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June 28, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., *et al.*,
to Amend Part 54 of the Commission's Rules to Prohibit Use of E-Rate Funds
to Build Fiber Networks in Areas Where Fiber Networks Already Exist –
RM-11841; CC Docket No. 02-6; WC Docket No. 13-184

Dear Ms. Dortch:

Pursuant to Section 1.405 of the Rules of the Federal Communications Commission (“FCC” or “Commission”) and the Public Notice released May 30, 2019 (DA 19-493),¹ **CVIN LLC DBA VAST NETWORKS** (“CVIN”), through counsel, submits for filing its comments in opposition to the petition for rulemaking filed by Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc., and Totelcom Communications, LLC (together, “Texas Carriers” or “Petitioners”) on May 22, 2019 (“Petition”).²

Please contact undersigned counsel if you have any questions.

Respectfully submitted,



James S. Bubar
Attorney for CVIN LLC
DBA VAST NETWORKS

JSB/ps
Enclosure

¹ 47 C.F.R. §1.405 (2019). The comment date in the public notice is July 1, 2019.

² Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., *et al.*, RM-11841; CC Docket No. 02-6; WC Docket No. 13-184 (filed May 22, 2019).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., <i>et al.</i> , to Amend Part 54 of the Commission’s Rules to Prohibit Use of E-Rate Funds to Build Fiber Networks in Areas Where Fiber Networks Already Exist)	RM-11841; CC Docket No. 02-6; WC Docket No. 13-184

COMMENTS OF CVIN

CVIN LLC DBA VAST NETWORKS (“CVIN”), through counsel, pursuant to Section 1.405 of the Rules of the Federal Communications Commission (“FCC” or “Commission”) and the Public Notice released May 30, 2019 (DA 19-493),¹ respectfully submits these comments in opposition to the petition for rulemaking filed by Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc., and Totelcom Communications, LLC (together, “Texas Carriers” or “Petitioners”) on May 22, 2019 (“Petition”). Petitioners urge the Commission to “adopt rules that prohibit the use of universal service funds for special construction of fiber networks that overbuild existing fiber networks.”² For the reasons stated below, CVIN opposes the Petition and requests that the Texas Carrier’s petition for rulemaking be denied.

I. INTRODUCTION AND BACKGROUND

CVIN is a facilities-based Competitive Local Exchange Carrier (“CLEC”) based out of Fresno, California. It has 2,500 miles of fiber through 23 Counties in California and has been providing E-Rate services since 2011. CVIN provides high bandwidth services on an all fiber

¹ 47 C.F.R §1.405 (2019). The comment date in the public notice is July 1, 2019.

² Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., *et al.*, RM-11841; CC Docket No. 02-6; WC Docket No. 13-184 (filed May 22, 2019) at 4.

network to the Corporation for Education Network Initiatives in California (CENIC), School Districts, Community Colleges, Private and Public Universities as well as commercial, municipal and carrier customers. It offers both lit and dark fiber services throughout the serving areas. CVIN's experience is contrary to the views expressed by Petitioners and, therefore, it opposes the Petition.

II. DISCUSSION

Petitioner's proposal to amend "and modernize" Part 54 of the Commission's Rules is an anticompetitive attempt by regionally based incumbent providers to protect their existing territories from those willing to offer competitive services under the guise of ensuring that federal funds are used efficiently and not wasted. In essence, this regionally based consortium suggests putting additional barriers of entry on any competitor in their territories. Petitioners fail to show why their solution should be applied nationally. Petitioners are regional carriers in rural central, mid and east Texas. The petition on its face is overbroad.³

There is nothing stopping Petitioners from working with other providers to create a comprehensive solution to Requests for Proposals ("RFPs") through the E-Rate program for construction of Wide Area Networks ("WANs") that would utilize existing fiber networks. Indeed, the use of their existing facilities should give them a significant advantage in a competitive bidding environment.

Incumbent local exchange carriers ("ILECs") enjoy a significant competitive advantage over CLECs as they have, and continue to take advantage of, subsidies such as High Cost Funds

³ See e.g. Comments filed by IDEATEK, September 5, 2018, WC Docket No. 18-141, "the Petition is, on its face, overbroad. For example it treats areas like the central business district in New York City the same as a rural county in Kansas even though there are areas in Kansas where there would be no broadband services without the use of unbundled network elements."

and other state and federal programs that are not available to CLEC's. Other subsidies are or have been available to both ILECs and CLECs. These subsidies include USAC E-Rate, ARRA, USDA, and other state and federal grants. The point of many of these programs in the early years was to assist a single provider in bringing services to unserved areas. However, over the past few decades the purpose of many of the grants and subsidies has been to encourage competition, improve services, and lower prices to these traditionally underserved areas. Setting the precedent that once a network has been built, that no other provider can be funded through E-Rate would negate many of these other programs that saw value in bringing new infrastructure to these areas because the incumbents had failed to provide a level of service that was sufficient for growing broadband needs. Any changes to the program that limit competition will only force School Districts to pay higher prices and accept lower quality services.

