

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

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

**REPLY COMMENTS OF THE CENTRAL TEXAS TELEPHONE COOPERATIVE,
INC., PEOPLES TELEPHONE COOPERATIVE, INC. AND TOTELCOM
COMMUNICATIONS, LLC**

Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc. and Totelcom Communications, LLC (collectively, the “Petitioners”), by counsel, submit these reply comments to address comments filed in response to the above captioned Petition for Rulemaking¹ that seem to misunderstand and mischaracterize the Petitioners’ purpose in filing the Petition and the proposals contained therein. To be clear, the Petitioners unequivocally support schools and libraries having access to top quality broadband services at the lowest possible price. By eliminating millions of dollars in waste from the E-Rate program that stem from unnecessary overbuilding of existing subsidized fiber networks, more unserved schools and libraries will receive access to critical broadband services.

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) (“Petition”).

I. DISCUSSION

a. The Record Clearly Demonstrates That E-Rate Waste Through Overbuilding is a Nationwide Problem

The comments filed in this proceeding clearly demonstrate that the Commission should immediately draft and release a Notice of Proposed Rulemaking (“NPRM”) seeking comment on the Petitioners’ proposals and on any other way that the Federal Communications Commission (“FCC” or “Commission”) can discourage government waste as a result of the overbuilding of existing federally-subsidized fiber networks. While the Petitioners brought this issue to light in regard to region-based consortia groups in Texas, the record already submitted in this proceeding shows similar concerns shared by specific carriers in Arizona, Georgia, Michigan, Oregon, South Carolina and Washington.² Indeed, comments submitted by USTelecom and NTCA—The Rural Broadband Association indicate that the waste from the E-Rate fund associated with overbuilding is a nationwide problem that needs to be addressed by the Commission immediately.³ The Petitioners are also aware of companies in other states that have had portions of their fiber networks overbuilt by commercial carriers using E-Rate funds. Many of those companies are reluctant to come forward out of a fear that their positions may be misconstrued or

² Comments of Valley Telephone Cooperative, Inc., RM-11841, at 1-2 (filed Jul. 1, 2019) (“Valley Comments”); Comments of Barry County Telephone Company and MEI Telecom, Inc., RM-11841, at 2-3 (filed Jul. 1, 2019) (“BCTC & MEI Comments”); Comments of Colorado Valley Telephone Cooperative, Inc., Public Service Communications, Inc., Sandhill Telephone Cooperative, Inc., Santa Rosa Telephone Cooperative, Inc., and Taylor Telecom, RM-11841, at 1-2 (filed Jul. 1, 2019) (“Concerned Rural Carriers Comments”); and Comments of Oregon Telecommunications Association & Washington Independent Telecommunications Association, RM-11841, at 1-2 (filed Jul. 1, 2019) (“OTA & WIA Comments”).

³ Comments of USTelecom – The Broadband Association, RM-11841, at 4-6 (filed July 1, 2019) (“USTelecom Comments”); Comments of NTCA–Rural Broadband Association, RM-11841, at 2-4 (filed July 1, 2019) (“NTCA Comments”).

that their company will be maligned, as many have falsely accused the Petitioners, as anti-competitive and self-serving.⁴

In its comments, USTelecom correctly notes that at the time the 2014 *Second Modernization Order*⁵ was released:

Then-Commissioner Ajit Pai and Commissioner O’Rielly immediately recognized that the *Second Modernization Order* created the possibility for wasteful overbuilding to the detriment of schools and libraries in need of high-speed connections. In his dissent, Commissioner Pai noted his concern that there were no safeguards in the *Second Modernization Order* to ensure that the money spent in the E-Rate program would be used to close the fiber gap, but instead could be spent to support urban and suburban network providers overbuilding existing and competing networks.⁶

In fact, the record already developed in this proceeding demonstrates that then-Commissioner Pai and Commissioner O’Rielly’s worst fears on the misuse of E-Rate monies and special construction fees have been realized.

Despite example after example of E-Rate waste through overbuilding on a nationwide level, some commenters, especially those representing special interests in Texas, have suggested

⁴ Comments of AASA, et. al., RM-11841, at 3-4 (filed Jul. 1, 2019) (“AASA & AESA Comments”); Comments of the Benton Foundation, RM-11841, at 5-6 (filed Jul. 1, 2019) (“Benton Comments”); Comments of Center for Democracy and Technology, RM-11841, at 2-3 (filed Jul. 1, 2019) (“CDT Comments”); Comments of CVIN, RM-11841, at 2-3 (filed Jun. 28, 2019) (“CVIN Comments”); Comments of EducationSuperHighway, RM-11841, at 2-3 (filed Jul. 1, 2019) (“ESH Comments”); Comments of INCOMPAS, RM-11841, at 6-9, 11 (filed Jul. 1, 2019) (“INCOMPAS Comments”); Comments of Infinity Communications & Consulting, Inc., RM-11841, at 1-2 (filed Jul. 1, 2019) (“Infinity Comments”); Comments of New America’s Open Technology Institute, et. al., RM-11841, at 6-8 (filed July 1, 2019) (“OTI Comments”); Comments of Consortium for School Networking, et. al., RM-11841, at 2-3, 12-13 (filed Jul. 1, 2019) (“PECP Comments”); Comments of State E-Rate Coordinators’ Alliance, RM-11841, at 8-9 (filed Jul. 1, 2019) (“SECA Comments”); Comments of Uniti Fiber, RM-11841, at 2, 7-9 (filed Jul. 1, 2019) (“Uniti Comments”).

