

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

In the Matter of)	
)	RM-11841
Modernizing the E-Rate Program for Schools and Libraries)	WC Docket No. 13-184
)	WC Docket No. 10-90
Connect America Fund)	
)	CC Docket No. 02-6
Schools and Libraries Universal Service Support Mechanism)	

COMMENTS OF VALLEY TELEPHONE COOPERATIVE, INC.

Valley Telephone Cooperative, Inc. (“Valley”), by counsel, hereby submits these comments to urge the Federal Communications Commission (the “FCC” or “Commission”) to initiate a Notice of Proposed Rulemaking proceeding in response to the Petition for Rulemaking filed by Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc. and Totelcom Communications, LLC (collectively, the “Texas Carriers”) on May 22, 2019, and to express support for the Texas Carriers’ proposals to prevent or discourage overbuilding of federally-funded fiber networks with Universal Service Fund (“USF”) Schools and Libraries Program (“E-Rate”) monies.¹ The Texas Carriers’ Petition, pursuant to Section 1.401² of the FCC’s Rules, seeks the modification of certain Commission rules to include safeguards “which would discourage overbuilding of existing federally supported fiber networks.”³ Valley, who has experienced similar overbuilding as described in the Texas Carriers’ Petition, supports the

¹ 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) (“Texas Carriers’ Petition” or “Petition”).

² 47 C.F.R. § 1.401.

³ Petition, p. 1.

Petition and, accordingly, requests that the Commission initiate a Notice of Proposed Rulemaking on the matters contained in the Petition as soon as possible to prevent further waste in the USF program and to ensure that more E-Rate funds are available for projects seeking to serve rural schools and libraries that do not currently have access to broadband services.

II. BACKGROUND

Valley is a rural telephone cooperative that was formed in 1962 to serve rural exchanges in southeastern Arizona and southwestern New Mexico. It has approximately 9,200 total connections throughout its approximately 10,000 square mile ILEC footprint and its two CLEC exchanges (collectively, the “Service Area”). In addition to constructing an extensive fiber optic network throughout the Service Area and a fiber route between Tucson, AZ and El Paso, TX, Valley, with assistance from USF High Cost support, has also constructed substantial fiber optic facilities to all schools and libraries inside of its Service Area. Valley has not charged local schools or libraries nor has it sought special construction funds through the E-Rate program to provide this connectivity within its Service Area, and it has only requested E-Rate “special construction” funds to provide fiber connectivity to local schools in rural Deming, New Mexico and Cochise, Arizona, and a library in Tombstone, AZ. All are outside of Valley’s Service Area. Valley has provided fiber connectivity to another school in Tombstone, Arizona, also outside its Service Area, without E-Rate special construction funds.

III. DISCUSSION

Valley has experienced many of the same overbuilding issues as described by the Texas Carriers.⁴ On February 27, 2018, the Cochise County (Arizona) Education and Technology Consortium (the “Consortium”) issued a Request for Proposal (“RFP”) through the E-Rate

⁴ Petition, p. 2.

program for the provision of broadband services to 19 school and library locations in Cochise County, AZ. Because Valley already provided fiber to 10 of the 19 locations contained in the RFP, Valley submitted a bid for the locations that did *not* then have fiber from Valley or from any other provider. Ultimately, Valley was the only bidder and, for reasons not known to Valley, the Consortium did not proceed with the project described in the RFP. Following the Consortium's decision to abandon the larger project, a single school that was previously part of the Consortium applied for E-Rate special construction funding on its own and worked with Valley to construct fiber and connect broadband services.

On September 15, 2018, the Consortium released another RFP for the next E-Rate funding year (the "Second RFP") seeking a single provider to provide service and/or construct fiber to 49 locations throughout Cochise County, AZ. Following Valley's review of the Second RFP, it realized that the Second RFP was seeking E-Rate special construction funds to overbuild portions of Valley's existing fiber network, which had been constructed with assistance from the USF High-Cost support program. In fact, Valley already provided fiber to 15 of the locations contained in the Second RFP, and two other nationwide providers had previously constructed fiber to many other locations. In addition, several of the locations in the Second RFP to which Valley has already connected fiber are the most rural, have the fewest students, and are the most expensive to serve. One of these schools served by Valley has only 4 students; another has just 16.

Unlike the first RFP in 2018, Valley determined that it could not feasibly bid on the Second RFP due to the increased size of the request. Because the Second RFP sought only one service provider, the scope of the project was too large for a rural telephone company and would have been a departure from the local broadband mission of Valley. The Consortium did receive two other bids from national companies, and the Second RFP was awarded to one of them.

Valley's understanding is that the Second RFP winner, a commercial company that will own the network, has applied for \$29 million in special construction funds from USAC and \$3 million from the State of Arizona. These special construction funds, if awarded, will be used to overbuild a large portion of Valley's fiber network. Valley's investment in the portion of the fiber network that will potentially be overbuilt is approximately \$16 million with substantial funding coming from the USF High Cost Program.

As a result of these instances of allowing E-Rate funds to be used to overbuild existing fiber networks that were also at least partially constructed with USF support, and the resulting reduction in funds available to rural schools and libraries that are most in need of broadband service, Valley supports Commission action to prevent or discourage such activity. Specifically, Valley supports the Texas Carriers' proposals 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, as described in the Texas Carriers' Petition.⁵ Valley is also open to other ideas aimed at preventing, or at the very least discouraging, overbuilding existing fiber networks with E-Rate funds. Valley believes that the Commission's initiation of a rulemaking proceeding to address the issues described herein is the most effective way to accomplish the goals outlined in the Texas Carriers' Petition. The Commission should initiate such a proceeding immediately, before more critical USF monies are wasted or diverted from schools and libraries with no connectivity at all.

⁵ Petition, p. 4.

IV. CONCLUSION

Valley fully supports the mission of the E-Rate program and recognizes the benefits that the program brings to schools and libraries throughout rural America. However, like the Texas Carriers, Valley is concerned about the use of E-Rate funds to overbuild existing networks that have been previously constructed using other USF or other government funds. Waste and misuse of funds in the program necessarily reduces the amount of funds available to the schools and libraries that are most in need of high-speed broadband connectivity.

For the reasons set forth above, the Commission should promptly initiate a Notice of Proposed Rulemaking to reevaluate portions of its E-Rate rules in order to 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,

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