighed by the benefits, and the answer is clearly yes given the alternatives in the market that can achieve all of the capabilities of the potentially restricted equipment.”<sup>59</sup> The issue, however, is whether small rural carriers can afford those alternatives. As shown above and as the Coalition discusses further in the following two sections, they likely cannot.<sup>60</sup>

**b. Costs Imposed by the Proposed Rule on Small Rural Carriers Would Be Enormous.**

It is evident that many small rural carriers relying on universal service support are ill-prepared to absorb significant spikes in their cost of operations. This leads to the next questions: Would the proposed rule impose costs on these carriers? If so, how severe would they be?

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<sup>58</sup> TIA Comments at 71.

<sup>59</sup> *Id.* at 72.

<sup>60</sup> In addition, TIA’s claims regarding market alternatives achieving capabilities of potentially restricted equipment may be overly optimistic. CCA explains that:

The experience of many rural carriers has been that newer foreign entrants to the market for these services are more attentive to rural carriers than other service-providers and perform repairs and installations more quickly and reliably. The quality and timeliness of these services increase coverage reliability for consumers, including subscribers to larger carriers who use rural networks while roaming. That reliability, in turn, supports expansion of the Internet- and app-based economy into rural areas and enhances public safety by ensuring access to emergency services.

CCA Comments at 8.

The Coalition has expressed concern in its Comments that “disqualifying a carrier from receiving any USF if that carrier uses any equipment or services from [targeted suppliers] would be devastating.”<sup>61</sup> The record shows that the Coalition is not alone in its assessment of the impact the proposed rule would have on the operations of small rural USF recipients.

Numerous commenters demonstrate how the proposed rule would cripple small rural carriers’ efforts to continue providing service to consumers,<sup>62</sup> and would threaten the viability of their businesses. NTCA argues that the proposed rule “would introduce significant unforeseen costs, and if these expenses could not be practically recovered from the carrier and/or its customers, the financial strain would thereby threaten the sustainability and vitality of the network operator.”<sup>63</sup> NTCA expresses concern that, “[i]n the worst-case scenario, new expenses associated with the equipment prohibition and subsequent wholesale replacement may force some small carriers out of business, thereby undermining the availability and affordability of telecommunications services in remote and rural areas of the country, including basic 9-1-1 connectivity.”<sup>64</sup>

CCA concludes that “[i]mplementation of the proposed rule will cause immense financial

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<sup>61</sup> Coalition Comments at 6. See Domain5 White Paper at 3 (explaining that “[t]he operational impacts resulting from the NPRM would also be significant. Tier III wireless providers serving rural and remote areas in Alaska, Wyoming, Kansas, Colorado, Nebraska, Oklahoma, South Dakota, Utah, Tennessee, Kentucky, and American Samoa will be particularly negatively affected if the USF is withdrawn.”).

<sup>62</sup> The impact of the proposed rule on consumers is discussed in detail in Section III.B.2.e., *infra*.

<sup>63</sup> NTCA Comments at 20.

<sup>64</sup> *Id.* at 20-21.

harm to carriers[,]”<sup>65</sup> explaining that “[t]he proposed rule’s immense costs will disproportionately harm small and mid-sized carriers that provide service in rural areas .... The proposed rule will put some carriers out of business and disrupt the services provided by other carriers.”<sup>66</sup>

Since most small rural carriers lack the resources to receive discounts from the big network suppliers, it follows that, as ITTA explains, “[c]onstrucively limiting the supply of equipment and services via the threat of withholding USF disbursements would drive up the costs of small, rural carriers by removing from the market vendors that typically price their offerings affordably.”<sup>67</sup>

**c. A Major Cost Faced by Small Rural Carriers Would Be the Need to Overhaul and Replace Existing Infrastructure Equipment.**

NTCA’s concern regarding “subsequent wholesale replacement”<sup>68</sup> costs, referenced in the previous section, warrants special attention, because many commenters agree that these would be among the most substantial costs imposed by the proposed rule. The proposed rule would force many small rural carriers to overhaul and replace much of their existing infrastructure equipment.

