

ALERT

FCC Acts on Supply Chain Security and Seeks Input on Secure Networks Act

July 17, 2020

At the July 16, 2020 Federal Communications Commission (FCC or Commission) Open Meeting, the FCC adopted a Declaratory Ruling and Second Further Notice of Proposed Rulemaking (FNPRM) in its proceeding on Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs. Amidst a backdrop of increasing regulatory scrutiny of Chinese telecom suppliers, this FCC action implements Congressional direction and promises future scrutiny of U.S. companies.

The Declaratory Ruling announces that the FCC has fulfilled certain obligations under the Secure Networks Act, and the Second FNPRM seeks asks about additional provisions of the Secure Networks Act, such as methods for maintaining a list of covered communications equipment and services required, and proposing to require all providers of advanced communications services to report on whether they use covered communications equipment or services.

Comments on the Second FNPRM will be due 21 days after publication in the Federal Register and replies will be due 35 days thereafter.

Background

This item builds on FCC activity to secure the communications supply chain from national security threats, including those posed by certain Chinese telecommunications equipment manufacturers. In its November 2019 Supply Chain Order, the Commission banned the use of public funds in the Universal Service Fund (USF) to purchase, obtain, or maintain any equipment or services produced or provided by companies that pose a national security threat to the integrity of

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Practice Areas

National Security
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communications networks or the communications supply chain. Our earlier Client Alert provides more information on the *2019 Supply Chain Order*.

The FCC also recently finalized its designations of Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as covered companies, thereby prohibiting use of USF funds to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by Huawei or ZTE.

On March 12, 2020, the President signed into law the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act or Act). The Act mirrors much of the *2019 Order* and among other measures, prohibits the use of USF funds to purchase covered communications equipment or services and directs the Commission to establish a reimbursement program to “rip and replace” covered equipment and services. Wiley’s summary of the Act is available [here](#).

Declaratory Ruling

The July 16, 2020 Declaratory Ruling finds that the FCC has fulfilled its obligation pursuant to Section 3 of the Secure Networks Act to prohibit the use of funds made available through a federal subsidy program administered by the Commission to purchase, rent, lease, or otherwise obtain or maintain any covered communications equipment or services from certain companies. The FCC fulfilled this obligation via its *2019 Supply Chain Order* prohibiting the use of universal service support for equipment and services produced or provided by companies designated as a national security threat.

Second Further Notice of Proposed Rulemaking

The Second Further Notice of Proposed Rulemaking seeks comment on proposals to implement further Congressional direction in Sections 2, 3, 5, and 7 of the Secure Networks Act, including on how these provisions interact with the FCC’s ongoing efforts to secure the communications supply chain. Specifically:

- The Commission seeks comment on constructing and updating of a list of covered communications equipment and services that pose an unacceptable risk to national security (Covered List). Among other questions, the FCC seeks comment on relevant interpretations of Section 889(f)(3) of the 2019 NDAA. The item also states that “[c]onsistent with the Secure Networks Act, which establishes no notice period before the publication of the Covered List, [the Commission] propose[s] to publish the Covered List without first seeking public comment on the contents.”
- The item seeks comment on a proposed rule that would prohibit the use of federal subsidies made available through a program administered by the Commission to purchase, rent, lease, otherwise obtain, or maintain any covered communications equipment and services identified and published on the Covered List. The new prohibition on the use of USF funds pursuant to the Secure Networks Act would be effective 60 days after communications equipment or services are placed on the Covered List. This prohibition would apply to all universal service programs but not other federal subsidy programs to the extent those programs may at times tangentially or indirectly involve expenditures related to the provision of advanced communications services. The Commission emphasizes that this rule would be in

addition to the rule adopted in the *2019 Supply Chain Order* that prohibits the use of USF funds for equipment and services produced or provided by companies designated as a national security threat.

- The item seeks comment on a proposed new reporting and information collection requirement to implement Section 5 of the Secure Networks Act, which requires each provider of advanced communications service to submit an annual report if it has purchased, rented, leased, or obtained any covered communications equipment or service. The reporting requirement would apply to facilities-based providers of broadband connections to end users. As for content, they would need to report the type, location, date obtained, and any removal and replacement plans of covered equipment and services in their network, along with a “detailed justification” of why they obtained the covered equipment or services. The item asks about additional information that should be included in reports (including the amount paid) and whether reports should be publicly available or treated as presumptively confidential.
- The Commission seeks comment on regulations tracking Section 7 of the Act about enforcement penalties and repayment of disbursed funds when the recipient is found to have committed a violation. Under the Act, the Commission would have authority to subject those found in violation to forfeitures as authorized under Section 503(b) of the Communications Act and Section 1.80 of the Commission’s rules.
- Finally, to the extent that the FCC seeks comment on multiple possible options to implement any given mandate, it urges commenters to include an assessment of relative costs and benefits for competing options. The FCC also seeks detailed comments on the costs of the proposals in the Second FNPRM.

Conclusion

The Declaratory Ruling and Second FNPRM indicate that the FCC is continuing to play an integral role in implementing federal and congressional directives to secure the nation’s communications and internet infrastructure. Wiley’s Telecom, Media & Technology, National Security, Cybersecurity, and Government Contracts practitioners can help navigate these shifting issues.