FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 18–89; FCC 19–121; FRS 16316]

Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on actions to address national security threats to networks funded by the Universal Service Fund (USF or the Fund). The Commission concurrently adopted a Report and Order addressing the use of USF support to purchase or obtain any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain.

DATES: Comments are due on or before February 3, 2020, and reply comments are due on or before March 3, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

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

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: For further information, please contact William Layton, Telecommunications Access Policy Division, Wireline Competition Bureau, at *William.Layton@fcc.gov* or (202) 418–0868.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice in WC Docket No. 18–89, adopted November 22, 2019 and released November 26, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-19-121A1.pdf.* The Report and Order and Order that was adopted concurrently with this Further Notice of Proposed Rulemaking (Further Notice) is published elsewhere in the **Federal Register**.

I. Introduction

1. In today's increasingly connected world, safeguarding the security and integrity of America's communications infrastructure has never been more important. Broadband networks have transformed virtually every aspect of the U.S. economy, enabling the voice, data, and internet connectivity that fuels all other critical industry sectors—including our transportation systems, electrical grid, financial markets, and emergency services. And with the advent of 5G—the next generation of wireless technologies, which is expected to deliver exponential increases in speed, responsiveness, and capacity—the crucial and transformative role of communications networks in our economy and society will only increase. It is therefore vital that the Commission protect these networks from national security threats.

2. The Commission has taken a number of targeted steps to protect the nation's communications networks from potential security threats. The Commission builds on these efforts, consistent with concurrent Congressional and Executive Branch actions, and ensure that the public funds used in the Commission's Universal Service Fund are not used in a way that undermines or poses a threat to our national security. Specifically, in the concurrently adopted Report and Order, the Commission adopts a rule that prospectively prohibits the use of USF funds to purchase or obtain any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain. In doing so, the Commission initially designates Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as covered companies for purposes of this rule and establish a process for designating additional covered companies in the future.

3. The Commission seeks comment on additional actions to address national security threats to USF-funded networks. These include a proposal to require USF recipients that are eligible telecommunications carriers (ETCs) to remove and replace existing equipment and services produced or provided by covered companies. Additionally, the Commission adopts an information collection to help determine the extent to which equipment and services produced or provided by covered

companies exist in our communications networks.

4. Given the Commission's oversight of the USF programs that fund voice and broadband networks and services and its obligation to be responsible stewards of the public funds that subsidize those programs, the Commission has a specific, but important, role to play in securing the communications supply chain. The Commission believes that the steps it takes in this document are consistent with this role, that they must do all it can within the confines of its legal authority to address national security threats, and that the Commission's actions, along with those taken by other Executive Branch agencies, will go far in securing our nation's critical telecommunications infrastructure.

II. Further Notice of Proposed Rulemaking

5. The concurrently adopted Report and Order marks an important step towards securing our nation's telecommunications networks and supply chains from national security threats. At the same time, the Commission recognizes that further steps are needed to secure our communications networks. As such, the Commission proposes to require as a condition on the receipt of any USF support that ETCs not use or agree to not use within a designated period of time, communications equipment or services from covered companies. In addition to conditioning future USF support, the Commission proposes to require ETCs receiving USF support to remove and replace covered equipment and services from their network operations. To mitigate the impact on affected entities, and in particular small, rural entities, the Commission proposes to establish a reimbursement program to offset reasonable transition costs. The Commission proposes to make the requirement to remove covered equipment and services by ETCs contingent on the availability of a funded reimbursement program. The Commission appreciates that many small and rural carriers affected by the Report and Order are already committed to securing the integrity of their networks, and the Commission expects these proposals would facilitate the transition of their equipment and services to safer and more secure alternatives and seek comment on these proposals.

6. The Commission believes sections 201(b) and 254 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 201(b), 254(b), provides legal authority for these proposals. Section 201(b) authorizes the Commission to ''prescribe such rules as may be necessary in the public interest to carry out the provisions of the Act.'' Section 254(b) further requires the Commission to base its universal service policies on the principles of providing ''[q]uality services . . . at just, reasonable, and affordable rates,'' as well as promoting ''[a]ccess to advanced telecommunications and information services . . . in all regions of the Nation.'' As the Tenth Circuit has explained, ''nothing in the statute limits the FCC's authority to place conditions . . . on the use of USF funds'' that advance the purposes of the universal service programs.

7. Ensuring the safety, reliability, and security of the nation's communications networks is vital not only to fulfilling the purpose of the Act but to furthering the public interest and the provision of quality services nationwide. The continued use of equipment or services produced or provided by an entity that poses a national security threat runs counter to these objectives and threatens the safety, reliability, and security of the nation's critical infrastructure. Conditioning receipt of future USF funding on not using covered equipment and services and requiring the removal and replacement of covered equipment and services will incentivize ETCs to eliminate the security shortcomings potentially present in their current operations.

