



January 14, 2020

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition for Rulemaking to Amend and Modernize Part 54 of the Commission’s Rules to Prevent Waste in the Universal Service Fund: RM-11841, CC Docket No. 02-06, and WC Docket No 13-184

Dear Chairman Pai:

The Schools, Health & Libraries Broadband Coalition (“SHLB Coalition” or “SHLB”)¹ writes to thank you for promoting fiber deployment to schools and libraries through the E-rate program. We also take this opportunity to respond to claims made by a handful of incumbent local telephone companies that are challenging the E-rate competitive bidding process.

Because of your leadership, thousands of schools and libraries, serving millions of students and library patrons, have been able to obtain much-needed high-speed broadband services at rates that are, in many cases, more cost-effective than their previous rates.² Of course, E-rate discounts have made these connections affordable to schools and libraries, but the underlying pre-discount prices have also substantially declined over the past few years because of increased competition in the marketplace fostered by the E-rate competitive bidding rules. The FCC’s fiber deployment and competitive bidding policies have saved schools and libraries, the Universal Service Fund and American ratepayers hundreds of millions of dollars per year.

¹ The SHLB Coalition is a broad-based coalition of organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB Coalition members include representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer organizations. See <http://shlb.org/about/coalition-members> for a current list of SHLB Coalition members.

² In just one example, the Park Hill (Mo.) School District saved hundreds of thousands of dollars for the E-rate program (and an equal amount for the district) by selecting a self-provisioned wide area network as its most cost-effective solution.

The Commission has correctly and frequently recognized that an open competitive bidding process leads to more efficient use of the Universal Service Fund, which is funded by American consumers. Competitive bidding has driven down costs in the Connect America Fund, and the FCC has likewise endorsed a competitive bidding framework for the new Rural Digital Opportunity Fund. Similarly, the E-rate program has benefited from FCC policies that promote a fair and open competitive bidding process, including the requirement that the price of eligible services and equipment must be the most heavily weighted factor in selecting the most cost-effective bidder. Competitive bidding has been a fundamental principle of the E-rate program since its inception.

Given the success of the Commission's long-standing and successful competitive bidding processes, we are surprised that a few traditional telephone companies have asked the FCC to reverse the competitive bidding process and prohibit E-rate from supporting fiber facilities where the traditional company claims that it already has fiber that can serve the school or library.³ The incumbent companies' proposals would lead to higher prices for schools and libraries, increase the burden on the E-rate fund, and thereby increase the burden on American ratepayers.

These few incumbents argue that incumbent providers all across the U.S. should be given a preference outside of the competitive bidding process, simply because they receive support from the high-cost program, without regard to the prices that they may charge schools and libraries. There is no reason to give these companies, or any companies, such a preference. These companies are free to submit bids for these services just like any other broadband provider. In fact, the FCC *requires* companies that receive high-cost support to submit these bids in their service territories in order to increase the competitiveness of the process.⁴ If the traditional incumbent providers receive high-cost support to build fiber-based broadband networks in their area, then logic would tell us that these companies should be able to offer

³ Three Texas Carriers filed a Petition for Rulemaking (hereinafter referred to as "Texas Carriers' Petition"), which is available at <https://www.fcc.gov/ecfs/filing/10522043215849>. These companies have had several meetings with the FCC since then.

⁴ In the FCC's *E-rate Modernization Order*, adopted on July 23, 2014, the Commission re-stated that broadband providers have an obligation to offer bids at the lowest corresponding price (LCP):

To ensure that applicants receive the best possible bids from service providers in response to their FCC Forms 470, consistent with the Commission's intent, we take this opportunity to reemphasize that our LCP rule, as it is now codified in our rules, means that providers must both (i) submit bids to applicants at prices no higher than the lowest price they charge to similarly-situated non-residential customers for similar services; and (ii) charge applicants a price no higher than the LCP. In abundance of caution, we also modify our LCP rule to better reflect the dual nature of this obligation.

See *E-rate Modernization Order*, para. 185, available at <https://www.fcc.gov/document/fcc-releases-e-rate-modernization-order>.

extremely competitive pricing to the schools and libraries in the competitive bidding process.

Unfortunately, school districts and library systems often find that the incumbent provider submits bids at prices that are much higher than the rates offered by competitors, if they bid at all. We cannot explain exactly why these incumbent providers that have received high-cost support do not bid or do not offer competitive pricing.⁵ We note, however, that many of these traditional, non-price cap incumbent companies are exempt from any competitive bidding process to qualify for high-cost support.

Granting these incumbent providers the right to void the results of the E-rate competitive bidding process would reduce the competitiveness of the marketplace. Incumbent providers receiving high-cost support will have no incentive to bid in the competitive bidding process if they know that they have the right to pre-empt the process and obtain a right to provide the service afterwards.

In addition, allowing a non-bidding vendor the opportunity to submit a proposal outside the competitive bidding process and/or after bids are due may be in direct conflict with many state and local competitive bidding policies. This would essentially result in a no-bid contract, which is rarely authorized and can only be justified if no other qualified bidder can provide that service. The process requested by the incumbent providers would not come close to meeting that test.

