

March 10, 2020

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Letter

*Petition for Rulemaking to Prevent Waste in the Universal Service Fund E-Rate Program, RM-11841, WC Docket No. 13-184, CC Docket No. 02-6 (“Petition”);
Establishing the Digital Opportunity Data Collection, WC Docket No. 19-195;
Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10.*

Dear Ms. Dortch:

Totelcom Communications, LLC (“Totelcom”), by counsel, hereby submits this *Ex Parte* letter to supplement the record in the above captioned proceedings with specific facts and costs demonstrating that the duplicative fiber network project awarded Universal Service Fund (“USF”) Schools and Libraries Program (“E-Rate”) funding in Region 14 of Texas is wasteful and an abuse of the E-Rate program. The E-Rate project awarded funding in Region 14 is more costly and is resulting in less quality fiber to at least four (4) independent school districts (“ISDs”) than the previously existing fiber service available to them. Totelcom also provides more detail on additional proposals that, if implemented by the Federal Communications Commission (“FCC” or the “Commission”), would save the federal government millions of dollars in waste stemming from the construction of duplicate fiber networks. While it seems obvious that spending millions of dollars to lay new fiber where fiber already exists is not cost effective, the Schools Health and Libraries Coalition (“SHLB”) and other parties in this proceeding have alleged otherwise.¹ As demonstrated in this proceeding² and further in this

¹ See, e.g., Letter to Chairman Ajit Pai from John Windhausen, Jr., Executive Director of SHLB, RM-11841 (Jan. 14, 2020)(“SHLB Ex Parte”) at 2 (stating the Texas Carriers’ proposal would “lead to higher prices for schools and libraries, increase the burden on the E-rate fund, and thereby increase the burden on American ratepayers.”).

² See Letter from Steven D. Metts to Commissioner Michael O’Rielly (Nov. 13, 2019). See, also, Comments of Barry County Telephone Company and MEI Telecom, Inc., RM-11841, (filed Jul.

letter, those allegations are baseless and misrepresent the Petition. Current FCC rules that allow upfront special construction costs to be used to overbuild an existing USF-funded fiber network are resulting in hundreds of millions of dollars of waste in the E-Rate program. In their Petition,³ the Texas Carriers' proposed rule changes to prevent such waste never included an all-out prohibition on fiber construction to schools and libraries. In addition to the proposals made in their Petition, the Texas Carriers continue to be open to other solutions, including implementing new rules to ensure a more fair and open Request for Proposal ("RFP") process that would result in more bids and less costs to the E-Rate program. Totalcom suggests such changes to the RFP process below and also recommends the Commission consider using the broadband maps or existing Form 471 information to prevent overbuilding when such overbuilding is not the most cost-effective solution.

The Texas Carriers Support Fiber Connections to All Schools and Libraries.

In order to correct inaccurate statements made by commenters in this proceeding, including SHLB,⁴ Totalcom reiterates that the Texas Carriers have never advocated for a prohibition on fiber construction to schools and libraries nor have they recommended that incumbents be given a preference in the E-Rate competitive bidding process or a right to void the results of a properly run RFP. The Texas Carriers fully support E-Rate funds being used to bring fiber connections to schools and libraries that currently do not have fiber. In fact, the Texas Carriers support using E-Rate funds to construct duplicative fiber connections to schools and libraries that already have fiber connections when that is the most cost-effective solution. The Texas Carriers actual proposal, if implemented, will save hundreds of millions of dollars in waste from the finite E-Rate fund by requiring a fiber lease negotiation process before granting special construction costs to duplicate fiber routes that already exist. The negotiation process would only be required in instances where a school already has a fiber connection to it capable of delivering the same level of service as that requested by the school for the proposed new fiber build. Further, use of the existing fiber (for the exact same service) would *only* be required if it was less expensive than building a new fiber connection.

Texas Region 14 Project Facts and Costs.

For decades, Totalcom has been the solution provider for voice and/or internet services to the following four (4) ISDs within its service area: Comanche ISD, DeLeon ISD, Gorman ISD and Sidney ISD. In November 2017, Totalcom sent a letter addressed to the Superintendents of each of the four ISDs, with a copy sent to the Region 14 Director of Technology, offering fiber

1, 2019); Comments of the Concerned Rural Carriers, RM-11841, (filed Jul. 1, 2019); and Comments of Oregon Telecommunications Association & Washington Independent Telecommunications Association, RM-11841 (filed Jul. 1, 2019).

