

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

Petition to Prohibit Use of E-Rate	)	WC RM-11841
Funds to Build Fiber Networks in	)	CC Docket No. 02-6
Areas Where Fiber Networks	)	WC Docket No. 13-184
Already Exist	)	

**COMMENTS OF EASTEX TELEPHONE COOPERATIVE, INC. AND NORTEX COMMUNICATIONS**

Eastex Telephone Cooperative, Inc. (“Eastex”) and Nortex Communications (“Nortex”) (collectively “Rural Carriers”) hereby submit these comments in response to the 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”) issued by Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc. and Totelcom Communications, LLC. (collectively “Texas Carriers”) on May 22, 2019 in the above-referenced proceeding. The Rural Carriers, both active E-rate service providers, are potentially affected by the Petition and therefore appreciate the opportunity to provide initial comments on the proposals requested therein.

**I. BACKGROUND INFORMATION**

Eastex Telephone Cooperative, Inc. (“Eastex”) serves approximately twenty-thousand access lines across 11 rural counties, spanning 2,250 square miles in 6 non-contiguous areas of East Texas. Since its incorporation in 1950, Eastex has made significant investments to construct and expand network capabilities to make critical services available to its customers, and today provides services including but not limited to voice, broadband and Ethernet transport to 8 school districts in its service territory.

Nortex Communications (“Nortex”), in operation since 1909, serves approximately 3,500 access lines across 3 counties from 6 exchanges, stretching across approximately 500 square miles of farm and ranch land in North Texas. Nortex provides service to 12 rural school districts and has made significant investments in its infrastructure to assure that the service to their school districts is more than sufficient to serve their growing needs.

Both Rural Carriers participate in state and federal Universal Service Fund (“USF”) programs, and rely on USF support to help recover their network costs. Through the support of USF funding, the Rural Carriers have deployed fiber to every school they serve, ensuring the schools have access to robust, scalable broadband services, achieving the connectivity targets adopted by the E-rate Modernization Order.<sup>1</sup>

## **II. OVERBUILDING DISCUSSION**

The Rural Carriers have experienced overbuilding of fiber networks in at least portions of their respective service areas by providers such as Zayo, which owns and operates a 130,000-mile fiber-optic network in North America and Europe, and has been very active in North Texas. Zayo and companies like it have been able to win bids for constructing new fiber to both urban and rural schools and/or to regional Education Service Centers (“ESCs”), where traditional E-rate funds have covered up to 90% of the cost of new construction, and matching funds may have covered the rest of that cost, despite fiber already being available, and in some cases, constructed using USF high cost support. According to data available in Education Superhighway’s Compare and Connect

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<sup>1</sup> *In the Matter of Modernizing the E-rate Program for Schools and Libraries*; WC Docket No. 13-184. Report and Order and Further Notice of Proposed Rulemaking. Para. 34. (July 23, 2014). (*E-Rate Modernization Order*)

tool, Zayo now serves 50 school districts in Texas,<sup>2</sup> and that list is growing. One of the listed districts listed among Zayo's customers, Sivells Bend was once a Nortex customer, and two of Nortex's other anchor schools, Muenster and Collinsville, have committed to transition their service to Zayo once they complete their existing service term commitment with Nortex.

But Zayo is certainly not the only carrier or even the only thing contributing to the issue of overbuilding. Zayo and other fiber players are merely taking advantage of E-rate rules effectuated by the first and second E-Rate Modernization Orders adopted in 2014. The first E-Rate Modernization Order adopted in July, 2014 encouraged consortia and bulk purchasing efforts, and directed USAC to prioritize review of E-rate applications from state and regional consortia applicants.<sup>3</sup> The Second E-Rate Modernization Order maximized schools' options for purchasing high speed connectivity by: 1) making payment options for special construction charges more flexible; 2) expanding the eligible services to include equal treatment for lit and dark fiber as well as permitting self-construction; and 3) creating additional funding to match state funding for special construction charges.<sup>4</sup> Together, these initiatives paved way for an increase in E-rate applications for high-speed broadband connectivity by regional and statewide consortia, and increased incentive to large carriers and vendors to build new fiber networks.

In Texas, a total of twenty regional Education Service Centers regularly conduct procurement activities to purchase internet access, transport and network equipment from

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<sup>2</sup>[https://www.compareandconnectk12.org/maps/TX/providers?view=SERVICE\\_PROVIDER&serviceProviders=Zayo%20Group&filed470=true](https://www.compareandconnectk12.org/maps/TX/providers?view=SERVICE_PROVIDER&serviceProviders=Zayo%20Group&filed470=true) (July 1, 2019)

<sup>3</sup> *E-Rate Modernization Order*. Para. 168.

<sup>4</sup> *In the Matter of Modernizing the E-rate Program for Schools and Libraries*; WC Docket No. 13-184. WC Docket No. 10-90. Second Report and Order and Order on Reconsideration. (December 11, 2014). (*Second E-Rate Modernization Order*)

third party vendors on behalf of all of the schools and/or districts in their region, and then sell those services and/or equipment, often at a profit, back to the very schools for which the regional entity procured them. These procurement activities often focus on the availability of fiber transport from one regional hub to another, or Wide Area Networks that span one Rural Carrier's exchange area to another carrier's service area, effectively limiting the Rural Carriers ability to bid on the requested services because portions of the transport lie outside of their service areas. Likewise, some regional Requests for Proposals ("RFPs") create qualifying bidder criteria that can effectually prohibit participation by a small, rural carrier. These regional procurement patterns, combined with the current E-rate rules, have created opportunities for larger vendors/carriers, like Zayo, to thrive by overbuilding existing fiber to certain schools.

