

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**COMMENTS OF THE
COMPUTING TECHNOLOGY INDUSTRY ASSOCIATION
(COMPTIA)**

The Computing Technology Industry Association (“CompTIA”),¹ the leading association for the global information technology (“IT”) industry, respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”)² in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

While most of the issues raised in the FNPRM fall within the province of the affected carriers, these comments highlight several principles that the Commission should follow as it proceeds. *First*, the Commission should remain focused on the universal service fund (“USF”) program and not expand its aim to encompass communications networks generally, since doing so would replicate other federal efforts and give rise to significant legal questions. *Second*, any determinations of which equipment from the covered companies must be replaced should follow

¹ CompTIA supports policies that enable the information technology industry to thrive in the global marketplace. We work to promote investment and innovation, market access, robust cybersecurity solutions, commonsense privacy policies, streamlined procurement, and a skilled IT workforce. Visit www.comptia.org to learn more.

² Report and Order, Further Notice of Proposed Rulemaking, and Order, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, et al., FCC 19-121 (Nov. 2019) (“FNPRM”).

a risk-based approach, much as Congress did when it specifically exempted certain products that cannot modify digital data. *Third*, the Commission can have confidence that the market will supply alternative gear to affected carriers, although rapid advances in wireless technology mean that a strict “comparable” replacement rule would be impractical and an imprudent use of funding. *Fourth*, given demonstrably strong support in Congress for providing dedicated funding, the Commission need not and should not consider diverting other USF funding at this time.

II. THE COMMISSION SHOULD NOT EXPAND ITS ACTIONS BEYOND THE UNIVERSAL SERVICE FUND TO COMMUNICATIONS NETWORKS MORE BROADLY.

The Commission should not go further than the Report and Order to “prohibit the use of equipment or services from covered companies in communications networks more broadly.”³ First, as the FNPRM itself notes earlier, the agency’s “legal authority is tied to [its] administration of the USF.”⁴ Expanding beyond the USF context to prohibit private transactions would take the Commission into significant uncharted territory and may invite major legal challenges. For example, section 889 of the FY 2019 NDAA⁵ imposes specific restrictions that would potentially be swallowed under a broad FCC regime, as would the work of the Federal Acquisition Security Council (“FASC”) in addressing these issues in the context of federal procurement. In addition, legislative proposals now moving through Congress evince a specific

³ FNPRM ¶ 131.

⁴ *Id.* at ¶ 128.

⁵ Pub. L. No. 115-232, 132 Stat. 1636, 1917 (2018).

desire for the FCC to focus on the USF context, with no suggestion that the agency go further nor play a government-wide leading role.⁶

CALEA. The Communications Assistance for Law Enforcement Act (“CALEA”) would not provide a good basis for the Commission to go beyond the USF context.⁷ As the FNPRM states, “CALEA is intended to preserve the ability of law enforcement agencies to conduct electronic surveillance”⁸ – that is, the statute is intended to aid *lawful* surveillance. In contrast, this proceeding is intended (at least in part) to prevent *unlawful* surveillance.⁹

Other federal actions. Legal questions aside, going beyond the USF context is unnecessary. In addition to work being done by the FASC and other agencies, the President’s executive order issued in May 2019 addressed communications equipment much more broadly and tasked the Department of Commerce with implementing it.¹⁰ To that end, the Department recently issued a proposed rule and is currently reviewing comments.¹¹ Having inconsistent and

⁶ See Secure and Trusted Communications Networks Act of 2019 § 2, [H.R. 4998](#), 116th Cong., as engrossed in House (passed Dec. 16, 2019) (limiting prohibitions to the use of federal subsidies); United States 5G Leadership Act of 2019 § 4, [S. 1625](#), 116th Cong. (same).

⁷ *Id.* at ¶ 132.

⁸ *Id.*

⁹ Section 105 of CALEA is captioned “Systems Security and Integrity” and requires carriers to ensure that any interception mechanism can be “activated” only in accordance with lawful authorization. 47 U.S.C. § 1004. However, this provision cannot be read as a broad grant of authority for the Commission to regulate cybersecurity, nor to address all potential equipment vulnerabilities. Rather, it simply requires carriers to safeguard the *lawful* interception mechanisms that the statute itself required to be created.

¹⁰ *Securing the Information and Communications Technology and Services Supply Chain*, Executive Order 13873, 84 Fed. Reg. 22,689, (May 15, 2019), <https://www.whitehouse.gov/presidential-actions/executiveorder-securings-information-communications-technology-services-supply-chain/>.

¹¹ Notice of Proposed Rulemaking, *Securing the Information and Communications Technology and Services Supply Chain*, 84 Fed. Reg. 65,316 (Nov. 27, 2019) (comments were due January 10, 2020).

overlapping policies to address the same issue would result in administrative burdens on the government and on private sector stakeholders with no corresponding benefit. The Commission should instead keep its focus on the USF context where its authority is much clearer.

