

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
)	
Modernizing the E-Rate Program for Schools and Libraries)	WC Docket No. 13-184
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
)	RM-11841

**COMMENTS OF INFINITY COMMUNICATIONS AND CONSULTING
IN RESPONSE TO THE TEXAS CARRIERS' PETITION TO PROHIBIT USE OF
E-RATE FUNDS TO BUILD FIBER NETWORKS IN AREAS WHERE FIBER
NETWORKS ALREADY EXIST**

Infinity Communications & Consulting, Inc. is an E-Rate consultant located in Bakersfield, California representing more than 300 E-Rate applicants in eight states. We also are a technology design firm that designs technology systems including Wide Area Network Systems. We have been in business since 2003 and have been involved in the bidding process with our applicants for more than 15 years. We believe giving incumbent telecommunications carriers "special treatment" either before a procurement process starts or during the bidding period is without merit, and E-Rate procurement rules should not be amended to accommodate this petition for the reasons listed below.

1. Giving the incumbent carrier any type of preference during the procurement process will stifle competition and significantly raise the cost of E-Rate funded services.

For many years, when all we had was one incumbent telco carrier in an area, our applicants complained that the fees their carriers were charging them were unreasonably high, but we had no options to find lower cost providers who could provide the services requested. Once other (lit fiber) telcos, dark fiber and self-provisioned service providers entered the marketplace, the cost of comparable services went down considerably and continue to drop as more and more service providers enter the marketplace. We can provide Commission staff with

dozens and dozens of actual bid results showing the incumbent provider was the highest bidder, and the contract was subsequently awarded to a carrier that was considerably cheaper. Many times, the incumbent was considerably higher than several other bidders. To allow the incumbent telco any type of preference just because they have fiber in the ground in parts of the applicant's area does not make sense in our experience.

2. The Texas Carriers are not the only entities in any given area that have installed fiber, and the FCC should allow others to offer E-Rate high-speed circuits.

The Texas Carriers seem to assert that they are the only entities that have installed fiber in their service locations, but that is likely untrue. It is certainly not true in the service areas where we have worked with E-rate applicants. There is already more than one incumbent service provider with existing fiber in many areas of the country. There are many parts of the country where there are multiple installed lit and dark fiber networks. In addition to telecommunications and cable companies, there are many gas and utility companies that built fiber networks. These companies originally planned to use the fiber for their own purposes, but later decided to open up their fiber to other entities such as county or city offices, schools or other governmental agencies. This is true even in some of the most rural parts of the country. If that is the case, how many companies will be able to say they are the existing fiber provider in an area? These companies may also have received governmental subsidies to install the fiber or benefitted from rates set by a regulatory agency; ratepayers likely helped pay for those fiber installations, just as ratepayers support the Universal Service Fund. How will the Commission select the winners and losers when there is more than one existing fiber provider? Depending upon the E-rate applicant's location, there may be more than one existing fiber provider that has received USF subsidies.

And what if the local incumbent telco only has a partially installed fiber network in the applicant's area? Would the local incumbent carrier still be given some sort of preference and

other lit-fiber, dark fiber or self-provisioned carriers would be restricted or denied the ability to bid this project?

3. In many of the states we work in, giving the incumbent carrier any type of preference either prior to a bid going out or after bids are received would violate state competitive bidding laws.

The Commission has stated that, in addition to E-rate rules, applicants must follow their state's bidding laws and regulations.¹ We believe this petition gives the incumbent telco a "preference" and this would conflict with many state bidding laws that require open and fair bidding. At a minimum, applicants would be torn between state requirements and the knowledge that if they did not select the incumbent provider, they would likely face at least a six-month delay in receiving a funding commitment while the winning provider "negotiated" with the incumbent carrier.

4. Commission rules already require "fair and open" competitive bidding.

Current USAC rules require that the applicant look at all options, manufacturers and service providers that can provide the requested services. This means if there are multiple service providers in an area that can provide a 1Gig circuit, for example, whether provided via lit-fiber, dark fiber, or a self-provisioned fiber solution, or even microwave or satellite, we should entertain all proposals and then pick the lowest cost and responsible provider that can provide that service. In E-rate parlance, it means we are conducting a fair and open competitive bidding process and then selecting the most cost-effective services.

¹ 47 C.F.R. § 54.504(a).

5. Commission rules already require applicants to seek bids for a leased lit solution if applicants want to entertain proposals for dark fiber or self-provisioned networks.

Current Commission rules require that applicants must seek bids for lit fiber proposals any time they want to receive proposals for dark fiber or self-provisioned networks.² This rule ensures that existing fiber is always considered by applicants.

6. The Commission should encourage more competition, not less.

In the *Second Modernization Order*, the Commission revised the amortization requirement and allowed greater competition from lit fiber, dark fiber and self-provisioned networks. Since then, the cost of data circuits has decreased significantly. As additional service providers have entered the marketplace, the cost of these circuits continues to improve for applicants and the programs. Given those facts, why would the Commission then create a barrier to entry to these competitive service providers?

7. The Texas Carriers did not demonstrate harm to the program and therefore the Commission should not initiate a rulemaking.

Nowhere in their petition did the Texas Petitioners provide specifics to prove that they were harmed or provide details on the projects they referred to in their petition. The petitioners imply they were not given a chance to bid on one or more projects in Texas, but they provided no evidence to support this claim. The lack of details and specifics makes it impossible for the Commission to determine if this petition is warranted and needs further consideration. We believe the burden of proof regarding this matter should be on the petitioners, and they need to provide more detail.

It is unclear why the Texas Carriers believe the current competitive bidding process was not sufficient. It is also unclear why the Texas Carriers could not participate in the processes they appear to take issue with. Presumably, other carriers were able to bid on the projects, so it is

²*Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, ¶ 39 (2014) (*Second E-rate Modernization Order*).

likely the fault is not with the competitive bidding rules or the applicants' implementation of the rules, but with the carriers' inability to submit bids where applicable. We note, however, that if these carriers are receiving high-cost funds, they have an obligation to submit bids on E-rate projects.³

For the reasons above, Infinity asks the Commission to dismiss the Texas Carriers' Petition.

Respectfully submitted,

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³ *Second Modernization Order*, ¶¶ 60-76.