

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Petition for Rulemaking to Amend and Modernize )  
Part 54 of the Commission’s Rules to Prevent )  
Waste in the Universal Service Fund E-Rate )  
Program )

**PETITION FOR RULEMAKING OF CENTRAL TEXAS TELEPHONE  
COOPERATIVE, INC., PEOPLES TELEPHONE COOPERATIVE, INC. AND  
TOTELCOM COMMUNICATIONS, LLC**

To: Marlene H. Dortch, Secretary, Federal Communications Commission

**I. INTRODUCTION AND BACKGROUND**

Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc., and Totelcom Communications, LLC (collectively, the “Texas Carriers” or the “Companies”), by counsel, hereby submit this petition pursuant to Section 1.401 of the Federal Communications Commission (“FCC” or the “Commission”) Rules.<sup>1</sup> For the reasons stated herein, the Texas Carriers urge the Commission to initiate a rulemaking proceeding to consider amending Part 54 of the Commission Rules, specifically with respect to the Universal Service Fund (“USF”) Schools and Libraries Program (“E-Rate”) competitive bidding requirements, to include safeguards which would discourage overbuilding of existing federally supported fiber networks.

The Texas Carriers and their wholly-owned subsidiaries provide rural voice and broadband service, as well as security and medical alarm, fixed fifth-generation wireless broadband, and other services throughout underserved portions of central and east Texas. The Texas Carriers fully support the E-Rate program, which has been successful in bringing high-

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<sup>1</sup> 47 C.F.R. § 1.401.

speed broadband connectivity to our nation’s schools and libraries. In fact, each of the Texas Carriers has successfully built broadband infrastructure, including fiber connections, to schools in their areas with the assistance of the E-rate and High Cost Programs. The Companies have previously consulted with FCC staff and other industry stakeholders regarding its concerns of the recent use of federal funds through the E-Rate Program for special construction projects that overbuild existing federally supported fiber networks in Texas.<sup>2</sup>

The Texas Carriers are particularly concerned about region-based consortia groups in Texas that have issued Requests for Proposals (“RFPs”), through the E-Rate program, for the construction of Wide Area Networks (“WANs”) to provide broadband services to each school within the region, even though many of those schools are already served by fiber. Because the regions include hundreds of schools and cover thousands of square miles, only select, large service providers have been able to respond to the RFPs. Smaller providers that are already serving individual schools within the region, via their USF-supported fiber networks, were unable to respond to the RFPs due to the sheer size of the requested WANs. Accordingly, only a few providers actually responded to the RFPs and the providers that responded did not necessarily propose the most cost-effective solutions. In at least three cases, the selected provider for these RFPs sought special construction costs, totaling over \$100 million dollars, to lay fiber to schools that already have fiber connections which were at least partially subsidized by USF. Current FCC rules require consortia to consider all bids “with price being the primary

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<sup>2</sup> See Letter from Donald L. Herman and Clare C. Liedquist, Counsel to Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc. and Totelcom Communications, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket 13-184 (filed Nov. 19, 2018). See also Letter from Commissioner Michael O’Rielly, Federal Communications Commission, to Radha Sekar, CEO of the Universal Service Administrative Co. (Mar. 7, 2019).

factor, and the bid selected... be for the most cost-effective service offering.”<sup>3</sup> Overbuilding an existing USF-supported fiber network is likely not the most cost-efficient method to acquire service. However, in establishing the current rules, the Commission likely did not contemplate that there would only be a few bids in the RFP process or that those few bids may require overbuilding of existing fiber networks. Nothing in the current rules prohibits the selected provider from seeking special construction costs of a duplicative fiber network nor do the rules require the selected provider to negotiate leasing rights of existing fiber. Accordingly, the Texas Carriers urge the Commission to consider implementing a rulemaking proceeding to include additional safeguards to the funding approval process for E-Rate projects that overbuild existing USF-supported fiber networks.

## II. DISCUSSION

While the Companies continue to support the program and the Commission’s goals of “closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation’s schools and libraries,”<sup>4</sup> the Texas Carriers are concerned about the use of E-rate funds to overbuild or build duplicate networks to existing fiber networks that were previously constructed using USF funds. For example, a single rural school or library could end up with two fiber connections supported by USF, one facility previously constructed with the support of funding from the High Cost or other USF programs, and a new redundant facility constructed with funding from the E-Rate program. Such overbuilding is not only wasteful and an inefficient use of governmental program funds, but it also reduces the pool of funds available to rural schools and libraries that actually need fiber broadband connection.

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<sup>3</sup> 47 C.F.R. § 54.503(c)(2).

<sup>4</sup> See NPRM, ¶ 1.

