

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

In the Matter of)	RM-11841;
)	CC Docket No. 02-6;
Petition for Rulemaking to Amend and Modernize)	WC Docket No. 13-184
Part 54 of the Commission 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 - COMMENTS OF THE OREGON
TELECOMMUNICATIONS ASSOCIATION AND THE WASHINGTON INDEPENDENT
TELECOMMUNICATIONS ASSOCIATION

I. INTRODUCTION

By Public Notice issued under DA 19-493 on May 30, 2019, the Wireline Competition Bureau (WCB) called for comments on a Petition for Rulemaking filed by Central Texas Telephone Cooperative, Inc., People Telephone Cooperative, Inc., and Totelcom Communications, LLC (the "Petitioners"). Opening comments are due by July 1, 2019. The Oregon Telecommunications Association (OTA) and the Washington Independent Telecommunications Association (WITA) hereby file these comments in response to the Public Notice.

The purpose of the Petition for Rulemaking is to request that the Commission initiate a rulemaking proceeding to consider amending Part 54 of the Commission's Rules. Specifically,

the amendments would put in place rules that would "prohibit use of the universal service funds for special construction of fiber networks that overbuild existing fiber networks."¹

OTA and WITA are trade associations representing primarily incumbent local exchange Carriers (ILECs) in their respective states. OTA² and WITA³ support the concept in the Petition for Rulemaking that a rulemaking should be opened to address the question raised by the Petitioners.

II. THE COMMISSION SHOULD CONSIDER ADOPTING RULES THAT PROHIBIT USE OF E-RATE FUNDS FOR OVERBUILDING EXISTING FIBER FACILITIES

The E-Rate program is a very important program that benefits schools and libraries. The E-Rate program fulfills an important goal of serving schools and libraries at the most favorable rates possible. That is one reason why the benefit of the E-Rate program should be protected and made available as broadly as possible.

At the heart of the Petitioners' request is that universal service funds, including E-Rate funds, are a limited resource whose use and benefit should be maximized. A maximum benefit does not exist if E-Rate funds are used to overbuild existing fiber networks that are constructed using, at least in part, universal service funds or other government monies. OTA and WITA

¹ Petition for Rulemaking at p. 4.

² OTA's ILEC Members are the following companies: Beaver Creek Cooperative Telephone Company, Canby Telephone Association d/b/a DirectLink, Cascade Utilities, Inc., Clear Creek Mutual Telephone Company, Colton Telephone Company, Eagle Telephone System, Inc., Frontier Communications Northwest, Inc., Gervais Telephone Company, Helix Telephone Company, Home Telephone Company, Molalla Telephone Company, Monitor Cooperative Telephone Company, Monroe Telephone Company, Mt. Angel Telephone Company, Nehalem Telecommunications, Inc., North-State Telephone Co., Oregon-Idaho Utilities, Inc., Oregon Telephone Corporation, People's Telephone Co., Pine Telephone System, Inc., Pioneer Telephone Cooperative, Roome Telecommunications, Inc., St. Paul Cooperative Telephone Association, Scio Mutual Telephone Association, Stayton Cooperative Telephone Company and Trans-Cascades Telephone Company

³ WITA's ILEC Members are the following companies: Asotin Telephone Company, Consolidated Communications of Washington Company, LLC, Hat Island Telephone Company, Hood Canal Telephone Co., Inland Telephone Company, Kalama Telephone Company, Lewis River Telephone Company, Inc., McDaniel Telephone Co., Pend Oreille Telephone Company, Pioneer Telephone Company, St. John Telephone, Inc., Skyline Telecom, Inc., Tenino Telephone Company, The Toledo Telephone Co., Western Wahkiakum County Telephone Company and Whidbey Telephone Company

strongly urge the Commission to open a rulemaking that would consider rules prohibiting the use of E-Rate funds to construct fiber facilities that overbuild existing fiber facilities.

