

SECURE AND TRUSTED COMMUNICATIONS NETWORKS
ACT OF 2019

DECEMBER 16, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 4998]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4998) to prohibit certain Federal loans, grants, and subsidies from being used to purchase communications equipment or services posing national security risks, to provide for the establishment of a reimbursement program for the replacement of communications equipment or services posing such risks, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Secure and Trusted Communications Networks Act of 2019”.

SEC. 2. DETERMINATION OF COMMUNICATIONS EQUIPMENT OR SERVICES POSING NATIONAL SECURITY RISKS.

(a) **PUBLICATION OF COVERED COMMUNICATIONS EQUIPMENT OR SERVICES LIST.**—Not later than 1 year after the date of the enactment of this Act, the Commission shall publish on its website a list of covered communications equipment or services.

(b) **DETERMINATION BY COMMISSION.**—The Commission shall place on the list published under subsection (a) any communications equipment or service, if and only if the Commission determines that such equipment or service—

(1) is produced or provided by—

(A) Huawei Technologies Co. Limited, Zhongxing Telecommunications Equipment Corporation, or any subsidiary or affiliate of either such entity;

(B) any successor to any entity described in subparagraph (A); or

(C) any other entity, if the Commission determines, based exclusively on the determinations described in paragraphs (1) through (3) of subsection (c), that such equipment or service produced or provided by such entity poses an unacceptable risk to the national security of the United States or the security and safety of United States persons; and

(2) is capable of—

(A) routing or redirecting user data traffic or permitting visibility into any user data or packets that such equipment or service transmits or otherwise handles; or

(B) causing the network of a provider of advanced communications service to be disrupted remotely.

(c) **RELIANCE ON CERTAIN OTHER DETERMINATIONS.**—In making a determination under subsection (b)(1)(C), the Commission shall rely solely on one or more of the following determinations:

(1) A specific determination made by any executive branch interagency body with appropriate national security expertise, including the Federal Acquisition Security Council established under section 1322(a) of title 41, United States Code.

(2) A specific determination made by the Department of Commerce pursuant to Executive Order 13873 (84 Fed. Reg. 22689; relating to securing the information and communications technology and services supply chain).

(3) The communications equipment or service being covered telecommunications equipment or services, as defined in section 889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232; 132 Stat. 1918).

(d) **UPDATING OF LIST.**—

(1) **IN GENERAL.**—The Commission shall periodically update the list published under subsection (a), as necessary to protect national security and to address changes in the determinations described in paragraphs (1) through (3) of subsection (c).

(2) **MONITORING OF DETERMINATIONS.**—The Commission shall monitor the making or reversing of the determinations described in paragraphs (1) through (3) of subsection (c) in order to determine whether to place communications equipment or services on the list published under subsection (a) or to remove communications equipment or services from such list. If a determination described in any such paragraph that provided the basis for a determination by the Commission under subsection (b)(1)(C) with respect to any communications equipment or service is reversed, the Commission shall remove such equipment or service from such list, except that the Commission may not remove such equipment or service from such list if any other determination described in any such paragraph provides a basis for a determination by the Commission under subsection (b)(1)(C) with respect to such equipment or service.

(3) **PUBLIC NOTIFICATION.**—For each 12-month period during which the list published under subsection (a) is not updated, the Commission shall notify the public that no updates were necessary during such period to protect national security or to address changes in the determinations described in paragraphs (1) through (3) of subsection (c).

SEC. 3. PROHIBITION ON USE OF CERTAIN FEDERAL SUBSIDIES.

(a) **IN GENERAL.**—

(1) **PROHIBITION.**—A Federal subsidy that is made available through a program administered by the Commission and that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service may not be used to—

(A) purchase, rent, lease, or otherwise obtain any covered communications equipment or service; or

(B) maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained.

(2) TIMING.—Paragraph (1) shall apply with respect to any covered communications equipment or service beginning on the date that is 60 days after the date on which the Commission places such equipment or service on the list required by section 2(a). In the case of any covered communications equipment or service that is on the initial list published under such section, such equipment or service shall be treated as being placed on the list on the date on which such list is published.

(b) COMPLETION OF PROCEEDING.—Not later than 90 days after the date of the enactment of this Act, the Commission shall adopt a Report and Order in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (WC Docket No. 18–89) that implements subsection (a).

SEC. 4. SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—The Commission shall establish a reimbursement program, to be known as the “Secure and Trusted Communications Networks Reimbursement Program”, to make reimbursements to providers of advanced communications service to replace covered communications equipment or services.