³ The Petition was filed by Central Texas Telephone Cooperative, Inc. ("Central Texas"), Peoples Telephone Cooperative, Inc. ("Peoples"), and Totalcom (collectively, the "Texas Carriers").

⁴ See SHLB Ex Parte at 2; see, also, Comments of EducationSuperHighway, RM-11841 (filed Jul. 1, 2019) at 5.

optic internet service to each ISD for up to 1GB service, and even higher if needed, for approximately two dollars (\$2.00) per megabit and no special construction costs (the “Letter Offer”).⁵ Totalcom received no response from any of the Superintendents or from the Region 14 Director of Technology.

At that time, Totalcom was unaware that Region 14 had issued a Form 470 and RFP requesting bids for fiber optic services to each of these four ISDs as well as thirty-seven (37) additional ISDs, comprising the entire thirteen (13) county Region.⁶ Totalcom was unaware of the Form 470 and RFP because the Form 470 was filed using the zip code of the Regional Educational Service Center, 79601, which is more than seventy (70) miles away from Totalcom’s service area and the schools Totalcom served at that time. Totalcom staff regularly checked for 470s filed within the zip codes of the ISDs it served or could serve, including 76442, 76444, 76454 and 76474. No Form 470 or RFP was issued for internet service in any of the individual ISDs’ zip codes for the 2017 or 2018 funding year. Had an RFP been filed, Totalcom would have submitted a bid as evidenced by the Letter Offer. Totalcom staff never checked for Form 470s and RFPs issued outside of their reasonable service area because they were cognizant that they did not have the capacity to provide service to an area that far away from Totalcom’s service territory (nor would they have had the ability to service an area as vast and large as Region 14). Perhaps, given notice and more time to respond, Totalcom could have partnered with other local carriers that already had fiber to the remaining thirty-seven ISDs to submit a joint bid for the entire region, but Totalcom was never provided effective notice, and even if it had been, would never have had the time needed to coordinate with other providers. The provider selected for Region 14’s RFP was a larger national provider with no existing fiber to a vast majority, if not all, of the ISDs. The selected provider, through Region 14, requested and was awarded special construction costs, in excess of seventeen million dollars (\$17,000,000.00), to lay new fiber to some schools that already have fiber connections.

Despite Totalcom’s inability to submit a bid due to lack of notice, the attached Excel chart⁷ shows that the partial bid Totalcom would have submitted,⁸ had it been given the opportunity, for the four ISDs, would have resulted in a substantial savings to the E-Rate program. In addition, Totalcom attaches photographs of the aerial fiber that is replacing Totalcom’s existing ground trenched fiber encased in conduit. Aerial fiber is generally considered less reliable than fiber buried in conduit.⁹ Aerial fiber, which is “bare” fiber hanging on poles, is subject to degradation from sun, wind and other weather elements and susceptible to snags and cutting from tall trucks, car accidents and/or animals. Fiber buried in conduit provides much more effective protection from such factors. The photographs alone demonstrate the far inferior quality fiber being installed.¹⁰ As stated in Totalcom’s Letter Offer, Totalcom’s existing

⁵ See Exhibit I, Offer Letter.

⁶ See Exhibit II, Region 14 Map. The dots represent ISDs where a carrier has preexisting fiber service available and the dots represent ISDs with unknown fiber access.

⁷ See Exhibit III, Cost Comparison Chart, Narrative and Illustration.

⁸ The partial bid is based on pricing from the Letter Offer and Totalcom’s website pricing.

⁹ See Exhibit IV, Aerial Fiber Build in Region 14.

¹⁰ It is worth noting that pleadings filed by the Regional Education Service Centers (“ESCs”) in this proceeding comparing broadband infrastructure to road infrastructure is entirely misleading

fiber to these four ISDs is capable of providing 1 gigabit services to the schools, and more if necessary. In direct contradiction of SHLB's and the Regional Education Service Centers' (ESCs) pleadings in the proceeding, Totelcom's service would have been less costly and would have provided equal and greater service speeds that would, in fact, be more reliable than the less reliable aerial fiber currently being installed at the costs of ratepayers. In fact, as shown in the attached Excel chart and the accompanying narrative, Totelcom's pricing for the four ISDs would have cost One Million Five Hundred Ninety-Six Thousand Two Hundred and Seventy Six Dollars and Forty Nine Cents (\$1,596,276.49) *less*, with *no* special construction costs, for the initial 5-year contract than the Region 14 awarded contract for the *same* services.

