Before the
FEDERAL COMMUNICATRIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Modernizing the E-rate	)	WC Docket No. 13-184
Program for Schools and Libraries	)	FCC 14-99

REPLY COMMENTS OF UNITE PRIVATE NETWORKS, LLC ON FURTHER NOTICE OF PROPOSED RULEMAKING

Unite Private Networks, LLC ("UPN") hereby submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking[1] ("Further Notice") in the above-captioned proceeding concerning the schools and libraries universal service support mechanism ("E-rate"). In the Further Notice, the Commission seeks comment on certain specific proposals to create a maximum duration for E-rate supported contracts.[2] UPN hereby submits its reply comments to refute several key comments made by CenturyLink in its comments.[3]

ENSURING THAT MULTI-YEAR CONTRACTS ARE EFFICIENT

A. Limiting the length of E-rate contracts to 5 years hinders competition.

In its comments, CenturyLink contends that the five year rule "strikes the right balance"[4] between the advantage of long term contracts and the administrative burden borne by applicants when hosting a new competitive bidding process. To support this assertion, CenturyLink states that "[T]here aren't any retail services that warrant a longer maximum contract length, even when special construction is necessary" and that a "five year maximum term is actually consistent with

[1] *Modernizing the E-rate Program for Schools and Libraries,* WC Docket No. 12-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. Jul 23, 2014). In these comments, any reference to the Report and Order portion of the Further Notice is called the "Report and Order".
[2] Further Notice at ¶¶ 271-278.
[3] *Comments of CenturyLink on Further Notice of Proposed Rulemaking* (dated Sept. 15, 2014) will be referred to as "CenturyLink's Comments".
[4] *Id.* at Page 9.

how other, non-E-rate customers manage their telecommunications procurements."[5] While UPN agrees that E-rate contracts should be treated in a similar fashion as non-E-rate contracts, UPN disagrees with the blanket representation made by CenturyLink that non-E-rate customers prefer shorter term contracts. In fact, UPN has numerous enterprise customers that utilize long-term contracts (7 to 10 years in length) for their bandwidth needs and enjoy the benefits such long-term contracts afford them, *i.e.*, ease of future budget planning due to stable pricing, small or no upfront costs, lower monthly costs, and relief from administrative burdens of hosting competitive bidding processes every couple of years.

CenturyLink also states that "long contract terms can reduce competition and lock-in applicants to a provider, services, technology, or prices that may be improved upon. Competitive procurement is essential to the E-rate program and the efficient, fair, and effective delivery of services to applicants."[6] UPN agrees that the competitive procurement process is essential to the E-rate program and that it has been the bedrock of the E-rate program since its inception. However, UPN disagrees that long-term contracts reduce competition. One of the many benefits enjoyed by applicants who choose to participate in long-term contracts is that they can "lock-in" rates for specific levels of bandwidth over a long period of time. However, this is only done after an open and fair competitive bidding process is held where all potential vendors have the same opportunity to provide bids for the services that the applicant is seeking. In addition, most applicants engage in long-term fiscal planning and that planning is directly tied to the competitive bidding process for current and future bandwidth needs. Simply because technology can or may be improved upon at some point in the future is not a sufficient enough reason to limit the many benefits that applicants can and do enjoy in long-term contracts. And, it is does not negate the administrative

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[5] *Id.*

[6] *Id.* at Pages 9-10.

burden applicants would bear when hosting new competitive bidding processes or the infrastructure shifts applicants face when changing to new and/or different technologies.

In addition, UPN contends that limiting the length of E-rate contracts to only five years (including extensions) does more to hamper competition than maintaining the current status of no limitation on length of E-rate contracts. CenturyLink states in its comments that "[T]he Commission may also note that the vast majority of K-12 school and library buildings are close to existing fiber, such that any special construction costs are surprisingly modest."[7] This may be true for the larger incumbent providers like CenturyLink.[8] However, it is not true for smaller providers who must incur a larger capital investment to build new fiber facilities and to provide service to many K-12 schools and library buildings. Longer term contracts allow smaller providers to amortize their capital investment over longer periods, which in turn allows them to provide service at no or small upfront costs and lower monthly payments over time. Forcing all service providers to approach the marketplace in the same fashion - meaning, to recoup their capital investment costs over the same period of time - provides a competitive advantage to large incumbent providers whose capital investment costs are "surprisingly modest". In order to compete in a one-size-fits-all marketplace, smaller providers will be forced to require either large upfront payments, large monthly payments, or a combination of both. UPN contends that applicants should be allowed the freedom to choose the solution that best suits their technological needs, as well as their current and future budgets, as they are the entities that are best suited to evaluate their options based on their individual needs, budgetary concerns, and state/local procurement regulations.

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[7] *Id.* at Page 10.

[8] *Id.* at Page 12(noting CenturyLink is the "third largest telecommunications company by access lines" and serves virtually every type of retail and wholesale customer).