The Coalition explained in its Comments that “[t]he practical effect of enforcing [the proposed] rule is that [Coalition] carriers would need to tear out roughly \$1 billion worth of gear currently used to provide mobile voice and broadband in America’s rural areas well before

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<sup>65</sup> CCA Comments at 10.

<sup>66</sup> *Id.* at 31 (footnote omitted).

<sup>67</sup> ITTA Comments at 5. *See* CCA Comments at 6 (noting that the “proposed rule will fundamentally alter the marketplace to the detriment of rural carriers and their customers”); NCTA Comments at 12.

<sup>68</sup> NTCA Comments at 20.

the gear reaches its useful life span and can be depreciated.”<sup>69</sup>

The Commission, in stating that “our proposed rule ... would apply only prospectively[,]”<sup>70</sup> apparently was not aware that prospective application of the proposed rule would not be sufficient to get small rural carriers out of the woods. CCA sums up the problem, stating that “[t]he reality ... is that even though the FCC intends its proposed rule to operate prospectively, it will have devastating and immediate retroactive effects[,]”<sup>71</sup> and explaining that carriers would be forced to “rip and replace” because “mix and match” is not a realistic solution.<sup>72</sup>

Pine Belt explains why the prospective application of the proposed rule would provide little benefit to small rural carriers. Pine Belt would be forced to replace all of its existing equipment purchased from a targeted supplier, which constitutes the vast majority of its network, because “Pine Belt is very concerned about the long-term interoperability” if it were to continue using this equipment “in conjunction with newer equipment (including upgrades) from different manufacturers.”<sup>73</sup>

The most likely solution for interoperability problems is to replace the older equipment. This would cost Pine Belt “from \$6 million to \$10 million, and the downtime from installing new equipment would likely cause Pine Belt to forego another \$1 to 3 million in roaming fees ....”<sup>74</sup>

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<sup>69</sup> Coalition Comments at 6.

<sup>70</sup> *Notice* at para. 17.

<sup>71</sup> CCA Comments at 10.

<sup>72</sup> *Id.* at 9-11. CCA observes that these costs would be enormous, agreeing with other commenters that they would tax the ability of many small rural carriers to remain in operation. *Id.* at 31.

<sup>73</sup> Pine Belt Comments at 6.

<sup>74</sup> *Id.* at 6-7. Sagebrush indicates that, “[w]ere Sagebrush to lose USF funding as a result of the proposed rule, it estimates the cost of replacing its network at around \$57 million.” Sagebrush Comments at 2.

Pine Belt concludes that, “despite the fact that the NPRM states that the proposed rule would apply only prospectively, the proposed rule would actually have extremely harmful retroactive effects. Pine Belt should not be penalized for operating its business in compliance with the rules promulgated by the federal government.”<sup>75</sup>

NTCA points to similar reliance concerns, explaining that, “[a]t the time the equipment was installed, small carriers based their decisions upon current regulations and installed equipment in good faith that the regulatory environment would not shift and suddenly revert to retroactive decisions.”<sup>76</sup> NTCA criticizes “[t]he Commission’s proposal to prohibit the use of certain equipment suppliers *ex post facto* [because it] would make worthless significant past investments incurred in the reliance of regulation (or lack of regulation) in place at the time of purchase—equipment which was bought and used in the furtherance of universal service goals.”<sup>77</sup>

**d. Commenters Explain That the Proposed Rule Would Be Discriminatory.**

CCA indicates that the proposed rule has a narrow focus, “target[ing] only one small portion of the sprawling and multifaceted American telecommunications network: carriers that receive USF funds. These carriers, who disproportionately serve rural areas, represent only one segment of the vast telecommunications and information services marketplaces.”<sup>78</sup> While the

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<sup>75</sup> Pine Belt Comments at 8 (footnote omitted).

<sup>76</sup> NTCA Comments at 20. See WTA Comments at 6 (indicating that, “[i]n the past, providers made an informed decision on what equipment they should use and chose the alternative that best served their situation. Providers should not be punished retroactively for using equipment that they previously selected in a reasonable and prudent manner.”).

<sup>77</sup> NTCA Comments at 20. Reliance issues are discussed further in Section IV., *infra*.