As reflected in the attached Fiber 11 Presentation (see Exhibit A, attached), ESCs present fiber deployment plans to stakeholders with little to no thought provided for the availability of existing fiber facilities. In fact, Zayo is listed as a part of the "team," even before any competitive bidding process had been conducted. The case for new fiber is presented strictly as a financial breakdown, reflecting projected costs, E-rate discounts, and matching funds for special construction. Similar presentations and articles have been presented within the E-rate community at large since the adoption of the E-Rate Modernization Orders, and many seek to influence schools and/or vendors to capitalize on the E-rate rules by building fiber while E-rate money is available for special construction, regardless of whether such fiber is truly needed or cost-effective. For example, see Exhibit B herein. Essentially, when the FCC opened up funding for special construction charges, a lot of folks saw dollar signs, and a cash grab ensued.

Eastex has reported concerns about consortia purchasing activities before,<sup>5</sup> and finds that those same concerns still ring true, and perhaps have grown in intensity since first expressed. While the Rural Carriers do bid on regional RFPs or Form 470 applications, depending on whether the carriers meet the qualifying criteria for bidders, the bids are often not evaluated as highly as those submitted by larger carriers, as has been proven by bidding conducted by the Rural Carriers on state master contract and consortia bidding opportunities in Texas. The Rural Carriers have also experienced scenarios wherein they become access providers to the larger carriers who have won the regional bids, but who cannot with their own facilities reach the individual schools in the Rural Carriers' service areas. Subsequently, the schools have paid more for their service and have lost their ability to acquire local service and support, instead receiving remote service from a large vendor who is not a local community partner and has no local presence.

The Rural Carriers also note that bidding on regional and statewide consortia RFPs or Form 470 applications can be challenging in other ways. While the Rural Carriers are aware of the twenty ESCs in Texas, and frequently monitor for posted RFPs or Form 470 applications by their respective ESCs, many other consortia exist. It is extremely difficult to determine all consortia that may potentially post RFPs or Form 470 applications applicable to a particular Rural Carrier's service territory. To exemplify this challenge, the Rural Carriers implore the FCC to attempt to utilize existing tools within USAC's website and E-Rate Productivity Center ("EPC") to build a list of schools, libraries and consortia which exist within or may be purchasing on behalf of a particular

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<sup>5</sup> *In the Matter of Modernizing the E-rate Program for Schools and Libraries*. WC 13-184. Comments of Eastex Telephone Cooperative, Inc. and Riviera Telephone Company, Inc. (September 16, 2013). See subsection II.D.

area or region. Because many consortia are operated in urban centers, their billed entity addresses do not show up in search results using zip codes or other local service area search criteria. Searching the Applicant Entities database located within the EPC for consortia in Texas reflects a total of 45 Texas-specific consortia entities. However, if one were to review organization details for any one entity, for example, Supernet Consortium, entity number 223076, he or she would not obtain any details about the individual members within that consortium or locations associated therewith. Even Internet searches on a particular consortium or researching its website may not provide sufficient details about member locations. Therefore, it is a challenge for the Rural Carriers to track all consortia activity that potentially involve their service areas.

### **III. SUPPORT FOR PETITION**

The Rural Carriers strongly support FCC action to prevent or discourage the use of USF monies from the E-Rate program to overbuild existing fiber networks, many of which have already been constructed with USF support. We support the Petitioners' proposal to amend 47 CFR 54.502 and 47 CFR 54.503 to provide a 60-day challenge period for special construction proposals that seek to overbuild existing networks and a subsequent 120-day good faith negotiation period with the existing fiber owner.

The Rural Carriers recognize that the issue of overbuilding has been brought up not only by the Texas Carriers, but also by Commissioner O'Rielly, who has repeatedly voiced concerns about overbuilding. For example, in his March 7, 2019 letter to Ms. Radha Sekar, CEO of USAC, Commissioner O'Rielly states:

“During my tenure at the Federal Communications Commission, I have repeatedly voiced concerns over the use of Universal Service Fund dollars to overbuild existing networks, particularly when those networks subject to overbuilding were themselves built with Universal Service Fund support. In addition to wasting ratepayer money, USF-supported overbuilding undermines the ability of existing network providers to bring service to unserved areas in their communities. I have regularly identified potential overbuilding risks in the E-Rate program, especially in view of the Commission’s problematic decision in 2014 to allow self-provisioned and dark fiber networks to be eligible for special construction subsidies.”<sup>6</sup>

One of the questions posted by Commissioner O’Rielly in this letter was “(h)ow many...WAN projects would result in overbuilding another provider’s network, in whole or in part?” In response to the question posed, USAC’s CEO Sekar stated, “...we do not have sufficient data to determine whether E-rate funded projects duplicate other provider’s networks.”<sup>7</sup>

Implementing a challenge process as proposed would allow affected carriers to report the existence of available fiber facilities to ensure that both E-rate applicants and USAC are fully aware of USF-funded network facilities in place. This practice would

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<sup>6</sup> See Letter from Mike O’Rielly, Commissioner, Federal Communications Commission, to Ms. Radha Sekar, CEO, Universal Service Administrative Co. March 7, 2019. <https://docs.fcc.gov/public/attachments/DOC-356472A1.pdf>

<sup>7</sup> See Letter from Radha Sekar, Chief Executive Officer, Universal Service Administrative Co. to The Honorable Michael O’Rielly, Commissioner, Federal Communications Commission. April 1, 2019. <https://docs.fcc.gov/public/attachments/DOC-357046A1.pdf> (See Response 4.a.)

allow all parties to collaborate and ensure that E-rate dollars were not being used to overbuild networks already funded by high-cost USF support.