8. The Commission also believes these proposals are consistent with Congress's direction, under the National Defense Authorization Act for Fiscal Year 2019 (2019 NDAA), Sec. 889(b)(2), 132 Stat. at 1917, to ''prioritize available funding and technical support to assist affected . . . entities to transition from covered communications equipment [as defined by the statute], and to ensure that communications service to users and customers is sustained.'' Section 889(b)(1) read in conjunction with section 889(b)(2) further evidences the intent of Congress to limit the use of Federal funding for the acquisition of covered equipment and services by funding recipients and to incentivize the replacement of covered equipment. The Commission recognizes the USF program is not a loan or grant program *per se* but interpret Congress as intending section 889(b)(1) read in conjunction with section 889(b)(2) as more broadly covering programs like USF that issue funding commitments. Failing to include USF, with annual expenditures of about $8.3 billion for the acquisition and use of communications equipment and services, would seriously undermine the purpose of section 889 of the 2019 NDAA. Section 889(b)(2) specifically directs executive agencies, including the Federal Communications Commission, to prioritize available funding and technical support to assist ''as is reasonably necessary'' businesses, institutions and organizations in transitioning from covered to replacement equipment as a result of the implementation of the prohibition on covered equipment as set forth in section 889(b)(1). The relevant legislative history ''stress[es] the importance of assisting rural communications service providers, anchor institutions, and public safety organizations in replacing covered equipment and associated support services contracts as soon as practicable.''

9. The Commission tentatively concludes that these statutory provisions collectively support the rules proposed herein and seek comment on this position. The Commission also believes they are consistent with Congress's purpose in creating the agency, in part, for ''the national defense'' as stated in Section 1 of the Act, 47 U.S.C. 151. The Commission further asks commenters to identify additional, alternative sources of statutory authority that would support these proposals.

10. *Covered Companies.* The Commission proposes to have the removal and replacement requirement apply to the equipment and services produced or provided by companies designated by the Commission as posing a national security threat pursuant to the process identified in the concurrently adopted Report and Order. The Commission seeks comment on this proposal. The Commission also seeks comment on potential alternatives.

11. *USF Recipients Subject to Requirement and Reimbursement Eligibility.* The Commission proposes to limit the removal and replacement requirement to ETCs. The covered companies initially designated in the Report and Order, Huawei and ZTE, supply equipment and services for fixed and mobile communications networks, cloud-based network solutions, and consumer devices, including Wi-Fi routers, data cards, and smartphones. While these products and services are not limited to use by ETCs, the Commission finds, given its legal authority is tied to the Commission's administration of the USF, the potential replacement burden and available reimbursement funding needed, and the evidence in the record that the primary USF recipients that currently rely on Huawei and ZTE are ETCs, that the

Commission should focus on the networks of ETCs, where there is the greatest concern regarding equipment and services posing a national security threat. Accordingly, the Commission does not propose to subject other USF recipients, like rural health care providers or schools and libraries, to the prohibition on the receipt of USF funds nor to the removal and replacement requirement. The Commission seeks comment on this approach. How should the Commission address service providers that are not currently ETCs? Should the Commission's proposed prohibition and removal and replacement requirements apply to those carriers that are designated ETCs in the future? If so, how? And should the Commission allow otherwise qualifying carriers to become ETCs for the sole purpose of participating in any removal and replacement fund? Would such ETC designation be necessary if, for example, Congress appropriated funds for a reimbursement program that was not tied to the Fund?

12. The Commission proposes making entities subject to the prohibition and removal requirement eligible for any replacement cost reimbursement program. In addition, the Commission seeks comment on whether other ''businesses, institutions, and organizations'' affected by section 889(b)(1)'s prohibitions should also be able to seek available funding or technical assistance from the Commission, even if they do not participate in any of the four universal service programs. Section 889(b)(1) states that executive agencies may not ''obligate or expend loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems'' ''that use[ ] covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.'' In particular, the Conference Report's note accompanying the 2019 NDAA discusses providing assistance to ''rural communications service providers, anchor institutions, and public safety organizations.'' If the Commission provides cost reimbursement through a USF mechanism and include entities that are not current USF recipients, the Commission proposes that any new entities would need to be eligible under existing USF requirements, such as being willing (and eligible) to be designated an ETC by the relevant commission for at least one year after first receiving funding. (A provider must be designated as an ETC to receive high-cost support. Similarly, there are restrictions on eligibility of schools, libraries, and rural health care facilities for the E-Rate and Rural Health Care programs.) The Commission seeks comment on this proposal. Are there any other limits the Commission should use for defining or identifying such an affected entity?

