

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

In the Matter of)	
)	
Texas Carriers' Petition to Prohibit)	RM-11841
Use of E-Rate Fund to Build Fiber Networks)	WC Docket No. 13-184
Where Fiber Networks Already Exist)	CC Docket No. 02-06
)	

COMMENTS OF EDUCATIONSUPERHIGHWAY

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July 1, 2019

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EducationSuperHighway respectfully submits these comments in response to the Public Notice in the above referenced proceeding.¹

INTRODUCTION AND SUMMARY

EducationSuperHighway opposes the Petitioners’ request for rulemaking, which is contrary to longstanding Commission goals to reduce waste, foster competition, and limit applicant burdens in the E-rate program. The Commission considered and rejected the very same request as part of its 2014 E-rate modernization order as anti-competitive, which is even more the case today. While the Petitioners argue that they want 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,”² the Petitioners’ recommendations do nothing to achieve any of these laudable goals. Instead, the

¹ Wireline Competition Bureau Public Notice, issued May 30, 2019, DA 19-493,

<https://www.fcc.gov/document/wcb-seeks-comment-texas-carriers-e-rate-petition>.

² Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., People’s Telephone Cooperative, Inc. and Totelcom Communications, LLC, Page 6

<https://ecfsapi.fcc.gov/file/10522043215849/Petition%20for%20Rulemaking%20Part%2054%205.22.pdf>

Petitioners' proposal would alter the rules of the program in a direction that is decidedly anti-competitive, not cost effective, and more bureaucratic. The rules the Commission already has in place ensure that the most cost-effective solution is awarded in an open and fair competitive bidding process. The Petitioners seek to mischaracterize competition as overbuilding: rather than participating in the bidding on projects in their service area, they elected instead to propose increased bureaucracy in Washington. The petition should thus be dismissed as meritless.

I. The petition goes against the FCC's long-standing commitment to fostering competition and minimizing bureaucratic red tape for the E-rate program

The FCC has already considered and rejected the same rule changes as the Petitioners recommend. In the Second E-rate Modernization Order, where incumbent providers made these same arguments that special construction projects "takes traffic away from actual or potential last mile facilities of broadband service providers, which frustrates their ability to utilize schools as anchor tenants for broadband investment in surrounding communities, especially in low density areas," the Commission instead concluded, "It is our view that vibrant competition on an even playing field generally brings the lowest prices and best promotes 'national broadband policy.'"³ In reviewing the issue, the Commission went on to conclude:

*"We do not adopt NTCA's proposals that we give existing providers a separate opportunity to demonstrate that they are able to provide service at the targeted speeds, because to do so would interfere with the competitive bidding process, which is the E-rate program's primary tool for ensuring schools and libraries select the most cost-effective option. Moreover, because E-rate applicants' requests for bids are publicly available, providers all have an equal opportunity to bid to provide E-rate services, and we expect that where there are existing providers and networks capable of providing service at the targeted speeds, they will be well situated to offer very competitive pricing through the competitive bidding process."*⁴

³ Second E-Rate Modernization Order, adopted December 11, 2014, Paragraph 41

⁴ Second E-Rate Modernization Order, adopted December 11, 2014, Paragraph 51

The Petitioners seek to not only overturn this conclusion, but to limit competition and increase bureaucracy in the E-rate process with duplicative procedures. The Petitioners' proposal includes a 60 day challenge period, coupled with a 120 day negotiation phase, which would extend the current process by up to 180 days. In 2018, the median time for USAC to review and issue a funding commitment decision to Texas consortia projects was 296 days. Adding on an additional 180 days to a nearly year-long review process would extend the clock so long that it would be impossible for projects to be completed in the funding years for which they were applied. As Chairman Pai⁵ has said, "bureaucratic red tape should not stand in the way of high-speed Internet being delivered to rural classrooms," and he expects "additional improvements to other aspects of E-Rate administration ... to make it easier for schools and libraries to apply for and receive funding without enduring unnecessary delays or denials." Rather than eliminating red tape, the Petitioners are proposing a *Washington knows best* strategy that micromanages school choices.

