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October 24, 2019

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Notice of Ex Parte Communication
RM-11841, WC Docket Nos. 13-184, 02-6
In the Matters of Petition for Rulemaking of Central Texas Telephone
Cooperative, Inc., et al.; Modernizing the E-Rate Program for Schools and
Libraries; Schools and Libraries Universal Service Support Mechanism

Dear Ms. Dortch:

On October 22, 2019, Jeffrey Strenkowski, Vice President, Deputy General Counsel of Governmental Affairs for Uniti Fiber¹ and the undersigned counsel met with D'wana Terry, Associate Bureau Chief; Ryan Palmer, Division Chief; Gabriela Gross, Deputy Division Chief; Bryan Boyle, Assistant Division Chief; James Bachtell, Assistant Division Chief; Stephanie Minnock, Attorney Advisor; and, Hayley Steffen, Attorney Advisor of the Wireline Competition Bureau ("Bureau") of the Federal Communication Commission ("Commission").

At the meeting, Uniti Fiber discussed its comments² and reply comments³ regarding the petition for rulemaking ("Petition") filed by a group of Texas carriers (Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc., and Telcel Communications, LLC (collectively,

¹ "Uniti Fiber" refers to a group of companies commonly owned by Uniti Group Inc. that provide telecommunications and other services in various parts of the U.S. It is comprised of Southern Light, LLC, Uniti Fiber LLC, Hunt Telecommunications, Inc., Information Transport Solutions, Inc., and certain other affiliated service providers. During the meeting, Uniti Fiber shared a map of its fiber network. See Uniti, *Network Map*, <https://uniti.com/network?map=fiber> (last visited Oct. 24, 2019).

² Uniti Fiber Comments, RM-11841, WC Docket Nos. 02-6, 13-184
<https://www.fcc.gov/ecfs/filing/107010508627947> (filed July 1, 2019).

³ Uniti Fiber Reply Comments, RM-11841, WC Docket Nos. 02-6, 13-184
<https://www.fcc.gov/ecfs/filing/10716337715586> (filed July 16, 2019).

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"Petitioners").⁴ Uniti Fiber discussed that the Petition misstates facts about the E-Rate competitive bidding process and re-affirmed its position that the Petition's proposed rules would not promote competition, but instead entrench incumbent providers. Due to the Petition's failure to meet the requirements of the Commission's rules, 47 CFR §§ 1.401(c), (e), the Bureau should dismiss the Petition consistent with prior actions of the Bureau and other Commission bureaus.⁵

Uniti Fiber discussed that small providers (like Petitioners) are not disadvantaged by the E-Rate consortia competitive bidding process or request for proposals ("RFPs"). The record overwhelmingly illustrates that the Commission dispelled this misconception in the *2014 Modernization Order* by clarifying that a single provider did not have to serve all members of a consortium.⁶ Further, the consortia that have participated in the proceeding have demonstrated they did not require bidders to serve every location in the consortium.⁷ Uniti Fiber shared its experience bidding on E-Rate RFPs, including consortia proposals, and made clear that Uniti Fiber has participated in E-Rate projects where the company only serves part of the overall project (either as an independently selected bidder or as a sub-contractor providing backhaul solutions or other necessary network elements).⁸ The record and Uniti Fiber's experience demonstrate that the

⁴ *Petition for Rulemaking of Central Texas Telephone Cooperative, Inc. et al.*, RM-11841, WC Docket Nos. 02-6, 13-184, <https://www.fcc.gov/ecfs/filing/10522043215849> (filed May 22, 2019) (*Petition*).

⁵ See *Consumer Watchdog Petition for Rulemaking to Require Edge Providers to Honor 'Do Not Track' Request*, RM-11757, 30 FCC Rcd 12424, 12425, para. 4 (WCB 2015) (dismissed a petition for rulemaking to require edge providers to honor do not track requests as being frivolous since the Commission had "unequivocally" stated it did not regulate edge providers); and see *Petition for Rulemaking filed by Robert A. Dukish*, DA 19-1054, at 2 (WTB 2019) (the Wireless Telecommunications Bureau dismissed a petition for rulemaking for failing to present evidence that compliance with the station identification rule has hindered amateur emergency communications); *Amendment of 47 CFR Part 90 of the Commission's Rules to Allow an Additional Frequency and Emission to be Designated for Travelers' Information Stations*, PRM15PS, 32 FCC Rcd 3049, 3051-51, paras. 6-9 (PSHSB 2017) (the Public Safety and Homeland Security Bureau dismissed a petition for rulemaking for Traveler's Information Stations to use FM stations due to failure to show a specific need and consider ongoing Commission spectrum proceedings); *Petition for Rulemaking filed David A. Behar Dismissed*, 31 FCC Rcd 53, 54 (OET 2016) (the Office of Engineering and Technology dismissed a petition for rulemaking for failing to properly understand the spectrum and equipment certification rules).

⁶ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8943, para. 179 (2014) (*2014 Modernization Order*); State E-Rate Coordinator's Alliance (SECA) Comments at 9-11; AASA & AESA Comments at 2; New America's Open Technology Institute Comments at 11-12; INCOMPAS Opposition at 6-9; SHLB, *et al.* Comments at 7-9; Education Super Highway Comments at 7-8.