Certainly even earlier in the E-rate process, changes could be effectuated to help increase awareness and transparency regarding new fiber builds. The Rural Carriers propose that USAC be required to maintain a database of all consortia, including details about the respective consortia members and their physical locations. The Rural Carriers would also propose that when a Form 470 application or RFP is posted which concerns new fiber access or the potential for special construction of fiber facilities, the applicant be required to notify any incumbent local exchange carrier (“ILEC”) designated to provide service in all or part of the applicant’s requested fiber construction zone of the Form 470 and/or RFP.

The Rural Carriers are also open to other ideas aimed at preventing, or at the very least, discouraging overbuilding existing fiber networks with E-rate money. Accordingly, we ask the FCC to initiate a Notice of Proposed Rulemaking on this issue as soon as possible to prevent waste and to ensure that more money is available for schools and libraries that desperately need broadband services.

#### **IV. CONCLUSION**

The nature of the areas served by the Rural Carriers is very similar to that of the Texas Carriers. The Rural Carriers offer services in very rural areas that experience little to no density and are therefore extremely costly to serve. That is exactly why these carriers have required USF support to help offset these high costs and keep telecommunications and broadband access affordable to rural customers. The Rural



Carriers care deeply about their E-rate customers and have taken steps to ensure that their schools and libraries have access to the best and most reliable services and technology available in the industry, meeting FCC-imposed buildout obligations and connectivity targets in the process.

However, due to E-rate modernization rule changes, consortia purchasing initiatives have increased and favored large vendors, capable of expanding their fiber footprint using the benefit of E-rate funds awarded to special construction projects, even in rural areas where fiber networks have been deployed with USF support. Rule changes are needed to ensure that USF funds are not utilized twice, once through high cost support, and once through E-rate support, to create redundant and unnecessary networks. The Rural Carriers support the rule changes proposed by the Texas Carriers, as well as other measures discussed herein or as seen fit by the FCC to prevent overbuilding or other forms of waste, fraud and abuse within the USF programs.

Respectfully Submitted by

**Rural Carriers:**

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Joey Anderson, CEO/GM  
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PO Box 587  
Muenster, TX 76252-0587

Date: July 1, 2019

## **EXHIBIT A**

### **FIBER 11; Fiber Infrastructure for Broadband Enhancement in Region 11**

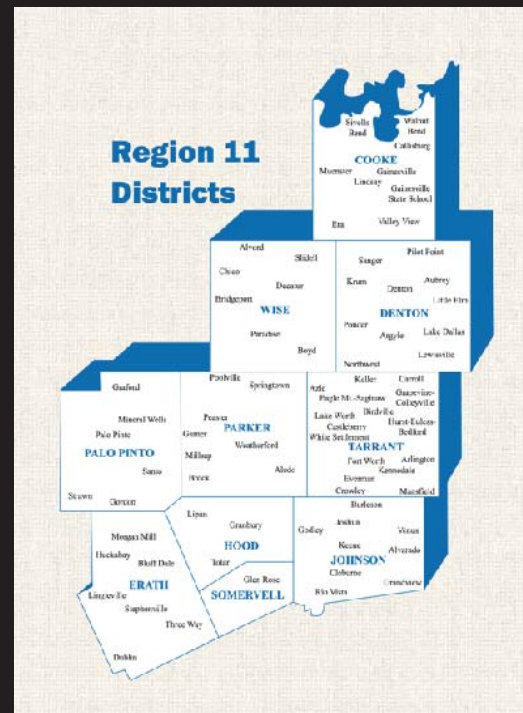
# FIBER I I

## Fiber Infrastructure for Broadband Enhancement in Region I I

ESC Region I  
August Technology Meeting  
Edinburg, Texas

# Who Is ESCI I?

- 10 Counties
- 77 School Districts (ISDs)
- 70+ Charters
- Roughly 600,000 Students
- Smallest - 40 Students
  - Bluff Dale
  - Three Way
  - Sivells Bend
- Largest - 80K Students
  - Fort Worth
  - Arlington
  - Denton
- **69%** Discount per E-Rate