(b) ELIGIBILITY.—The Commission may not make a reimbursement under the Program to a provider of advanced communications service unless the provider—

(1) has 2,000,000 or fewer customers; and

(2) makes all of the certifications required by subsection (d)(5).

(c) USE OF FUNDS.—

(1) IN GENERAL.—A recipient of a reimbursement under the Program shall use reimbursement funds solely for the purposes of—

(A) permanently removing covered communications equipment or services purchased, rented, leased, or otherwise obtained before—

(i) in the case of any covered communications equipment or services that are on the initial list published under section 2(a), August 14, 2018; or

(ii) in the case of any covered communications equipment or services that are not on the initial list published under section 2(a), the date that is 60 days after the date on which the Commission places such equipment or services on the list required by such section;

(B) replacing the covered communications equipment or services removed as described in subparagraph (A) with communications equipment or services that are not covered communications equipment or services; and

(C) disposing of the covered communications equipment or services removed as described in subparagraph (A) in accordance with the requirements under subsection (d)(8).

(2) LIMITATIONS.—A recipient of a reimbursement under the Program may not—

(A) use reimbursement funds to remove, replace, or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained on or after—

(i) in the case of any covered communications equipment or service that is on the initial list published under section 2(a), August 14, 2018;

or

(ii) in the case of any covered communications equipment or service that is not on the initial list published under section 2(a), the date that is 60 days after the date on which the Commission places such equipment or service on the list required by such section; or

(B) purchase, rent, lease, or otherwise obtain any covered communications equipment or service, using reimbursement funds or any other funds (including funds derived from private sources).

(d) IMPLEMENTATION.—

(1) REGULATIONS.—Not later than 270 days after the date of the enactment of this Act, the Commission shall promulgate regulations to implement the Program.

(2) SUGGESTED REPLACEMENTS.—

(A) DEVELOPMENT OF LIST.—The Commission shall develop a list of suggested replacements of both physical and virtual communications equipment, application and management software, and services.

(B) NEUTRALITY.—The list developed under subparagraph (A) shall be technology neutral and may not advantage the use of reimbursement funds

for capital expenditures over operational expenditures, to the extent that the Commission determines that communications services can serve as an adequate substitute for the installation of communications equipment.

(3) APPLICATION PROCESS.—

(A) IN GENERAL.—The Commission shall develop an application process and related forms and materials for the Program.

(B) COST ESTIMATE.—

(i) INITIAL ESTIMATE.—The Commission shall require an applicant to provide an initial reimbursement cost estimate at the time of application, with supporting materials substantiating the costs.

(ii) UPDATES.—During and after the application review process, the Commission may require an applicant to—

(I) update the initial reimbursement cost estimate submitted under clause (i); and

(II) submit additional supporting materials substantiating an updated cost estimate submitted under subclause (I).

(C) MITIGATION OF BURDEN.—In developing the application process under this paragraph, the Commission shall take reasonable steps to mitigate the administrative burdens and costs associated with the application process, while taking into account the need to avoid waste, fraud, and abuse in the Program.

(4) APPLICATION REVIEW PROCESS.—

(A) DEADLINE.—

(i) IN GENERAL.—Except as provided in clause (ii) and subparagraph (B), the Commission shall approve or deny an application for a reimbursement under the Program not later than 90 days after the date of the submission of the application.

(ii) ADDITIONAL TIME NEEDED BY COMMISSION.—If the Commission determines that, because an excessive number of applications have been filed at one time, the Commission needs additional time for employees of the Commission to process the applications, the Commission may extend the deadline described in clause (i) for not more than 45 days.

(B) OPPORTUNITY FOR APPLICANT TO CURE DEFICIENCY.—If the Commission determines that an application is materially deficient (including by lacking an adequate cost estimate or adequate supporting materials), the Commission shall provide the applicant a 15-day period to cure the defect before denying the application. If such period would extend beyond the deadline under subparagraph (A) for approving or denying the application, such deadline shall be extended through the end of such period.

(C) EFFECT OF DENIAL.—Denial of an application for a reimbursement under the Program shall not preclude the applicant from resubmitting the application or submitting a new application for a reimbursement under the Program at a later date.