B. Refraining from changing the length of E-rate contracts provides simplicity and certainty.

In its Further Notice, the Commission asks, would it be sufficient to require that contracts be renegotiated every five years, or should the Commission permit longer term contracts if they include provisions that would help ensure that applicants enjoyed the benefit of declining prices of bandwidth and their expected increasing demand for those services?[9] In responding, CenturyLink stated it "believes the Commission should avoid adding more complexity to E-rate procurement."[10] UPN agrees with CenturyLink that the Commission should not add more complexity to E-rate procurement, especially in a time where numerous changes and shifts in the program's focus are taking place. But, again, UPN disagrees with CenturyLink's proposal of setting a "reasonable, balanced maximum."[11] Applicants and service providers alike are well aware of the current guidelines for E-rate's competitive bidding requirements and long-term agreements. At this time, making no change to the regulations is the simplest action and continues to provide certainty for applicants who have planned for future budgets based on existing long-term agreements. As discussed in more detail below and in its responding comments to the Further Notice, UPN disagrees with the idea that costs to deploy fiber will continue to decline over time. UPN further advocates for contracts with flexibility to increase bandwidth over the life of the agreement, regardless of the length of the agreement.

In addition, implementing any rule change as to the acceptable length of E-rate contracts that does not grandfather in current agreements is neither simplistic nor certain. The majority of applicants would be faced with the prospect of hosting numerous competitive bidding processes

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[9] Further Notice at ¶ 275.

[10] CenturyLink Comments at Page 11.

[11] *Id.*

in a single E-rate season, as well as the possibility of paying very large termination penalties outside of E-rate if they are forced to terminate long-term contracts in exchange for shorter-term contracts which may or may not be less expensive depending on the competitive bidding process.

C. Long-term contracts provide many benefits to schools and libraries as well as service providers.

As noted above, UPN strongly disagrees with CenturyLink's position that very long duration contracts undermine competition and lock in applicants.[12] The Further Notice speculates that much longer term contracts may be the most efficient way to contract for installation of a new dedicated fiber connection or other such facility thought to require infrastructure build-out or to have "useful life of 20 years or more."[13] CenturyLink states "[T]his exemption invites abuse of the rule, as too many people exaggerate the real world practical life of IT network facilities, even as they underestimate the necessary costs of operating, maintaining, and upgrading those facilities over time."[14] Again, UPN strongly disagrees with this statement. The current E-rate competitive regulations do not provide for a specified duration of contracts and there is no allegation of overall abuse of the current competitive regulations driving the need for E-rate modernization. In addition, it is widely accepted in the telecommunications industry that fiber optic cable has a useful life of at least 20 years. For example, fiber that was deployed in the early to mid-1990s is still being used today by small and large providers alike with no immediate need of replacement. Well maintained fiber very likely has a useful life of 30 to 40 years. As such, it makes sense for E-rate contracts to take advantage of the useful life of these facilities just as it does with Category 2 equipment, which has a much shorter useful life expectancy. Other E-rate regulations require Category 2

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[12] *Id.*

[13] Further Notice at ¶ 276.

[14] CenturyLink Comments at Page 11-12.

equipment purchased with E-rate funds to remain in use at the school for which it was purchased for a period of at least three years. This is presumably to ensure that the equipment is fully utilized during its useful life expectancy. The same should ring true for fiber deployment. Applicant should be able to enjoy the benefits of their procurement for as long as reasonably practicable.

As with any contractual relationship, service providers have a responsibility to ensure that their network facilities meet the contracted bandwidth requirements regardless of any needed maintenance or upgrade of facilities that is required to do so. In fact, maintenance and upgrading of facilities is generally taken into account when developing pricing and determining costs related to providing service to any given customer regardless of the length of the contract. As such, this portion of CenturyLink's argument falls flat.

CenturyLink further states that the Commission can consider applications for waiver of a five-year limit on E-rate contract duration, where the petitioner can show unique circumstances justifying deviation from the requirement.[15] However, CenturyLink states in a footnote in its comments that "The Commission has acknowledged the need to reduce administrative complexity, which is essentially burdensome for smaller and rural applicants. It would seem ironic for the FNPRM at the same time to be considering an additional layer of procurement complexity here."[16] UPN agrees that there is a need to reduce the administrative complexity, especially for smaller and rural applicants. But, it is the very same applicants who often benefit from longer term contracts due to the complexity of delivering service to more remote areas. Limiting their options to only five-year agreements could have the unintended effect of actually causing the cost for their service to be increased. And, adding a waiver exemption that they could apply for in order to receive

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[15] *Id.* at Page 11.
[16] *Id.* at footnote 25 on Page 10.

funding for longer term contracts has the effect of adding to their administrative burden. Neither of these outcomes is consistent with the overarching theme of the Commission's E-rate modernization efforts.