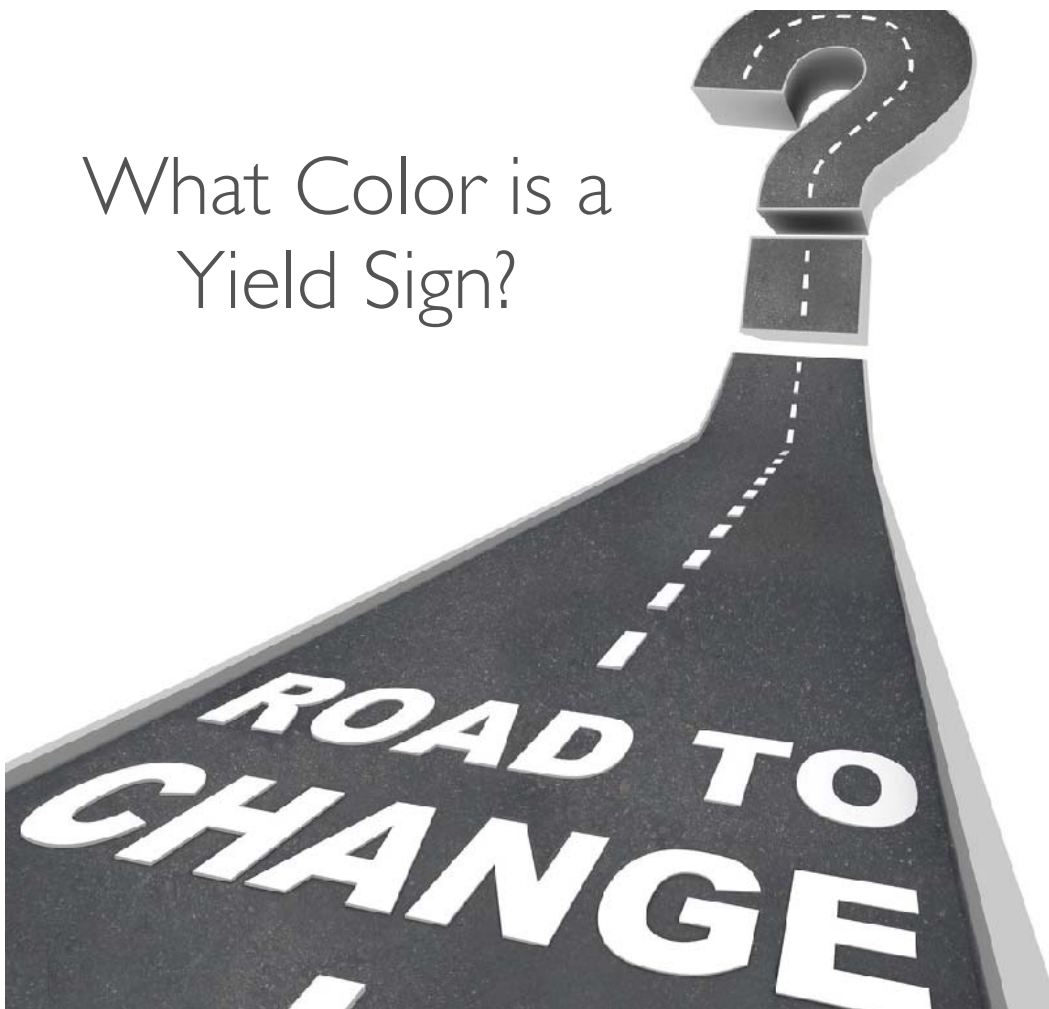




# WHY?

SB507 Storage  
Shared Services

What Color is a  
Yield Sign?



# What Color is a Yield Sign?



In road transport, a **yield** or give way **sign** indicates that each driver must prepare to stop if necessary to let a driver on another approach proceed. A driver who stops or slows down to let another vehicle through has yielded the right of way to that vehicle.



[www.trafficsign.us](http://www.trafficsign.us)

[Yield sign - Wikipedia](https://en.wikipedia.org/wiki/Yield_sign)  
[https://en.wikipedia.org/wiki/Yield\\_sign](https://en.wikipedia.org/wiki/Yield_sign)



# What Color is a Yield Sign?



Early design (1950-1956)



Second version (1956-1961)



Third version (1961-1971)