<sup>78</sup> CCA Comments at 35.

proposed rule would treat all USF recipients the same, the more relevant concern is that “restricting the equipment and service choices of some market participants but not others, as would result from limiting such measures to USF recipients, would potentially distort competition and harm consumers.”<sup>79</sup>

This discrimination problem would be compounded by placing small rural carriers at a competitive disadvantage against larger carriers that enjoy access to equipment at discounted rates that are not available to smaller carriers. Under the proposed rule, large carriers that do not receive USF support would continue to have access to equipment from targeted suppliers, even if the equipment has potential security risks.

**e. Commenters Demonstrate That Rural Consumers Would Be Harmed by the Proposed Rule.**

An important question in this proceeding is how the Commission’s proposed rule would affect rural consumers. The answer is not encouraging. If small rural carriers were forced by the proposed rule to “rip and replace” existing infrastructure equipment, it is fair to assume this would have negative implications for customers. The record bears out this assumption.

Sagebrush brings the disturbing picture into stark relief, explaining that, “if Huawei is deemed ineligible to be supported, Sagebrush would be forced to substantially reduce its coverage.”<sup>80</sup> Projections undertaken by Sagebrush indicate that, “with current funding, and the increased costs of a replacement network, its network would be reduced by almost two-thirds, shrinking from 161 to 55 cell sites, while the size of its coverage area would be reduced by over

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<sup>79</sup> AT&T Comments at 3.

<sup>80</sup> Sagebrush Comments at 3.



two-thirds, a loss of 11,700 square miles of coverage.”<sup>81</sup>

Pine Belt, also pointing to consumer harms that would be caused by the proposed rule, argues that such a result “is contrary to the purpose of the USF, which is intended to increase access to evolving services for consumers living in rural and insular areas, and for consumers with low-incomes, as well as for increased access to high-speed Internet in the nation’s schools, libraries and rural health care facilities.”<sup>82</sup>

A further consumer harm that would be engendered by the new rule is that it would impair small rural carriers’ deployment of new technologies. CCA argues that the rule “will slow down or even entirely prevent adoption and integration of new technologies, such as 5G wireless capability, which runs counter to the FCC’s stated priorities.”<sup>83</sup>

CCA sums up the implications of the proposed rule for consumers by observing that “the proposed rule’s effects on telecommunications and information services access for underserved communities, especially rural areas, will be calamitous.”<sup>84</sup> The Coalition agrees with CCA’s estimate that “[i]t will take a decade or more to recover.”<sup>85</sup> CCA predicts that, “[d]uring that time,

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<sup>81</sup> *Id.* Sagebrush states that:

This loss of coverage would have severe public safety implications. In some areas where Sagebrush is the only wireless carrier, 911 service as well as voice and mobile broadband service will be lost. In addition, Sagebrush covers 173 miles of the U.S.-Canadian border and provides service to more than 75 Border Patrol and U.S. Customs agents. Ironically, a measure intended to preserve national security would instead jeopardize it by depriving these important border security personnel of critical wireless service.

*Id.* at 3-4 (footnotes omitted).

<sup>82</sup> Pine Belt Comments at 7.

<sup>83</sup> CCA Comments at 11.

<sup>84</sup> *Id.* at 14.

<sup>85</sup> *Id.*

the rest of the country and the rest of the world will continue to innovate in network and device technology, invest in those systems and support services, and improve the speed and quality of connectivity. All the while, rural America will fall further and further behind.”<sup>86</sup>

**C. Commenters Demonstrate that the Commission Fails to Cite Any Benefits That Would Be Produced by the Proposed Rule.**

Whatever benefits the proposed rule might produce would be minimal because the rule would affect only a small portion of the U.S. information and communications technology market. This limited solution sought by the Commission cannot be nearly as effective as a “whole of Government” approach that would address national security threats on a broader scale.