⁵ See *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, Second Report and Order and Order on Reconsideration, WC Docket No. 13-184, *Connect America Fund*, WC Docket No. 10-90, 29 FCC Rcd 15538 (Dec. 11, 2014) (“*Second Modernization Order*”).

⁶ USTelecom Comments at 3-4.

that this issue is unique to Texas and that the Petitioners are somehow to blame for not participating in the narrow RFP process.⁷ As indicated above, the record in this proceeding shows that this issue is happening in many other states.⁸ Further, these commenters ignore the numerous barriers that small rural carriers face in certain large consortium-based RFPs, including the fact that the RFPs cover hundreds of miles, are not listed under all zip codes associated within the consortium, either give preferential weight to serving the entire consortium or do not make clear that partial bids will be accepted, and include an incredibly short 28-day timeline⁹ to submit a bid.¹⁰ Therefore, the argument that all providers have “an equal opportunity to bid”¹¹ on the RFPs is a red herring that conceals these barriers faced by small carriers. While blaming the Petitioners seems to be a fashionable way for some special interests to try to distract the Commission and distort the Petitioners’ proposals, not a single commenter that opposes the FCC moving forward with an NPRM acknowledges the most obvious fact – that

⁷ AASA & AESA Comments at 2-3; CVIN Comments at 2; ESH Comments at 2, 7-9; PECP Comments at 6-7; SECA Comments at 10-11; and Uniti Comments at 2, 8-9.

⁸ *See, supra*, note 2.

⁹ *See* 47 C.F.R. 54.503(c)(4).

¹⁰ While the Petitioners may have been the best equipped, by experience and existing infrastructure, to serve schools within their own rural service area, they were neither equipped to serve schools that are over a hundred miles away in urban areas nor did they have the time or relationships to form a group bid within the 28-day time period. *See infra* discussion in Section I(b) p. 6-7 herein. In many cases, the RFP process in Texas, and likely other states, was arguably not “fair and open” to all potential applicants in violation of existing Commission Rules. *See* 47 C.F.R. § 54.503(a). While the Petitioners’ proposal to reduce waste in the E-Rate program involves a mandatory negotiation period *after* the RFP process to determine whether fiber leasing would be more cost effective than overbuilding, the Petitioners are open to other solutions, such as improving the RFP process so that all carriers capable of serving any school within the RFP can effectively participate. A *genuinely* open and fair RFP process will likely result in a greater number of bids and a more competitive, cost-effective solution.

¹¹ Benton Comments at 7.

eliminating waste in the E-Rate program will make more money available for schools and libraries that lack any meaningful broadband service.

b. The Petitioners' Proposals Seek to Eliminate Waste, Not Competition

Many of the comments filed in response to the Petition include attacks on and generalizations about the Petitioners' proposal, such as calling it "anti-competitive" or "protectionist,"¹² and claim that such proposals will result in school districts paying higher prices and accepting lower quality services. These characterizations are patently false, unsubstantiated and misunderstand many aspects of the Petitioners' proposal. The Petition aims to discourage the use of precious E-Rate Funds to overbuild existing federally-funded fiber networks so that more money will be available to serve additional schools and libraries, not to squelch competition. However, having multiple federally-funded fiber networks running parallel to each other in rural America, as some commenters seem to support, does not amount to real competition; but instead, amounts to hundreds of millions of dollars in government waste.

Amongst the other various misinterpretations of the Petition, many commenters misunderstood the Petitioners' petition to request the ban of *all* E-Rate funds where there is an existing fiber network.¹³ On the contrary, the Petitioners are not advocating for a blanket prohibition of E-Rate funds in areas where a fiber network is built at all. Rather, they are

¹² AASA & AESA Comments at 3-4; Benton Comments at 5-6; CDT Comments at 2-3; CVIN Comments at 2-3; ESH Comments at 2-3; INCOMPAS Comments at 6-9, 11; Infinity Comments at 1-2; OTI Comments at 6-8; PECP Comments at 2-3, 12-13; SECA Comments at 8-9; Uniti Comments at 2, 7-9.

