

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
Petition for Reconsideration by
PTA-FLA, Inc.
WC Docket No. 18-89
SCRIP Participant ID: SCRIP0001018
File No. SCRIP001018-AM001

ORDER ON RECONSIDERATION

Adopted: January 16, 2024

Released: January 16, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Pursuant to section 1.106(a)(1) of the Commission’s rules,1 the Wireline Competition Bureau (Bureau) addresses PTA-FLA, Inc.’s (PTA-FLA) Petition for Reconsideration2 (Petition) of the Bureau’s denial of PTA-FLA’s Application Request for Funding Allocation (Application).3 The Bureau denies the Petition on the merits, upholding its prior determination that PTA-FLA is not a provider of advanced communications service and therefore is not eligible to participate in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program).4

II. BACKGROUND

2. The Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), as amended, directed the Commission to establish the Reimbursement Program.5 The purpose of the

1 47 CFR § 1.106(a)(1).

2 Petition for Reconsideration of PTA-FLA, Inc., WC Docket No. 18-89 (filed Aug. 15, 2022) (Petition).

3 PTA-FLA filed its Application on January 23, 2022 and amended it on May 17, 2022. PTA-FLA, Inc., Application Request for Funding Allocation, File No. SCRIP001018-AM001 (filed May 17, 2022) (Application). The Bureau denied the Application via email on July 15, 2022. Email from FCC SCRIP Team to Leslie Williams and Ellen Diemer (July 15, 2022, 15:20 EST) (included as Exh. 1 to Petition) (Denial Email).

4 The Bureau has the authority to act on petitions for reconsideration of final non-rulemaking actions taken pursuant to delegated authority. 47 CFR § 1.106(a)(1). The Bureau’s denial of PTA-FLA’s Application was done pursuant to delegated authority. Specifically, the Commission delegated to the Bureau “authority . . . to adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Program . . . review the estimated cost forms, issue funding allocations for costs reasonably incurred, set filing deadlines and review information and documentation regarding progress reports, allocations, and final accountings.” 47 CFR § 1.50004(p).

5 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), as amended by Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2020) (CAA). The Commission adopted the 2020 Supply Chain Order on December 10, 2020, in which it established the Reimbursement Program. Protecting

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Reimbursement Program is to reimburse providers of advanced communications service<sup>6</sup> with ten million or fewer customers for reasonable costs incurred for the removal, replacement, and disposal of covered communications equipment or services that pose an unacceptable national security risk, *i.e.*, communications equipment or service produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE) that were obtained by providers on or before June 30, 2020.<sup>7</sup>

3. Pursuant to the Commission's rules implementing the Secure Networks Act and Reimbursement Program procedures adopted by the Bureau, the Bureau opened an application filing window on October 29, 2021.<sup>8</sup> The filing window closed on January 14, 2022.<sup>9</sup> The Bureau commenced the official 90-day application review period for the Reimbursement Program on January 31, 2022.<sup>10</sup> The Bureau and the Fund Administrator assessed the applications based on: (1) whether the application was complete; (2) whether the applicant was eligible for the Reimbursement Program; and (3) whether the cost estimates provided by the applicant were reasonably necessary for the removal, replacement, or disposal of covered communications equipment and services.<sup>11</sup>

4. After reviewing PTA-FLA's Application, the Bureau sent an email to PTA-FLA's designated contact on May 12, 2022 notifying PTA-FLA that it did not appear to be eligible for the Reimbursement Program because it had ceased network operations in 2014 and therefore did not qualify

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*Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*2020 Supply Chain Order*). On July 13, 2021, the Commission amended its rules to incorporate the CAA amendments to the Secure Networks Act. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, 36 FCC Rcd 11958, 11959, para. 2 (2021) (*2021 Supply Chain Order*).

<sup>6</sup> For purposes of the Secure Networks Act, "advanced communications service" "has the meaning given the term 'advanced telecommunications capability' in section 706 of the Telecommunications Act of 1996." 47 U.S.C. § 1608(1). Section 706 defines "advanced telecommunications capability" "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." 47 U.S.C. § 1302(d)(1).

<sup>7</sup> See 47 U.S.C. § 1603(c); *2021 Supply Chain Order*, 36 FCC Rcd at 11978, para. 46; see also *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); *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).