ITTA addresses this problem with the proposed rule, arguing that “[h]olding USF disbursements hostage as the means to inhibit the purchase of equipment or services from targeted foreign providers would have a *de minimis* impact on accomplishing the Commission’s goals in this proceeding of reducing or eliminating national security risks to communications networks or the communications supply chain.”<sup>87</sup>

ITTA explains that “[t]his is because such risks are an issue throughout the communications ecosystem. Security vulnerabilities in the communications network are not limited to USF recipients.”<sup>88</sup> Further, as NTCA states, “at best, the NPRM may represent only a small ‘finger in the dike’ response, which leaves vulnerable equipment within the larger telecommunications network untouched and thus does little to mitigate in fact meaningful risk.”<sup>89</sup>

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<sup>86</sup> *Id.*

<sup>87</sup> ITTA Comments at 4.

<sup>88</sup> *Id.*

<sup>89</sup> NTCA Comments at 16. NTCA elaborates that the “prohibition would only apply to a small subset of carriers which receive universal service funds to maintain or evolve communications infrastructure;

A further problem with the proposed rule is that the Commission has failed to articulate any benefits that would be realized by the rule. As CCA states, the Commission does not make its case for why the rule is necessary:

The Commission has failed to identify evidence supporting the broad prohibitions contemplated by the proposed rule.... [T]he NPRM rests on premises that are not supported by any evidence identified by the Commission—and the Commission gives no reason for why the sweeping prohibitions it proposes are necessary in light of the dangers in question ....<sup>90</sup>

CCA concludes that “it is unclear from the NPRM exactly what benefits the Commission contemplates—a point that is underscored by the Commission’s acknowledgment that it is not sure what benefits might flow from the rule, and how those benefits might be quantified.”<sup>91</sup>

Given the extensive and well-documented costs that would be imposed by the proposed rule, it is incumbent on the Commission to articulate the benefits that would justify adoption of the rule, even in the face of the considerable costs it would impose. The Coalition agrees with other commenters that the Commission has not met this test.

Finally, the Coalition notes that TIA has listed a number of purported benefits that could result from adoption of the proposed rule, “some of which[,]” according to TIA, “may even be quantifiable.”<sup>92</sup> But these supposed benefits—promoting “quality and equality” of service, sparing U.S. businesses costs associated with breaches and online distributed threats posed by the

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other telecommunications operators which utilize private or public funding sources would not be affected or similarly prohibited from accessing and deploying what is defined as problematic supply chain partnerships.” *Id.*

<sup>90</sup> CCA Comments at 37 (emphasis in original).

<sup>91</sup> *Id.* at 34 (citing *Notice* at para. 33).

<sup>92</sup> TIA Comments at 67.

operations of banned foreign suppliers, and consumer confidence<sup>93</sup>—are in fact difficult to quantify.

The possible benefits advanced by TIA do not provide a sound basis for the proposed rule, especially in light of TIA’s own observation that “Government intervention in the marketplace to ... prohibit the use of products from a particular supplier is an extraordinary action, particularly for an agency whose mission is to promote competition[,]”<sup>94</sup> and in light of the tangible and documented damage the proposed rule would impose on small rural carriers receiving USF support, on their customers, and on the Commission’s own USF policies and goals.

**IV. IF THE COMMISSION ADOPTS THE PROPOSED RULE, IT SHOULD MAKE MODIFICATIONS TO MITIGATE ITS IMPACT ON SMALL RURAL CARRIERS.**

If the Commission decides to press forward with its proposed rule—notwithstanding evidence and arguments in the record, and instead of relying on a “whole of Government” best practices approach recommended by the Coalition and other commenters—then the Commission must ensure that its unilateral pursuit of national security concerns does not conflict with or undermine the universal service principles it is charged with preserving and enhancing.

Mitigating the adverse impact of the rule on small rural carriers and their customers is important and necessary in part because of the extent of these carriers’ reliance “on the fact

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<sup>93</sup> *Id.* at 67-70.

<sup>94</sup> *Id.* at i.

that this equipment [provided by targeted vendors] was lawful.”<sup>95</sup> As CCA observes, “the [proposed] rule will eviscerate carriers’ longstanding investment-backed reliance interests.”<sup>96</sup> CCA, expressing concern that “[t]he proposed rule threatens USF-supported carriers with economic devastation and poses serious dangers to consumers and public safety[,]”<sup>97</sup> proposes a number of “common-sense provisions to mitigate those harms ....”<sup>98</sup> The Coalition endorses each of CCA’s proposals.<sup>99</sup> As the Coalition discusses in the following paragraphs, the record supports the proposals.