13. The Commission believes that ETCs are the most likely to rely on USF-supported prohibited equipment and that the potential burden and available funding needed to cover all non-ETC USF recipients may be quite high. At the same time, the Commission recognizes that limiting its proposed removal and replacement requirement to ETCs runs some risk that non-ETC USF recipients may keep otherwise prohibited equipment in USF-supported networks. Recognizing the Commission's need to balance risks and benefits, it seeks comment on whether to expand its proposed removal and replacement requirement to all USF recipients, rather than limit it to only ETCs. That is, should the Commission expand this proposed requirement to any entity receiving universal service support?

14. Or should the Commission go further and prohibit the use of equipment or services from covered companies in communications networks more broadly? The Commission seeks comment on whether the Commission can and should prohibit any communications company from purchasing, obtaining, maintaining, improving, modifying, or otherwise supporting any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain, regardless of whether they use universal service support to do so. If so, what penalties would apply to non-USF recipients for non-compliance? The Commission also seeks comment on whether it can and should similarly expand the proposed removal and replacement requirement to non-USF recipients. What adjustments would the Commission need to make to its proposed requirement to implement such an expansion? For example, should the Commission also include such companies in a reimbursement program and how would this affect the burden and availability of reimbursement funding needed? Alternatively, should the Commission allow non-USF recipients to voluntarily participate in a reimbursement program, and if so, could it do so absent legislation? Should the Commission also require non-USF recipients to comply with an information collection similar to the one it adopts in this document for ETCs, and if so, could it do so absent legislation? And what would be the Commission's source of legal authority for applying a prohibition on covered equipment and services and its proposed removal and replacement requirement to non-USF recipients absent new congressional legislation?

15. Would the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. 229(a), be one potential source of such authority, and if so, what providers would be covered and how would the Commission need to adjust a prohibition on covered equipment and services and its proposed removal and replacement requirement to account for reliance on that authority? Would section 103(b)(1) of CALEA, 47 U.S.C. 1002(b)(1), apply—if at all—if the Commission were to expand its rules beyond the expenditure of federal funds? For example, in 2005, the Commission interpreted the scope of CALEA to also include facilities-based ISPs and interconnected VoIP service providers. How should the Commission consider these kinds of entities with respect to a prohibition on covered equipment and services and a removal and replacement requirement?

16. *Equipment and Services Requiring Removal and Replacement.* In the concurrently adopted Report and Order, the Commission determined a blanket prohibition on USF funding for all equipment and services from covered companies posing a national security risk was easier to administer and would provide more regulatory certainty for USF recipients than a narrower prohibition aimed at specific types of equipment and services. The prohibition includes not only finished products by a covered company but also products containing specific components or sub-parts produced or provided by a covered company. The Commission proposes to use the same scope to identify equipment and services subject to a removal and replacement requirement. The Commission seeks comment on this proposal.

17. Including all equipment and services from covered companies creates a bright line for ETCs to make determinations for removal and replacement. This approach would also include equipment and services covered by the 2019 NDAA, which has a narrower scope, covering equipment and services that are either a ''substantial or essential component of

any system, or as critical technology as part of any system.'' Section 889(b)(3) of the 2019 NDAA also excludes from its definition of covered telecommunications equipment any 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.'' Although the Commission recognizes using the 2019 NDAA definition would limit the replacement burden, a broader requirement increases the likelihood of preventing engineered, backdoor access to the network and should be easier for ETCs to implement and for the Commission to enforce. The Commission seeks comment on this proposal and the benefits and costs of a broader requirement.

18. In the concurrently adopted Report and Order, the Commission prohibits the use of USF to purchase or obtain any equipment or services produced or provided by a covered company. As the FCC has recognized on multiple occasions, the Lifeline program supports services, not end-user equipment. However, some carriers participating in the Lifeline program offer free handsets to eligible consumers as part of their offering. Carriers' websites further indicate that some Lifeline ETCs offer free handsets that are manufactured by the covered companies. The Commission seeks comment on whether the distribution of such handsets to Lifeline-eligible consumers poses a risk to the integrity of Lifeline consumers' communications.

19. Alternatively, if the Commission relies on the 2019 NDAA as a source of authority for these proposed actions, should the Commission then tailor the removal and replacement requirement to more closely adhere to the scope of equipment and services identified in the 2019 NDAA? Would limiting replacement to the equipment and services covered by the 2019 NDAA affect the estimated cost in a meaningful way? In light of the burdens that replacing existing network equipment will impose on carriers receiving USF support, how should the Commission clearly define and identify this type of equipment in order to assist applicants and potential auditors in determining how to comply with the proposed rule? Should the Commission use or reference any definitions developed by the Executive Branch for purposes of federal procurement compliance with the 2019 NDAA? Instead, should the Commission or USAC develop a list of equipment and services that must be removed and replaced? Should the Commission specifically limit the removal and replacement to only covered equipment and services embedded or deployed in an ETC's network? To what extent should the requirement apply to the networks of ETC affiliates?

