

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

In the Matter of)
)
Promoting Fair and Open Competitive) WC Docket No. 21-455
Bidding in the E-rate Program)
)
)
)

**REPLY COMMENTS OF
THE STATE E-RATE COORDINATORS' ALLIANCE**

Nearly all of the parties' initial comments in response to the E-rate competitive bidding portal Notice of Proposed Rulemaking (NPRM)¹ oppose the proposed creation of a mandatory competitive bidding portal to be superimposed on the current E-rate bidding practices. The comments in opposition to the new mandatory portal share many of the same concerns raised by the State E-rate Coordinators' Alliance (SECA) Initial Comments, namely:

- The portal will not help reduce waste, fraud or abuse.
- There must be a distinction made between inadvertent errors based on good faith efforts to follow program rules versus blatant and criminal behavior to circumvent bidding rules and defraud the E-rate program
- The bidding portal will be so burdensome that it will discourage competitive bidding and participation in the E-rate program by both applicants and vendors – especially smaller entities.
- The portal will preempt state and local bidding procedures.
- The portal is unable to accommodate multi-stage bidding or mini-bids conducted using E-rate qualified master contracts.

¹ NPRM Promoting Fair and Open Competitive Bidding in the E-rate Program, (released December 16, 2021, WC Docket No. 21-455).

- The portal will encourage spam bids and create more burden on applicants to justify disqualification of spam bids.
- Reduction of the Improper Payment percentage for the E-rate program will occur not with the establishment of a bidding portal, but rather, when the FCC clarifies existing competitive bidding rules to provide applicants with clear cut guidance.

Of all the various reasons and concerns about the bidding portal raised by the opponents, there is one legal issue that cannot be ignored: the national mandatory E-rate bidding portal will preempt state procurement laws. Twenty-one (21) commenting parties, including agencies from nine different states, explained and provided different examples and citations as to how the bidding portal will conflict with state law.² Given that the statutory language enabling the E-rate program contains no express preemption provision, and in light of the fact that the current regulations state that the bidding requirements are not intended to override state requirements, the bidding portal cannot be legally justified.

The few parties that support the portal (either as described in the NPRM or with modifications) do not raise any persuasive reason or evidence in support of the portal. The most fervent party to support the portal, composed of six telecommunications carriers,³ used their comments to request that the FCC overhaul the long-established E-rate competitive bidding

² American Library Association Initial Comments, p. 2; California K12 High Speed Network Initial Comments, pp. 2-3; Consortium for School Networking and State Educational Technology Directors Association Initial Comments, pp. 6-7, 9-14, 18-19; Council of Great City Schools Initial Comments, p. 2; Educational Service Unit #9 (Nebraska) Initial Comments, p. 2; Illinois Office of Broadband Initial Comments, pp. 4, 6-10; INCOMPAS Initial Comments, pp. 6-8; Infinity Communications & Consulting Initial Comments, pp. 2-4; Kentucky Department of Education Initial Comments, pp. 1, 3; Los Angeles (California) United School District Initial Comments, pp. 1-3; Nebraska Dept Administrative Services, Office of CIO Initial Comments, pp. 2-3; Administrator of the Oklahoma Universal Service Fund Initial Comments, pp. 3-4; Central Susquehanna Intermediate Unit/PEPPM Technology Purchasing Cooperative (Pennsylvania), p. 2; School District of Lancaster (Pennsylvania) Initial Comments, pp. 4-5; State E-rate Coordinators' Alliance Initial Comments, pp. 14-16; Schools, Health and Libraries Broadband Coalition Initial Comments, pp. 1, 4-5, 7-9; South Dakota Department of Education Initial Comments, pp. 3-5; Utah Education and Telehealth Network Initial Comments, pp. 1-2; Verizon Initial Comments, p. 4; Wisconsin Department of Public Instruction Initial Comments, p. 2; WTA - Advocates for Rural Broadband Initial Comments, pp. 2-3.

³ Barry County Telephone Company *et al.* Initial Comments filed in WC Docket No. 21-455; <https://www.fcc.gov/ecfs/search/search-filings/filing/1042783479585>

rules. In place of the current requirements, the carriers advance the same recommendations put forth in their 2019 petition for rulemaking.⁴ Parties that filed comments in opposition to the 2019 petition fully rebutted their requests and claims. Accordingly, SECA requests that the record in the rulemaking proceeding (RM-11841) be incorporated into this proceeding by reference, since that record already have been developed in response to the same recommendations.

In particular, these carriers ask the Commission to require applicants to provide information such as zip codes of each recipient of service in consortium Form 470 applications. Yet, this information is already publicly available for all Form 470 applications – including consortia Form 470 applications -- in USAC’s Open Data platform. The Form 470 consortia entity dataset specifically contains all the “child entities” such as schools associated with a “parent entity” such as a school district, as well as these entities’ physical address information.⁵ In addition, most statewide consortium Form 470 applications (as well as many regional Form 470 applications) have RFP documents that contain the name and physical address of each entity for which service is requested including the zip code. It would be duplicative and overly burdensome to require applicants to have to data enter this information in the Form 470 application.