Narrow the Scope of the Proposed Rule.—CCA indicates that “[t]he Commission gives no reason for why ... its rule could not be more narrowly tailored.”<sup>100</sup> The Coalition agrees that USF funds used for maintenance, software updates, and customer support should not fall within the

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<sup>95</sup> CCA Comments at 33.

<sup>96</sup> *Id.* at 41 (footnote omitted). The Coalition notes that TIA contends that targeted suppliers specified by the Commission present a special case: the need for “defenses against state actors’ strategic exploitation of specific suppliers that are potentially beholden to them.” TIA Comments at 34. TIA argues that public-private partnerships and industry standards (including those developing best practices) are not intended to address this type of special case. In the Coalition’s view, however, it is reasonable to conclude that a best practices regime, designed and developed by the Commission along the lines recommended by the Coalition and Domain5, would be effective in preventing any security breaches that may be attempted through equipment or services provided by targeted suppliers, or any other manufacturer or provider. Moreover, this protection could be accomplished without undermining the Commission’s USF goals and responsibilities. In addition, a risk of the approach taken by the proposed rule—banning specific foreign companies from providing equipment or services to USF recipients—is that it could prove to be resting on a shaky foundation of insufficient evidence. See Sagebrush Comments at 4.

<sup>97</sup> CCA Comments at 44.

<sup>98</sup> *Id.*

<sup>99</sup> See *id.* at 44-47.

<sup>100</sup> *Id.* at 37-38 (footnote omitted).

scope of the proposed rule. Such coverage by the rule “would either effectively mandate replacement of those products before the end of their life-cycle or force companies receiving USF monies to run outdated or inadequately maintained equipment.”<sup>101</sup>

The Coalition agrees with USTelecom that the Commission should determine, upon consultation with DHS, whether equipment from targeted suppliers would “constitute[ ] the same type of threat to the supply chain as other ‘smart’ equipment”<sup>102</sup> if the suppliers’ equipment “lacks the capacity to route or redirect traffic, or ... has no visibility into the packets or data it transmits ....”<sup>103</sup>

The Coalition also joins TracFone in suggesting that “the Commission should clarify that the proposed prohibition does not extend to consumer end-user devices used in conjunction with the Lifeline program.”<sup>104</sup> In addition, the Coalition agrees with EchoStar that the Commission should not “adopt a rule that would apply to components or sub-parts of a finished product....”<sup>105</sup> As EchoStar explains, “[p]urchasers of telecommunications equipment have limited

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<sup>101</sup> NCTA Comments at 15. See Puerto Rico Telephone Company, Inc. (“PRTC”), Comments at 7 (suggesting that, “if the Commission adopts the proposed rule, it should specify that it will preserve the availability of USF support for maintenance and upgrade activities related to existing equipment and devices”). NCTA argues that, “[a]s a practical matter, [the proposed rule] would penalize companies for equipment purchases they have already made, as well as penalize companies who have contracts with providers using already-deployed equipment for the length of their contracts, thereby imposing a retroactive effect and negating the relief associated with grandfathering.” *Id.*

<sup>102</sup> USTelecom Comments at 13.

<sup>103</sup> *Id.* USTelecom argues that “[i]t is essential to properly scope the risks and their correlation with specific types of equipment, products and services in order to appropriately tailor measures taken to protect the nation’s networks and services now and in the future.” *Id.*

<sup>104</sup> TracFone Wireless, Inc. (“TracFone”), Comments at 2.