(5) CERTIFICATIONS.—An applicant for a reimbursement under the Program shall, in the application of the applicant, certify to the Commission that—

(A) as of the date of the submission of the application, the applicant—

(i) has developed a plan for—

(I) the permanent removal and replacement of any covered communications equipment or services that are in the communications network of the applicant as of such date; and

(II) the disposal of the equipment or services removed as described in subclause (I) in accordance with the requirements under paragraph (8); and

(ii) has developed a specific timeline (subject to paragraph (7)) for the permanent removal, replacement, and disposal of the covered communications equipment or services identified under clause (i), which timeline shall be submitted to the Commission as part of the application; and

(B) beginning on the date of the approval of the application, the applicant—

(i) will not purchase, rent, lease, or otherwise obtain covered communications equipment or services, using reimbursement funds or any other funds (including funds derived from private sources); and

(ii) in developing and tailoring the risk management practices of the applicant, will consult and consider the standards, guidelines, and best practices set forth in the cybersecurity framework developed by the National Institute of Standards and Technology.

(6) DISTRIBUTION OF REIMBURSEMENT FUNDS.—

(A) IN GENERAL.—The Commission shall make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants for reimbursements under the Program according to the needs of the applicants, as identified by the applications of the applicants.

(B) NOTIFICATION.—If, at any time during the implementation of the Program, the Commission determines that the funds made available to the Commission to carry out the Program will not be sufficient to fully fund all approved applications for reimbursements under the Program, the Commission shall immediately notify—

(i) the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives; and

(ii) the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate.

(7) REMOVAL, REPLACEMENT, AND DISPOSAL TERM.—

(A) DEADLINE.—The permanent removal, replacement, and disposal of any covered communications equipment or services identified under paragraph (5)(A)(i) shall be completed not later than 1 year after the date on which the Commission distributes reimbursement funds to the recipient.

(B) GENERAL EXTENSION.—The Commission may grant an extension of the deadline described in subparagraph (A) for 6 months to all recipients of reimbursements under the Program if the Commission—

(i) finds that the supply of replacement communications equipment or services needed by the recipients to achieve the purposes of the Program is inadequate to meet the needs of the recipients; and

(ii) provides notice and a detailed justification for granting the extension to—

(I) the Committee on Energy and Commerce of the House of Representatives; and

(II) the Committee on Commerce, Science, and Transportation of the Senate.

(C) INDIVIDUAL EXTENSION.—

(i) PETITION.—A recipient of a reimbursement under the Program may petition the Commission for an extension for such recipient of the deadline described in subparagraph (A) or, if the Commission has granted an extension of such deadline under subparagraph (B), such deadline as so extended.

(ii) GRANT.—The Commission may grant a petition filed under clause (i) by extending, for the recipient that filed the petition, the deadline described in subparagraph (A) or, if the Commission has granted an extension of such deadline under subparagraph (B), such deadline as so extended, for a period of not more than 6 months if the Commission finds that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal described in subparagraph (A).

(8) DISPOSAL OF COVERED COMMUNICATIONS EQUIPMENT OR SERVICES.—The Commission shall include in the regulations promulgated under paragraph (1) requirements for the disposal by a recipient of a reimbursement under the Program of covered communications equipment or services identified under paragraph (5)(A)(i) and removed from the network of the recipient in order to prevent such equipment or services from being used in the networks of providers of advanced communications service.

(9) STATUS UPDATES.—

(A) IN GENERAL.—Not less frequently than once every 90 days beginning on the date on which the Commission approves an application for a reimbursement under the Program, the recipient of the reimbursement shall submit to the Commission a status update on the work of the recipient to permanently remove, replace, and dispose of the covered communications equipment or services identified under paragraph (5)(A)(i).

(B) PUBLIC POSTING.—Not earlier than 30 days after the date on which the Commission receives a status update under subparagraph (A), the Commission shall make such status update public on the website of the Commission.

(C) REPORTS TO CONGRESS.—Not less frequently than once every 180 days beginning on the date on which the Commission first makes funds available to a recipient of a reimbursement under the Program, the Commission shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on—