Modern design as agreed to in 1971







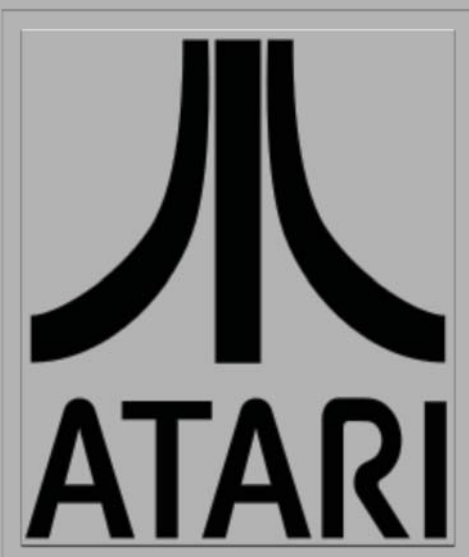
# OUR APPROACH

## OPTION 1

Circuits, Limitations  
EASY, COMMON

## OPTION 2

Dark Fiber, Flexibility  
HARD, UNKNOWN



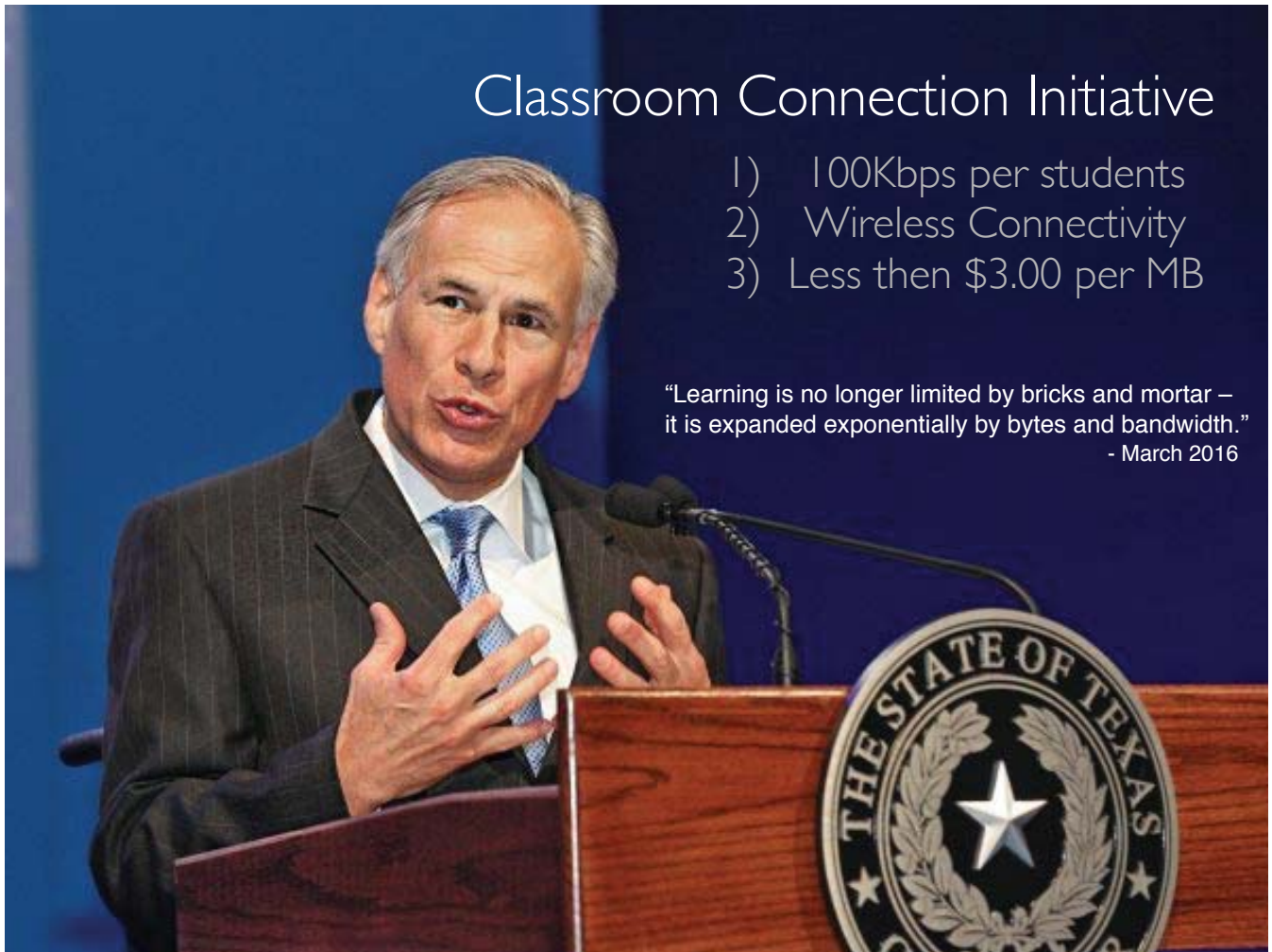
“Everyone who’s ever taken a shower has an idea. It’s the person who gets out of the shower, dries off and does something about it who makes a difference.”

-Nolan Bushnell,  
Inventor of Atari and Chuck E Cheese

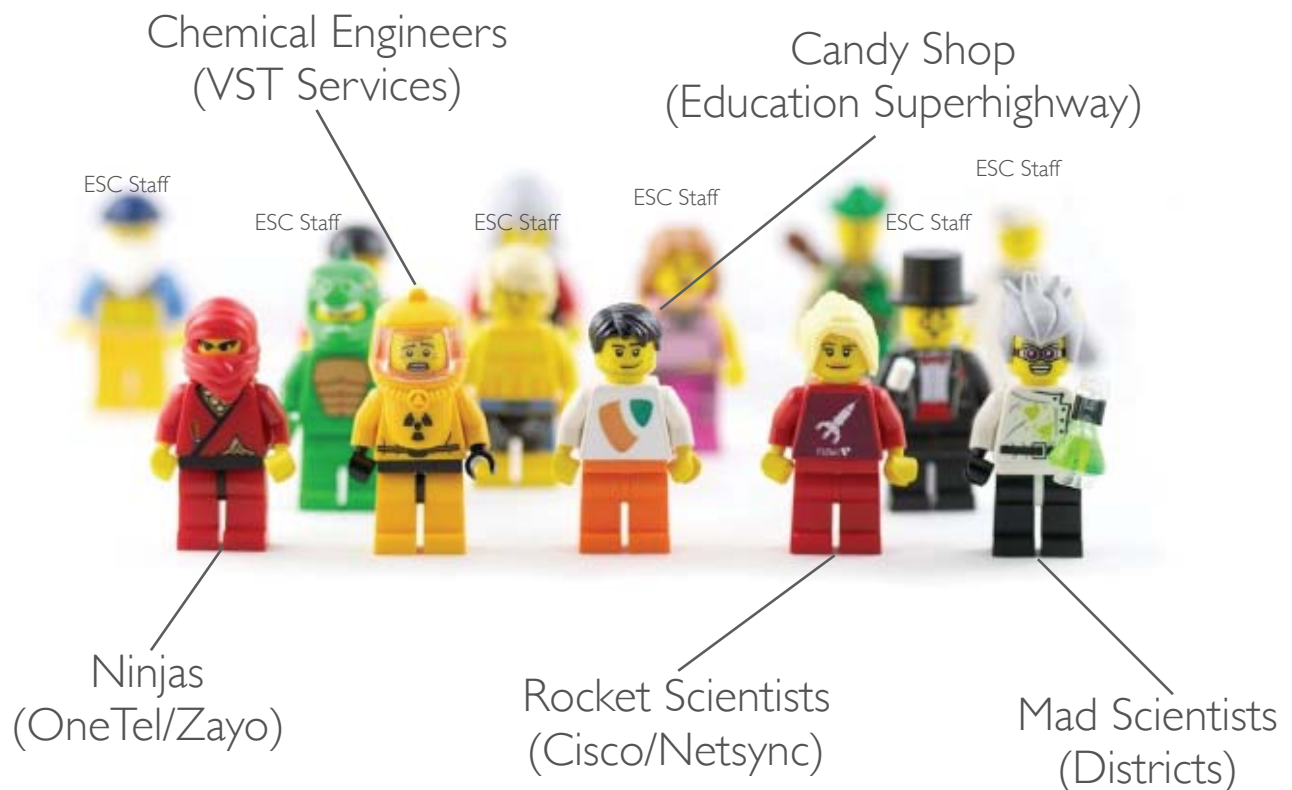
# Classroom Connection Initiative

- 1) 100Kbps per students
- 2) Wireless Connectivity
- 3) Less then \$3.00 per MB