<sup>105</sup> EchoStar Satellite Operating Corporation and Hughes Network Systems, LLC (“EchoStar”) Comments at 6 (emphasis in original).

visibility into all of the components that are used by their suppliers in producing particular products.”<sup>106</sup>

Provide Additional Funding.—Imposition of the proposed rule would inflict considerable financial hardship on small rural carriers receiving USF support, principally because they would be required to replace their network infrastructure,<sup>107</sup> and small rural carriers relied on the fact that they were lawfully installing and utilizing equipment purchased from targeted suppliers. Therefore, if the Commission were to impose a rule that would effectively pull the rug out from under these carriers, it should be accompanied by a funding mechanism sufficient to defray network infrastructure replacement costs these carriers incur.<sup>108</sup>

Apply the Rule Only to Direct Spending.—The proposed rule would “prohibit, going forward, the use of USF funds to purchase equipment or services from any communications equipment or service providers identified as posing a national security risk to communications networks or the communications supply chain.”<sup>109</sup> The rule should not prohibit the use of USF funds on any project in which equipment produced by a targeted company is being purchased.<sup>110</sup> As CCA points out, such an extension would make it even more likely that small rural

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<sup>106</sup> *Id.* The Coalition disagrees with EchoStar’s suggestion that the Commission should bar USF recipients from using support to purchase a particular product produced by a particular company, “for example, identifying the product by its model name, SKU [stock-keeping unit], or both[,]” *id.*, since the Coalition believes it would not be practical for the Commission to track model names or SKUs.

<sup>107</sup> See, e.g., Sagebrush Comments at 2-3.

<sup>108</sup> See CCA Comments at 45; ITTA Comments at 6 (arguing that, “[a]t a minimum, if the Commission adopts its proposal, it should provide additional USF funds to compensate for the increased compliance costs”); NTCA Comments at 24 (explaining that “[a]ny new, wholesale replacement of infrastructure and equipment must be supported with clear recovery mechanisms to ensure rural carriers are afforded the necessary assistance before, during, and after the transition period”).

<sup>109</sup> *Notice* at para. 2 (emphasis added).

<sup>110</sup> See *id.* at para. 16.

carriers utilizing equipment obtained from targeted suppliers would be forced to replace all their network infrastructure equipment.<sup>111</sup>

Adopt a Sufficiently Long Compliance Period.—The Coalition favors a transition period and a delayed compliance date of at least 10 years, agreeing with CCA that such a period will be necessary for small and mid-sized carriers, and that “the longer the period carriers have to comply, the greater ability they have to spread out costs to try to lessen the proposed rule’s crippling financial impact.”<sup>112</sup>

Waiver Process.—The Coalition believes that a sufficient and workable waiver process, based on the standard “good cause” showing, makes sense. As CCA notes, considerations to be taken into account in a waiver process should include “the availability and price of alternative sources of equipment, devices, or services; and any documented support (including certifications, if available) regarding the safety of particular equipment, devices, or services.”<sup>113</sup>

Grandfather Contracts.—Although grandfathering contracts will not solve problems relating to the need for small rural carriers to replace their existing network infrastructure due to interoperability issues, grandfathering would provide these carriers with some protection. The Coalition agrees with WTA that “[a]ll prior existing agreements, including agreements for

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<sup>111</sup> CCA Comments at 44-45.

<sup>112</sup> *Id.* at 45. See Sagebrush Comments at 7 (explaining that, “[f]or Sagebrush, transitioning to a new network will require approximately two years of planning, including research and negotiation with vendors, network planning, and developing a financial plan to pay for the new network. Once a new vendor is chosen, the buildout, core turn up, configuration of the new network, and optimization are all likely to take at least an additional eight years.”).

<sup>113</sup> CCA Comments at 46. See CTIA Comments at 20.



maintenance and customer service, between an applicable vendor and a provider should be grandfathered.... [N]ew agreements to service existing equipment should be allowed.”<sup>114</sup>

Grandfather Existing Equipment.—The Coalition agrees with CCA that grandfathering existing equipment would provide some protection to “[c]arriers [that] have made substantial investments in their networks, based on existing law and Commission policy.”<sup>115</sup> As NCTA observes, “[a]pplying any new blacklisting retroactively might well force premature retirement of equipment, especially as the blacklist evolves, which could adversely affect service provisioning and quality and increase network costs.”<sup>116</sup>

Grandfather Devices.—The Coalition agrees with CCA that consumer devices that have already been purchased should be grandfathered, along with “software updates and related services.”<sup>117</sup>

## **V. THE COMMISSION SHOULD REFINE AND CLARIFY ITS PROPOSAL.**

The record reflects concern that the Commission’s vague proposal to bar universal service support recipients from using equipment from blacklisted foreign companies has created uncertainty across the telecommunications industry. Commenters encourage the Commission to adopt a further rulemaking notice, and to coordinate with other Federal agencies and stakeholders, before deciding whether to take any final action in this proceeding. The Commission should heed these concerns and suggestions.

