

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

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

ORDER ON CLARIFICATION

Adopted: October 28, 2021

Released: October 28, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. This Order on Clarification responds to an application filed by Cincinnati Bell, Inc. (Cincinnati Bell) seeking review, in part, of a public notice released by the Wireline Competition Bureau (Bureau) adopting procedures and forms for the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). Specifically, Cincinnati Bell seeks review of language in the Finalized Reimbursement Process Public Notice suggesting that certain customer premises equipment (CPE) produced or provided by Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) are ineligible for reimbursement under the Reimbursement Program. We grant Cincinnati Bell's request to clarify the extent to which certain CPE produced or provided by Huawei and ZTE that is essential to the provision of advanced communications service, as described herein, is considered covered communications equipment eligible for reimbursement under the Reimbursement Program.

II. BACKGROUND

2. As directed by the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), as amended, the Commission established the \$1.9 billion Reimbursement Program to reimburse providers of advanced communications services with ten million or fewer customers for costs reasonably incurred in the removal, replacement, and disposal of covered communications equipment or services from their networks that pose a national security risk. Communications equipment or services

1 Cincinnati Bell, Inc., Application for Review, WC Docket No. 18-89 (filed Sept. 29, 2021) (Application for Review).

2 Wireline Competition Bureau Finalizes Application Filings, Procedures, Cost Catalog, and Replacement List for the Secure and Trusted Communications Networks Reimbursement Program, WC Docket No. 18-89, Public Notice, DA 21-947, 2021 WL 3466248 (WCB Aug. 3, 2021) (Finalized Reimbursement Process Public Notice). We construe Cincinnati Bell's Application for Review as a petition for clarification of the Bureau's Finalized Reimbursement Process Public Notice and address it at the Bureau-level because the questions raised in the Application for Review are questions on which the Bureau, pursuant to its delegated authority, has not had an opportunity to pass. See 47 CFR § 1.115(c) ("No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.")

3 See Application for Review at 5; Finalized Reimbursement Process Public Notice at 35, para. 100.

4 Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, § 4(a)-(c), 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609) (Secure Networks Act). The Commission implemented the

(continued....)

considered “covered” and thus eligible for Reimbursement Program support is limited to the communications equipment or services produced or provided by Huawei or ZTE that were obtained by providers of advanced communications services on or before June 30, 2020.<sup>5</sup>

3. In the *2021 Supply Chain Order*, the Commission specifically addressed the eligibility of non-Huawei and non-ZTE mobile handsets and other CPE, finding the replacement of such equipment ineligible for reimbursement under the Reimbursement Program.<sup>6</sup> The Commission stated that “[e]xpanding the scope of reimbursement eligibility to include subscriber mobile handheld devices not produced or provided by Huawei or ZTE threatens to detract substantial funding away from the core mission of securing the nation’s networks.”<sup>7</sup> Accordingly, the Commission found the replacement of such handsets not reasonably necessary for the removal, replacement, and disposal of covered communications equipment or service, and thus ineligible for reimbursement.<sup>8</sup>

4. On August 3, 2021, the Bureau adopted the final procedures for the application filing and reimbursement process for the Reimbursement Program.<sup>9</sup> The Bureau also adopted a final version of the Catalog of Eligible Expenses and Eligible Costs (Catalog), “which applicants may rely on, where applicable, when submitting cost estimates in their [FCC Form 5640] Application Request for Funding Allocation.”<sup>10</sup> The Bureau made several changes to a preliminary version of the Catalog when adopting the final version.<sup>11</sup> In particular, the Bureau removed from the Catalog cost estimates for several CPE-

(Continued from previous page) \_\_\_\_\_

Secure Networks Act on December 10, 2020. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 7821 (2020). On July 13, 2021, the Commission amended its rules, consistent with amendments to the Secure Networks Act included in the Consolidated Appropriations Act, 2021. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, FCC 21-86, 2021 WL 3024271, at 49-51, Appx. A (Jul. 13, 2021) (*2021 Supply Chain Order*).

<sup>5</sup> *2021 Supply Chain Order*, 2021 WL 3024271, at 49-51, Appx. A. See generally *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, Order, 35 FCC Rcd 6604 (PSHSB 2020) (*Huawei Designation Order*); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633 (PSHSB 2020) (*ZTE Designation Order*).

<sup>6</sup> *2021 Supply Chain Order* at 38-39, paras. 93-94.

<sup>7</sup> *Id.* at 39, para. 94.

<sup>8</sup> *Id.* In reaching this determination, the Commission reasoned that “[h]andsets and other customer premises equipment, including Internet of Things devices, used by end users to access and utilize advanced communications services are distinctly different from the cell sites, backhaul, core network, etc. used to operate a network and provide advanced communications services.” *Id.* at 39, para. 94. As the term is used in the communications industry, “CPE” encompasses “internal modem and broadband routers,” or “a premise gateway with wireless (Wi-Fi) capabilities.” See *Wireline Competition Bureau Seeks Comment on a Report and Preliminary Cost Catalog and Replacement List to Help Providers Participate in the Supply Chain Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 21-355, Attach. 2 at 7 (WCB Mar. 25, 2021).

<sup>9</sup> *Finalized Reimbursement Process Public Notice*. The Bureau published a summary of the *Finalized Reimbursement Process Public Notice* in the Federal Register on August 30, 2021. FCC, Wireline Competition Bureau Finalizes Application Filings, Procedures, Cost Catalog, and Replacement List for the Secure and Trusted Communications Networks Reimbursement Program, 86 Fed. Reg. 48521 (Aug. 31, 2021).