III. DETERMINATIONS REGARDING WHICH EQUIPMENT AND SERVICES REQUIRE REMOVAL SHOULD FOLLOW A RISK-BASED APPROACH.

In the Report and Order, the Commission determined that a blanket prohibition on USF funding for any equipment and services from covered companies was easier to administer and would provide more regulatory certainty. However, as the FNPRM recognizes, this approach is broader than that taken by Section 889, which excludes equipment “that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.”¹² The inclusion of that provision in Section 889 is consistent with other work across the government on risk-based approaches to equipment criticality that has advanced since this proceeding began.

Ideally, the Commission could consider looking to the Department of Homeland Security for ongoing work with industry to establish a repeatable approach for assessing the criticality of ICTS products, including a calculation based on what the product is, what entity is using it, and for what purpose. However, given the Commission’s desire for somewhat brighter lines, at a minimum the statutory exemption in section 889 should be adopted by the Commission here. Importantly, such a requirement would preserve the option for carriers to elect removal of *all* gear, thus preserving ease of administration for some carriers while limiting the mandated replacement burden for others.

¹² Sec. 889; FNPRM ¶ 134.

IV. THE MARKETPLACE IS CAPABLE OF PROVIDING APPROPRIATE REPLACEMENT PRODUCTS AND SERVICES.

As the Commission notes, it is undoubtedly the case that some affected carriers purchased their equipment because the covered companies offered them for sale at significantly lower prices.¹³ Of course, the reasons for those price differences originate in geopolitical and economic factors.¹⁴ While other vendors have indicated they will work constructively with the small number of carriers affected by the Commission’s actions here,¹⁵ the ultimate solution to preserving and growing a healthy and competitive global ICT sector surely does not lie with pushing more vendors to also provide their gear at below-market prices.

However, the Commission can have confidence that the market will provide adequate replacement products and services for at least two reasons. First, by some estimates, the covered companies hold less than one percent of the market share.¹⁶ This demonstrates that the remaining 99% of the market includes carriers large and small who have served their customers while avoiding using such equipment. Second, there is nothing in the record suggesting that the covered companies are producing products with technically superior capabilities; rather, the

¹³ FNPRM ¶ 139.

¹⁴ See, e.g., [Reply Comments of the Telecommunications Industry Association](#), filed July 2, 2018 in WC Docket No. 18-89, at 62-65 (“TIA Reply Comments”) (discussing Chinese subsidies for national champion carriers); see also Stu Woo, [Facing Pushback From Allies, U.S. Set for Broader Huawei Effort](#), Wall Street Journal, Jan. 23, 2020 (“A U.S. official said Washington ... plans to give financial assistance to developing countries to use alternative suppliers in 5G networks via newly empowered government agencies and initiatives.”).

¹⁵ Commissioner Starks, [Find It, Fix It, Fund It, Report of the Stakeholder Workshop Held June 27, 2019](#), at 15 (“Workshop Report”) (describing a commitment from Nokia at the workshop to facilitate financing terms for affected carriers).

¹⁶ *Id.* at 8.

market for 5G technologies is characterized by constant innovation and competition by both global and small companies alike.¹⁷

Replacement with upgraded gear. Unlike television broadcast stations that have seen two major protocol changes in the past 60 years, wireless network equipment is continually being upgraded even between the major “generations” of CMRS technology. A cursory glance at a list of the various Third Generation Partnership Project (“3GPP”) releases shows that the standards have been upgraded every 1-2 years to incorporate significant new features.¹⁸ Therefore, virtually all of the gear being replaced would likely have no current equivalent on the marketplace, and some degree of upgrading through the new Commission-funded program will be inevitable.¹⁹ Moreover, as a policy matter it makes little sense to use funding from a federally-administered program to pay for equipment that would be outdated on the day it was installed.

V. THE COMMISSION SHOULD SEEK APPROPRIATED FUNDING AND SHOULD NOT DIVERT OTHER USF FUNDING.

The Commission is on the right path by proposing to use appropriated funding from Congress to fund its proposed reimbursement program.²⁰ Legislative proposals have been advanced in both the House and Senate, most recently with the House passing the Secure and Trusted Communications Networks Act by a unanimous voice vote in December 2019. Recent reports indicate there are some remaining differences to be resolved, with the Senate bill

¹⁷ See, e.g., TIA Reply Comments at 31-41 (describing the market and explaining that USF recipients will continue to benefit from a very competitive market).

¹⁸ <https://www.electronics-notes.com/articles/connectivity/3gpp/standards-releases.php> (find better cite).

¹⁹ FNPRM ¶ 140.

²⁰ FNPRM ¶ 143.

proposing \$700 million from future spectrum auctions while the House bill would authorize \$1 billion.²¹ However, there is clearly overwhelming support in Congress for providing the Commission with dedicated funding to address the issue.

For that reason, the Commission should not entertain the prospect of diverting other USF funding to fund its proposed replacement program at this time.²² Broadband deployment remains one of the major policy objectives for the agency, and universal service funds should be used on the purpose for which they were intended.

CONCLUSION

CompTIA appreciates the Commission's efforts and urges the adoption of policies consistent with the comments above.

Sincerely,

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February 3, 2020

²¹ John Hendel, [*Senate impasse on Huawei*](#), Politico Morning Tech, Jan. 21, 2020 (describing conversations between Sens. Mike Lee and Roger Wicker); *see also* H.R. 4998 and S. 1625, *supra* n. 6.

²² FNPRM ¶ 144.