¹³ Comments of American Library Association, RM-11841; CC Docket No. 02-6; WC Docket No. 13-184, at 3-5 (filed July 1, 2019) ("ALA Comments"); Benton Comments at 10-11; CDT Comments at 1-2; CVIN Comments at 2-3; ESH Comments at 5; INCOMPAS Comments at 6-9; Infinity Comments at 3-4; OTI Comments at 2-3; PECP Comments at 8-13.

seeking to ensure that USF funds are used efficiently to achieve the E-Rate program's purpose and schools are receiving the best and highest service for the lowest possible price. Therefore, the Petitioners encourage putting a mechanism in place to consider and negotiate a reasonable rate to lease existing fiber to avoid duplicative costs and unnecessary overbuilding to the benefit of both USAC and the schools. In the event that a reasonable rate cannot be reached and overbuilding a fiber network is the best and most cost-effective option, then the Petitioners believe that the schools should be able to make that choice. In such a circumstance, overbuilding would be permitted in that narrow instance.

Other commenters incorrectly assert that the Petitioners are against the formation of and use of consortia to provide service to large geographic areas.¹⁴ While the Petitioners appreciate the many benefits afforded by consortia formation, the Petitioners also caution that consortia can be, in and of themselves, anti-competitive when an RFP is tailored to one winner and requires limited response times.¹⁵ As explained in the Petition, the Petitioners serve small service areas and only a small number of local schools and libraries.¹⁶ When these local schools join a consortium with hundreds of other schools spread across hundreds of miles, and the consortium issues an RFP that requires or strongly prefers the provision of service by a single provider to all of the schools in geographic area, the sheer coordination required to provide that level and breadth of service effectively eliminates small carriers from RFP consideration.¹⁷ Therefore,

¹⁴ AASA & AESA Comments at 1-2; ESH Comments at 5-6; Comments of ESC Region 11, RM-11841; CC Docket No. 02-6; WC Docket No. 13-184, at 2-3 (filed July 1, 2019) ("ESC Region 11 Comments"); SECA Comments at 11-13.

¹⁵ *See, supra*, note 9-10.

¹⁶ Petition at 1-2.

¹⁷ The record in this proceeding reveals that consortia serving large geographic areas is not unique to Texas. *See* ESH Comments at 6 (stating that 8 states utilize regional consortia to procure E-rate services on behalf of school districts).

while the Petitioners are not advocating the elimination of bidding consortia for the provision of E-Rate services, they are acutely aware that there is an inherent anti-competitive advantage given to large commercial carriers that can submit a bid to cover an entire large geographical area. Once these large commercial carriers are selected, there is no disincentive for them to apply for special construction costs to overbuild existing fiber networks, including fiber networks constructed by small, rural carriers with Universal Service Fund (“USF”) monies.¹⁸

c. The Petitioner’s Proposal Will Not Result in Additional Funding Delays

Various commenters opposed the Petition’s proposed 60-day challenge period and 120-day negotiation period because they objected to adding additional steps to USAC’s already lengthy E-Rate approval process.¹⁹ However, the Petitioners’ proposal does not add additional time onto the USAC approval process. The challenge and negotiation periods would run concurrent to USAC’s review and would not affect the approval time of any application. As commenters recognize, it typically takes nearly a year to review an E-Rate funding application,²⁰ during which the challenge and negotiation period can easily run simultaneously.

In trying to reduce waste through overbuilding existing federally-funded fiber networks, the Petitioners put forth a proposal that dissuades but does not prohibit overbuilding.²¹ Nevertheless, the Petitioners are open to alternative options aimed at discouraging the

¹⁸ Valley Comments at 3-4 (citing a commercial company seeking special construction funds to overbuild a large portion of Valley’s existing network that Valley has already invested roughly \$16 million into with the assistance of the USF High Cost program).

¹⁹ Benton Comments at 7-9; CVIN Comments at 5; ESH Comments at 4; ESC Region 11 Comments at 4; INCOMPAS Comments at 12-13; PECP Comments at 10-11; SECA Comments at 9; Uniti Comments at 10-11.

²⁰ Benton Comments at 7.

²¹ Petition at 4-5.

overbuilding and waste of E-Rate funds, such as transforming the RFP process. Because there are likely many ways that the FCC could discourage overbuilding and prevent waste in the E-Rate program, the FCC needs to immediately draft and release an NPRM. Given the scarcity of USF monies and the Commission's goals of expanding broadband to underserved and unserved areas, is the Petitioners believe that rules should be enacted to ensure that USF funds are used efficiently, schools are receiving the best and most cost-effective service, and the process is open and fair.

II. CONCLUSION

The Petitioners reiterate their support for the E-Rate program and the benefits that the program provides to rural schools and libraries. However, the current E-Rate competitive bidding process has been fraught with waste and overbuilding. The comments filed in opposition to the Petition fail to explain how allowing such waste and overbuilding benefits the schools and libraries, or USAC.

Therefore, the Petitioners urge the Commission to take action by releasing an NPRM seeking comment on the Petitioners' proposals to amend the E-Rate competitive bidding requirements to encourage the most efficient use of E-Rate funds and the provision of the best and most cost-effective service to the schools and libraries.

Respectfully submitted,

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