20. *Eligible Replacement Costs.* The Commission proposes to make available reasonable replacement costs for the equipment and services produced or provided by covered companies, and it seeks comment on this proposal. The Commission also seeks comment on what costs associated with replacing such equipment and services are reasonable and what types of restrictions to place on equipment and service replacement costs in order to manage limited USF resources effectively and guard against waste, fraud, and abuse. How should the Commission determine the reasonableness of the costs to replace the covered equipment or services? Should USF recipients be allowed to seek reimbursement for technology upgrades to their networks while transitioning from covered equipment and services to replacement equipment and services? To best target available funds, should the Commission prioritize payments for the replacement of certain equipment and services that are identified as posing the greatest risk to the security of networks, and what categories of equipment and services should that prioritization include? If so, how should the Commission prioritize such funds? What additional administrative burdens would such prioritization require and what impact would it have on how quickly the Commission could remove all problematic equipment and services from our communications networks?

21. The Commission has made significant strides towards closing the digital divide and encouraging the deployment of the next generation of equipment and services. Would the Commission's proposal require ETCs replacing equipment and services to replicate the functionality of that equipment, even if the equipment or services is outdated? Could requiring the replacement of aging equipment that endangers our national security aid the Commission's efforts to close the digital divide and encourage the migration to 5G technology in rural America? The Commission recognizes the practicality that USF recipients, such as wireless carriers using older technologies, like 3G equipment, may not be able to find functionally-equivalent equipment available in the marketplace. The Commission seeks comment on how to encourage both the goal of closing the digital divide and the need to prevent wasteful spending on outdated equipment while reducing the national security risks in our Nation's networks operated and used by ETCs.

22. As discussed in the concurrently adopted Report and Order, some parties allege that they purchased equipment from covered companies because of significant price savings compared to equipment from other vendors. The Commission seeks comment on this claim and, to the extent it is accurate, what the Commission and the private sector can do to address it. Are there measures that non-covered companies can undertake to offer lower prices to carriers seeking to replace their insecure equipment? Can carriers create joint purchasing programs to reduce their equipment costs? To what extent are the security problems discussed in this proceeding related to the lack of U.S.-based equipment vendors? Are there U.S.-supplied alternatives or replacements for products from the covered companies? Finally, the Commission seeks comment on ways it can ensure that, going forward, ETCs obtain and rely on equipment only from trusted vendors.

23. During the Commission's broadcast incentive auction, the Commission developed a standard to reimburse costs reasonably incurred by an entity in order to relocate or otherwise modify its facility, using a comparable facilities reimbursement standard for all eligible entities. The Commission's spectrum incentive auction incentivized incumbent broadcast television licensees to relinquish or relocate from their bands for the repurposing and re-licensing of the spectrum via auction for, among other things, commercial mobile use. As part of that process, the Commission established a reimbursement program to compensate relocated broadcasters for costs ''reasonably incurred'' in relocating to new channels assigned in the repacking process. In that proceeding, the Commission decided to not provide reimbursement for new, optional features that are not already present in the equipment being replaced, but because some stations may not have been able to replace older, legacy equipment in the marketplace, the Commission would reimburse for some equipment that includes improved functionality. Should the Commission adopt a similar comparability standard for replacement costs here? Should the Commission allow reimbursement for non-comparable equipment or services that are safer or more secure than the replaced equipment or services due to enhanced safety features, more robust encryption, more frequent security updates, and so forth? What are the cost implications of allowing covered

equipment or services to be replaced with upgraded technologies and what limits or standards should the Commission place on these upgrades? Are there efficient ways to develop estimates of replacement costs that could provide guidance to USF recipients required to make these replacements? If the Commission does elect to allow USF recipients to upgrade their equipment and receive reimbursement, what type of showing should it require them to make to support their reimbursement requests for eligible replacement costs? The Commission also seeks comment on whether the Commission's Wireline Competition Bureau or USAC should be responsible for reviewing and acting on reimbursement requests.

24. The Commission also seeks comment on any other issues surrounding the cost to comply with its proposed rule of requiring replacement of covered equipment and services by ETCs. For instance, should the Commission adopt a cut-off date for equipment and services eligible for reimbursement as currently being considered in the United States 5G Leadership Act of 2019, S. 1625, 116th Cong. (2019)? Should equipment and services replaced after the effective date of the accompanying *Report and Order* but before the availability of a reimbursement program be eligible for reimbursement? Should the Commission require equipment to be retired and scrapped? To provide good incentives for carriers in selling scrapped equipment, should the Commission allow them to keep some fraction, *e.g.,* one third of the sale value? How should the Commission also factor in associated business costs, such as existing loans or sped-up depreciation? Using the Commission's broadcast incentive auction for comparison, lost revenues were not eligible for reimbursement due to a statutory prohibition. The Commission proposes to make lost revenues ineligible for reimbursement due to the difficulty in administration and seek comment on this approach.

