Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:	)	
	)	
Texas Carriers' Petition For Rulemaking to	)	WC Docket No. 02-6
Prohibit Use of E-rate Funds To Build Fiber	)	WC Docket No. 13-184
Networks In Areas Where Federally	)	
Supported Fiber Networks Already Exist	)	

REPLY COMMENTS OF FUNDS FOR LEARNING, LLC

For all of the reasons set forth and explained rather well in the numerous comments submitted in opposition to the petition of the Texas Carriers,[1] Funds For Learning, LLC, ("FFL")[2] likewise opposes the Texas Carriers' Petition. Reduced competition, fewer choices, and increased regulatory complexity do not serve the public interest.

The Texas Carriers' petition and the service provider commenters in support of it give the impression that no one in this group wants to compete for business. Since they have already received money from a USF fund to help build their fiber networks, the Texas Carriers' argument goes, the FCC should not permit anyone else to provide fiber connectivity to a customer within their reach – even if that someone else can do it better and for lower cost – no matter the quality of the Texas Carriers' respective connections and the speed and long-term cost of their service.

We have seen rural carriers who are on the forefront of providing quality

[1] Wireline Competition Bureau Public Notice issued May 30, 2019, DA 19-493; Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc. and Totelcom Communications, LLC ("Texas Carrier's Petition").

[2] FFL is an E-rate compliance firm specializing in guiding E-rate applicants through the E-rate regulatory process and is an advocate for the use of educational technologies and student Internet access. Formed in 1997, FFL provides professional advice and assistance relating to the E-rate program to clients in all 50 states.

connections to the schools and libraries in their community. Rather than resisting competition, they rise to the challenge. Leveraging their USF-supported networks, they bring faster, more cost-effective solutions into their community. They submit bids and they do not take for granted the opportunity to serve students and library patrons. For those carriers, they continue to win over their competition and *everyone wins* in their communities. Those rural telecommunications carriers should be celebrated and supported, and we applaud the work that they do bringing connectivity to distant corners of our country.

These Reply Comments are not directed at those carriers. They are directed at the Texas Carriers. The Texas Carriers paint a very different picture than most rural carriers. Rather than working to earn business, they ask the FCC to regulate competition away. Competition is hard work, and the Texas Carriers know it. It takes a great deal of time and focus. It may even require price-cutting, sometimes substantial. So why, this group of carriers seemed to have asked themselves, should we do that if we don't have to? Why should we compete on price, if we don't have to? Why should we compete on quality of service, if we don't have to? Why should we worry about the speed of our connections, if we don't have to? Why should we take the time to put together comprehensive, cost-effective proposals, if we don't have to? Why should we examine ways that we, as a multi-carrier group or groups, might be able to compete successfully for E-rate consortia business, if we don't have to?

"Chicken Little" is folktale about a chicken who concludes that the sky is falling after an acorn falls on his head. The king, he decides, must be warned, so off he goes. Along the way, he retells his story about the broken sky to other fowl who of course share his fear and thus join forces with him. In the most familiar version of the story, a fox invites all of the fowl into his lair to discuss the matter, where he promptly eats them all. The fable is interpreted as (1) a warning against mass hysteria; and (2) a warning not to believe everything one is told.

The Texas Carriers would have everyone believe that the sky is falling, that disaster is imminent if the FCC does not exempt them (and similarly situated providers) from competition. They want everyone to believe that it would be foolish or worse, no matter the circumstances, to permit any competitor of a High Cost-supported service provider to provide fiber connectivity to schools and/or libraries any time a High Cost-

supported provider claims to have some fiber in the ground or on a pole that can provide at least some Internet connectivity to them. Their tale is a wildly misleading and, like Chicken Little's, overly hysterical. Which is precisely why several commenters found it so easy to shoot it completely full of holes.[3]

Like the fox in the fable, the Texas Carriers' selfish objective is to cash in on a frenzy caused by an erroneous message. Their hope is to convince the FCC to hand them millions of dollars of E-rate business on a silver platter by making something out of absolutely nothing. We urge the FCC not to let them get away with this. Sure, the E-rate program's competitive bidding process experiences a little bit of rough weather from time to time, but just like the sky, it remains as solid as ever. In this regard, SECA said it best:[4]

> No vendor deserves no-bid contracts, not even ones that have been received High Cost support. E-rate was not founded on a bedrock principle of protectionism, and the rules should not be amended to start this now. The existing competitive bidding process, no matter how challenging the process may be, is sound. It is consistent with state laws and lowers out-of-pocket costs for schools and libraries and stretches E-rate dollars to the fullest.