Proposed Changes To The RFP Process.

In addition to the proposed rule changes contained in the Petition, Totelcom is open to other ideas aimed at preventing or discouraging government waste as a result of overbuilding existing fiber networks to ensure that E-Rate funds are being maximized to the benefit of all schools and libraries. Totelcom acknowledges that part of the reason overbuilding is occurring is because, as correctly pointed out by the ESCs and SHLB, existing carriers did not participate in the RFP processes. However, as explained above, Totelcom could not submit a meaningful bid due to lack of notice and time to coordinate with other carriers, and, quite frankly, because of the size of geographic area, the RFPs favored a larger carrier. Totelcom has identified a number of steps that the Commission can take to reform the RFP process to ensure greater participation and more competition in the process, including, but not limited to the following solutions.

The Commission should require that Applicants file FCC Form 470 and RFPs in every zip code in which service is being requested. The current E-Rate competitive bidding processes allow for RFPs to be posted under a single zip code, as opposed to including all zip codes that the proposed services cover. This is problematic because service providers frequently search posted FCC Form 470s and associated RFPs by zip code, a particularly helpful function in large states like Texas where searching by state or applicant type may produce an onerous number of results. Searching by zip code allows service providers to search specific areas where there are facilities already in place. Regional consortia can serve hundreds of schools across multiple counties and posting a region-wide RFP under a single zip code may not properly notify service providers in all of those areas. Therefore, under the current process, service providers who do

and bizarre because, unlike state roads and interstate highways, the Texas Carriers' existing fiber has the same capacity as the new fiber networks and is able to serve the population of their respective areas "effectively and efficiently." *See* Letter from Gina Spade, Counsel to Texas Education Service Centers Regions 10, 11 and 15 to Marlene H. Dortch, Secretary, FCC, RM-11841 (filed Aug. 28, 2019) at 1. The ESCs' implication that overbuilding is acceptable where the existing fiber is incapable of accommodating the "growth" and "needs" of the schools is simply untrue and underscores the ESCs' lack of understanding of telecommunications. The new fiber being built to the schools with E-Rate funds is often functionally identical to the existing fiber and, in the case of the fiber constructed with E-Rate funds in Region 14, subpar. In the Texas Carriers' case, the proposed services can run over existing fiber. In fact, the existing fiber to the schools in the Texas Carriers' service areas is fully capable of delivering 10 Gbps, 100 Gbps or multiple 100 Gbps streams using DWDM technology.

not serve the listed zip code or anywhere near the listed zip code are put at risk of missing an RFP that covers their service area and are unable to submit a bid. All three of the Texas Carriers encountered this barrier when they did not submit bids for RFPs because the regional consortia posted under zip codes that are 80 to 130 miles away from the school districts they serve, effectively preventing the submission of a bid for the project.¹¹ Requiring Applicants to list every zip code that the proposed services may cover will increase the number of bids and result in a more competitive, cost-effective solution. It should be noted that SHLB agrees with this suggestion and in their most recent *Ex Parte* letter recommended that the Universal Service Administrative Company (“USAC”) expand and improve the existing “Search” function for Form 470s.¹² While adoption of this proposal alone will not solve the problem of using E-Rate special construction dollars to duplicate existing fiber networks, it will allow more participation for existing and interested service providers.

E-Rate Applicants should not be allowed to give preferential weight to service providers capable of providing service to the entire region in the bid evaluation criteria in RFPs. In RFPs where it is unclear that partial bids will be accepted or in the limited 28-day timeframe to form a group bid, this is a scoring disadvantage to existing, local carriers that are automatically unable to earn those points in the evaluation. Similarly, giving more weight to service providers that have experience with large network deployments effectively weeds out smaller providers with existing facilities in place, that require no construction costs, and affords the larger providers a significant advantage. It is difficult to understand how giving preferential treatment to service providers capable of providing service to all of an expansive region or with large network deployment experience fosters a “fair and open” process when it limits and prioritizes the type of respondents, specifically to larger service providers with a greater reach.