"Learning is no longer limited by bricks and mortar –  
it is expanded exponentially by bytes and bandwidth."  
- March 2016

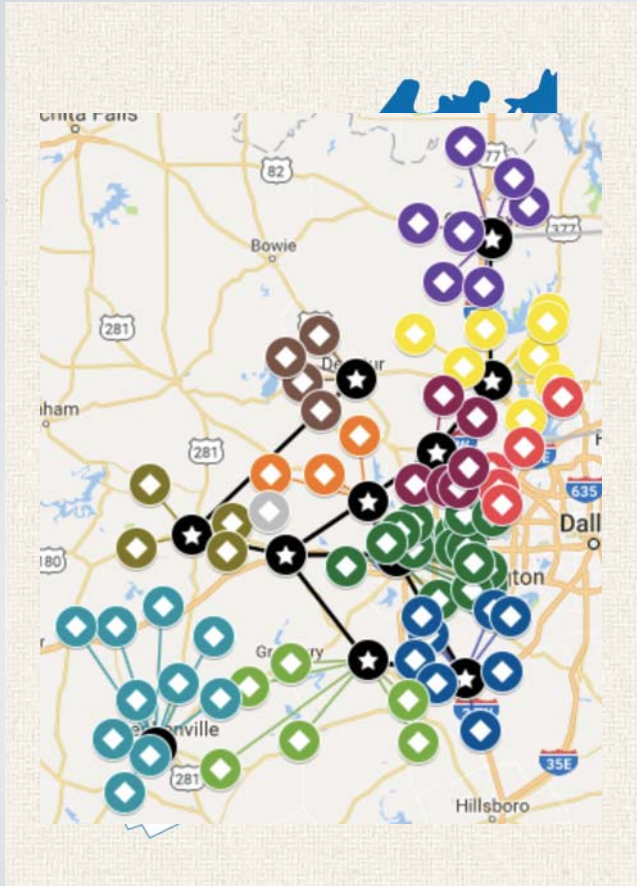


## ASSEMBLE THE TEAM



## FIBER | | Results

- 100Gb Backbone
- 10Gb Connections
- 11+ Hub Sites
- 53 Districts (Phase I)
- 200Gb Internet Access



## FIBER | | Costs

- Special Construction for Dark Fiber
- Core and Hub Site Equipment
- End Point Equipment
- Monthly Recurring Charges for Fiber
- Monitoring Equipment/Services
- Managed Services
- Project Management
- E-Rate Services





## FIBER I I Costs

\$ 21,000,000	-	Special Construction for Dark Fiber
3,500,000	-	Core and Hub Site Equipment
640,000	-	End Point Equipment
300,000	-	Monthly Recurring Charges for Fiber
75,000	-	Monitoring Equipment/Services
215,000	-	Managed Services
100,000	-	Project Management
<u>+ 80,000</u>	-	E-Rate/Legal Services
<b>\$ 25,910,000</b>		
\$ 17,753,700	69%	E-Rate Eligible Discount
2,100,000	10%	State Match for Special Construction
<u>2,100,000</u>	10%	FCC to Match State
\$ 21,953,700		Total Discount

**\$3,956,300 Total Buildout and Year 1**  
**\$238,700 Year 2+**

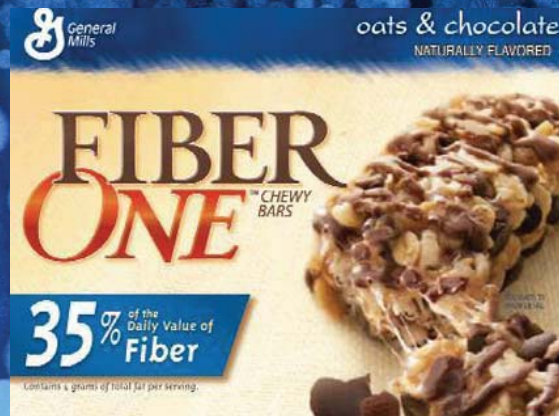
# FIBER I I

Fiber Infrastructure for Broadband Enhancement in Region I I

ESC Region I  
August Technology Meeting  
Edinburg, Texas

# FIBER |

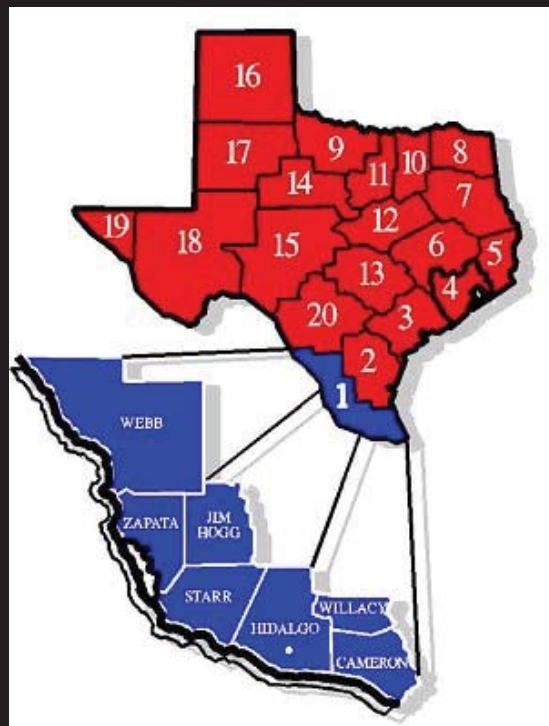
Fiber Infrastructure for Broadband Enhancement in Region I