<sup>8</sup> *Wireline Competition Bureau Announces Application Filing Window for the Secure and Trusted Communications Networks Reimbursement Program – Filing Window Opens October 29, 2021*, WC Docket No. 18-89, Public Notice, DA 21-1207, at 1 (WCB Sept. 27, 2021).

<sup>9</sup> The Commission delegated authority to the Bureau to set the length of the window. *2021 Supply Chain Order*, 36 FCC Rcd at 11996-97, para. 95. For good cause shown, the application filing window was extended 14 days. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs; Motion for Extension of Time of the Rural Wireless Association, Inc. and NTCA – The Rural Broadband Associations*, WC Docket No. 18-89, Order, DA 21-1648, para. 6 (WCB Dec. 29, 2021).

<sup>10</sup> *Wireline Competition Bureau Announces Applications Filed for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-131, at 1 (WCB Feb. 9, 2022) (*Applications Filed Public Notice*). Given the number and complexity of the applications filed, the Bureau extended the application review period by an additional 45 days, as authorized under the Secure Networks Act and the Commission's rules. *Id.* at 4. This brought the deadline to complete review of Reimbursement Program applications to June 15, 2022, which was further extended pursuant to the Secure Networks Act because applicant cure periods were still pending. 47 U.S.C. § 1603(d)(3)(B).

<sup>11</sup> See 47 CFR § 1.50004(d); *2020 Supply Chain Order*, 35 FCC Rcd 14336, para. 121; *2021 Supply Chain Order*, 36 FCC Rcd at 11992-96, paras. 86-94.

as a provider of advanced communications service.<sup>12</sup> PTA-FLA responded by amending its Application on May 17, 2022, asserting that it qualified as a provider of advanced communications service because it had affiliates that provided advanced communications service.<sup>13</sup>

5. The Bureau issued a Public Notice approving Reimbursement Program applications and allocating all appropriated funds to those approved applications on July 15, 2022.<sup>14</sup> On the same day, the Bureau denied PTA-FLA's Application because it determined that PTA-FLA is not a provider of advanced communications service and therefore is not eligible to participate in the Reimbursement Program.<sup>15</sup> PTA-FLA subsequently filed its Petition pursuant to section 1.106 of the Commission's rules,<sup>16</sup> contending that (1) it qualifies as a provider of advanced communications service because its affiliates provide such service; (2) the Commission should grant its Application because it would serve the public interest by helping fund the removal, replacement, and disposal of covered equipment owned by PTA-FLA; and (3) if the Commission does not grant reconsideration, it should open a new filing window for applications to the Reimbursement Program.<sup>17</sup>

### III. DISCUSSION

6. We deny PTA-FLA's Petition because, after reviewing the record, we uphold our initial determination that PTA-FLA is not a provider of advanced communications service and therefore is not eligible to participate in the Reimbursement Program. To be eligible to participate in the Reimbursement Program, an entity must be a "[p]rovider[]" of advanced communications service with ten million or fewer customers.<sup>18</sup> This standard has two independent prongs. First, the entity must be a provider of advanced communications service.<sup>19</sup> The Secure Networks Act defines a "provider of advanced communications service" as "a person who provides advanced communications service to United States customers."<sup>20</sup> Second, if the entity is a provider of advanced communications services, it must have "ten million or fewer customers" of advanced communications service.<sup>21</sup> For purposes of this second prong, "customers" include both customers of the applicant and of its affiliates.<sup>22</sup> For the purposes of our analysis, we refer to

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<sup>12</sup> Email from FCC SCRP Team to Leslie Williams and Ellen Diemer (May 12, 2022, 07:28 EST).

<sup>13</sup> Application, Attach. 1 (Eligibility Amendment). PTA-FLA's Petition listed three PTA-FLA affiliates as providing advanced communication services—SI Wireless, LLC, Gallatin Wireless LLC, and Rural Connect LLC. Petition at 2. Of these, SI Wireless and Gallatin Wireless separately applied to the Reimbursement Program and were allocated funds. *Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, Appx. A at 6, 12 (WCB July 18, 2022) (*SCRP Granted Applications Public Notice*). Rural Connect LLC did not apply to the Reimbursement Program.

<sup>14</sup> *SCRP Granted Applications Public Notice*, DA 22-774, at 1.