Service Providers should be given additional time to respond to RFPs that cover more than 50 miles. Under the current competitive bidding rules, service providers only have 28 days from the posting date to respond to an RFP before the Applicant may select a provider.¹³ As the Texas Carriers have previously discussed in the record, even though they may be the best equipped to serve schools within their own rural service area, they were not equipped to serve schools that are over a hundred miles away nor does 28 days provide them with sufficient time to form a group bid.¹⁴ The coordination required to provide services covering more than 50 miles impedes small providers from competing.¹⁵ Therefore, the current competitive bidding rules do

¹¹ Peoples was not aware of an RFP issued by Region 10 ESC because it was listed under 75081, the zip code for Richardson, Texas, which is roughly 100 miles from Peoples. Totalcom was not aware of an RFP issued by the Region 14 ESC under 79601, the zip code for Abilene, Texas, which is more than 80 miles from Totalcom. Central Texas was not aware of an RFP issued by Region 15 ESC under 76903, the zip code for San Angelo, TX, which is more than 120 miles away from Central Texas.

¹² See SHLB Ex Parte Letter at 4.

¹³ 47 CFR 54.503(c)(4).

¹⁴ Reply Comments of Central Texas Telephone Cooperative, Inc., et al., RM-11841; WC Docket No. 13-184; CC Docket No. 02-6, at 4, n. 10 (filed July 16, 2019) (“Texas Carriers Reply”).

¹⁵ Texas Carriers Reply at 6.

not provide an equal opportunity to bid and the Commission should consider implementing a rulemaking proceeding to include additional time for larger requests so as not to disadvantage existing, local participants in the competitive bidding process.

To increase transparency in the RFP process and ensure cost-effectiveness of proposed services, Applicants should be required to publish certain information regarding its competitive bidding process. When approving special construction costs, applicants should provide an accounting of everything that they are building, including the number of strands and a description of how non-warehoused fiber will be used. Additionally, whenever special construction funds are proposed to be allocated, applicants should be required to include the results of their scoring rubric for the bids, so that the public has transparent information regarding whether the project that was selected was, in fact, the “most cost effective.” Moreover, in order for the competitive bidding process to truly be open and fair, the Commission should take steps to limit any behind-the-scenes coordination. One way to accomplish this is to identify the names of the consultants who write the proposals and ensure that consultants who design the network for Consortia are prohibited from any involvement in bidding on the project.

Ineligible locations and services should be excluded from the RFP process. Allowing ineligible locations to be included in an RFP may also unfairly persuade the bid reviewer, even if the RFP claims that ineligible locations will not be included in the evaluation. Including ineligible locations runs the risk of those locations being subsidized by USF funds and should therefore be excluded from the process altogether. In addition, ineligible services like technical support and network maintenance should be noted and left out of the RFP.

Broadband Maps Could Prevent Waste in the E-Rate Program.

Possibly the most effective and simplest way to resolve waste in the E-Rate program would be for the Commission to require USAC to evaluate whether a school or library actually needs a newly constructed fiber network before granting upfront special construction costs for the same. While it seems the administrator of an enormous fund like E-Rate would track which schools and libraries have existing fiber and which schools and libraries need it (either through inquiry or data collection via questions on the Form 470s and Form 471s), it does not. In his March 7, 2019 letter to Radha Sekar, CEO of USAC, Commissioner Michael O’Rielly asked: “Does USAC understand the E-Rate rule to permit funding for special construction projects... that would duplicate, in whole or in part, fiber networks that have been built using federal funds?”¹⁶ Commissioner O’Rielly also asked how many “WAN projects would result in overbuilding another provider’s network, in whole or in part?” In response, Ms. Sekar indicated that they did not track this information, stating: “we do not have sufficient data to determine whether E-rate funded projects duplicate another provider’s networks.”¹⁷ Carriers’ deployments are proprietary information and not publicly available and other publicly available sources, such as study area codes (SACs) and the National Broadband Map, are not sufficiently detailed to

¹⁶ Letter from Commissioner Michael O’Rielly to Radha Sekar (Mar. 7, 2019), 1.