We find ourselves, preposterously, in the position of having to preach to the FCC the value of competition in the marketplace for E-rate goods and services. Limiting competition without substantial, credible evidence that this limitation will somehow result in lower prices, or, at the very least somehow make it easier for schools and libraries to achieve their broadband goals and objectives, runs completely counter to everything that the FCC has been evangelizing about since 1996. In a word, it is bizarre.

Furthermore, it is a slap in the face to Chairman Pai who believes quite strongly that competition is the key to lower prices and that efforts to eliminate it should be viewed with a tremendous amount of skepticism. "Consumers benefit most from competition, not preemptive regulation," he states quite plainly and unambiguously in his Regulatory Philosophy. Because of that, he goes on to caution, "regulators should be skeptical of

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[3] See, for example, the comments submitted by SECA, SHLB, ALA, and Education SuperHighway.

[4] SECA Comments at p.16.

pleas to regulate rivals, dispense favors, or otherwise afford special treatment."[5]

We are standing on the precipice of a very slippery slope. If the FCC decides to exempt from competition High Cost-supported, rural providers that have fiber networks "capable" of serving schools and libraries, what comes next? Will it be a similar exemption for any incumbent service provider anywhere that can provide a school and library with at least some fiber connectivity? Is that where we're headed? Here are just a few of the innumerable, serious and substantial issues that the FCC will have to take the time to consider carefully, if it decides to head down this slope:

- How would this kind of competitive exemption impact applicants with local bidding rules that mandate a truly competitive, competitive bidding process?

- Rather than price being the highest weighted factor in a bid evaluation, will it be necessary to give the most weight to another factor, such as whether a local carrier receives other USF funds?

- When selecting a service provider, are schools and libraries going to have to consider the potential impact of their procurement on the incumbent vendor? If so, what will program rules require them to do or not do if their local rules prohibit this.

- Will rural schools no longer be permitted to participate in consortia? Or, alternatively, will program rules have to be amended to force consortia to use incumbent providers?

- When an incumbent vendor chooses not to submit a bid, will the applicant be required to consider the incumbent's services anyway? Will this obligation extend to non-incumbent vendors who choose not to bid? What kind of, and how much, affirmative action in this regard will the rules require?

- Will program rules require incumbents to bid for the portion of services to be delivered in their service areas, even if the overall procurement spans multiple incumbent service providers? What are the rules going to say about evaluating piecemeal bids from incumbent providers versus bids for all or a combination of service areas?

- Should the FCC decide to require the use of an incumbent carrier, will the FCC establish a price threshold at which point an applicant would be allowed to

[5] Excerpts from Chairman Pai's Regulatory Philosophy: https://www.fcc.gov/about/leadership/ajit-pai

consider alternative sources of broadband?

- If the FCC concludes that "overbuilding" of fiber networks with E-rate support is a real and serious problem that requires regulating, how is it going to define the term "overbuilding"? How many fiber optic cables and/or vendors will the FCC consider to be too much in a rural community? In any community?

- How much cost savings for an E-rate applicant will be necessary to justify the choice not to use an incumbent's service? Or will the FCC require the applicant to choose the incumbent no matter what it charges?

- Will program rules require service providers to follow local bid protest procedures as a prerequisite to submitting complaints to USAC and/or the FCC?

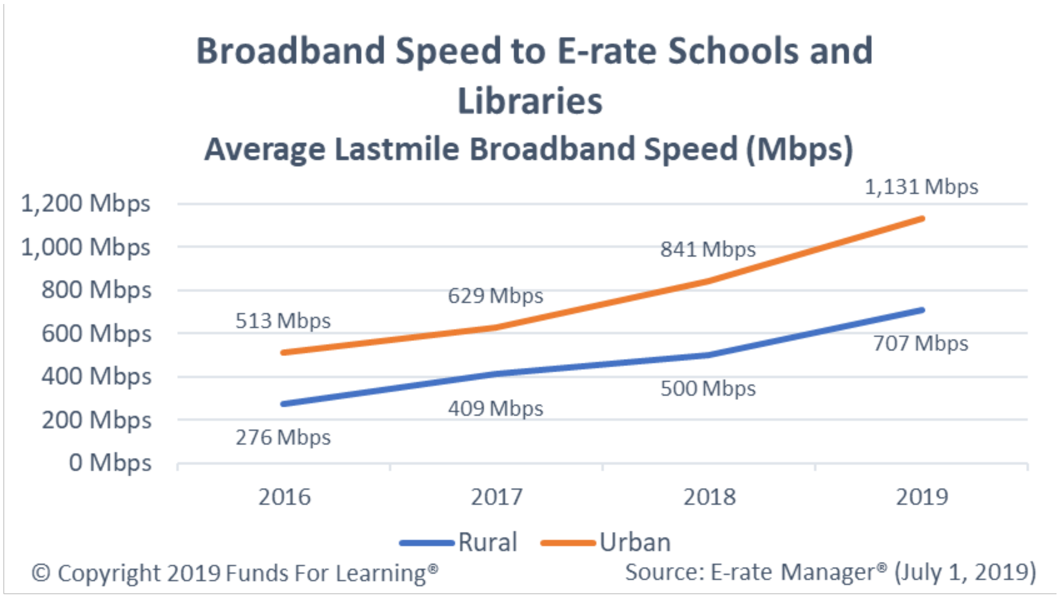
Megabit Pricing in Rural Areas Has Declined Substantially Since 2016