In addition, UPN believes that limiting the length of E-rate contracts to any specific term will add to the administrative complexity of the E-rate program itself and could cause applicants to loose funding even when all other E-rate regulations have been followed. For instance, if a rural applicant holds a competitive bidding process that is fair to all potential vendors and selects a service provider that best meets their individual needs with a contract with the following terms: 1) a term of 7 years with 3 voluntary extensions (for a total of 10 years); 2) no upfront costs assessed; 3) the lowest monthly costs (as compared to all other options); and 4) an allowance for an increase in bandwidth if the applicant needed it during the life of the contract, any E-rate funding request for this contract would be denied because exceeding the five year contract length limitation and having voluntary extensions would be a fatal flaw - even if all other forms were properly and timely completed. Application of the proposed rule in this scenario (which is not necessarily unique) would be contrary to the Commission's goals of providing resources to enable schools and libraries to have access to higher levels of bandwidth in order to compete and interact in a global society.

CenturyLink further states that "[V]ery long term arrangements similarly make little sense for schools and libraries."[17] Again, UPN must disagree with this statement. Many of UPN's customers - both enterprise and E-rate supported - enjoy the benefits we have discussed above relating to agreements that are 7 to 10 years in length, even in states that have limitations on the

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[17] *Id.* at Page 12.

length of contracts that schools and libraries can enter into. For instance, in the State of Nebraska, state statutes require schools and other municipal entities to enter into contracts that are limited to one year at a time, excluding voluntary extensions. As noted in the State of Nebraska's Comments[18] in response to the Further Notice, the State of Nebraska utilizes 8-year and 6-year contract durations to "decrease its unit cost of commodity" on Internet and Wide Area Network ("WAN") transport. In order to comply with the state statute, these agreements are structured as one year agreements with 5 or 7 one-year voluntary extensions. This allows the State of Nebraska to comply with its local regulations and enjoy the benefit of longer term contracts that meet each individual school or library's needs. A change in E-rate regulations will have a direct, negative impact on applicants such as the State of Nebraska and its Educational Service Units.

Next, CenturyLink argues that "[T]he needs of applicants are dynamic, technology is moving rapidly, prices for high capacity services are falling, and applications are changing all the time. The assumption that very long term contracts will be less expensive over time is simply not sufficiently reliable to justify such a major exemption. It would be a mistake for the E-rate program to essentially lock in applicants - and lock out competition."[19] UPN agrees that the needs of applicants are dynamic and technology is moving rapidly, which is why UPN supports the Commission's idea of allowing for long-term contracts with scalable options that would allow applicants to increase their bandwidth as the need arises over the life the contract. As noted above, there is currently no limitation on the maximum length for an E-rate contract; and local procurement regulations, competition in the marketplace and the specific needs of applicants are the driving factors for determining the appropriate length of a contract. UPN disagrees with

[18] *Initial Comments of the State of Nebraska, Office of the Chief Information Officer, Regarding Further Notice of Proposed Rulemaking Set Forth in FCC Order 14-99* (dated Sept. 14, 2014) at Page 6.
[19] CenturyLink Comments at Page 13.

CenturyLink's assertion that making no change to the maximum length of an allowable E-rate contract would somehow be a mistake. Currently, competition is alive and well in the E-rate program.

CenturyLink also claims that long-term contracts are unnecessary because special construction charges are eligible for E-rate support, in addition to charges for recurring services.[20] Again, as discussed throughout these Reply Comments, there are many benefits to allowing long-term contracts, especially when fiber builds are necessary. Not every service provider approaches the marketplace in the same fashion. Often, UPN does not require upfront payment of its capital investment, but rather amortizes that capital investment over a longer period of time through monthly payments from its customers. UPN believes that this approach is beneficial to applicants and to the overall health of the E-rate fund because the burden of bearing the capital investment is shifted to the service provider, applicants are not required to pay large portions of costs in a single year, and the E-rate fund is not required to pay large portions of costs for a single applicant in a single year.

Finally, CenturyLink states "Too many parties - including some financially-challenged R&E networks and others hoping to tap the E-rate fund - have misrepresented the difficulty securing affordable high-capacity service. The truth is that the vast majority of school and library sites nationwide likely have cost-effective high-capacity commercial service available, even, surprisingly, in rural areas, and that availability is improving all the time. Service is more capable, more widely available, and more cost-effective than ever before."[21] UPN disagrees with this "truth". The truth is that many, many schools and libraries across the nation are underserved and

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[20] *Id.*
[21] *Id.*

lacking in bandwidth, as evidenced by the record in this proceeding. Additionally, the truth is that municipalities and other entities have enacted stricter regulation geared at assessing fees for new fiber builds and labor rates have continued to increase, all of which cause the cost to provide service, especially in more remote areas, to increase. Just because certain electronic devices are less costly or large incumbent providers may have "surprisingly modest" special construction costs does not automatically equate to the overall cost of supplying bandwidth to schools and libraries is dropping at such a rate that a long-term contract would be out-of-date within a mere five years.

CONCLUSION

UPN strongly disagrees with many of the points made by CenturyLink in its comments to the Further Notice and reiterates its comments submitted in this proceedings that a federally mandated, one-size-fits-all rule will have the effect of limiting applicants' options in such a way that favors large incumbent providers and has the ultimate effect of hampering competition. UPN believes that the competitive bidding process the Commission has set in place for the E-rate program is working and limiting the length of allowable contracts will only serve to cause additional administrative burdens on Applicants.

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Respectfully Submitted,

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