



Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
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Protecting against National Security Threats ) WC Docket No. 18-89  
to the Communications Supply Chain through )  
FCC Programs )  
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**COMMENTS ON NOTICE OF PROPOSED RULEMAKING**  
**REGARDING PROTECTING AGAINST NATIONAL SECURITY**  
**THREATS TO THE COMMUNICATIONS SUPPLY CHAIN**  
**THROUGH THE FCC’S E-RATE PROGRAM**  
**(WC Docket 18-89; FCC 19-121)**

The State E-Rate Coordinators’ Alliance (“SECA”) submits these Comments in response to the FCC’s Further Notice of Public Rulemaking (“NPRM”) released November 26, 2019 (WC Docket 18-89; FCC 19-121) seeking comment on proposed rules requiring the removal of “covered” equipment and services, specifically those provided by Huawei or ZTE, previously supported by Universal Service Fund (“USF”) payments. These Comments address those NPRM concerns most directly related to E-rate applicant issues.

**SECA concurs with the Commission’s proposal<sup>1</sup> to exempt non-ETC USF recipients — specifically school, library and consortia applicants — from being required to remove and/or replace any covered equipment or services previously purchased and installed with E-rate Category 2 funding.**

SECA agrees that the greatest threat to national security involves the use of covered equipment and services in Eligible Telecommunications Company (“ETC”) networks rather than in the more localized facilities of other USF recipients such as schools and libraries.

As a practical matter, there has been little use made of E-rate funding in the procurement of covered equipment by schools and libraries. In particular:

1. The U.S. subsidiaries of the two currently covered companies, Huawei Enterprises USA Inc. (SPIN 143036885) and ZTE USA Inc. (SPIN 143044152), both have E-rate SPINs, but have never been designated as service providers in Form 471 applications nor has either filed a SPAC (Form 473) for a single funding year and therefore have not received E-rate disbursements. This is because an annual Form 473 must be on file for any SPIN associated with an FRN in order for funds to be disbursed on that FRN.
2. Covered equipment, as provided by other service providers, has been purchased in only limited instances by E-rate applicants. As shown in Table 1, the prediscout value of Huawei equipment — all Category 2 — funded since FY 2016 is less than \$4.5 million and involves only 24 applicants. Over the same period, there is no record of the E-rate approval of funding for ZTE equipment.

Last November, Commissioner Carr released a report entitled “[Security Vulnerabilities Within Our Communications Networks](#)” based on a stakeholder workshop he had sponsored the previous June. The report acknowledges costs and other challenges implicit in a full-scale “rip-and-replace” solution but notes that such an approach may be necessary “at least for the most vulnerable network equipment such as the network core.” Conversely, given the limited nature of Category 2 Huawei equipment purchased by E-rate applicants, which is not part of the network core operated by

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<sup>1</sup> Paragraph 128.

commercial communications companies, it appears that E-rate regulations requiring the immediate removal and replacement of suspect equipment located in schools and libraries are not needed at this time.

Table 1

**Installed Huawei Equipment — As reported for FY 2016-2019**

State	BEN	Billed Applicant Name	Make	Total Cost	Ineligible Cost	Eligible Cost
MI	16067945	Ada Christian School	Huawei	31,488.12	-	31,488.12
IL	135359	Addison School District 4	Huawei	1,985.76	-	1,985.76
OH	129519	Bedford City School District	Huawei	1,665.32	-	1,665.32
CA	102808	Birmingham Community Charter High School	Huawei	85,601.84	43,197.22	42,404.62
MO	137448	Blue Eye School District R 5	Huawei	1,126.00	-	1,126.00
TX	140789	Broaddus Indep School District	Huawei	148,852.15	-	148,852.15
TX	140852	Crowley Indep School District	Huawei	184,376.00	5,335.20	179,040.80
OK	139733	Deer Creek Independent School Dist	Huawei	703,611.04	-	703,611.04
CA	102756	El Camino Real Charter High Sch	Huawei	15,514.84	-	15,514.84
IL	136134	Henry Senachwine Sch Dist Un 5	Huawei	48.30	-	48.30
NH	120962	Hopkinton School District	Huawei	91,543.02	-	91,543.02
TX	141246	Huffman Indep School District	Huawei	98,758.00	-	98,758.00
TX	141111	Italy Indep School District	Huawei	56,800.02	1,492.58	55,307.44
OK	139856	Kingston Indep School Dist 3	Huawei	144,068.00	-	144,068.00
NV	231274	Lake Mead Christian Academy	Huawei	44,448.80	-	44,448.80
TX	140936	Lindsay Indep School District	Huawei	32,189.94	-	32,189.94
TX	17002254	Manara Academy District	Huawei	246,215.23	-	246,215.23
PA	19636	Middle Bucks Institute Of Technology	Huawei	58,671.30	-	58,671.30
TX	141124	Milford Indep School District	Huawei	60,563.42	-	60,563.42
OK	139842	Moore Public Schools	Huawei	2,297,531.00	-	2,297,531.00
MI	57838	Muskegon Christian School	Huawei	5,800.00	-	5,800.00
WI	133240	Rosholt School District	Huawei	3,910.84	-	3,910.84
TX	222195	Trinity Basin Preparatory	Huawei	147,097.28	-	147,097.28
TX	140633	Yantis Indep School District	Huawei	8,729.88	-	8,729.88
<b>Grand Total (24 applicants)</b>				<b>4,470,596.10</b>	<b>50,025.00</b>	<b>4,420,571.10</b>

