

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Establishing the Digital Opportunity Data Collection	)	WC Docket No. 19-195
	)	
Modernizing the FCC Form 477 Data Program	)	WC Docket No. 11-10
	)	

**COMMENTS OF THE RURAL CARRIERS FOR THE PROTECTION OF  
E-RATE FUNDS**

The Rural Carriers for the Protection of E-Rate Funds (“RCPEF”),<sup>1</sup> by their counsel, hereby submit these comments in response to the Second Further Notice of Proposed Rulemaking (“*Notice*”) issued in the above-captioned docket, which are limited to the Commission’s questions regarding using digital mapping to “promote efficiency, minimize waste and help avoid duplicative funding within the Universal Service Fund (“USF”).<sup>2</sup> The RCPEF strongly support the Federal Communications Commission’s (“FCC” or the “Commission”) efforts to establish the Digital Opportunity Data Collection (“DODC”). The DODC is a major step forward in creating a more granular broadband map that administrators of federal and state support programs can use to prevent overbuilding and maximize the use of their funds so that more unserved locations are connected. The map alone, however, will not resolve overbuilding in the USF Schools and Libraries Program (“E-Rate”), which contains no rule prohibiting overbuilding already federally subsidized fiber networks.

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<sup>1</sup> Please see Exhibit A for the list of individual members of RCPEF.

<sup>2</sup> *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (rel. Aug. 6, 2019) (“*Notice*”), ¶ 84.

The RCPEF are telephone cooperatives and broadband and cable service providers that share a common mission of bridging the digital divide in their respective rural communities. Due to the expansive landscape and sparse populations of their communities, the tremendous expense in deploying services has traditionally outweighed any return on investment. Accordingly, the RCPEF are great proponents of USF and other federal and state funding programs, which have allowed them to deploy fiber to their local schools and broadband services to a lot of their otherwise unreachable citizens. The RCPEF also appreciate the finite nature of the USF and, for that reason, encourage the Commission to place checks in place to ensure it is used for its maximum potential.

The DODC has the potential to vastly improve federal and state grant and loan programs that aim to close the digital divide. By understanding where broadband is currently available, the Commission and other federal and state agencies can invest into the areas that are actually unserved. While the RCPEF fully support the DODC as a first step, they implore the Commission to consider the second step, which is to obligate USAC, the administrator of USF, to consider these facts for *all* USF programs. As Commissioner Michael O’Rielly states “one of the problems inherent to USF administration is insufficient coordination among the programs, which has resulted in easily preventable waste and gross inefficiencies.”<sup>3</sup>

Such preventable waste is especially true within the E-Rate program, where no rule currently exists to require USAC to consider whether a school or library is already served by a fiber network before approving upfront special construction costs to build an entirely duplicative fiber network. Currently, Section 54.501<sup>4</sup> of the FCC Rules allows any school that is not

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<sup>3</sup> *Notice* at 108.

<sup>4</sup> 47 C.F.R. § 54.501

operating as a for-profit business or does not have endowments exceeding \$50,000,000 to be eligible to seek E-Rate support for eligible services, which include Category 1 services described in the Eligible Services List (“ESL”).<sup>5</sup> The ESL, released annually by the Wireline Competition Bureau, has since the 2016 ESL<sup>6</sup> included upfront, special construction costs. The allowance of upfront, special construction costs combined with no rule prohibiting overbuilding has led to the duplication of fiber networks funded by the E-Rate program, costing rate payers, at minimum, over \$100,000,000 in waste. Certainly, the wasted money from the E-Rate program, combined with accurate maps, could be used to ensure that existing unserved schools and libraries receive critical E-Rate funds, bringing the power of the Internet and broadband services to the most rural and underserved portions of the United States.

The Texas Carriers brought this issue to light when they filed a Petition for Rulemaking with the Commission in May of this year.<sup>7</sup> The record in that proceeding shows similar incidents and concerns of fiber overbuilding in Arizona, Georgia, Michigan, Oregon, South Carolina, Utah, Wyoming and Washington.<sup>8</sup> The Texas Carriers proposed that USAC require a challenge

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<sup>5</sup> 47 C.F.R. § 54.502.

<sup>6</sup> See *Schools and Libraries Universal Service Support Mechanism, Eligible Services List for Funding Year 2016* (rel. September 11, 2015) (Appendix B) (“Applicants may seek special construction funding for the upfront, non-recurring costs for the deployment of new or upgraded facilities.”).

<sup>7</sup> 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”).

<sup>8</sup> Comments of Valley Telephone Cooperative, Inc., RM-11841, at 1-2 (filed Jul. 1, 2019); Comments of Barry County Telephone Company and MEI Telecom, Inc., RM-11841, at 2-3 (filed Jul. 1, 2019); 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); Comments of Oregon Telecommunications Association & Washington Independent Telecommunications Association, RM-11841, at 1-2 (filed Jul. 1, 2019); and Letter from Chris Reno, Director of Accounting to Union Telephone Company, to Commissioner Michael O’Rielly, RM-11841 (filed Jul. 20, 2019).

period before granting upfront, special construction costs to build a new fiber network. During this challenge period, carriers with existing fiber could come forward and propose a leasing arrangement with the winning bidder. If (and only if) the leasing arrangement is a more cost-effective use of E-Rate funds, then USAC would require the selected bidder to enter such arrangement in lieu of wasting millions of dollars to build a duplicative fiber network. The Texas Carriers recognize that such a challenge period is necessary since USAC currently does not know which schools currently have fiber. While the DODC proposed in this proceeding may resolve that lack of knowledge, the E-Rate rules must be amended to require USAC to only grant upfront, special construction costs when leasing fiber is not the most cost-effective option.

The RCPEF appreciate the Commission's efforts to take the first step in fixing the broadband mapping issues, which ultimately can lead to more efficient use of the USF. The Commission, however, must also take the next step by amending the E-Rate rules to prevent wasteful overbuilding using funds from the same program. The RCPEF urge the Commission to release a Notice of Proposed Rulemaking seeking comment on the Texas Carriers' proposals to amend the E-Rate rules to discourage waste from the allocation of special construction dollars from the E-Rate fund.

Respectfully Submitted,

THE RURAL CARRIERS FOR THE  
PROTECTION OF E-RATE FUNDS



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September 23, 2019

## **APPENDIX A**

### *List of Rural Carriers for the Protection of E-Rate Funds Members*

1. Barry County Telephone Company
2. Blackfoot Communications, Inc.
3. Central Texas Communications, Inc.
4. Colorado Valley Communications
5. Public Service Communications, Inc.
6. Peoples Telephone Cooperative, Inc.
7. Sandhill Telephone Cooperative, Inc.
8. Santa Rosa Telephone Cooperative, Inc.
9. Totelcom Communications, LLC
10. Valley Telephone Cooperative, Inc.