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<sup>114</sup> WTA Comments at 6. See CCA Comments at 46; NTCA Comments at 24; PRTC Comments at 7; USTelecom Comments at 15.

<sup>115</sup> CCA Comments at 46. See USTelecom Comments at 15; WTA Comments at 6.

<sup>116</sup> NCTA Comments at 15.

<sup>117</sup> CCA Comments at 47.

**A. Commenters Criticize the Vagueness of the Notice and the Uncertainty It Has Caused.**

The Commission, in attempting to propose a rule that distills a complex issue down to a clear-cut prohibition, has instead generated confusion and uncertainty. NTCA explains that, “[a]lthough the Commission may have intended to offer for comment a bright-line rule, which is straightforward and unambiguous, in reality its application is murky at best.”<sup>118</sup> NTCA notes that, “[g]iven the complexity in the design and architecture of telecommunications networks, and the interconnected nature of the supply chain, a blanket restriction on equipment and service providers, even prospectively, is quite difficult to apply.”<sup>119</sup>

The vagueness of the Commission’s proposal, not surprisingly, has created considerable uncertainty. CCA explains that “[t]he proposed rule has already sent a chill of uncertainty throughout the market. This uncertainty deters investment, as carriers will not spend capital on projects that may instantly be rendered worthless if a single component in a long supply chain is placed on the prohibited list.”<sup>120</sup>

Pine Belt explains that “[t]he uncertainty created by the mere release of this NPRM has already negatively impacted Pine Belt, putting future deployment plans and equipment purchases in jeopardy[.]”<sup>121</sup> and notes, as an example, that “Pine Belt has been unable to turn on

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<sup>118</sup> NTCA Comments at 8.

<sup>119</sup> *Id.* NTCA also states that “[t]he FCC’s sudden change in direction also introduces substantial uncertainty into future network deployments and the equipment selection process, which directly contradicts the foundational tenets of predictability and specificity which guide universal service.” *Id.* at 21. See CCIA Comments at 5-6; ITTA Comments at 6 (indicating that “uncertainty surrounds the effects of the proposed rule on current equipment and services”).

<sup>120</sup> CCA Comments at 3. See Berry Declaration at 6 (para. 12), cited at page 21, n.47, *supra*.

<sup>121</sup> Pine Belt Comments at 4.

LTE service as a result of the vendor company [a targeted supplier] being unable to complete software updates or to obtain software licenses stemming from the vendor’s combined reaction to the NPRM and other federal actions.”<sup>122</sup>

The Coalition urges the Commission to clear up the uncertainty generated by the proposed rule. This is particularly important, in light of the upcoming Mobility Fund Phase II auction, scheduled to begin late next year.

**B. The Commission Should Adopt a Further Notice of Proposed Rulemaking and Coordinate with Other Federal Agencies Before Taking Any Final Rulemaking Action.**

The Coalition endorses CCA’s proposal that the Commission should issue a further rulemaking notice with an updated, more detailed proposed rule.<sup>123</sup> CCA captures the problem the Commission has created with the *Notice*:

Any final rule that results from the Commission’s NPRM is likely to be far more elaborate than the proposed rule. But without a more detailed proposed rule, the affected parties will be deprived of the chance to provide input on the regulations that will have a substantial effect on their businesses, and the FCC will be deprived of input that would help tailor the rule to maximize the accomplishment of its goals and minimize the costs.<sup>124</sup>

NTCA argues that “the Commission’s current high-level proposal lacks sufficient definition and detail to enable meaningful analysis or commentary,”<sup>125</sup> and suggests that, “for that reason, the FCC should ‘step back’ and work with other Federal agencies to scope and define

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<sup>122</sup> *Id.*

<sup>123</sup> CCA Comments at 47.