ESC Region I  
August Technology Meeting  
Edinburg, Texas

## Who Is ESCI?

- 7 Counties
- 37 School Districts (ISDs)
- Roughly 425,000 Students
- Smallest - 250 Students
  - San Isidro
  - Webb
  - San Perlita
- Largest - 49K Students
  - Brownsville
  - United
  - Edinburg
- **89%** Discount per E-Rate



## FIBER | Costs

\$ 21,000,000	- Special Construction for Dark Fiber
3,500,000	- Core and Hub Site Equipment
640,000	- End Point Equipment
300,000	- Monthly Recurring Charges for Fiber
75,000	- Monitoring Equipment/Services
215,000	- Managed Services
100,000	- Project Management
<u>+ 80,000</u>	- E-Rate/Legal Services
<b>\$ 25,910,000</b>	
\$ 22,899,700	89% E-Rate Eligible Discount
1,155,000	5.5% State Match for Special Construction
<u>1,155,000</u>	5.5% FCC to Match State
\$ 25,209,700	Total Discount

**\$700,300 Total Buildout and Year 1**  
**\$84,700 Year 2+**



Direct Connections  
Google, Microsoft, Amazon, etc.

Shared Services  
Storage, Resources, Co-Location

Statewide Connectivity  
Working with LEARN Network



## THE PROCESS

June 19 – August 1, 2017	Verify/Confirm Participation & Termination Address Send Address Forms to Districts
August 1 – September 1, 2017	Prepare RFP Document – IA, Fiber, Network Eqpt
August 1, 2017	Create Region Consortium Entity Number Send Letter of Agency Documents to Districts
September 1, 2017	District TAC Meeting Presentation – Estimated Cost
September 1-31, 2017	Districts add Consortium to E-Rate EPC Profile
October 1, 2017	Submit RFP
December 1-31, 2017	Review and Evaluate RFP Responses
January 1-31, 2018	Award Contracts
January 1-31, 2018	Update Member Districts with Final Cost Structure GO/NO GO DECISION



# THE PROCESS

February 1 – April 1, 2018	Review and Prepare FCC Form 471
May 1, 2018	Submit FCC Form 471 (FY 2018)
June 1 – December 31, 2018	FCC Form 471 Review Process
January 1 – March 31, 2019	Estimated Approval Time Frame
April 1, 2019	Begin Implementation
May 1, 2019	Submit FCC Form 471 (FY2019) – MRC + any New District Adds
July 1, 2019	Begin Invoices to Member Districts
June 30, 2020	Complete Implementation

## **EXHIBIT B**

### **“Maximizing the Potential Benefits of E-rate Special Construction Reimbursement in Light of Potential Program Changes”**

**Published: Tuesday, January 3, 2017 by CTC Technology & Energy**

[\(http://www.ctcnet.us/blog/maximizing-the-potential-benefits-of-e-rate-special-construction-reimbursement-in-light-of-potential-program-changes/\)](http://www.ctcnet.us/blog/maximizing-the-potential-benefits-of-e-rate-special-construction-reimbursement-in-light-of-potential-program-changes/)

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## JAN 03 Maximizing the Potential Benefits of E-rate Special Construction Reimbursement in Light of Potential Program Changes

The changes in Washington DC in January, as a new presidential administration takes office, may bring changes to the E-rate program.[1] In brief, E-rate reimbursement for special construction charges may not survive through the incoming administration, and E-rate funding in general may be reduced. To hedge against these potential changes, public entities that can benefit from the E-rate program should act now to secure those benefits in the coming funding cycle.

This memo outlines the opportunities for E-rate reimbursement of fiber construction charges—and explains why both service recipients (school districts and library systems) and potential public sector service providers (like city and county governments) should act quickly to capitalize on the program in the next funding year.

### Benefits of E-rate Special Construction Reimbursement

For schools and libraries, an E-rate procurement that includes investment in fiber optics can:

- Ensure the long-term affordability of network connectivity required to meet growing broadband needs.
- Hedge against potential increases in price in broadband services.
- Help school and library facilities reach federal broadband connectivity goals as defined by the most recent E-rate modernization order.
- Protect against potential reductions in, or elimination of, federal E-rate funding over time.

For local governments that serve their schools and libraries as an E-rate service provider, the special construction reimbursement can be a means to build out a public sector fiber network with significant federal funding. This assumes, of course, that the local government participates in the competitive bidding process (i.e., responds to the school or library's E-rate RFP) and is selected as the winning, most cost-effective bidder to serve the schools or libraries. While the fiber strands built for the schools or libraries would be dedicated to that purpose, the locality could install additional strands of fiber at the small incremental cost of those materials.