Furthermore, reducing the competitive bidding analysis to one dimension – whether or not fiber already exists – would ignore not only the price of the services, but also other qualitative factors that are vitally important. As we pointed out in our comments in response to the incumbent providers’ Petition, the school and library systems must have the opportunity to evaluate the age of the fiber plant, whether the fiber has a history of cuts, whether it connects through a central office or provides a direct connection between school/library buildings, whether the vendor provides quality and timely customer service and accurate billing, and other factors. Even if it exists, existing fiber may not meet the schools’ and libraries’ specific needs for service. If high-cost recipients are designing and building their facilities primarily to serve residential customers, existing fiber facilities may not meet the technical, high-bandwidth, specifications required by schools and libraries to ensure high-quality services without interruption.

As we and others stated in our comments in response to the Texas Carriers’ Petition, the Texas Carriers did not provide anything close to sufficient data or information to justify opening a rulemaking proceeding on this matter, especially since the Commission’s rules clearly put the burden on a Petitioner to provide sufficient facts.⁶ The recent *ex parte* filings

⁵ It may be time for the Commission to examine whether these companies should continue to receive high-cost support if they are not participating in the competitive bidding process or if they are not offering cost-effective services that meet the needs of the schools and libraries in their communities.

⁶ Comments of CoSN, SHLB Coalition, TASA, TASB, TASBO, TCEA, Texas K-12 CTO Council, et al, in Docket No. 13-184, filed July 1, 2019. Available at

by the incumbent telephone companies fare no better than the Texas Carriers' Petition.⁷ The Petition should be dismissed for failing to meet the minimum factual requirements for such petitions.

Nonetheless, the Commission and USAC may wish to consider additional, simple changes within the existing forms and bidding rules that would promote the competitiveness of the E-rate fiber market. In our discussions with the Texas Carriers, they noted that they may not always be aware when a large school district or library system issues an RFP for service covering a school or library in the incumbent's service area. Furthermore, it may not always be clear from the RFP if the school district permits broadband providers to submit bids on a portion of the proposed sites, rather than all the sites.

SHLB recommends that USAC expand and improve the existing "Search" function where vendors search for bidding opportunities. Currently, the search fields contain very few search criteria, including information related to consortia members. However, this information exists in the existing Form 470 and USAC database, but is not entirely available during the current search process.

Furthermore, if a school or library district allows providers to submit bids on a portion of the project, USAC could encourage applicants to clearly state this in the RFP. These steps would provide all providers, including incumbent high-cost providers, with more information that can help them identify bidding opportunities. Care must be taken, however, to ensure that school and library applicants are not burdened with additional filing requirements that may cause their applications to be rejected. The State E-rate Coordinators' Alliance (SECA) recently submitted comments that would improve the current Form 470, while ensuring that such additional requirements would not be imposed.⁸ We would be pleased to work with the

[https://ecfsapi.fcc.gov/file/10701076212242/Final%20SHLB%20Comments%20to%20Texas%20E-rate%20Petition%20w-Attachments%20\(07.01.19\).pdf](https://ecfsapi.fcc.gov/file/10701076212242/Final%20SHLB%20Comments%20to%20Texas%20E-rate%20Petition%20w-Attachments%20(07.01.19).pdf).

⁷ The *ex parte* filings of the Texas carriers usually consist of a single paragraph that lists who attended the meeting and vague and unsubstantiated allegations that the E-rate program is causing "potential waste and inefficient use of funds" and "overbuilding". The claimants do not submit cost or pricing information, do not provide copies of the Requests for Proposals, and do not provide maps or data to support their claims that they already have fiber serving the schools and libraries. See, e.g., the Petition for Rulemaking by the Texas Carriers, and recent *ex parte* filings by Valley Telephone Cooperative, <https://prodnet.www.neca.org/publicationsdocs/wwpdf/82219valley2.pdf>., Barry County Telephone Company, and Union Telephone Company Sand Hill Communications, LLC, and Union Telephone Company. <https://ecfsapi.fcc.gov/file/109031779203285/AS%20FILED%20-%20Barry%20Cty%20WCB%20Ex%20Parte%20Notice%202019.9.3.pdf>; <https://ecfsapi.fcc.gov/file/1080850844600/Carr%20J%20Calascione%20Ex%20Parte%20Notice%202019.8.6.pdf>.; <https://ecfsapi.fcc.gov/file/10731908803685/2019%200730%20Union%20Letter%20to%20O'Rielly%20re%20Overbuilds.pdf>.

⁸ Available at [https://ecfsapi.fcc.gov/file/103137806983/SECA%20Initial%20Comments%20in%20DA%2019-196%20Form%20470%20Revisions%20\(10.31.2019\)\(filed\).pdf](https://ecfsapi.fcc.gov/file/103137806983/SECA%20Initial%20Comments%20in%20DA%2019-196%20Form%20470%20Revisions%20(10.31.2019)(filed).pdf)

Commission, USAC, SECA and other interested parties to continue that dialogue and fine-tune the Form 470 before it goes into development.

In closing, we thank you again for your leadership in upholding the competitive bidding process in the E-rate rules. Your efforts have saved schools and libraries and the American consumer millions of dollars, while improving the digital connectivity for students and teachers across the country.

Sincerely,

A handwritten signature in black ink that reads "John Windhausen, Jr." with a stylized flourish at the end.

John Windhausen, Jr.
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cc:

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