<sup>124</sup> *Id.*

<sup>125</sup> NTCA Comments at 7.

the relevant risks prior to presenting for further comment a more detailed and well-crafted proposal ....”<sup>126</sup>

It is important that interested parties have an opportunity to explore potential impacts of a more detailed proposed rule on small rural companies receiving USF support. NFIB proposes specific issues the Commission could raise in a further rulemaking notice regarding impacts of the rule on small companies receiving USF support.<sup>127</sup>

As previously discussed,<sup>128</sup> the record provides strong evidence that the Commission should give priority to ongoing coordination with other Federal agencies with expertise in national security matters, as well as with industry stakeholders. Several parties suggest that the Commission defer any action in this proceeding, to ensure any actions it takes are well-informed and consistent with other government initiatives.

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<sup>126</sup> *Id. See id.* at 15.

<sup>127</sup> Letter from David S. Addington, Senior Vice President and General Counsel, National Federation of Independent Business (“NFIB”), to FCC, WC Docket No. 18-89 (Apr. 5, 2018), at 2-3. Specifically, NFIB suggests that the Commission should seek comment on:

- (a) the extent to which American small businesses in the telecommunications industry have already built their networks with equipment from a company that likely will become a prohibited company under the rule, (b) the extent to which such small businesses could in the future purchase equipment from non-prohibited companies that would interoperate with the existing equipment from the prohibited company, and (c) the extent to which, as a practical business matter, such small businesses could avoid the adverse impact of the prohibition by no longer accepting universal service support.

*Id.*

<sup>128</sup> *See* Section II.B.2., *supra*.

For example, PRTC asks the Commission to defer action to allow for coordination and development of a broad, comprehensive strategy to address national security risks to the communications supply chain.<sup>129</sup> PRTC notes that, “[u]nlike other Executive Branch agencies, the Commission does not have the specific expertise, staff, resources or access to intelligence necessary to establish criteria for determining which companies pose a national security threat to the integrity of communications networks or the communications supply chain.”<sup>130</sup>

Commenters believe it is especially important for the Commission to coordinate with DHS because of its involvement in telecommunications sector supply chain issues.<sup>131</sup> USTelecom explains that DHS “has recently indicated that it will be conducting two communications supply chain risk assessments, one general and one that is more specific and comprehensive. Both assessments are projected to be completed in the relatively near future.”<sup>132</sup> USTelecom argues that the Commission “should at least defer its action in this proceeding until DHS has completed its evaluations of what the supply chain threats and vulnerabilities are in the communications networks.”<sup>133</sup>

## **VI. CONCLUSION.**

The Commission has identified concerns relating to the potential vulnerability of the communications supply chain to national security threats. The record has shown, however, that

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<sup>129</sup> PRTC Comments at 6.

<sup>130</sup> *Id.* at 5.

<sup>131</sup> See Section II.B.2., *supra*.

<sup>132</sup> USTelecom Comments at 10 (footnote omitted).

<sup>133</sup> *Id.*

the Commission’s proposed solution—a rule prohibiting USF recipients from acquiring equipment or services from targeted companies—will not provide effective protection, but will impose substantial costs on these support recipients.

There is support in the record for the Commission to develop and implement a best practices regime such as that proposed by the Coalition, which would be effective in identifying and addressing national security threats to the supply chain and to telecommunications networks. The Coalition and other commenters also advocate that the Commission should continue its efforts to work with other Federal agencies with national security expertise, with Congress, and with industry stakeholders, to design and implement holistic solutions to national security threats to the nation’s communications infrastructure and operations.

The Coalition joins other commenters in urging the Commission to embark on this path by adopting a further notice of proposed rulemaking that presents a detailed approach for addressing supply chain vulnerabilities and national security threats. This approach should rely on a best practices regime, which can play an important role in safeguarding communications infrastructure.

Respectfully submitted,

RURAL WIRELESS BROADBAND COALITION

By:  \_\_\_\_\_

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