(i) the implementation of the Program by the Commission; and

- (ii) the work by recipients of reimbursements under the Program to permanently remove, replace, and dispose of covered communications equipment or services identified under paragraph (5)(A)(i).
- (e) MEASURES TO AVOID WASTE, FRAUD, AND ABUSE.—
- (1) IN GENERAL.—The Commission shall take all necessary steps to avoid waste, fraud, and abuse with respect to the Program.
 - (2) SPENDING REPORTS.—The Commission shall require recipients of reimbursements under the Program to submit to the Commission on a regular basis reports regarding how reimbursement funds have been spent, including detailed accounting of the covered communications equipment or services permanently removed and disposed of, and the replacement equipment or services purchased, rented, leased, or otherwise obtained, using reimbursement funds.
 - (3) AUDITS, REVIEWS, AND FIELD INVESTIGATIONS.—The Commission shall conduct—
 - (A) regular audits and reviews of reimbursements under the Program to confirm that recipients of such reimbursements are complying with this Act; and
 - (B) random field investigations to ensure that recipients of reimbursements under the Program are performing the work such recipients are required to perform under the commitments made in the applications of such recipients for reimbursements under the Program, including the permanent removal, replacement, and disposal of the covered communications equipment or services identified under subsection (d)(5)(A)(i).
 - (4) FINAL CERTIFICATION.—
 - (A) IN GENERAL.—The Commission shall require a recipient of a reimbursement under the Program to submit to the Commission, in a form and at an appropriate time to be determined by the Commission, a certification stating that the recipient—
 - (i) has fully complied with (or is in the process of complying with) all terms and conditions of the Program;
 - (ii) has fully complied with (or is in the process of complying with) the commitments made in the application of the recipient for the reimbursement;
 - (iii) has permanently removed from the communications network of the recipient, replaced, and disposed of (or is in the process of permanently removing, replacing, and disposing of) all covered communications equipment or services that were in the network of the recipient as of the date of the submission of the application of the recipient for the reimbursement; and
 - (iv) has fully complied with (or is in the process of complying with) the timeline submitted by the recipient under subparagraph (A)(ii) of paragraph (5) of subsection (d) and the other requirements of such paragraph.
 - (B) UPDATED CERTIFICATION.—If, at the time when a recipient of a reimbursement under the Program submits a certification under subparagraph (A), the recipient has not fully complied as described in clause (i), (ii), or (iv) of such subparagraph or has not completed the permanent removal, replacement, and disposal described in clause (iii) of such subparagraph, the Commission shall require the recipient to file an updated certification when the recipient has fully complied as described in such clause (i), (ii), or (iv) or completed such permanent removal, replacement, and disposal.
- (f) EFFECT OF REMOVAL OF EQUIPMENT OR SERVICE FROM LIST.—
- (1) IN GENERAL.—If, after the date on which a recipient of a reimbursement under the Program submits the application for the reimbursement, any covered communications equipment or service that is in the network of the recipient as of such date is removed from the list published under section 2(a), the recipient may—
 - (A) return to the Commission any reimbursement funds received for the removal, replacement, and disposal of such equipment or service and be released from any requirement under this section to remove, replace, or dispose of such equipment or service; or
 - (B) retain any reimbursement funds received for the removal, replacement, and disposal of such equipment or service and remain subject to the requirements of this section to remove, replace, and dispose of such equipment or service as if such equipment or service continued to be on the list published under section 2(a).
 - (2) ASSURANCES.—In the case of an assurance relating to the removal, replacement, or disposal of any equipment or service with respect to which the recipient returns to the Commission reimbursement funds under paragraph

(1)(A), such assurance may be satisfied by making an assurance that such funds have been returned.

(g) **RULE OF CONSTRUCTION REGARDING TIMING OF REIMBURSEMENT.**—Nothing in this section shall be construed to prohibit the Commission from making a reimbursement under the Program to a provider of advanced communications service before the provider incurs the cost of the permanent removal, replacement, and disposal of the covered communications equipment or service for which the application of the provider has been approved under this section.

(h) **EDUCATION EFFORTS.**—The Commission shall engage in education efforts with providers of advanced communications service to—

- (1) encourage such providers to participate in the Program; and
- (2) assist such providers in submitting applications for the Program.

(i) **SEPARATE FROM FEDERAL UNIVERSAL SERVICE PROGRAMS.**—The Program shall be separate from any Federal universal service program established under section 254 of the Communications Act of 1934 (47 U.S.C. 254).

(j) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Commission \$1,000,000,000 for fiscal year 2020 to carry out the Program. Such amount is authorized to remain available through fiscal year 2029. Not more than \$5,000,000 of the amounts appropriated under this subsection may be used for the administrative costs of carrying out the Program.

SEC. 5. HOLD HARMLESS.

In the case of a person who is a winner of the Connect America Fund Phase II auction, has not yet been authorized to receive Connect America Fund Phase II support, and demonstrates an inability to reasonably meet the build-out and service obligations of such person under Connect America Fund Phase II without using equipment or services prohibited under this Act, such person may withdraw the application of such person for Connect America Fund Phase II support without being found in default or subject to forfeiture. The Commission may set a deadline to make such a withdrawal that is not earlier than the date that is 60 days after the date of the enactment of this Act.

