



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

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

I. Introduction and Overview

The South Dakota Department of Education (“Department” or “SD DOE”) and Bureau of Information and Telecommunications (“BIT”) (hereinafter referred to as “South Dakota” or “State”) submits the following Replies to Comments in response to the FCC’s Further Notice of Proposed Rulemaking to modernize the E-rate Program for Schools and Libraries, FCC Order No. 14-99 (Order released July 23, 2014) (hereinafter referred to as “E-rate Reform Order”).

Together with BIT, the Department currently offers high speed broadband Internet access service and connectivity to all 151 of the public school districts. The schools are interconnected via the Digital Dakota Network (“DDN” or “Network”). The DDN is a statewide interactive video communications system using compressed digital technology to provide a “meeting pipeline” across the state of South Dakota and the global community. The DDN also provides high speed Internet access service. The DDN connects the Executive, Legislative and Judicial branches of state government, the Board of Regents, private universities, the four public technical schools, municipal governments and the K-12 community.

Through its state budget appropriation, the Department historically has paid for the non-discount share of the K12 network costs and E-rate pays for the remaining costs. In 1998 when the network was first established, most districts were connected with T-1 lines. Larger schools and districts received multiple T-1 lines with the largest having OC-3 (155 Mbps) access. Over time as bandwidth needs grew, the minimum connectivity level per district increased and within the past year, most districts are now connected with a 50 mbps circuit. Even with the increased circuit size, however, some districts’ need for bandwidth now exceeds 50 mbps. These districts are

permitted to purchase additional bandwidth at the state master contract prices, provided that the district pays for the non-discount share and applies for E-rate on the additional bandwidth cost. This “split billing” arrangement enables districts to receive the benefit of lower pricing through aggregated demand, even though the school must bear the non-discount cost of the additional bandwidth themselves.

Technology is vitally important to ensuring that high quality education is available across the State. South Dakota is the fifth most sparsely populated state. The State has over 77,000 square miles and its population is approximately 833,000 according to 2012 census data. There were less than 150,000 students (146,514) enrolled as of the fall of 2012 (which is the most recent data available). There are approximately 11 people per square mile in the State, and only North Dakota, Montana, Wyoming and Alaska have fewer per capita inhabitants.¹ Educators have embraced and incorporated the network in daily learning through distance education, professional training and state reporting, just to name a few applications.

Nearly two thirds, or 102 of the public school districts have fewer than 500 enrolled students, and 30 of those districts have fewer than 200 students. Fifty nine of the districts, or 39%, consist of one building that houses the elementary, middle and high school programs. There are only 23 districts with more than 1000 students. The two largest districts, Rapid City and Sioux Falls, account for more than 37,000 students or one-quarter of the public student population. Of the six county wide districts in the state, the per capita number of students varies from 0.31 (Stanley County) to 1.5 (Todd County). Stanley County has 444 students through the 1444 square mile county while Todd County has 2049 students throughout the 1389 square mile county. These statistics vividly illustrate the sparsely populated and disaggregated characteristics of the elementary and secondary student population.

E-rate funds have enabled the State Network to expand connectivity and services to students across the State. The State historically has used E-rate to facilitate ubiquitous broadband access. Typically the State network application accounts for about one half of the total annual approved funding for all of the State's applicants, ranging from \$2 Million to \$2.5 Million annually. The annual average funding approved for all of the State's applicants including the State network is approximately \$5.75 Million.

¹ In comparison, New Jersey, the most densely populated state, has 1,205 residents per square mile. On average, there are 88 residents per square mile across the United States.

II. Multi-Year Contracts Should Not Be Limited To Five Years And Such A Restriction Will Not Ensure Such Contracts Are Efficient. (¶¶271-278)

The State shares the Commission's goal of ensuring that the prices that applicants pay for E-rate services are as cost-effective as possible. We disagree that imposing a five year or any other maximum contract term will help achieve this goal. The Commission seems to realize, by citing various factors, that there are countervailing forces in effect here. On the one hand, the price for some E-rate services are declining so it is beneficial for applicants to limit their contract terms in order to be able to benefit from price reductions and avoid having to pay higher than market rates. On the other hand, the Commission also acknowledges that multi-year contracts allow applicants to negotiate more favorable terms and achieve administrative efficiencies.

South Dakota state law does not prescribe any maximum contract term for state contracts or for contracts signed by schools or libraries. Accordingly, the FCC's imposition of such a limitation would not consistent with state law.

South Dakota routinely enters into contracts with an initial term of between three to five years to establish "anchor tenant" opportunities for our service providers. We as state government are willing to make a long term funding commitment if the service provider is willing to invest in broadband infrastructure in an area. The anchor tenant role allows the service providers to then offer services to additional businesses and citizens along that path. Also, the multi-year terms enable the State to obtain more competitive pricing. The State has substantial contract and competitive procurement expertise and well as substantial technology expertise. The FCC should not second guess the state's decision to enter into a contract of any particular length of time. This is not an area where the FCC has any special expertise or knowledge.

The logical progression of the FCC's concern would lead to the conclusion that all services should have to be annually bid and no multi-year contracts should be allowed in order to ensure that applicants do not pay higher than market prices. But the FCC recognizes that this solution is not sound since multi-year terms actually allow applicants to negotiate more favorable pricing than one year pricing. Yet, even a five year contract could possibly cover a period that would result in higher than market prices being paid.