25. The Commission also seeks comment on the necessity of requiring replacement of certain equipment and services. Requiring such replacement in instances where replacement is unnecessary is a waste of public funds and contrary to its goals for the USF programs. The Commission seeks comment on whether to narrow its proposed rule to require that ETCs remove, but not replace, covered equipment and services. Are there scenarios in which replacement of removed equipment and services is not necessary? Are there networks in which there is sufficient redundancy that the removal of covered equipment and services need not be replaced? Are there other reasons why ETCs may not need to replace removed equipment and services?

26. *Available Funding.* The Commission proposes to seek an appropriation or authorization of funds from Congress to fund its proposed reimbursement program and to provide support for replacing existing equipment and services posing a national security threat in USF-supported networks. Given the potential national security risks in leaving existing equipment in USF-funded networks, as well as Congress' direction to the Commission to ''ensure that communications service to users and customers is sustained,'' it believes Congress will want to play a role in providing financial resources to resolve a time-limited issue. For example, on May 22, 2019, Senators Cotton, Markey, Warner, and Wicker introduced S. 1625, the United States 5G Leadership Act of 2019, which would establish a $700 million Supply Chain Security Trust Fund using auction proceeds to replace equipment or services that are determined by the Commission to pose a national security risk. The Commission seeks comment on its proposal, and on the appropriate level of funding the Commission should request from Congress.

27. Alternatively, if Congress does not appropriate funding for the Commission, the Commission seeks comment on using USF funding to provide support for replacing existing equipment and services posing a national security threat in the networks used by USF recipients. As noted in the record, there are existing budgets or caps for all four universal service programs. Should the Commission account for replacement reimbursement costs from the USF under the cap or budget for the USF program that funded the equipment in the first place? How would using USF support affect the contribution factor? Should the Commission consider establishing a new, time-limited USF program for this purpose? If the Commission does not establish new USF replacement disbursement program, it seeks comment on whether there is a way to prioritize existing USF support using the existing programs. For instance, should the Commission consider advance funding for affected entities under the high cost support programs? Or, are there specific Commission rules that the Commission could change or waive, such as the E-Rate program's category two budget limits or equipment transfer rules for schools and libraries that may need to replace existing equipment or services? Within the confines of the USF program, what level of support is appropriate for funding these replacement costs?

28. What are the total costs of removing and replacing equipment and services from covered companies as proposed? For instance, the Telecommunications Industry Association provides an estimate of less than 1,500 cell sites costing approximately $150 million plus installation. At the other end of the cost estimates, one declaration stated that it could cost $410 million for a single carrier to transition the equipment out of its network. The Rural Wireless Association (RWA) states that approximately 25% of its members have deployed either Huawei or ZTE in their networks, with estimated costs of $800 million to $1 billion in costs to replace equipment before the end of its lifespan and depreciation for those 12 to 13 companies. They also cite information from Huawei, who is an associate member of the RWA, that it has 40 wireless and wireline customers in the United States, whose additional costs beyond its membership RWA could not estimate. How accurate are these estimates? What other sources of information are available to estimate the total cost that would be needed for the Commission's proposed reimbursement program? (Separately, in the concurrently adopted Order, the Commission adopts an information collection to aid its inquiry).

29. Finally, should the Commission cap the amount of funding available to these affected entities? If the Commission sets such a cap, it seeks comment on ways to prioritize the limited funding if the replacement funding amount sought exceeds the total available funds. Should the Commission separately cap the amount eligible for each individual funding request? Section 889(b)(2) states that the Commission shall ''prioritize available funding . . .'' that is ''reasonably necessary for those affected entities to transition.'' As in the United States 5G Leadership Act, should the Commission limit eligibility for assistance based on the maximum number of customers that an affected entity serves? Would such a limitation ensure that the limited funds are properly targeted to those entities with the most need? How should the Commission interpret ''reasonably necessary''? Should the Commission require affected entities to contribute some portion of the funding to replace the covered equipment and services,

i.e., what portion, if any, of an entity's replacement cost should be borne by the requesting entity? If so, what percentage is appropriate to limit waste by incentivizing cost-efficient decision-making by ETCs, while ensuring entities can continue to serve their customers, patrons, and patients?