SEC. 6. ENFORCEMENT.

(a) **VIOLATIONS.**—A violation of this Act or a regulation promulgated under this Act shall be treated as a violation of the Communications Act of 1934 (47 U.S.C. 151 et seq.) or a regulation promulgated under such Act, respectively. The Commission shall enforce this Act and the regulations promulgated under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Communications Act of 1934 were incorporated into and made a part of this Act.

(b) **ADDITIONAL PENALTIES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), in addition to penalties under the Communications Act of 1934, a recipient of a reimbursement under the Program found to have violated section 4, the regulations promulgated under such section, or the commitments made by the recipient in the application for the reimbursement—

(A) shall repay to the Commission all reimbursement funds provided to the recipient under the Program;

(B) shall be barred from further participation in the Program;

(C) shall be referred to all appropriate law enforcement agencies or officials for further action under applicable criminal and civil laws; and

(D) may be barred by the Commission from participation in other programs of the Commission, including the Federal universal service support programs established under section 254 of the Communications Act of 1934 (47 U.S.C. 254).

(2) **NOTICE AND OPPORTUNITY TO CURE.**—The penalties described in paragraph (1) shall not apply to a recipient of a reimbursement under the Program unless—

(A) the Commission provides the recipient with notice of the violation; and

(B) the recipient fails to cure the violation within 180 days after the Commission provides such notice.

(c) **RECOVERY OF FUNDS.**—The Commission shall immediately take action to recover all reimbursement funds awarded to a recipient of a reimbursement under the Program in any case in which such recipient is required to repay reimbursement funds under subsection (b)(1)(A).

SEC. 7. DEFINITIONS.

In this Act:

(1) **ADVANCED COMMUNICATIONS SERVICE.**—The term “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. 1302).

(2) **COMMISSION.**—The term “Commission” means the Federal Communications Commission.

(3) **COVERED COMMUNICATIONS EQUIPMENT OR SERVICE.**—The term “covered communications equipment or service” means any communications equipment or service that is on the list published by the Commission under section 2(a).

(4) **CUSTOMERS.**—The term “customers” means, with respect to a provider of advanced communications service—

(A) the customers of such provider; and

(B) the customers of any affiliate (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)) of such provider.

(5) **EXECUTIVE BRANCH INTERAGENCY BODY.**—The term “executive branch interagency body” means an interagency body established in the executive branch.

(6) **PERSON.**—The term “person” means an individual or entity.

(7) **PROGRAM.**—The term “Program” means the Secure and Trusted Communications Networks Reimbursement Program established under section 4(a).

(8) **PROVIDER OF ADVANCED COMMUNICATIONS SERVICE.**—The term “provider of advanced communications service” means a person who provides advanced communications service to United States customers.

(9) **RECIPIENT.**—The term “recipient” means any provider of advanced communications service the application of which for a reimbursement under the Program has been approved by the Commission, regardless of whether the provider has received reimbursement funds.

(10) **REIMBURSEMENT FUNDS.**—The term “reimbursement funds” means any reimbursement received under the Program.

Amend the title so as to read:

A bill to prohibit certain Federal subsidies from being used to purchase communications equipment or services posing national security risks, to provide for the establishment of a reimbursement program for the replacement of communications equipment or services posing such risks, and for other purposes.

I. PURPOSE AND SUMMARY

H.R. 4998, the “Secure and Trusted Communications Networks Act of 2019”, was introduced on November 8, 2019, by Reps. Pallone (D–NJ), Walden (R–OR), Matsui (D–CA), and Guthrie (R–KY), and referred to the Committee on Energy and Commerce. H.R. 4998 would take a series of actions aimed at improving the security of communications networks in the United States. Among other things, H.R. 4998 would require the Federal Communications Commission (FCC or Commission) to develop and maintain a list of communications equipment and services that pose an unacceptable risk to national security and prohibit the use of Federal funds administered by the FCC to purchase, rent, lease, or otherwise obtain such equipment and services. The legislation also establishes the Secure and Trusted Communications Reimbursement Program to assist small communications providers with the costs of removing prohibited equipment and services from their networks and replacing prohibited equipment with more secure communications equipment and services.

II. BACKGROUND AND NEED FOR LEGISLATION

United States communications service providers rely heavily on equipment and services manufactured and provided by foreign companies. The increasingly globalized market for communications equipment and services has opened the door to cheaper goods for

consumers but poses new challenges for the United States, particularly for ensuring the security of the telecommunications supply chain.