For these reasons, the Texas Carriers believe that the Commission should consider amending the E-Rate competitive bidding requirements, specifically 47 C.F.R. §§ 54.502 and 54.503, to include safeguards that might eliminate, or at least reduce, the possibility of overbuilding existing USF or other government funded networks with E-Rate funds. The Companies propose that the Commission adopt rules that prohibit the use of universal service funds for special construction of fiber networks that overbuild existing fiber networks. To determine whether fiber already exists, the Texas Carriers suggest that the Commission incorporate a public challenge process that requires an E-Rate applicant (including consortia) seeking funding for special construction fiber projects, whether for self-provisioned networks or networks owned by a commercial provider, to confirm that no existing fiber facilities exist. In order to effectively do so, the Companies propose requiring E-Rate applicants seeking new fiber builds to post their proposed special construction projects on the USAC website and allow a sixty (60) day challenge period in which existing provider(s) can demonstrate that its existing network facilities are capable of connecting via fiber the school or library in question. The rules should then provide that funding will not be approved for any special construction costs associated with laying new fiber infrastructure to any portion of the proposed network where it is demonstrated that fiber already exists.

As outlined in greater detail in Exhibit I attached hereto, the Texas Carriers recommend adding the following sentence to Section 54.502(a)(1) of the Commission's Rules: "Category One services shall not include special construction costs for the construction of fiber where it has been demonstrated that fiber already exists, unless the existing fiber owner is unwilling to negotiate in good faith to lease that fiber at reasonable market-based prices." Next, the Texas

Carriers' suggest adding the following paragraph to Section 54.503 of the Commission's rules, as detailed in Exhibit I:

- (d) *Posting of FCC Form 471 Special Construction Exhibits for Challenge Period.* (1) In submitting their completed FCC Form 471s, applicants that request special construction costs for fiber shall also submit a 471 Special Construction Exhibit summarizing their proposed fiber buildout plans that require reimbursement for upfront special construction costs. This FCC Form 471 Special Construction Exhibit shall include, at a minimum, the following information:
- (i) A list of the schools or libraries that shall be connected to the newly laid fiber; and
  - (ii) A map depicting the proposed fiber lines.
- (2) The Administrator shall post each FCC Form 471 Special Construction Exhibit that it receives from an applicant on its Web site designated for the purpose of allowing broadband carriers, as well as state and local entities, the opportunity to challenge the need for these proposed new fiber facilities.
- (3) After posting on the Administrator's Web site an FCC Form 471 Special Construction Exhibit, the Administrator shall wait at least sixty (60) calendar days before approving the special construction costs. During this 60-day period, broadband carriers, as well as state and local entities, shall have the opportunity to challenge the need for these proposed new fiber facilities. Challengers shall submit information to the Administrator to show that fiber already exists in the applicable locations.
- (4) If it is shown that fiber already exists, the selected service provider and the existing fiber owner shall have a one hundred and twenty (120) day period to negotiate in good faith the terms, conditions and reasonable, market based price of a fiber lease agreement.
- (5) The Administrator shall consider any information submitted during this challenge period before approving those special construction costs pursuant to Section 54.502(a)(1).

Existing Section 54.503(d) would be retitled Section 54.503(e), existing Section 54.503(e) shall be retitled Section 54.503(f), as depicted in the attached Exhibit I.

### **III. CONCLUSION**

The Companies fully support the E-Rate program and appreciate the benefits the program brings to schools and libraries throughout rural America. However, waste and misuse of funds in the program could lead to leaving the schools that are most in need of highspeed broadband connectivity on the wrong side of the digital divide. The Texas Carriers are concerned about the use of E-Rate funds to overbuild existing networks that have been previously constructed using other USF or other government funds. In order to eliminate or reduce this potentially inefficient

and wasteful use of USF program funds, the Companies encourage the Commission to amend the E-Rate competitive bidding requirements in the manner described above. Such amendments will, in the opinion of the Companies, encourage the most productive use of E-Rate funds while still fulfilling the mission of the program to provide increased access to high-speed Internet in the nation's schools, libraries and rural health care facilities.

Respectfully submitted,

CENTRAL TEXAS TELEPHONE  
COOPERATIVE, INC.

PEOPLES TELEPHONE COOPERATIVE,  
INC.