30. *Preventing Waste, Fraud, and Abuse.* As the Commission proposes to prohibit ETCs from using equipment and services from covered companies, it proposes to add a certification to existing program forms. USF recipients would need to certify they are complying with the proposed rule(s), either by certifying that they do not have covered equipment and services or that they are working to replace covered equipment and services with the funding received. The Commission proposes requiring a duly authorized individual from the entity under penalty of perjury sign the certification. Are there any concerns with this certification requirement? Do all USF participants have, or can they obtain through reasonable due diligence, sufficient insight into their equipment and services to make these certifications? Are there any other enforcement mechanisms that the Commission should consider?

31. The Commission also proposes to require all affected entities that receive funding to replace equipment or services to file annual certifications of compliance that all support will be used for its intended purpose. This is consistent with section 254 of the Act, which requires that USF recipients ''shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' The Commission proposes that the annual certification should be signed by a duly authorized individual from the company under the penalty of perjury. The Commission believes this proposal will protect the Universal Service Fund and any other potential source of funding from waste, fraud, and abuse. The Commission seeks comment on this and other ways to reduce the risk of waste, fraud, and abuse.

32. For instance, to ensure effective use of replacement funding, the Commission proposes to adopt a detailed reimbursement application process to confirm that funding is being used only to replace covered equipment and services, rather than to deploy services to new areas or replace aging equipment or services that are not covered. This is similar to the process adopted in the recent spectrum incentive auction where the Commission required broadcasters to submit estimated construction plans to the Media Bureau for the reimbursement of relocation costs. Under the Commission's proposal, applications for replacement funding would need to provide details of the covered equipment and services being replaced, the replacement equipment and services, and the estimated costs of replacement. The Commission seeks comment on this proposal.

33. The Commission believes that a detailed application process will verify the original costs, as well as the new replacement costs to ensure USF support or other funding is not wasted and used appropriately for comparable replacement facilities and services or limited upgrades, if the Commission so allows. How does the Commission verify the original and replacement costs to ensure that USF support or other funding is not wasted? What other information should the Commission require and how does it ensure the application process is simple enough that it does not discourage participation or delay efforts to replace equipment and services from covered companies that pose a national security risk? Alternatively, the Commission seeks comment on whether it should require affected entities to submit detailed requests for funding as well as detailed invoices similar to the process used within the E-Rate program. Would this option be more efficient than the detailed application process the Commission proposes? How does the Commission limit the burden on small entities while safeguarding the available funding? To prevent waste, fraud, and abuse, and to ensure transparency in the reimbursement program, should the Commission make disbursements to eligible entities public as was done following the broadcast incentive auction?

34. As with the existing USF programs, the Commission proposes that recipients of support be subject to periodic compliance audits and other inquiries, including as appropriate investigations, to ensure compliance with the Commission's rules and orders. The Commission seeks comment on this proposal and whether such an approach is sufficient to encourage compliance.

35. If a recipient violates the proposed condition upon receiving support or includes inappropriate costs in seeking replacement assistance, what steps should the Commission take in response? Are there any mitigating factors that should be considered when taking such steps? Should the Commission impose additional penalties beyond loss of funding and potential forfeitures under section 503 of the Act, 47 U.S.C. 254, 503? For instance, should violators be suspended or barred from receiving USF support? The Commission seeks comment on how to align such a penalty with Congress' direction in the 2019 NDAA to ensure that communications services to users and customers is sustained.

36. *Timelines for Removing and Replacing Equipment.* The Commission seeks comment on the timing and deadlines for replacement of covered equipment and services by ETCs. The Commission specifically seeks comment on the amount of time that may be necessary to replace covered equipment and services currently in communications networks with permissible, equivalent authorized equipment and services. The Commission also seeks comment on whether there are other sources of information that it should consider to help inform its decisions on replacement timing and deadlines and to understand the scope of the effort.

37. Should the Commission allow ETCs to obtain support even if they currently use covered equipment and services so long as they agree to replace such equipment and services by a set deadline? This would allow recipients to continue to receive support going forward and thus allow for a transition period to come into compliance without causing a disruption in annual funding for much needed supported services. If so, the Commission proposes to set a deadline by which covered equipment and services must be removed as a condition of receiving support. The Commission seeks comment on this proposal. How much time should the Commission allow for equipment and service replacement? Does a two-year period provide sufficient time? Or would a longer transition period, such as 3 to 7 years as suggested by one commenter, be more appropriate? The Commission also requests comment on how a deadline would impact overall replacement costs.

38. In adopting a deadline, should the Commission require all equipment and services to be removed by a set date, or implement a phased approach with different deadlines for affected ETCs to replace equipment and services? Recognizing the important national security interest in removing covered equipment and services as quickly as possible, if the Commission adopts a phased approach, how long would affected companies need to comply? Should different categories of ETCs be given additional time to replace covered equipment and services? For example, how should the size of the ETC affect the deadline?