<sup>15</sup> Petition, Exh. 1 (Denial Email) ("Based on the information contained in your application, we have determined that you are ineligible to participate in the SCRP because you do not qualify as a provider of advanced communications services with 10 million or fewer customers as defined under the Commission's rules. 47 CFR §§ 1.50001(a), 1.50004(a). Specifically, Applicant ceased network operations in 2014 and is thus no longer considered a provider for purposes of the SCRP.").

<sup>16</sup> Petition at 1.

<sup>17</sup> *Id.* at 1-3.

<sup>18</sup> 47 CFR § 1.50004(a); *see also* 47 U.S.C. §§ 1603(b) and 1608(10)(A).

<sup>19</sup> 47 U.S.C. §§ 1603(b) and 1608(10)(A); 47 CFR § 1.50004(a).

<sup>20</sup> 47 U.S.C. § 1608(10)(A).

<sup>21</sup> 47 CFR § 1.50004(a); *2021 Supply Chain Order*, 36 FCC Rcd at 11963, para. 15 (defining "customer" as those taking advanced communications service from the provider and/or its affiliate).

<sup>22</sup> 47 U.S.C. §§ 1603(b) and 1608(6). As discussed in the *2020 Supply Chain Order*, customers of affiliates of an applicant are counted for this purpose to help ensure that the Reimbursement Program, as intended by Congress,

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the two prongs as the “service” prong and the “customers” prong. If the entity fails either prong it is not eligible to participate in the Reimbursement Program.<sup>23</sup>

7. As previously found, PTA-FLA ceased network operations in 2014 and therefore has not been a provider of advanced communications service since at least 2014.<sup>24</sup> PTA-FLA does not contest this.<sup>25</sup> Rather, it argues that as of January 23, 2022 it had affiliates that provided advanced communications service, and that by virtue of those services it too qualified as an advanced communications service provider.<sup>26</sup> More specifically, PTA-FLA contends that because the definition of “customers” in the Secure Networks Act includes both customers of the applicant and its affiliates, PTA-FLA must also be allowed to treat *services* provided by its affiliate as if they were provided by PTA-FLA for purposes of the “service” prong of the eligibility standard.<sup>27</sup> We disagree, as the language and structure of sections 4 and 9 of the Secure Networks Act defeat PTA-FLA’s argument.

8. First, in applying the “service” prong we must consider the definition of “provider of advanced communications service” in the Secure Networks Act.<sup>28</sup> The definition is “a person [i.e., an individual or entity] who provides advanced communications service” to United States customers.<sup>29</sup> PTA-FLA’s argument, however, would require us to expand that definition to read “a person who provides advanced communications service to United States customers *itself or has an affiliate that does so.*”<sup>30</sup> Such a reading is inconsistent with the language of the statute. Thus, we decline to read “affiliates” into the definition.<sup>31</sup>

9. Second, and relatedly, Congress did include affiliates in other definitions under the Secure Networks Act. In particular, in section 9(6) Congress expressly included “affiliates” of an

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supports smaller providers with 10 million or fewer attributable customers and not providers that are part of a larger operator that provides services through multiple subsidiaries. *2020 Supply Chain Order*, 35 FCC Rcd at 14333, para. 114.

<sup>23</sup> 47 U.S.C. § 1608(a)-(b); 47 CFR § 1.50004(a).

<sup>24</sup> Petition, Exh. 1 (Denial Email).

<sup>25</sup> Application, Attach. 1 at 1 (Eligibility Amendment) (PTA-FLA requested that the text of its Eligibility Amendment be kept confidential); *see also* Petition at 3 n.6 (stating that “[i]n 2014, PTA-FLA discontinued its provision of advanced communications service, transferring its customers and covered equipment to various affiliates”); *id.* at 2 (“PTA-FLA was not providing advanced communications service directly to customers on January 23, 2022, the date it filed its FCC Form 5640 [Application][.]”). PTA-FLA asserts it could provide such service in the future (Petition at 5) but that is not relevant to the analysis of its eligibility at the time of its Application or at present.

<sup>26</sup> Petition at 3. PTA-FLA relies on advanced communications services provided by its affiliates Rural Connect, LLC, SI Wireless, LLC, and Gallatin Wireless, LLC. *Id.*

<sup>27</sup> *Id.* at 2-3

<sup>28</sup> 47 U.S.C. § 1608(10).