¹⁷ Letter from Radha Sekar to Commissioner Michael O’Rielly (Apr. 1, 2019), 4.

make this determination.” The Digital Opportunity Data Collection (“DODC”)¹⁸ adopted by the Commission to create a more granular broadband map could provide an ample opportunity for USAC to actually have this information. The DODC is an important first step in fixing the broadband mapping issues, which ultimately can lead to more efficient use of E-Rate funds. The Commission needs to use these maps to “avoid duplicative funding” within the E-Rate program;¹⁹ but to do so, the FCC needs to revise its rules to prohibit special construction costs where fiber already exists when overbuilding is not the most cost effective solution. Other USF programs, like high-cost A-CAM, Connect America Fund and the proposed Rural Digital Opportunity Fund,²⁰ already prohibit duplicative funding. The E-rate program requires rule changes to similarly avoid duplicative, wasteful funding.

Totelcom continues to support the mission and successes of the E-Rate program. However, the current rules have resulted in inefficient use, waste and abuse of these critical, finite funds. Therefore, Totelcom submits these additional proposals as a way to ensure the goals of the E-Rate program are being met and reiterate that the Commission should initiate a proceeding to address the gaps in the current E-Rate competitive bidding rules that allow such waste.

Pursuant to Section 1.1206(b) of the Commission’s Rules, we are filing this letter electronically in the above-captioned dockets. Please contact the undersigned if you have any questions.

Respectfully submitted,



Donald L. Herman, Jr.
Clare L. Andonov
Counsel to Totelcom

¹⁸ See *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (rel. Aug. 6, 2019) (“DODC Notice”).

¹⁹ DODC Notice, ¶ 84.

²⁰ See, e.g., *In re Rural Digital Opportunity Fund; Connect America Fund*, WC Docket No. 19-126, WC Docket No. 10-90, Report and Order (rel. Feb. 7, 2020), ¶¶ 12-13 (“Not included in these categories for Phase I eligibility are census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband service, and census blocks where a Rural Broadband Experiment support recipient is obligated to offer at least 25/3 Mbps service... we exclude census blocks which have been identified as having been awarded funding through the U.S. Department of Agriculture’s ReConnect Program, or awarded funding through other similar federal or state subsidy programs to provide 25/3 Mbps or better service.”)

Totelcom

Communications, LLC

Exhibit I

November 15, 2017

Doug Bowden, Superintendent
Sidney ISD
P. O. Box 190
Sidney, TX 76474

Dana Marable, Superintendent
DeLeon ISD
425 South Texas
DeLeon, TX 76444

Gary Speegle, Superintendent
Comanche ISD
405 North Lane
Comanche, TX 76442

Mike Winter, Superintendent
Gorman ISD
P. O. Box 8
Gorman, TX 76454

Dear Superintendent,

I want to take this opportunity to make sure you are aware of our capabilities to upgrade the internet service available to your schools. You are the public schools in our service area and I know you use a combined network today so I am addressing you as a group.

We hear from different sources throughout the state a lot of confusing information about what is and is not available, or could be available in areas. The information is not gathered very well and its accuracy is lacking.

We now serve all of the schools in our Oklahoma service area and in Northern Texas with direct internet access via fiber connections, removing the wireless networks that were previously used, allowing much higher transmission rates. Our local area schools are all that we do not serve.

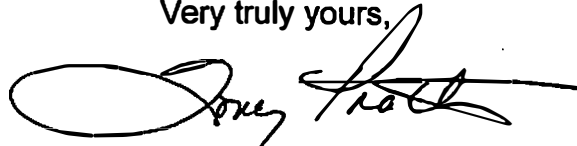
Fiber is available at your locations as follows: DeLeon – already in place; Gorman – approximately 600' away; Sidney – approximately 800' away; Comanche – across FM 3381. No special construction charges would be required, just some time to extend the fiber across your property to your interface point.

Speeds up to 1GB could be ordered at any location and even higher with some electronics changes if ever needed. Pricing will depend on speeds requested, but could be as low as \$2.00 per Mb.

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Superintendents
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Thank you for your consideration and we look forward to serving your students' needs.

Very truly yours,

A handwritten signature in black ink, appearing to read "Toney Prather". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

TONY PRATHER
President

TP/db

cc: Robb McClellan, Director of Technology
Region 14
1850 Hwy 351
Abilene, TX 79601

REGION 14