Given the pivotal role that private communications networks serve in connecting U.S. critical infrastructure functions, American networks are appealing targets for foreign adversaries. The United States, therefore, has a clear interest in mitigating threats posed by vulnerable communications equipment and services.

In particular, the United States identified individual Chinese telecommunications firms, including Huawei Technologies Co. Ltd (Huawei) and its affiliates, as posing significant threats to U.S. commercial and security interests.¹ Their susceptibility to state influence over business operations results in China having “the means, opportunity, and motive to use telecommunications companies for malicious purposes,” such as espionage and cyberattacks.² In April 2018, the U.S.-China Economic and Security Review Commission found that the Chinese Government had “invested significant state capital and influence” on state-owned enterprises to strategically place these companies in the U.S. communications supply chain.³

Large communications companies with sophisticated network security operations and significant capital generally have avoided installing and using Huawei and other suspect foreign equipment in their networks.⁴ Moreover, Federal agencies have actively reached out to large carriers to express concerns when carriers have considered purchasing suspect equipment.⁵ In contrast, some smaller carriers with more limited resources and less sophisticated security operations have purchased and installed Huawei, and other suspect foreign equipment, in their networks either because the equipment was less expensive or they were unaware of the security risk, or both.⁶

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 4998:

The Subcommittee on Communications and Technology held a legislative hearing on September 27, 2019, entitled “Legislating to Secure America’s Wireless Future.” The Subcommittee received testimony from the following witnesses:

- John Nettles, President, Pine Belt Wireless;
- Harold Feld, Senior Vice President, Public Knowledge;

¹ Department of Commerce, *Department of Commerce Announces the Addition of Huawei Technologies Co. Ltd. to the Entity List* (May 15, 2019) (press release).

² House Permanent Select Committee on Intelligence, *Investigative Report on the US National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE*, 112th Cong. (Oct. 8, 2012).

³ U.S.-China Economic Security Review Commission, *Supply Chain Vulnerabilities from China in US Federal Information and Communications Technology* (Apr. 2018).

⁴ See, e.g., Paul Mozur, *AT&T Drops Huawei’s New Smartphone Amid Security Worries*, the New York Times (Jan. 9, 2018) (www.nytimes.com/2018/01/09/business/att-huawei-mate-smartphone.html).

⁵ See, e.g., Todd Shields, *Locke Says Sprint’s Chief Was Called About Huawei Bid Concerns*, Bloomberg (Dec. 7, 2010) (www.bloomberg.com/news/articles/2010-12-07/commerce-s-locke-says-sprint-s-chief-was-called-about-huawei-bid-concerns).

⁶ See, e.g., Cecilia Kang, *Huawei Ban Threatens Wireless Service in Rural Areas*, the New York Times (May 25, 2019) (www.nytimes.com/2019/05/25/technology/huawei-rural-wireless-service.html).

- Dean R. Brenner, Senior Vice President, Spectrum Strategy and Tech Policy, Qualcomm Incorporated; and
- Bobbie Stempfley, Managing Director, CERT Division, Software Engineering Institute, Carnegie Mellon University.

IV. COMMITTEE CONSIDERATION

H.R. 4998, the “Secure and Trusted Communications Networks Act of 2019”, was introduced on November 8, 2019, by Reps. Pallone (D–NJ), Walden (R–OR), Matsui (D–CA), and Guthrie (R–KY), and referred to the Committee on Energy and Commerce. The bill was subsequently referred to the Subcommittee on Communications and Technology on November 12, 2019. Following a legislative hearing, the Subcommittee met in open markup session on November 14, 2019, pursuant to notice, to consider H.R. 4998. Mr. Pallone and Mr. Walden offered an amendment to the bill, which was agreed to by a voice vote. Subsequently, the Subcommittee on Communications and Technology agreed to a motion by Mr. Doyle, Chairman of the subcommittee, to forward favorably H.R. 4998, amended, to the full Committee, by a voice vote.

On November 20, 2019, the full Committee met in open markup session, pursuant to notice, to consider H.R. 4998, as amended (committee print). During consideration of the bill, an amendment offered by Mr. Walden and Mr. Pallone was agreed to by a voice vote. Subsequently, the Committee on Energy and Commerce agreed to a motion by Mr. Pallone, Chairman of the committee, to order favorably reported H.R. 4998, amended, to the House, by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 4998, including the motion on final passage to order the bill reported to the House.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to prohibit the use of vulnerable communications equipment or services and establish a program to reimburse eligible carriers for the costs of replacing such vulnerable equipment or services with trusted, comparable communications equipment or services.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 4998 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 4998 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Secure and Trusted Communications Networks Act of 2019”.