<sup>29</sup> 47 U.S.C. § 1608(10). Section 1608(10) refers to “a person who provides advanced communications service,” and section 1608(6) defines “person” and an “individual or entity.” Thus, a “provider of advanced communications service” is “a[n] [individual or entity] who provides advanced communications service.”

<sup>30</sup> Alternatively, PTA-FLA’s approach would require us to revise the definition of “person” under 47 U.S.C. § 1608(8) to read “an individual or entity, *or an affiliate of such entity.*”

<sup>31</sup> Where a statute is silent on an issue (in this case, on whether “a person who provides advanced communications service” includes affiliates of that person), courts must “construe [the statute’s] silence as exactly that: silence.” *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015) (“The problem with [the defendants’ proposed] approach is the one that inheres in most incorrect interpretations of statutes: It asks us to add words to the law to produce what is thought to be a desirable result. That is Congress’s province.”); *Alabama v. North Carolina*, 560 U.S. 330, 352 (2010) (“We do not—we cannot—add provisions to a federal statute.”).

advanced communications service provider when defining “customers” for purposes of the 10-million-customer limit in section 4(b).<sup>32</sup> If Congress wanted to similarly include “affiliates” in the definition of a “provider of advanced communications service,”<sup>33</sup> it would have done so. Thus, consistent with principles of statutory construction, we presume this omission to be intentional, meaning that advanced communications services provided by affiliates are not to be attributed to an entity to determine whether that entity itself qualifies as a provider of advanced communications service.<sup>34</sup> Moreover, section 9(6)’s definition of “customers” itself draws a clean distinction between a provider of advanced communications service (covered in subsection (A)) and affiliates of such a provider (covered in subsection (B)). This further supports the view that Congress recognized a distinction between a provider of advanced communications service and its affiliates, and knew to specifically mention affiliates when it meant to include them.<sup>35</sup> Indeed, if, as PTA-FLA argues, Congress meant a “provider of advanced communications service” to always include both the applicant to the Reimbursement Program and all its affiliates, the specific reference to affiliates in section 9(6)(B) of the Secure Networks Act would be unnecessary, and therefore superfluous. We decline to read the statute in a way that would render that provision superfluous.<sup>36</sup>

10. Third, PTA-FLA does not identify any direct textual support in the Secure Networks Act or the Commission’s rules or orders for the proposition that an entity can qualify as a “provider of advanced communications service” based solely on the services provided by its affiliate.<sup>37</sup> Instead, PTA-FLA relies solely on the discussion of how to count *customers* of an affiliate for purposes of the “customers prong” under the *2021 Supply Chain Order*.<sup>38</sup> That discussion, however, is limited to implementing the “customers” prong,<sup>39</sup> and PTA-FLA does not explain how that discussion could require the Bureau to treat the *services* of an affiliate as the services of an applicant under the separate “service” prong.<sup>40</sup> If anything, the relevant discussion in the *2021 Supply Chain Order* undercuts PTA-FLA’s position. Like the definition of “customer” in the Secure Networks Act, that discussion distinguishes between providers and affiliates, repeatedly referring to providers *and/or* affiliates as separate entities. Specifically, the Commission defined the term “customer” based on those taking advanced

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<sup>32</sup> 47 U.S.C. § 1608(6)(A)-(B) (defining the “customers” of a provider of advanced communications service to include both the customers of that provider and the customers of its affiliates).

<sup>33</sup> 47 U.S.C. § 1608(10).

<sup>34</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (“[W]here Congress includes particular language in one section of a statute but omits it in another provision of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion.”); *Russello v. United States*, 464 U.S. 16, 23 (1983) (same). If that is true in different sections of the same act, this principle would likewise apply within a single section of an act.

<sup>35</sup> *Florida Pub. Telecomms. Ass’n, Inc. v. FCC*, 54 F.3d 857, 860 (D.C. Cir. 1995) (referring to “the usual canon that when Congress uses different language in different sections of a statute, it does so intentionally” and finding that when a term was used in several sections of a statute but was “noticeably absent” from the section at issue, Congress meant to exclude it from that section).

<sup>36</sup> *Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1058 (2019) (“[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”; rejecting interpretation of first clause in a statute as already including the concepts reflected in the second clause, as that would have rendered the second clause superfluous); *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 226 (2015) (courts are to interpret statutes in a way to avoid surplusage).