TOTELCOM COMMUNICATIONS, LLC



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May 22, 2019

§54.502 Eligible services. (Proposed additional language in **bold**)

(a) *Supported services.* All supported services are listed in the Eligible Services List as updated annually in accordance with paragraph (d) of this section. The services in this subpart will be supported in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. The supported services fall within the following general categories:

(1) *Category one.* Telecommunications services, telecommunications, and Internet access, as defined in §54.5 and described in the Eligible Services List are category one supported services. **Category One services shall not include special construction costs for the construction of fiber where it has been demonstrated that fiber already exists, unless the existing fiber owner is unwilling to negotiate in good faith to lease that fiber at reasonable market-based prices.**

§54.503 Competitive bidding requirements. (Proposed additional language in **bold**)

(a) All entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

(b) *Competitive bid requirements.* Except as provided in §54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under §54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(c) *Posting of FCC Form 470.* (1) An eligible school, library, or consortium that includes an eligible school or library seeking bids for eligible services under this subpart shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process. The FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information:

- (i) A list of specified services for which the school, library, or consortium requests bids;
- (ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant;
- (iii) To the extent an applicant seeks the following services or arrangements, an indication of the applicant's intent to seek:
  - (A) Construction of network facilities that the applicant will own;

(B) A dark-fiber lease, infeasible right of use, or other dark-fiber service agreement or the modulating electronics necessary to light dark fiber; or

(C) A multi-year installment payment agreement with the service provider for the non-discounted share of special construction costs;

(iv) To the extent an applicant seeks construction of a network that the applicant will own, the applicant must also solicit bids for both the services provided over third-party networks and construction of applicant-owned network facilities, in the same request for proposals;

(v) To the extent an applicant seeks bids for special construction associated with dark fiber or bids to lease and light dark fiber, the applicant must also solicit bids to provide the needed services over lit fiber; and

(vi) To the extent an applicant seeks bids for equipment and maintenance costs associated with lighting dark fiber, the applicant must include these elements in the same FCC Form 470 as the dark fiber.

(2) The FCC Form 470 shall be signed by a person authorized to request bids for eligible services for the eligible school, library, or consortium, including such entities.

(i) A person authorized to request bids on behalf of the entities listed on an FCC Form 470 shall certify under oath that:

(A) The schools meet the statutory definition of “elementary school” or “secondary school” as defined in §54.500 of these rules, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

(B) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(C) Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.

(ii) A person authorized to both request bids and order services on behalf of the entities listed on an FCC Form 470 shall, in addition to making the certifications listed in paragraph (c)(2)(i) of this section, certify under oath that:

(A) The services the school, library, or consortium purchases at discounts will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by §54.513.



(B) All bids submitted for eligible products and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service offering consistent with §54.511.

(3) The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its Web site designated for this purpose.

(4) After posting on the Administrator's Web site an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's Web site before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

**(d) Posting of FCC Form 471 Special Construction Exhibits for Challenge Period. (1) In submitting their completed FCC Form 471s, applicants that request special construction costs for fiber shall also submit a 471 Special Construction Exhibit summarizing their proposed fiber buildout plans that require reimbursement for upfront special construction costs. This FCC Form 471 Special Construction Exhibit shall include, at a minimum, the following information:**

**(i) A list of the schools or libraries that shall be connected to the newly laid fiber; and**

**(ii) A map depicting the proposed fiber lines.**

**(2) The Administrator shall post each FCC Form 471 Special Construction Exhibit that it receives from an applicant on its Web site designated for the purpose of allowing broadband carriers, as well as state and local entities, the opportunity to challenge the need for these proposed new fiber facilities.**

**(3) After posting on the Administrator's Web site an FCC Form 471 Special Construction Exhibit, the Administrator shall wait at least sixty (60) calendar days before approving the special construction costs. During this 60-day period, broadband carriers, as well as state and local entities, shall have the opportunity to challenge the need for these proposed new fiber facilities. Challengers shall submit information to the Administrator to show that fiber already exists in the applicable locations.**

**(4) If it is shown that fiber already exists, the selected service provider and the existing fiber owner shall have a one hundred and twenty (120) day period to negotiate in good faith the terms, conditions and reasonable, market-based price of a fiber lease agreement.**

**(5) The Administrator shall consider any information submitted during this challenge period before approving those special construction costs pursuant to Section 54.502(a)(1).**

(e) *Gift restrictions.* (1) Subject to paragraphs (d)(3) and (4) of this section, an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed \$50 from any one service provider per funding year. The \$50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (d)(2)(ii) of this section.

(2) For purposes of this paragraph:

(i) The terms “school, library, or consortium” include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Program of the Universal Service Fund (E-rate Program), including individuals who prepare, approve, sign or submit E-rate applications, or other forms related to the E-rate Program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate Program; and

(ii) The term “service provider” includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

(i) Are motivated solely by a personal relationship,

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium, and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other E-

rate program rules, including those in paragraph (c)(2)(i)(C) of this section, requiring schools and libraries to pay their own non- discount share for the services they are purchasing.

(f) *Exemption to competitive bidding requirements.* An applicant that seeks support for commercially available high-speed Internet access services for a pre-discount price of \$3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

(1) Internet access, as defined in §54.5, is eligible for this exemption only if the purchased service offers at least 100 Mbps downstream and 10 Mbps upstream.

(2) The Chief, Wireline Competition Bureau, is delegated authority to lower the annual cost of high-speed Internet access services or raise the speed threshold of broadband services eligible for this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.