SECA believes that a less burdensome regulatory approach to encourage, but not mandate, the replacement of existing Huawei equipment would be more appropriate and sensible at this stage. One such incentive might be to credit the purchase price of any Huawei equipment removed with offsetting increases in those applicants' prediscount Category 2 budgets for next FY 2021-2025 cycle. The impact of this approach from an E-rate funding standpoint would be negligible yet would provide a clear and balanced indication of the Commission's longer-term goal of eliminating identifiable threats at any network level.

**SECA believes that E-rate exposure to the threat of covered equipment in Category 1 services and networks is best addressed in the Commission's proposed rules to require the removal and replacement of covered equipment and services in ETC networks.**

The extent of use of covered equipment by providers of Category 1 telecommunications and Internet access services, either as terminating equipment at school and library sites or as incorporated more broadly within those providers' networks, is not easily tracked in USAC's E-rate databases and is therefore difficult to quantify. Anecdotal information indicates that Huawei, and perhaps ZTE, equipment is routinely used by some telecom and/or Internet providers. Schools and libraries so affected would like to see this equipment removed and replaced as a responsibility of those service providers either as current ETCs, "designated ETCs in the future," or "otherwise qualifying carriers to become ETCs for the sole purpose of participating in any removal and replacement fund" as is being considered in this NPRM.

**SECA reiterates three key sets of comments submitted by SECA in response to the initial National Security NPRM regarding product and bid disqualification, identification of prohibited products and services, and the liability for the recovery of funds.**

[SECA's comments](#) in the initial National Security NPRM (FCC 18-42) addressed three areas of concern that SECA believes were not fully addressed in the resulting Report and Order, Further Notice of Proposed Rulemaking, and Order (FCC 19-121). SECA respectfully summarizes our positions on these areas and suggests their inclusion in the follow-on Report and Order.

*Queen of Peace and Bid Disqualification Relief:*

The FCC's *Queen of Peace* decision<sup>2</sup> requires applicants to accept and consider proposals from all equivalent manufacturer product lines, even if the district has standardized on a specific manufacturer. In light of the conflict that exists between the *Queen of Peace* rules and the Commission's new national security rules, SECA believes that the *Queen of Peace* rule should be amended to add a proviso stating that "unless such equivalent product lines include any prohibited companies or their products."

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<sup>2</sup> DA 11-1991 (adopted December 7, 2011).

Further, current E-rate rules require applicants seeking to disqualify a bid response to have had specifically indicated any disqualification reasons in their RFP and/or FCC Form 470. SECA believes these rules (and USAC guidance) should be updated to allow for the automatic disqualification of bids that include any prohibited products or services regardless of whether the applicant's Form 470 RFP procurement documents included this specific disqualification reason.

*Identification of Prohibited Companies, Products, and Services:*

SECA believes that the responsibility for identifying prohibited companies, products, and services falling within the scope of the Commission's national security rules must rest with the E-rate service providers — carriers and non-carriers (including manufacturers and/or resellers) alike. As specialists in their respective industries, these suppliers are best equipped — certainly far more so than schools and libraries — to identify the origin of components provided and/or incorporated in their proposals for eligible E-rate products and services. At a minimum, E-rate service providers should be required to certify via an additional certification on existing FCC Forms 473 and/or Form 498 that the products and/or services they are proposing to applicants are fully compliant with the Commission's national security rules. In turn, E-rate applicants should be able to rely upon the certifications of their service providers to demonstrate the applicants' own compliance with such rules. To the extent a service provider cannot or can no longer certify compliance, the affected E-rate applicants should be granted authority to request an Operational SPIN Change to a compliant provider.

*Liability for Recovery of Funds:*

In the absence of clear evidence to the contrary, applicant reliance on certifications of its service providers should place the presumptive burden for the recovery of disbursed funds on such providers in all instances involving violations of the national security rules. To the extent rule violations may be attributed, not to those suppliers directly, but to other firms further up or further down the supply chain, it will be incumbent on the primary E-rate service providers to have covered themselves contractually with their own suppliers.

**Conclusions:**

SECA shares the Commission's concern with the overall security of the nation's communications networks and with the cybersecurity of its own school and library networks. SECA supports a measured and balanced response to national security threats at any level focusing first and foremost on the removal and replacement of suspect equipment in national networks operated by the ETC and ETC-like telecommunications and Internet carriers. SECA does not see a pressing need for expanded E-rate regulations requiring the removal of a limited amount of installed Category 2 equipment by a few affected applicants, but does support strengthening vendor certifications regarding compliance with the national security measures enacted by the Commission.

Respectfully Submitted by:

/s/ Debra Kriete

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