➢ Competition Lowers Broadband Prices

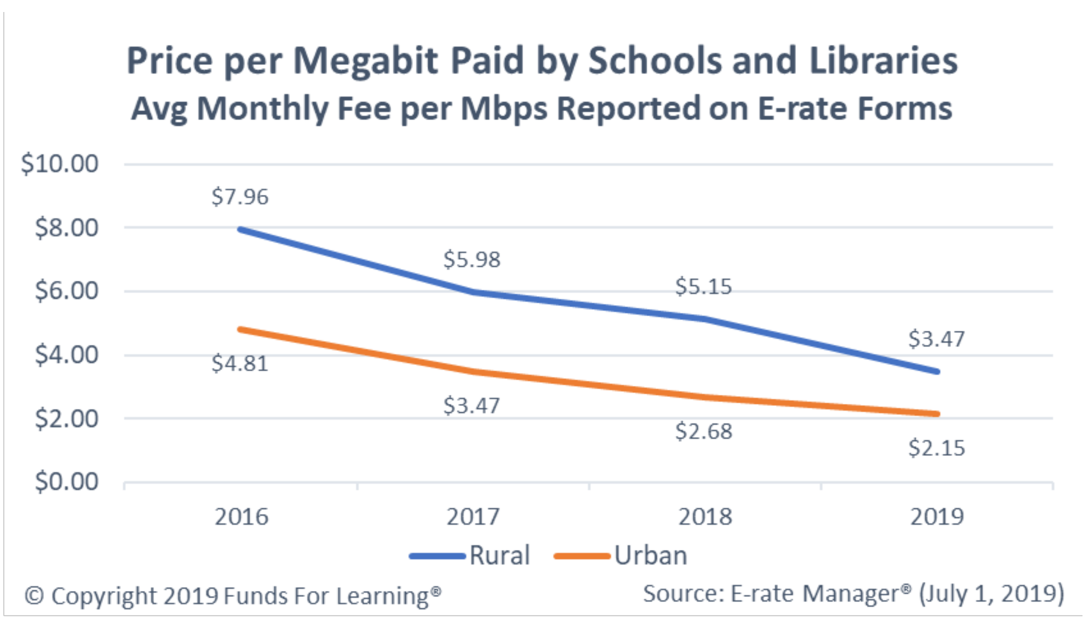
In conclusion, and as numerous commenters have already made crystal clear: the sky is not falling. So-called overbuilding is not engendering the extreme wastefulness that the Texas Carriers and those that support them say it is. Indeed the data tells an altogether different story – namely, more vendor bids and the option for self-provisioned networks bring both faster networks and better prices.

According to E-rate funding applications, the average speed of broadband to school and library buildings has more than doubled since 2016, while the average price paid per megabit has dropped more than half. New options for broadband connectivity, including self-provisioned networks, and an increase in the number of available service providers are both factors driving this dramatic change.

In 2016, rural schools reported an average "last mile" broadband connection speed of 276 megabits per second (Mbps). For the same period, urban schools reported an average connection speed of 513 Mbps. Now, in 2019, these speeds have more than doubled. Rural sites now have an average speed of 707 Mbps, more than 2.5 times faster than 2016. Urban sites now average 1,131 Mbps, 2.2 times faster than 2016.



Remarkably, this dramatic increase in bandwidth has cost applicants (and the E-rate program) very little money. The average monthly fee per megabit of download speed has dropped almost as much as the bandwidth being delivered has increased. In 2016, rural applicants paid an average of $7.96 monthly per Mbps of download speed. For urban applicant, the average fee was $4.81 per Mbps of download speed. Now, in 2019, the amount paid by rural and urban schools average $3.47 and $2.15 per Mbps, respectively.