As Chairman Pai has previously pointed out about E-Rate: "The FCC has no business micromanaging the technology priorities of our local schools and libraries." ... "because every school and every library has its own unique needs, its own budget constraints, its own infrastructure with its own lifecycle, we should have the humility to recognize that local schools and libraries might be in a better position than officials in Washington, D.C., to set their own priorities."⁶ Counter to the Chairman's remarks, this petition seeks to remove local choice from the E-rate process by eliminating school districts' ability to explore competitive options.

II. Current competitive bidding rules are sufficient

The current rules in place are more than enough to satiate the Petitioners' demands. Commission rules are rooted in the concept of fair and open competitive bidding for services in order to obtain the most cost-effective solution for both the applicant and E-rate. These rules, and the review process that has been implemented to enforce them, require applicants to submit extensive information and answer highly technical questions in order to defend the cost

⁵ Chairman Pai letter to Senator Tester, May 10, 2018

⁶ Statement of Commissioner Ajit Pai, July 11, 2014

effectiveness of any funding request that includes special construction. Instead, in the Petitioners' desire to avoid duplicative services to applicants' requests, they propose a duplicative process and duplicative rules.⁷ It has never been part of the rules or the review process to consider whether more than one service provider has the ability to serve a single location that is part of an application, nor should it be. The basic criterion for determining whether or not funding will be committed to a project is: *is this the most cost-effective solution to the problem the applicant is attempting to solve?* If competitive bidding is the most reliable path to cost-effectiveness, the FCC should rely on the extensive rules already in place.

The petition recommends a challenge period for providers who already have fiber near the district. Inherently, if the provider already has fiber in the area, they should be able to propose the most cost effective solution. However, the proposed rules would effectively take competitive options off the table for school districts, which would allow incumbents to behave in a monopolistic manner. **Eliminating the ability for applicants to receive bids from anyone but their incumbent carrier is the path to overcharging, not overbuilding.**

III. Limiting consortia formation is wasteful to E-rate and harmful to school districts

The Texas Carriers say they “are particularly concerned about region-based consortia groups.” However, the FCC has seen the benefits of consortia pricing as a means of cost savings to the E-Rate program, and the beneficiaries of consortia -- school districts and students in Texas and across the country -- have experienced better pricing and increased bandwidth. In its First Modernization Order, the FCC concluded: “Consortium purchasing can drive down the prices paid by schools and libraries for E-rate supported services.” Understanding this, the Commission sought to “reduce or eliminate some of the existing barriers to applicants’ participation in consortia.”⁸ The petition seeks to rebuild those barriers.

Not only are consortia effective at lowering costs, improving service, and removing administrative burdens from individual applicants - they are also prevalent throughout the E-rate

⁷ USAC response to Commissioner O’Rielly April 1, 2019
<https://docs.fcc.gov/public/attachments/DOC-357046A1.pdf>

⁸ First E-rate Modernization Order, 7/23/2014, Section 5.B.168.

landscape. There are 22 states that procure E-rate services on behalf of school districts through statewide consortium bidding and purchasing vehicles. Another 8 states leverage regional consortia to procure services on behalf of local school districts. An analysis of funding year 2019 E-rate Form 471s reveals that 43% of school districts applied for internet services as part of a consortium. With so many school districts choosing to participate in regional and statewide consortia, it would be misguided to adopt rules that limit the ability of local K-12 entities to elect to procure services as a group. Rather than trying to bend the rules to conform to a few providers' desires, the service provider community should strive to meet the needs of districts and the prevailing K-12 broadband landscape.