39. If the Commission does adopt a phased deadline approach, it seeks comment on how to structure the deadlines. Should the Commission identify specific replacement thresholds, or prioritize replacement of certain equipment and services first? How would a transition with set thresholds to replace equipment and services impact ETCs as compared to a single deadline? For any proposed timeline, the Commission seeks comment on the impact of the timeline on reimbursement costs. How does the replacement cost of covered equipment and services change over different transition timeframes? Is it more cost-efficient to set a specific deadline or wait for the end of life of the deployed equipment? For example, the record shows support for having a transition period. Alternatively, what are the potential impacts on carriers and consumers of requiring an expedited transition period? Commenters, particularly small wireless carriers, argue that equipment may not be readily available or may only be available at a much higher cost. How does the Commission best model the cost differences based on the timing? How should the Commission factor in potential executive or legislative actions that could have timing and cost implications in the future, such as the additions of further prohibited equipment manufacturers in future legislation?

40. To the extent the Commission allows ETCs to replace covered equipment and services pursuant to varying deadlines while still continuing to receive USF support, should ETCs be allowed to replace a certain percentage of the prohibited equipment and services in the first year in order to continue to receive support for replacement? What types of reporting from these entities would be necessary for the Commission to track compliance with any milestones? If there are reasons outside of an entity's control that delay replacement, should the Commission establish a mechanism for the entity to report noncompliance with the milestones without penalty? Should the Commission provide financial incentives for entities that can accelerate replacement faster than its milestones?

41. *Additional Issues Arising from the 2019 NDAA.* Section 889(b)(2) of the NDAA requires the Commission to prioritize ''technical support'' to assist affected entities in transitioning from using covered equipment to new equipment without impacting communications service to consumers. The Commission seeks comment on what ''technical support'' means. Is the Commission or USAC properly suited to provide technical support to carriers as they eliminate covered equipment or services from their network? If so, what ''technical support'' should the Commission provide to assist affected entities in their transition? The Commission seeks comment on how to comply with this portion of section 889(b)(2) of the NDAA. For instance, the Commission seeks comment on best practices to reduce the risk from existing equipment and services provided by covered entities while USF recipients transition to safer and more secure equipment and services. Are there ways USF recipients can upgrade software from a covered company to reasonably improve the security of and reduce threats from covered equipment or services? Should recipients be permitted to replace a covered company's software with that of a trusted third party, in a way that could mitigate the security risk? How would such actions reduce the risk and are there ways for the Commission to provide assistance in making these decisions?

42. The Commission also seeks comment on how to implement the direction under the 2019 NDAA in light of actions taken by the Executive Branch since August 2018. In particular, on May 15, 2019, the President issued Executive Order 13873 prohibiting the acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service by a person subject to United States jurisdiction, where the Department of Commerce has determined that the transaction is subject to the jurisdiction or direction of a foreign adversary and it poses certain risks to the national security of the United States. The next day, the Bureau of Industry and Security of the Department of Commerce added Huawei Technologies, Co. Ltd. to the Export Administration Regulations (EAR) Entity List. The EAR Entity List is where persons, including entities, designated by the Bureau of Industry and Security, are identified when ''there is reasonable cause to believe, based on specific and articulable facts, that the person has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States.'' The Bureau of Industry and Security of the Department of Commerce later amended the EAR to create a 90-day temporary general license allowing some continued exports, reexports, and transfers through August 19, 2019, amended the EAR to extend a second time the temporary general license through November 18, 2019, and then subsequently extended the temporary general license a third time through February 16, 2020. The Secretary of Commerce will also be issuing regulations pursuant to this Executive Order.

43. The Commission seeks comment on how to ensure that its actions are consistent and in harmony with actions by other government agencies. How do these Executive Branch actions affect this rulemaking? Are there restrictions imposed by the inclusion of companies on the Entity List that accelerate the need for the Commission to act?

44. Based on presently available information, the Commission estimates the cost of requiring the removal and replacement of covered equipment and services within the next two years to be between $600 million and $2.0 billion, *i.e.,* adding approximately $440 million to $1.0 billion more to the costs of the Commission's action in the concurrently adopted Report and Order. This compares to Cobank's removal-and-replacement cost estimate of $1 billion. That estimate applies to rural carriers only and excludes ongoing operational costs, both of which the Commission's estimates includes. In making this estimate, the Commission adopts the assumptions of the cost benefit analysis of the concurrently adopted Report and Order, except it assumes all carriers accepting universal service support must remove and replace 100%, rather than only 50% to 75%, of their equipment. The Commission assumes that the concurrently adopted Report and Order will impact investment decisions starting in 2020, so the Commission would see replacements identical to what would occur under attrition at the end of both 2020 and 2021, covering 2 years or 20% of the original equipment, with replacement cost of the remaining 80% of the Huawei or ZTE asset base occurring at the end of the period. Thus, the Commission's cost estimate of between $600 million and $2.0 billion is the sum of the present value of three differences: (1) the difference between the two-year cost streams under attrition and under the base case, plus (2) the difference between the cost stream that removal and replacement generates over the next 8 years and the base case cost stream over those 8 years, plus (3) the difference between the cost flows with the replaced capital and the steady-state annuity under the base case from January 1, 2030, out to 2040. If the Commission extends the transition to