The net effect is that both rural and urban schools are receiving much faster connections for about the same money, or a little more, each month. The table below shows the average broadband speed, total monthly fee, and net monthly fee per Mbps for urban and rural schools

Lastmile Broadband in School and Libraries

Speeds and Costs Reported on E-rate Form 471 Funding Applications

	Rural Average			Urban Average		
Funding Year	**Broadband Speed**	**Monthly Fee**	**Monthly Fee per Mbps**	**Broadband Speed**	**Monthly Fee**	**Monthly Fee per Mbps**
2016	276 Mbps	$2,194	$7.96	513	$2,471	$4.81
2017	409 Mbps	$2,447	$5.98	629	$2,182	$3.47
2018	500 Mbps	$2,574	$5.15	841	$2,255	$2.68
2019	707 Mbps	$2,451	$3.47	1,131	$2,428	$2.15

Source: E-rate Manager® (July 8, 2019)

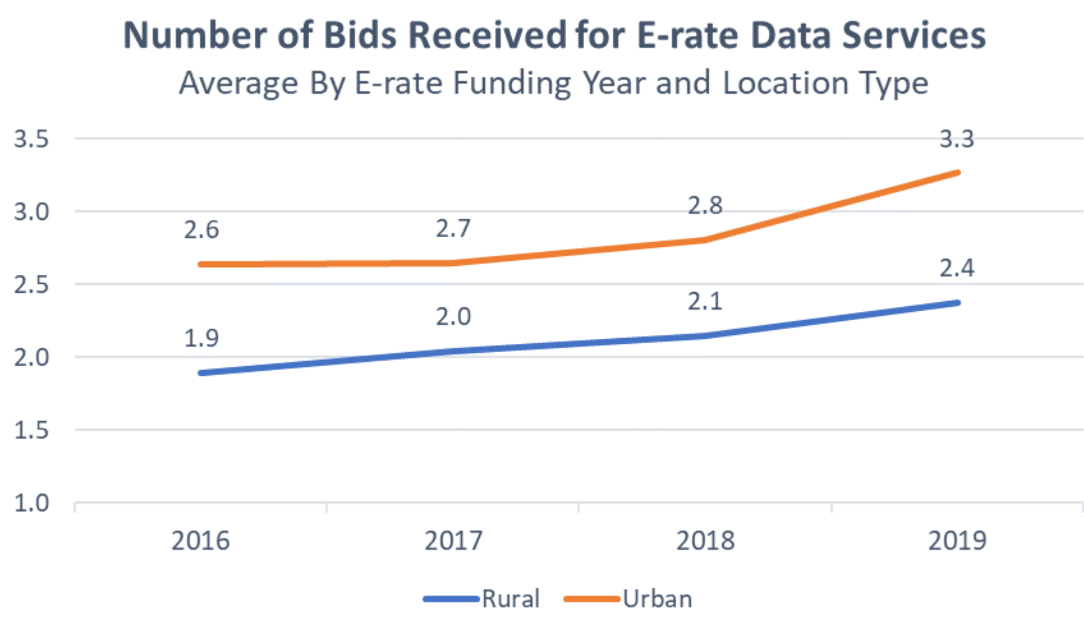
- <u>Just The Option to Procure Self-Provisioned Networks Has Increased Competition and Driven Down Prices</u>

A significant portion of applicants report that their price per megabit has decreased because of <u>the option</u> to procure self-provisioned networks. In a nationwide survey of applicants just completed by Funds For Learning, 26% of applicants reported that self-provisioned networks resulted in lower prices for their school or library system, regardless of whether or not they purchased such a network.[6]

This has helped foster an environment that encourages more vendors to submit bids to provide services to schools and libraries. Since 2016, the average number of bids received for Category One data services has increased 25%. In 2016, applicants received an average of 2.35 vendors bids for their data services. In 2019, applicants received an

[6] 2019 Trends Report by FFL at https://www.fundsforlearning.com/2019ErateTrends

average of 2.93 vendor bids for their data services. Importantly, both urban and rural applicants have benefited from an increase in competition for their business.



Number of Bids Received for E-rate Data Service

Average Count of C1 Bids by Location Type

Funding Year	Rural	Urban	Overall
2016	1.89	2.64	2.35
2017	2.04	2.65	2.41
2018	2.15	2.80	2.55
2019	2.38	3.26	2.93

Source: E-rate Manager® (July 8, 2019)

About the Calculations

The rural and urban status of an applicant is based on the geographic location of each individual site as reported on E-rate Form 471 applications. For purposes of this analysis, an entity is rural if a majority of its sites have a rural designation.

- The average broadband speed and monthly fee is based on the description of service detail data provided by the applicant on each year's Form 471 funding application(s). Only data transmission services designated as "last mile" have been included. The speeds and fees listed do not include Internet access-only (no transport) fees or miscellaneous charges.
- The average number of Category One bids excludes voices services.
- All data was downloaded from E-rate Manager® on July 1, 2019.

Respectfully submitted,

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