⁴ See Exhibit A for the citations and references to the Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc. and Totelem Communications, LLC, RM-11841 *et seq.* (May 22, 2019) - <https://www.fcc.gov/ecfs/search/search-filings/filing/10522043215849>.

⁵ The data set entitled “E-Rate Supplemental Entity Information” contains E-Rate Productivity Center (EPC) information about schools, libraries, school districts, library systems, consortia, and non-instructional facilities (NIFs). <https://opendata.usac.org/E-rate/E-Rate-Supplemental-Entity-Information/7i5i-83qf> Each member of a consortia is listed in the data set, with their physical address including zip code. Each independent school and each school that is part of a district also is listed in the data set (including their physical address) and linked to the district. The same is true with respect to independent libraries and libraries that are part of a library system. The physical addresses including zip codes of each entity is included in the data set.

We believe the solution to the carriers' request is for USAC to build a dataset in the Form 470 download functionality that automatically includes the consortia members' zip code information rather than requiring vendors to download this as a separate file. We believe this solution should satisfy the carriers' concerns and avoid revamping the Form 470 or placing additional burdens on applicants.

The other concerns outlined in the carrier's comments are more troublesome. They provide examples of bidding outcomes where the carrier was not selected as the winning bidder even though they contend their bid was the lowest cost. This suggests that the lowest cost proposal must be chosen, even though since the inception of E-rate, the bidding rules allow for the *most cost-effective solution*, which requires the price of E-rate eligible services to be most heavily weighted, and allows for other non-cost factors such as quality of service to be included. It is easy to conceive of a situation where a lowest cost proposal does not have the same quality of service as other proposals that may be priced higher and therefore is not the most cost-effective solution.

The carriers also presume that if they have fiber facilities in place, they should have the right to provide service to the location regardless of price, and E-rate funds should not be approved for special construction. These carriers do not have an inherent 'right' to serve these locations, but they do have the obligation to submit proposals so that their service offerings can be evaluated. Each of the commenting carriers have received millions in High Cost support⁶ and

⁶ The following companies receive USF funding for areas in Texas: Central Texas Telephone Cooperative, Inc. received \$8.9 million in High Cost Support in 2021, and a total of \$71 million from 2017 - 2020 from USF for broadband deployment. Peoples Telephone Cooperative, Inc. has received \$9.7 million in High Cost Support in 2021 and a total of \$26.6 million from 2017 – 2020 from USF for broadband deployment. Totalcom Communications has received \$4.5 million in High Cost Support in 2021 and their affiliated company, Tote Holdings, LLC received a total of \$38.6 million from USF for broadband deployment. Valley Telephone Cooperative, Inc. received \$10.6 million in High Cost Support in 2021 and a total of \$50.3 million from USF for broadband deployment. In Michigan, Barry County Services Company received \$1.5 million in High Cost Support

therefore, are already subject to a Commission directive to respond to Form 470 applications pursuant to the Commission’s December 2014 modernization order. There, the FCC anticipated the “overbuilding” concern that may arise by authorizing E-rate applicants to obtain funding to pay for build-out of facilities. To mitigate these concerns, the Commission directed all carriers that receive High Cost support to respond to Form 470 applications where they can provide service. The Commission stated, “At the same time, this obligation [to respond to Form 470 applications] decreases the likelihood that limited E-rate support will be spent to overbuild the networks of high-cost recipients in some rural and high-cost areas while schools and libraries in other high-cost areas remain unconnected.”⁷

The existing rules are fair and provide a level-playing field whereas the carriers’ requests would slant the bidding process in their favor. All special construction requests for E-rate funding are subject to an intensive, heightened review that includes verifying the integrity of each applicant’s competitive bidding process. These current practices already ensure that E-rate funds are approved for special construction only when it is efficient and cost effective to do so.

Summary

In order to satisfy the concerns of certain carriers that are seeking consortia member zip codes, and to facilitate the submission of bids from High Cost Support recipient carriers where the carriers can serve schools and libraries, we urge the FCC to instruct USAC to modify Open

in 2021 and a total of \$2.6 million in 2019-2020 from USF for broadband deployment. Source for Broadband Deployment funding: <https://data.usac.org/publicreports/caf-map/> and supporting data for the map. Source for High Cost Support: <https://opendata.usac.org/High-Cost/High-Cost-Disbursements>.

⁷ Modernizing the E-rate Program for Schools and Libraries, *et al.*, Second Report and Order and Order on Reconsideration, WC Docket No. 13-184, *et seq.*, (FCC 14-189) (December 19, 2014) at ¶ 63 (Emphasis added).

Data to embed consortia members' zip code information into the vendor Form 470 search queries and results.

We encourage the Commission to refrain from approving any of the other recommendations from the carriers. Those concerns seem to be based on their lack of bidding success and desire to change the rules so as to effectuate a different outcome in their favor.

SECA respectfully requests the Commission to decline to adopt the national mandatory bidding portal for E-rate procurements.

Respectfully submitted,

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