seven years (instead of two), the costs will decline by $250 million to $590 million. While the Commission acknowledges that the benefits of its proposed actions are difficult to quantify, the Commission expects that they would outweigh the costs. The Commission seeks comment on this analysis and any other quantitative or qualitative information available on the costs and benefits of its proposals.

III. Procedural Matters

A. Paperwork Reduction Act

45. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

46. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in the Further Notice. The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

47. Consistent with the Commission's obligation to be responsible stewards of the public funds used in the USF programs and increasing concern about ensuring communications supply chain integrity, the *Further Notice* proposes and seeks comment on a rule conditioning receipt of USF support on certification by an ETC that it does not use covered equipment or services from companies that pose a national security threat to communications networks or the communications supply chain. The *Further Notice* also seeks comment on establishing a program for the funding of reasonable replacement costs for ETCs affected by the new condition on USF support.

48. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

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

50. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

51. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

52. The small entities potentially affected by the proposals herein include Telecommunications Service Providers, internet Service Providers and Vendors and Equipment Manufacturers.

53. The Further Notice proposes a rule that conditions universal service support on a certification that ETCs are not using any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain. The Commission seeks comment on this proposal, and its likely costs and benefits, as well as on alternative approaches and any other steps it should consider taking. The Further Notice also seeks comment on how broadly this proposed rule should apply, and how it should be implemented. The Commission seeks comment on how to enforce the proposed rule, including who should be held liable for the recovery of disbursed funds. The Commission also seeks comment on establishing a program for the funding of reasonable replacement costs for ETCs affected by the new condition on USF support. Lastly, the Commission seeks comment on whether sections 201(b) and 254 provide legal authority for the proposed rule.

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

55. In compliance with the direction to the Commission provided in the 2019 NDAA, the Further Notice specifically proposes to establish a funding mechanism to reimburse entities, particularly small and rural carriers, for the costs of replacing the covered equipment. The Further Notice also

seeks comment on whether there are any compliance issues the Commission should consider, particularly for smaller carriers.

56. The Commission expects to take into account the economic impact on small entities, as identified in comments filed in response to the Further Notice and this IRFA, in reaching its final conclusions and promulgating rules in this proceeding. In addition to taking into the account the size of the entity in potentially establishing transition periods to come into compliance with the proposed condition on future USF support, the Commission also seeks comment on establishing a program for the funding of reasonable replacement costs for ETCs affected by the new condition on USF support, which would include small ETCs.

57. *Ex Parte Presentations.* The proceeding this Further Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. Ordering Clauses

58. Accordingly, *it is ordered* that, pursuant to the authority contained in section 1–4, 201(b), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201(b), 254, this Further Notice *is adopted.*

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communication Commission proposes to amend 47 part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302 unless otherwise noted.

Subpart A—General Information

■ 2. Amend § 54.9 by adding paragraphs (c) and (d) to read as follows:

§ 54.9 Prohibition on use of funds.

* * * * *

(c) Upon adoption of a funded reimbursement mechanism for replacing such equipment or services, Eligible Telecommunications Carriers must certify prior to receiving a funding commitment or support that it does not use covered equipment or services.

(d) For purposes of paragraph (c) of this section, covered equipment or services are equipment or services produced or provided by any company designated by the Commission as posing a national security threat to the integrity of communications networks or the communications supply chain.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 191220–012]

RIN 0648–BH67

Fisheries of the Northeastern United States; Omnibus Deep-Sea Coral Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to approve and implement the measures of the New England Fishery Management Council's Omnibus Deep-Sea Coral Amendment. This action would protect deep-sea corals from the impacts of commercial fishing gear on Georges Bank and in the Gulf of Maine. These proposed management measures are intended to reduce, to the extent practicable, impacts of fishing gear on deep-sea corals in New England while balancing their costs to commercial fisheries.

DATES: Public comments must be received by February 18, 2020.

ADDRESSES: The New England Fishery Management Council has prepared a draft Environmental Assessment (EA) for this action that describes the proposed measures in the Omnibus Deep-Sea Coral Amendment and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of the amendment to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA). Copies of supporting documents used by the New England Fishery Management Council, including the EA and RIR/IRFA, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/omnibus-deep-sea-coral-amendment.*

You may submit comments, identified by NOAA–NMFS–2019–0092, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to