Although the Petitioners decline to identify any specific consortia or projects to which their concerns apply, it is presumed that the Petitioners' comments are in reference to their experiences with Education Service Centers in Texas. EducationSuperHighway has extensive data that supports the effectiveness of the consortia procurement model in Texas and elsewhere. In 2015, Education Service Center 14 ("ESC 14"), a consortium of 41 school districts in Texas, was being served by a fixed wireless wide area network ("WAN"). The fixed wireless WAN ran into serious bandwidth bottlenecks as schools started to use more technology in the classroom, which led ESC 14 to issue an RFP in Funding Year 2015 to seek leased lit fiber connections for its members. After a multi-year procurement process, ESC 14 was able to upgrade its WAN connectivity from fixed wireless to fiber, which provided member districts with 3 to 6 times the bandwidth they were receiving via the previous service. The total monthly cost of Internet service for ESC 14 dropped from \$137,370 before the upgrades to \$48,110 after the upgrades, providing significant savings for both the school districts involved and the E-rate program⁹. Although some ESC 14 member districts are located in one of the Petitioners' service areas, the Petitioner did not express any interest in the project, attend any bidders conferences, or submit any bids. The final ESC 14 consortium WAN only has one provider, simply because that provider submitted the most cost-effective solution for the member districts, as was proven by the project's approval for funding by USAC after rigorous PIA review.

⁹ Data based on E-rate Form 471 filings between 2015 and 2019

ESC 11 is another Texas consortium that, thanks to E-rate's competitive bidding process, is now delivering higher speeds and lower costs to its member districts. Beginning in 2016, the ESC sought a consortium solution for their entire membership; at the time, twenty of the ESC's members were on non-fiber connections. Prior to joining the consortium, the average cost per megabit (Mbps) for member districts was \$5.18. After completion of a consortium-wide fiber WAN bid, the new average cost per Mbps for broadband service is 20 times lower, dropping to \$0.21.¹⁰ The average bandwidth per district in the consortium increased by 10 times, from 907 Mbps to 10 Gbps.

IV. Rather than submitting competitive bids, the Petitioners are submitting bureaucratic proposals to Washington

A process for the Petitioners to maintain their anchor customers already exists: submit bids on the Form 470s for projects in their service areas. The Petitioners do not mention any specific WAN projects to which their concerns apply; however, EducationSuperHighway reviewed all of the Texas consortium projects involving new fiber construction that applied for Universal Service Fund support in the 2016-2018 Funding Years and were approved by USAC. By our assessment, each of these fiber WAN projects followed fair and competitive bidding rules. The RFP's allowed for multiple awardees, counter to recent public comments that "school district consortia had manipulated the competitive bidding process to ensure that funding went to build new wide area networks covering entire school regions."¹¹ Allowing for multiple awardees enables providers with smaller footprints to bid on the portions of a project in their service area, or to join together with other providers to bid on the overall project.

This consortia of providers approach is fairly common when responding to large regional projects. In 2015, Rasornet¹², a group of 6 providers serving different regions in Arkansas, successfully bid on a large number of circuits and services for Arkansas' statewide K-12 network, APSCN. However, instead of pursuing one of the multiple avenues available to be part of the solution for consortium applicants in Texas, the Petitioners chose not to submit a response

¹⁰ ESC 11 pricing schedule: https://fiber11.net/?page_id=11

¹¹ Remarks of FCC Commissioner Michael O'Rielly, Before the Hudson Institute, June 25, 2019. <https://docs.fcc.gov/public/attachments/DOC-358148A1.pdf>

¹² <http://www.rasornet.com/>

of any kind or to participate in any step of the process for the projects put out to bid by ESC 14 or ESC 15 (both of which overlap with the Petitioners' service areas) between 2015 and 2018. Ironically, at least one of the Petitioners is still getting business from an ESC project they did not bid on through subcontracting agreements with the winning bidder - yet another example of how providers with smaller footprints can participate in large regional projects.

In summary, instituting new rules is not required to prevent overbuilding -- provider participation in a fair and competitive marketplace is.

CONCLUSION

For the reasons discussed herein, the Commission should dismiss the Petitioners' proposal on the grounds that the petition:

1. Is anti-competition and anti-cost effectiveness,
2. Confuses overcharging applicants with overbuilding networks,
3. Introduces unnecessary and duplicative rules and regulation.

Thus, the Commission should reject the Petitioners' request for rulemaking, and dismiss the petition as meritless. The Commission has already considered and rejected this very same request because of the established open and fair competitive bidding process and because incumbent providers are well situated to offer competitive pricing. There is no new law, fact, or substance that changes this conclusion.

Respectfully submitted,

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