⁷ SHLB, *et al.* Comments at 6; Texas Education Service Centers (ESC) Regions 10, 11 and 15 Ex Parte, <https://ecfsapi.fcc.gov/file/108141196214611/Texas%20ESCs%20ex%20parte%208-13-19%20Comm%20O'Rielly.pdf> (filed Aug. 13, 2019); Utah Education and Telehealth Network Ex Parte, <https://www.fcc.gov/ecfs/filing/10826507213967> (filed Aug. 27, 2019); Cochise County Education and Technology Consortium Ex Parte, <https://www.fcc.gov/ecfs/filing/1092574918450> (filed Sept. 25, 2019).

⁸ In limited cases Uniti Fiber leases inputs from other carriers in order to undertake some E-Rate projects, but as a matter of practice the company's business model is to bid on projects in which it

competitive bidding process does not unfairly disadvantage any provider simply because the provider cannot serve the entirety of a RFP service area.⁹

Further, Uniti Fiber reiterated that the record and the accompanying USF rules establish High Cost funding and E-Rate funding are complementary and not duplicative.¹⁰ High Cost funding supports the construction and maintenance of broadband-capable facilities in particular *areas*,¹¹ but does not direct specific last-mile builds that connect *specific school and library locations*.¹² Further, High Cost funding supports *residential* consumers with lower speed requirements¹³ that are not equivalent to the *enterprise* services schools and libraries subscribe to in E-rate.¹⁴ Finally, E-Rate support in any particular service area is not counterproductive to High Cost funding in the same area as E-Rate construction can and sometimes does utilize High Cost network facilities that are capable of enabling last-mile connections to schools or libraries.

Finally, Uniti Fiber explained that the Petition's proposed rules to not alleviate any alleged harms in the competitive bidding process, but only ensure incumbent providers receive multiple

believes it can directly serve the applicant(s) rather than relying on inputs from other carriers, so the leasing of other facilities is a rare exception rather than a common practice.

⁹ The company cannot recall seeing any consortia RFPs (at least in recent years) that prohibit awards to multiple providers.

¹⁰ See Uniti Fiber Reply Comments at 4.

¹¹ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17680, para. 48 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3164, para. 208 (2016) (*citing Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15688-89, para. 125 (2014) (*2014 High Cost Modernization Order*); 47 CFR § 54.313(e)) (explaining High Cost funding goals and policies to focus spending on deploying broadband-capable infrastructure to areas lacking service at specific Internet speed thresholds, and designing reporting requirements based on locations capable of being served, but not on subscription).

¹² 47 CFR § 54.502(a)(1); see USAC, *Fiber – Summary Overview*, (September 2017) (explaining the types of special construction funding available to schools and libraries to support subscription and connection through E-Rate).

¹³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17697, para. 94 (establishing a 4/1 Mbps standard); see also *2014 High Cost Modernization Order*, 29 FCC Rcd at 15649, para. 15 (requiring companies receiving High Cost funding for fixed broadband to serve consumers with speeds of at least 10 Mbps for downloads and 1 Mbps for uploads).

¹⁴ See *2014 Modernization Order*, 29 FCC Rcd at 8885-86, paras. 34, 39 (stating the connectivity goals of the E-rate program are 100 Mbps per 1000 students for Internet access, and 10 Gbps per 1000 students for WAN/last mile connectivity).

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opportunities to retain E-Rate services.¹⁵ The proposed rules remove the competition incentives from the E-rate competitive bidding process in favor of incumbent carriers' challenge and negotiation processes. This affords incumbent providers a second opportunity to receive funding they should have bid on and did not win in a competitive bid process. The negotiation process adds significant delays to the E-rate funding approval timeline that likely delays construction beyond the funding year. These delays and the Petition's challenge process increases *ad hoc* reviews for the E-rate program that already has significant backlog processing and approving applications.

Due to the failure of the Petition and the record to demonstrate harm, set forth all facts and data necessary to support the rule changes requested, and the proposed rules not alleviating the competitive issues the Petition fails to establish, the Bureau should dismiss the Petition. Here, the petition for rulemaking should be denied because it fails to allege facts justifying the rule changes and incorrectly asserts smaller providers cannot participate in consortia RFPs. The Petition and the record do not include sufficient facts describing how the RFPs are harming smaller providers, showing how current rules for partial bids are ineffective, showing how selected service providers were not the most cost-effective, or showing where the incumbents have existing connections satisfying school's requested needs that are "overbuilt" by E-rate service providers. The Petition and supporting commenters rely on factually incorrect assertion that smaller providers cannot participate in larger RFPs when the E-rate rules plainly require consideration of partial bids by smaller providers. Consistent with prior Bureau action and similar actions of other Commission bureaus, the Petition should be dismissed.¹⁶

Sincerely,

/s/ Tamar E. Finn

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¹⁵ Uniti finds RFPs through publicly available online USAC databases, and evaluates them to determine if they include institutions that Uniti Fiber believes it can directly serve—incumbent providers should be able to do so too with minimal effort.

¹⁶ See *supra* note 5.