In a similar way, the E-rate special construction reimbursement could create new competition in the local broadband market if the schools or libraries select a private provider to build fiber. In this scenario, as in the scenario in which the local government wins the competitive bidding process, the private provider, answering an eligible E-rate applicant's bid for leased dark fiber or leased lit fiber, could add fiber strands in addition to the fiber it builds to connect schools. Then the private sector entity could use those additional strands to offer broadband services in the neighborhoods around the schools, and wherever else the fiber reaches.

### Brief Overview of Approaches to E-rate Special Construction Reimbursement

The E-rate program provides financial assistance to schools and libraries to obtain affordable broadband. Eligible schools, libraries, and consortia of schools and libraries apply for E-rate support every funding year (July 1 through June 30).

Applicants (schools and libraries) are generally required to seek competitive bids for the services they seek to purchase using E-rate funds; the price of eligible products and services must be the primary factor in selecting the winning bid. City and county governments are eligible to bid and provide services to schools and libraries that utilize E-rate, much as private sector service providers are.[2]

In 2014, the FCC updated the E-rate rules for reimbursement of construction costs, known as special construction charges. The rule changes were designed to expand opportunities for E-rate applicants to select higher bandwidth lit services that may require the construction of new infrastructure by a service provider, or allow applicants to pursue other service options such as dark fiber RFPs and self-provisioning when traditional lit services are unavailable or not as cost-effective.

This E-rate capital funding offers an opportunity for school districts and library systems to enable the construction of fiber optics by the winning bidder of their broadband procurement, so long as the bid that includes the cost of construction is the most cost-effective bid (measured over some period of time that can be as long as 20 years or more).

## E-Rate Bidding Process for Special Construction

In this scenario, the school or library system would issue an RFP under the E-rate rules for both “lit” services and for a long-term lease for “dark” fiber. The incumbent provider can bid on this RFP, as can competitors (including public sector competitors) that propose to build and own new fiber, subsidized by the E-rate program, and then to provide to the schools or libraries either lit communications services or a dark fiber lease for a period of time specified in the RFP. (The schools or libraries can then “light” the fiber with equipment funded under E-rate.)

Under the rules of the E-rate program, the winning bidder would be the one that offers the most cost-effective option, measured over a period of time selected by the school district or library system. If a bid to build fiber and then provide services or dark fiber would be more cost-effective than procurement of the same services from other providers, measured over the next, say, 20 years, then the E-rate program would fund construction of the fiber at the community’s standard E-rate discount rate.

In the scenario in which the applicant contracts for dark fiber (as opposed to lit services), it could procure a guaranteed long-term lease of 20 or more years. This approach would serve as a hedge against reduction or elimination of the E-rate program in the future, ensuring that the schools or libraries control sufficient fiber infrastructure to meet their needs at low cost into the far foreseeable future. We think particularly highly of this approach because it entails extremely low risk and relatively low effort for applicants—but gives them long-term security.

Construction of new fiber by the winning bidder enables a school district or library system to meet its own needs for advanced broadband services – and to simultaneously enable its provider to build new infrastructure that can serve as a base for deployment of new services to the public in the neighborhoods around the schools or libraries. (E-rate rules do not allow any fiber strands built with E-rate funding to be utilized for other purposes, but the winning bidder could pay the incremental materials cost to install excess fiber strands alongside the fiber dedicated to the schools or libraries.)

## Act Now to Capitalize on Potential E-rate Funding Before Expected Changes to the Program

Based on the outcome of the presidential election and likely changes in leadership at the FCC, we believe that the next chairperson of the FCC will not be as committed to this fiber-based competitive model as is the current chair. Indeed, there is some risk that in the coming year or two, the FCC under new leadership could adjust its direction on special construction funding.

Even if the E-rate program does not see substantial changes in what can be funded, it is likely that that total amount of funding will be reduced. We anticipate an effort in the new administration to lower the cap on the E-rate program (which was raised quite substantially in recent years). If the cap is lowered, there may be insufficient funding for procurements that require special construction. The procurement cycle for the 2017-18 funding year, which will only partially overlap with the new administration, could thus be the last opportunity to seek reimbursement for fiber construction.




For this reason, we strongly recommend that schools and libraries seek to maximize the next E-rate funding year, the process for which has already begun for some districts (i.e., those that are planning their RFPs in advance of the FCC's upcoming bidding window) and extends into the late spring for funding to begin July 1st. [LIBRARY \(HTTP://WWW.CTCNET.US/LIBRARY/\)](http://www.ctcnet.us/library/) [BLOG \(HTTP://WWW.CTCNET.US/NEWS/\)](http://www.ctcnet.us/news/)


We note, too, that there is benefit to testing this strategy even if the bids on dark fiber turn out not to be of interest to a school district or library system, or if the applicant chooses to accept a bid for lit services. (Under the E-rate rules, an applicant can test this strategy through an RFP process without being obligated to execute it.) Including the dark fiber option in an E-rate RFP increases the competitive pressure on existing vendors—often leading them to offer lower pricing for lit services. In this scenario, simply the potential for new competition emerging through the dark fiber procurement strategy could reduce a school district or library system's costs for communications services.

[1] The term "E-rate" is the informal name for the Federal Communications Commission's Schools and Libraries universal service program.

[2] If the eligible E-rate applicant is part of city or county government, the city or county government should make certain that there is a process of bid evaluation for the E-rate applicant that involves no conflicts with the city or county entity that submits the E-rate bid. For example, the county IT director should not be part of the E-rate applicant's bid evaluation process if the county IT department is the operator of the network which is proposed to serve the E-rate applicant's broadband needs.

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