The issue is not how long the contract term is. The issue is how often does the applicant review current prices and ensures that the contract price is adjusted so that it is calibrated to current conditions. A ten-year

contract that has a biennial requirement to review and adjust prices to reflect current market conditions is far more effective than a five year contract term that has no mandatory requirement to review and adjust prices at all. In essence the five year contract would have the same pricing for all five years whereas the ten year contract would have four price adjustments during its life.

The FCC made a strong point in its E-rate Reform Order that service providers must comply with the Lowest Corresponding Price (LCP) rule. They must offer bids with the LCP and charges prices that reflect the LCP. The Commission also stated that this area will be the subject of enhanced enforcement efforts in the future. One strong signal to implement the LCP rule and that would help to ensure that applicants pay cost effective pricing throughout the entire term of multi-year contracts would be require at a minimum biennial review LCP compliance by the parties. Parties should be free to negotiate even more frequent LCP reviews in their agreements, such as annual LCP reviews. Because of the new pricing transparency initiatives that the FCC will implement as part of the E-rate Reform Order, applicants will be better equipped to engage in such price comparisons and to be more proactive with their vendors to seek LCP compliance. Service providers should be expected to track the prices paid by similarly situated customers in the same geographic regions as its E-rate customers. South Dakota believes that this approach will be far more effective than prescribing a maximum contract term for multi-year contracts.

The FCC also asked in Paragraph 275 whether they should allow a contract that sets a fixed price for an increasing level of bandwidths over the term of the contract, based on applicants' anticipated needs and the rapid declining price of bandwidth. The answer is a resounding yes. Indeed, our standard requests for proposals contain language that anticipates growth in demand for bandwidth and requires bidders to provide a price schedule for such increases. These schedules are then incorporated into our multi-year contracts so that when there is a need to increase bandwidth a service order can be submitted under the existing contract. Absent such flexibility the state would be constantly engaging in procurements to right-size the bandwidth levels delivered to the 151 public school districts in our state and it would lose out on the benefits of price aggregation if it had to bid these services on a site by site basis.

III. State Consortia Discounts Should Continue To Be Calculated As A Simple Average. ¶¶286-291)

The FCC proposes to change the consortia discount calculation to a weighted average of each member's discount. They predict that consortia will be better able to allocate the funding according to each applicant's own

discount rate. The FCC asked for comment on the benefits and drawbacks of such an approach, and on whether it would encourage more schools and school districts to join consortia.

Although at first blush the weighted average discount method may appear to be more logical than the current simple average approach, the results are startling and prove that the weighted average approach does not allow for the consortium members to receive the benefit of their full, stand-alone district discount. Indeed, the weighted average approach reduces the overall consortium discount and leaves a shortfall when the consortia lead tries to allocate the funding to each member according to the member's own E-rate discount.

Using the Fall 2013 data that South Dakota relied on for its statewide network Form 471 application for FY 2014, we recalculated each district's discount (each consortium member) using the simple average approach where the district wide number of NSLP eligible students were divided by the district wide number of enrolled students, to arrive at a district wide NSLP percentage, which was then correlated to the E-rate discount matrix according to whether the district is rural or urban. Then we computed the simple average of all members' discounts as well as the weighted average of all members' discounts. The simple average is 68%, while the weighted average discount is 64%. We then multiplied each member's prediscount cost by the member's discount and totaled up these amounts. We then compared these amounts to the funding request computed according to the consortia wide discount at 64% and 68% multiplied by the total prediscount amount. Using the 68% discount, there is a \$15,000 shortfall arising from funding of \$2.1 million being allocated among the members. Using the 64% discount, the total funding amount is \$1.959 million and the shortfall increases to \$138,000.

Looking at our results, we observed that the prices and quantities of service for each district varies and is not related to how large the district is. Consequently the weighted discount methodology bears no correlation to the manner for allocating funding among the consortium members. If the discount method is changed, we will have an even larger shortfall in funding which reduces the effective discount rates of the consortium members. This change will have the opposite of the intended result of trying to encourage applicants to join and form consortia. For these reasons South Dakota supports the continued use of the simple average method of calculating consortium discounts and does not support the weighted discount method.

IV. An Additional Five Percent Discount Should Be Allocated To Consortium Applicants As Defined By The Proposed Modified Definition of the Education Coalition.

South Dakota supports the additional five percent discount being provided to consortium applicants as an incentive and acknowledgment of the benefits that the consortia applications achieve on behalf of their members. We also endorse the rationale and views set forth in the Education Coalition comments concerning the numerous benefits of consortia. In our state, but for the state network consortium there are many rural schools that would be bereft of broadband options and particularly *affordable* broadband options.

The proposed definition of consortia that would qualify for the additional five percent discount should be based on the modified definition proposed by the Education Coalition in their Comments to the Further Notice of Proposed Rulemaking. We believe that the modification of the fifth factor appropriately takes into account the prescribed membership attributes of consortia that are defined by state statute or policy: "To the extent each individual state's laws, policies, and regulations allow, membership in the consortium should be open to all eligible schools and libraries, including public charter schools and private schools that are within the consortium lead's organizational authority."

V. Conclusion

The South Dakota Department of Education respectfully requests the Federal Communications Commission to adopt an Order consistent with the recommendations set forth above.

Respectfully submitted,

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