REPLY COMMENTS OF COSN AND SETDA REGARDING NETWORK SECURITY AND INTEGRITY

The Consortium for School Networking (CoSN) and the State Educational Technology Directors Association (SETDA) submit these Reply Comments to express support for the recommendations submitted by the State E-rate Coordinators Alliance (SECA) in the above captioned proceeding. Ensuring network security and integrity, including preventing unauthorized access to confidential student and employee data held by state and local education agencies, is a top priority for CoSN’s and SETDA’s members. Our organizations strongly support the Federal Communications Commission’s (Commission) decision to address the national security threats associated with compromised network infrastructure, while also carefully evaluating the new rules’ impact on E-rate and other Universal Service Fund (USF) beneficiaries. As you evaluate the record in this proceeding, we respectfully encourage you to consider the following recommendations.

BIDS THAT INCLUDE PROHIBITED PRODUCTS AND SERVICES SHOULD BE AUTOMATICALLY DISQUALIFIED, AND THE COMMISSION SHOULD TAKE OTHER STEPS TO MINIMIZE THE RULES’ IMPACT ON E-RATE APPLICANTS

CoSN and SETDA support SECA’s recommendation that the rules should permit the “automatic disqualification of bids that include any prohibited products or services, regardless of whether the applicant’s RFP or other procurement documents included this specific disqualification reason.” Applicants should not be required to expend time and resources to ensure that procurement
materials provide a basis for disqualification, when the products or services are disqualified per se by regulation.

Similarly, we also agree with SECA that the “Queen of Peace” rule should be modified to account for prohibited products and services. The rule’s requirement that applicants consider equivalent products and services during the competitive bidding process remains appropriate. However, satisfying the requirement by using the phrase “or equivalent”, when describing a requested product or service, is insufficient under the new national security rules. As suggested by SECA, the phrase should include the following qualifier: “unless such equivalent product lines include any prohibited companies or their products”. Updating this phraseology will help build awareness in the novice applicant and provider community that certain companies and their products are prohibited by the Commission from USF support.

Taking the above recommended steps, in addition to ensuring applicants are financially held harmless, will help to minimize the overall burden and regulatory complexity of implementing the supply chain requirements applicable to the E-rate and other USF programs. These steps will lessen the amount of information required to appear in procurement materials and encourage the use of language that puts applicants and providers alike on notice of the national security regulations, which the Commission has signaled could be expanded to other companies over time.

ADOPT A REASONABLE IMPLEMENTATION TIMELINE AND EMPOWER APPLICANTS TO ADDRESS NON-COMPLIANT PROVIDERS

CoSN and SETDA agree with the Commission’s decision in the Report and Order to apply the new national security rules prospectively. Our organizations support SECA’s recommendation that any additional requirements adopted by the Commission through this proceeding should take effect no earlier than the first application period following at least one full year from the new rule’s adoption. This reasonable implementation timeline would provide applicants with time to learn about and successfully support, as needed, service provider compliance with the regulations. We also agree with SECA that the service provider compliance timeline – their deadline for ensuring existing equipment and services are modified to satisfy the new regulations – should not disrupt multi-year E-rate contracts. We also urge the Commission to recognize that in some cases equipment may not be readily available to replace prohibited products, so the agency should ensure
that the implementation timelines are not so rigid that they lead to the disruption of services to
schools. When necessary, applicants should have the authority to seek Operational Service
Provider Identification Number changes to address the failure of a service provider to comply with
the national security requirements.

PROVIDERS SHOULD BE PRIMARILY RESPONSIBLE FOR IDENTIFYING
PROHIBITED COMPANIES AND PRODUCTS

Carriers, not applicants, should bear the primary responsibility for identifying prohibited products
and services covered by the Commission’s proposed rule. It is unreasonable to expect school
districts and schools, especially in small and low resource communities, to know what equipment
a carrier uses in their data center. Although both applicants and providers have long term record
keeping obligations under the program’s rules, service providers are uniquely qualified by their
technical and industry expertise to: (1) prevent prohibited services and product from slipping into
future networks; and (2) identify legacy products and services for removal and replacement. CoSN
and SETDA echo SECA’s argument that service providers – as industry specialists – “are best
equipped…to identify the origin of components” of finished products, product components, and
specific subcomponents that are “incorporated in their proposals for eligible E-rate products and
services.” Furthermore, while E-rate applicants must assume responsibility for understanding the
supply-chain requirements and exercise great care when selecting vendors and acquiring
equipment, and services, in general, E-rate service providers (carriers and non-carriers) are best
positioned to recover disbursed funds when the supply chain rules are violated. We also agree with
SECA that the “Commission should expect applicant adoption of “best practice” procurement
policies consistent with such rules and the underlying security threats.”

Lastly, CoSN and SETDA agree with the Commission’s decision in the Report and Order to
prohibit not only finished products by a covered company, but also products containing specific
components or sub-parts produced or provided by a covered company. We agree with the
Commission that this approach provides more regulatory certainty for USF recipients and urge the
agency to use the same scope to identify equipment and services subject to a removal and
replacement requirement.
Respectfully submitted,

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