<sup>10</sup> *Finalized Reimbursement Process Public Notice* at \*26, para. 73.

<sup>11</sup> See *id.* at \*26-36, paras. 73-105; *id.*, Appx. C.

related expenses explaining that such equipment is “not reasonably necessary” and thus ineligible for reimbursement under the *2021 Supply Chain Order*.<sup>12</sup>

5. On September 29, 2021, Cincinnati Bell filed an application seeking review of the Bureau’s *Finalized Reimbursement Process Public Notice*, asking the Commission to “confirm that all network equipment produced by ZTE, specifically including premise gateway devices” is eligible for reimbursement “even if they include Wi-Fi capability.”<sup>13</sup> In the alternative, Cincinnati Bell asks for the Commission to direct the Bureau “to correct and update the [*Finalized Reimbursement Process Public Notice*] and Final Catalog to remove information inconsistent with the Commission’s determination that all communications equipment provided by ZTE is reimbursable.”<sup>14</sup> No oppositions were filed in response.<sup>15</sup>

### III. DISCUSSION

6. Consistent with the Secure Networks Act and *2021 Supply Chain Order*, we clarify that certain CPE produced or provided by Huawei or ZTE is covered communications equipment that is potentially eligible for reimbursement under the Reimbursement Program. In the *2021 Supply Chain Order*, the Commission addressed the issue of non-covered, that is, non-Huawei and non-ZTE mobile handsets and related CPE, finding the replacement of such equipment not reasonably necessary to the removal, replacement, and disposal of covered communications equipment and service.<sup>16</sup> Accordingly, the Commission stated the costs associated with the removal, replacement, and disposal of such non-covered CPE are ineligible for reimbursement under the Reimbursement Program.<sup>17</sup>

7. The Bureau in the *Finalized Reimbursement Process Public Notice* addressed the handling of CPE generally for purposes of the Catalog, without reference to covered or non-covered CPE. Accordingly, we clarify the reasoning provided for the exclusion of CPE generally as referring only to non-covered non-Huawei and non-ZTE CPE that is not essential to the provision of advanced communications service. Costs associated with the removal, replacement, and disposal of covered Huawei and ZTE CPE, where “essential to the provision of advanced communications service,” may be eligible for reimbursement.<sup>18</sup> Such Huawei and ZTE CPE could include “network gateway devices with wireless (Wi-Fi) capabilities” to the extent such equipment is “owned, rented, leased, or otherwise obtained” by the provider of advanced communications service on or before June 30, 2020.<sup>19</sup>

---

<sup>12</sup> *Id.* at \*35, para. 100. In particular, the Bureau “revise[d] the Catalog ‘Smart Home’ subcategory to clarify that ‘Wi-Fi Routers’ would not be reimbursable under the program.” *Finalized Reimbursement Process Public Notice* at 35, para. 100 & Appx. C, § 1.8.2.

<sup>13</sup> Application for Review at 5.

<sup>14</sup> *Id.*; *see id.* at 9 (asking the Commission to “direct the Bureau revise the Final Catalog to clarify that premises gateway devices (including those with Wi-Fi capabilities) produced by ZTE are reimbursable”).

<sup>15</sup> *See* 47 CFR § 1.115(d) (“opposition to the application [for review] shall be filed within 15 days after the application for review is filed,” and “[e]xcept as provided in paragraph (e)(1) of this section, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition.”).

<sup>16</sup> *See 2021 Supply Chain Order* at \*38-39, paras. 93-94.

<sup>17</sup> *See id.*

<sup>18</sup> 47 U.S.C. § 1608(4).

<sup>19</sup> *See 2021 Supply Chain Order* at \*32-34, paras. 75-84 (discussing the definition of “providers of advanced communications services”); *see also id.* at \*8-21, paras. 18-45 (discussing equipment and services eligible for reimbursement).

Accordingly, costs associated with the removal, replacement, and disposal of covered CPE produced or provided by Huawei or ZTE are eligible for reimbursement.<sup>20</sup>

#### IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 405, section 4 of the Secure Networks Act, 47 U.S.C. § 1603, Division N, Title IX, sections 901 and 906 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, §§ 901, 906, 134 Stat. 1182, and sections 0.91, 0.291, 1.115, and 1.50004(p) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.115, 1.50004(p), that the Application for Review filed by Cincinnati Bell, Inc. on September 29, 2021 IS CONSTRUED as a Petition for Clarification and IS GRANTED to the extent provided herein.

9. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

---

<sup>20</sup> We decline to further revise the final Catalog to reflect this clarification. *See* Application for Review at 5 (requesting clarification and, “[i]n the alternative,” requesting “the Bureau to correct and update the . . . final Catalog”). Statements in the Catalog indicating certain categories of CPE are ineligible for reimbursement should be read as referring to non-covered CPE, in other words, non-Huawei and non-ZTE equipment. The Catalog is not intended to be a definitive or exhaustive list of all reimbursable expenses, but rather is a tool to help applicants with their application submissions. *See 2020 Supply Chain Order*, 35 FCC Rcd at 14340, para. 129. To the extent that certain reimbursable expenses are not explicitly listed in the Catalog, e.g., costs related to the removal, replacement, and disposal of certain Huawei or ZTE CPE, applicants may request reimbursement by submitting individualized cost estimates, with supporting materials substantiating the costs. *See* 47 CFR § 1.50004(c)(1)(i), (v).