Sec. 2. Determination of communications equipment of services posing national security risks

Section 2 requires the FCC to publish and maintain on its website a list of covered communications equipment or services.

In making determinations as to what equipment and services are covered communications equipment and services for purposes of the

list, the Commission must rely on either a specific determination made by any executive branch interagency body with appropriate national security expertise, a specific determination made by the Department of Commerce pursuant to Executive Order 13873, or a designation of communications equipment or services as covered telecommunications equipment or services (as defined in section 889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019).

The Committee expects that the FCC will monitor these sources, both for purposes of adding covered equipment and services to the list and removing equipment and services that are no longer considered covered equipment or services by the source cited in making the original determination.

In the event that the original source reverses a designation for certain equipment or services (from covered to not covered), however, but a different source identified by the legislation maintains that such equipment or services are covered equipment or services, the Commission may not remove such equipment or service from its list until each or all sources reverse the designation.

The Commission is also required under this section to notify the public on an annual basis if no changes to the list were necessary in the preceding 12-month period.

Sec. 3. Prohibition on use of certain Federal subsidies

Section 3 prohibits the use of Federal subsidies made available through programs administered by the Commission from being used to purchase, rent, lease, or otherwise obtain any covered communications equipment or service, or to maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained.

For equipment or services placed on the list required by section 2 at the time of its initial publication, the prohibition on Federal subsidies is intended to take effect on the date of its publication on the list. For any equipment or services placed on the list after the initial publication of the list, the prohibition on Federal subsidies is effective on the date that is 60 days after the date such equipment or service is added to the list.

Sec. 4. Secure and Trusted Communications Networks Reimbursement Program

Section 4 requires the FCC to promulgate regulations not later than 270 days after the date of enactment to establish the “Secure and Trusted Communications Networks Reimbursement Program” (Program) to reimburse providers of advanced communications service with 2 million or fewer subscribers for the costs associated with removing and replacing covered equipment from networks.

Providers receiving reimbursements under the Program may use funds only for purposes of permanently removing, replacing, and disposing of covered communications equipment and services that were purchased, rented, leased, or otherwise obtained by the provider before August 14, 2018, if the covered equipment or service is included on the initial list developed under section 2. At a minimum, the Committee expects the initial publication of the list to include equipment and services produced or provided by Huawei Technologies Co. Limited (Huawei), Zhongxing Telecommunications

Equipment Corporation (ZTE), and any subsidiary or affiliate of either entity.

For instances in which a provider has purchased, rented, leased, or otherwise obtained equipment and services that are not included on the initial publication of the list, but are deemed to be covered equipment or services at a later date, the provider is eligible to receive reimbursement funds to remove and replace covered equipment and services that were purchased, rented, leased, or otherwise obtained not later than 60 days after the Commission adds such equipment to the list.

This section also requires the Commission to develop a list of suggested replacements for both physical and virtual communications equipment, application and management software, and services to mitigate the burden on providers to find suitable alternatives to covered equipment and services. The Committee expects the Commission, when implementing regulations described under this section, to preclude network upgrades that go beyond the replacement of covered communications equipment or services from eligibility; however, the Committee expects there to be a transition from 3G to 4G or even 5G-ready equipment in instances where equipment being replaced was initially deployed several years ago.

The Commission is required to develop processes to facilitate intake and review of applications for reimbursement under the Program. In developing the relevant forms and materials, the Commission must require providers to submit an initial estimate for reimbursement costs at the time the application is submitted. The Committee expects this information will assist the Commission in meeting its requirement to ensure that funds are distributed equitably amongst applicants. The Commission may also require applicants to submit updated cost estimates and supporting documentation, including invoices, as the Commission deems necessary.

The Commission is required under this section to approve or deny applications no more than 90 days after the date of submission to the FCC. The Commission may choose to extend this deadline for not more than 45 days, if an excessive number of applications are filed at one time. If for any reason the Commission determines an application to be deficient, the Commission is required to allow applicants a 15-day period to cure deficiencies in the application. The Committee expects the Commission to work closely with applicants to identify deficiencies and what further documentation or addendums are needed to cure such deficiencies. Providers whose applications are denied are not precluded from re-submitting applications or submitting new applications for reimbursement.