Many School Districts are moving to dark fiber to reduce the long-term costs of service for their districts. Many incumbent providers will not offer dark fiber because they want to maintain the revenue levels associated with lit services or have antiquated hybrid copper/fiber networks. These incumbents will use these proposed changes to keep competing carriers from installing newer, higher quality and lower cost networks within their territories.

Last year CVIN bid for a large WAN project for a School District. The School District asked for quotes for both lit and dark fiber. The lit fiber services were priced over \$21 million over the contract term while the dark fiber services were priced at \$8 million. If this provision promoted by Petitioners had been adopted, none of the dark fiber providers that bid on the project would have been able to use E-Rate funds. The incumbent would have walked away with a windfall \$21 million contract. Had the incumbent been assured that there would be no competition, the pricing would have been even higher.

CVIN is aware of other instances in which communities would be disadvantaged by the proposal. In these communities there are competing fiber providers, but only one provider has extended fiber to each individual school by using previous E-Rate funds. Under this new proposal, the competing provider would be unable to obtain special construction to build laterals necessary to extend to the school unless that provider is willing and able to absorb the cost of construction and spread it over recurring charges, leaving the School District with a single option.

There are examples across the State of California where large national incumbent providers with existing fiber networks lost competitive bids to new companies proposing and building new networks from scratch with E-Rate funding. They are able to charge customers significantly less than the existing provider. There are examples in Bakersfield, Sanger, Tracy, Stockton, Gilroy, Parlier, Reedley, Castro Valley, and many other California communities. The end results have been a savings to taxpayers over the existing fiber networks, increased competition, higher speeds and better service quality. As a result of losing many of the school projects, the large national incumbents have become much more aggressive on pricing leading to lower prices for many California schools.

There are additional issues. Creating new regulations that would require a provider to disclose the location of planned fiber and provide a competing carrier the opportunity to challenge the project after it has been awarded puts the winning carrier at a serious disadvantage. Carriers normally rely on their ability to add additional customers to ensure the long-term sustainability of any new fiber network. Allowing a competing carrier to see maps of the fiber routes ahead of implementation, and then delay the implementation through challenges, would allow this competitor to tie-up as much potential business in contracts as possible before the new carrier can even begin construction.

The timeline for E-rate approval currently takes much longer than it should. Adding these additional steps into the approval process will cause delays and additional work for USAC staff.

The Commission has a “goal of closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation’s schools and libraries.”⁴ There is no reason why that goal cannot be met competitively under the current E-Rate competitive bidding rules. The current rules are sufficient to ensure that only minimal federal funds are used when overbuilding existing networks. Incumbent providers with existing networks should easily be the low-cost provider because their networks were paid by previous E-rate cycles and other subsidies. If a provider wants to compete for RFPs that span multiple territories, then the provider needs to partner with other regional networks to present a competitive bid, rather than trying to enact rules to protect its own territory.

III. CONCLUSION

Petitioner’s proposal is anti-competitive, protectionist, overbroad, and will effectively delay implementation of newer low-cost facilities. The proposal is not about ensuring that federal funds are utilized efficiently. Rather, the proposal seeks to protect the revenue and customer base of incumbent providers who refuse to put in the effort to offer services at competitive rates.

History has shown that competition spurs innovation and pushes companies to continually offer the latest products and technologies. Broadband is no different. By removing the threat of competition for incumbent providers, the Commission will also be removing the ability of communities to benefit from evolving technologies and increased speeds that future applications will demand. Protected monopolies are not motivated (or pressured) to continually upgrade,

⁴ See NPRM, WC Docket Nos. 19-2, 13-184 (rel. January 31, 2019) at 1.


enhance quality of services, or contain pricing that organizations that operate in highly competitive environments do constantly.

For the reasons stated above, CVIN requests that the Texas Carriers' petition for rulemaking be denied.

Dated: June 28, 2019

Respectfully submitted,

CVIN LLC DBA VAST NETWORKS

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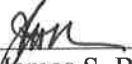
Attorney for CVIN LLC DBA VAST
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June 2019, a copy of the foregoing "Comments of CVIN" was served on the following persons by first-class U.S. mail, postage prepaid, addressed as follows:

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