III. THE PETITIONERS' PROPOSAL IS A GOOD START BUT DOES NOT GO FAR ENOUGH.

To implement the concept of not funding the overbuilding of networks, the Petitioners propose an amendment to Section 54.502(a)(1) of the Commission's Rules to disallow special construction costs for the construction of fiber where it is demonstrated that fiber already exists "unless the existing fiber owner is unwilling to negotiate in good faith to lease the fiber at reasonable market-based prices."⁴ To implement this concept, Petitioners also suggest an amendment to Section 54.503 of the Commission's Rules that would create a challenge process.

In summary, the Petitioners' concept would require applicants submit a 471 Special Construction Exhibit which identifies the schools or libraries that will be connected to the newly laid fiber and provides a map depicting the proposed fiber lines. This Exhibit would be posted on the USAC website. After posting, there would be sixty days for existing broadband carriers, and state and local entities, to challenge the need for the proposed new fiber facilities. Challengers must submit information to the USAC Administrator to show that fiber already exists in the applicable locations. Once the challenge is raised, the proposed E-Rate service provider and the existing fiber owner would have a 120 day period to negotiate in good faith the terms and conditions for a reasonable market-based price for a fiber lease agreement. The Petitioners' suggested challenge process is a good start. However, it does not go far enough.

OTA and WITA advocate that in addition to posting on the website, notice of the proposed fiber network should be given to each ILEC in whose territory the proposed fiber is planned for construction. This will ensure that the broadband provider, to the extent that it is the

⁴ Petition at p. 4.

ILEC, has the most meaningful opportunity to institute a challenge. The rationale for notice to the ILEC is that the ILEC is most likely the broadband carrier that has used universal service funds or other governmental funds, such as RUS loans, to build the fiber that is proposed to be overbuilt. Taking this extra step of providing notice would be an enhancement to the goal of ensuring that scarce federal funds are used to maximize the benefits from those scarce resources.

In addition, the Petitioners' proposed rules imply, but do not expressly state, that if at the end of the 120 days of good faith negotiation there is no lease, that the construction costs would still be disallowed. The purpose of adding new rules is to avoid overbuilding. If it can be argued by the tentative awardee that they should still be able to go ahead with construction of the overbuild, that defeats the purpose of the new rules. In addition, if an overbuild can proceed if a new lease is not consummated, that diminishes the proposed awardee's desire to negotiate in good faith to reach an actual lease of the existing fiber. Thus, there should be explicit language that states that if a lease is not reached, the construction project will not be funded.

Finally, if the broadband provider with the existing network is already providing the school or library a service which is equivalent to the service that is proposed under the new project, then a new lease is not necessary. The project should simply be disallowed since the service is already being provided. That is the best means to preserve the E-Rate funds for use in areas where it is really needed and to prevent waste, fraud and abuse.

IV. CONCLUSION

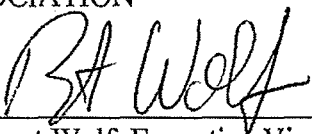
In the proposed rulemaking, attention will need to be given to details not discussed in the Petition for Rulemaking. For example, does the existing fiber facility need to meet certain standards, such as capability to provide 100 megabits, to qualify as a potentially overbuilt fiber facility? Should there be sideboards around the lease negotiations to prevent either party from

gaming the negotiations? These matters, and others, can be addressed in the NPRM.

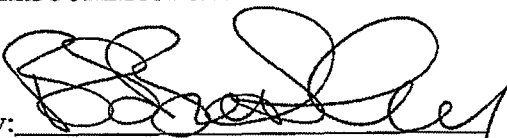
For now, it is clear that the Petition for Rulemaking raises significant issues. Based on the foregoing, OTA and WITA urge the Commission to grant the Petitioners' request and open a rulemaking to address the use of E-Rate funds in the overbuilding of existing fiber networks. The goal should be to prohibit such activity and preserve federal resources to the greatest extent possible.

Submitted this 1st day of July, 2019.

OREGON TELECOMMUNICATIONS
ASSOCIATION

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