Applicants for reimbursement under the Program are required to certify to the Commission, at the time of application, that the applicant has developed a plan for the permanent removal, replacement, and disposal of covered equipment and services from their networks and certify that the applicant has developed a specific timeline for permanently removing, replacing, and disposing of covered equipment and services. Applicants are required to submit this timeline to the Commission as part of the application. Additionally, applicants whose applications are approved by the Commission must certify that, as of the date of the approval of the application, the applicant will not use reimbursement funds, or any

other funds, to purchase, rent, lease, or otherwise obtain covered equipment or services.

This section requires the Commission to make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants for reimbursement under the Program. If at any time the Commission determines that the funds made available to the Commission will be insufficient to carry out the Program, the Committee expects the Commission to immediately notify the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives, and the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate.

Any applicant receiving reimbursement funds under the Program is required to complete the permanent removal, replacement, and disposal of covered equipment and services from their networks not later than one year after the date on which the Commission distributes funds to the applicant. If the Commission finds that applicants are at risk of not meeting the deadline due to shortages in the supply of replacement equipment and services, the Commission may extend the deadline for all applicants for a period of six months. The Commission may also grant, on a case-by-case basis, individual extensions of an applicant's deadline for not more than six months, if the Commission finds that, due to no fault of the applicant, the applicant is unable to complete the requirements under the deadline. The Committee expects the Commission to not find it the fault of a recipient of the program if such recipient has a shortage of a qualified workers, either employees or contracted third-parties, to complete the removal of covered equipment and replacement of new equipment under the timeframe established in the Act.

This section also requires the Commission to include requirements for proper disposal of covered equipment and services in the regulations promulgated under paragraph (1) of this section.

Recipients of reimbursement funds are required to submit status updates to the Commission not less frequently than once every 90 days, beginning on the date of the approval of an application, and continuing until the recipient's work to permanently remove, replace, and dispose of covered equipment and services is complete.

The Commission is required to submit reports to Congress on the implementation of the Program, and the status of work being done by recipients of reimbursement funds under the Program, not less frequently than once every 180 days.

The Committee expects the Commission to take all appropriate steps to combat waste, fraud, and abuse in the Program. These steps shall include, but are not limited to, requiring recipients to submit detailed spending reports and documentation of invoices, and conducting routine audits and random field investigations of recipients to ensure compliance with Program requirements and this Act.

The Commission shall require recipients of reimbursement funds to submit a final certification that the recipient has complied with, or is in the process of complying with, all Program requirements as established by this Act and Commission regulations resulting from this Act. If the recipient is still in the process of complying with Program requirements at the time of final certification, the

Commission shall require the recipient to submit an updated certification to the Commission upon completing such requirements.

The Commission is required to engage in education efforts with communications providers to encourage their participation in the Program and to assist providers' understanding of and complying with Program requirements.

This section establishes that the Secure and Trusted Communications Networks Reimbursement Program shall be separate from any Federal universal service program.

This section authorizes \$1,000,000,000 to be appropriated for fiscal year 2020 to carry out the Program. The Commission may not use more than \$5,000,000 of the appropriated amount for administrative costs associated with carrying out the program.

Sec. 5. Hold harmless

Section 5 clarifies that any winner of the Connect America Fund Phase II auction, who is unable to meet build-out obligations due to prohibitions on covered equipment and services in this Act, may withdraw their application for Connect America Fund Phase II support without being found in default or forfeiture.

Sec. 6. Enforcement

Section 6 requires the Commission to enforce this Act and the regulations promulgated under this Act consistent with all applicable terms and provisions of the Communications Act of 1934.

This section also establishes additional penalties for recipients of funding under the Program if the Commission finds the recipient to have violated section 4 of this Act, the regulations promulgated under this Act, or commitments made by the recipient in their application or certifications to the Commission. Recipients of funding under the Program who violate the terms of the Program shall be required to repay all reimbursement funds to the Commission, barred from further participation in the Program, and referred to all appropriate law enforcement agencies or officials as appropriate. The Commission may also choose to bar violators from other Commission programs, including Federal universal service support programs.

The Commission is required to provide recipients found in violation of Program requirements an opportunity to cure violations within 180 days of the Commission providing such notice. If the recipient fails to cure such violations, the Commission is required to take action to recover all reimbursement funds awarded to the recipient under the Program that are subject to repayment.

Sec. 7. Definitions

Section 7 provides definitions for the terms "advanced communications service", "Commission", "covered communications equipment or service", "customers", "executive branch interagency body", "person", "Program", "provider of advanced communications service", "recipient", and "reimbursement funds".

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by the bill H.R. 4998.