<sup>37</sup> See Petition at 2-3.

<sup>38</sup> *Id.* (citing *2021 Supply Chain Order*, 36 FCC Rcd at 11963-64, para. 15).

<sup>39</sup> See *2021 Supply Chain Order*, 36 FCC Rcd at 11963-64, para. 15

<sup>40</sup> Petition at 2-3.

communications service from “the provider and/or its affiliate.”<sup>41</sup> If the Commission had intended for a provider to include any affiliates, it presumably would not have referred to them as distinct entities in the very paragraph cited by PTA-FLA. And thus, instead of defining a “customer” in terms of those taking advanced communications service from “the provider *and/or* its affiliate,” the Commission would have defined a “customer” in terms of those taking advanced communications service from “the provider, *including* any affiliates.”

11. PTA-FLA also makes two other arguments that we find unpersuasive. First, PTA-FLA contends an eligibility finding would serve the public interest by preventing PTA-FLA’s affiliate, Rural Connect, from continuing to use Huawei and ZTE equipment and by preventing PTA-FLA itself from redeploying such equipment or reselling it to a third party.<sup>42</sup> In the alternative, PTA-FLA contends that if the Commission denies the Petition, it should open a new filing window for “PTA-FLA and other similarly situated applicants to apply for funding[.]”<sup>43</sup> PTA-FLA asserts that this would serve the public interest because it “would give PTA-FLA the opportunity to ensure its eligibility by recommencing the provision of advanced communications service itself, rather than through an affiliate.”<sup>44</sup>

12. With regard to the first argument, the Commission supports the goals of the Secure Networks Act to improve the security of the nation’s communications networks, but we are bound by the parameters Congress established in the statute when it directed the Commission to implement the Reimbursement Program. Therefore, whether an eligibility finding would serve the public interest is irrelevant because, as discussed above, PTA-FLA does not meet the statutory requirement<sup>45</sup> to be a provider of advanced communications service. With regard to its request for a new filing window, we decline to open a subsequent filing window. Despite PTA-FLA’s contention that there is money available for disbursement through a second window,<sup>46</sup> at this time all of the funds appropriated to the Reimbursement Program have been allocated to Reimbursement Program recipients.<sup>47</sup> In addition, even if funding were available, that would not change the fact that PTA-FLA does not meet the eligibility standard. For these reasons, we deny PTA-FLA’s Petition.

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<sup>41</sup> 2021 Supply Chain Order, 36 FCC Rcd at 119363-64, para. 15. See also 2020 Supply Chain Order, 35 FCC Rcd at 14333, para. 114 (“Accordingly, we interpret ‘customers of such provider’ and ‘customers of any affiliate’ to mean those customers taking advanced communications service from *the provider and its affiliates.*”) (emphasis added).

<sup>42</sup> Petition at 4.

<sup>43</sup> *Id.* at 4-6.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> 47 CFR § 1.50004(a); 47 U.S.C. § 1608(10)(A). Regardless of whether the public interest would be served by an eligibility finding, we cannot deviate from the Secure Networks Act’s requirement that to be eligible for the Reimbursement Program an applicant must be a provider of advanced communications service.

<sup>46</sup> Petition at 6.

<sup>47</sup> In fact, because cost estimates from providers exceeded available funding, the Commission’s rules required the Bureau to prorate the allocations approved for the Priority 1 applicants (those with fewer than two million customers) on an equal basis, consistent with the Secure Networks Act’s requirement that funding be distributed on an equitable basis. 47 CFR § 1.50004(f)(1); see also 47 U.S.C. § 1603(d)(5)(A). The pro-rata factor applied to the funding allocations was approximately 39.5%. *SCRIP Granted Applications Public Notice* at 3. PTA-FLA’s claim that \$62 million remains available to be allocated to approved applicants is incorrect, and may rest on a failure to account for the expected \$62 million in program administration expenses. *Id.* at 2 n.12.

**IV. ORDERING CLAUSES**

13. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4, 7, and 9 of the Secure Networks Act, 47 U.S.C. §§ 1603, 1606, and 1608, Division N, Title IX, sections 901 and 906 of the Consolidated Appropriations Act, 2021, and sections 0.91, 0.291, 1.106, and 1.50004 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, and 1.50004, that the Petition for Reconsideration filed by PTA-FLA, Inc. is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau