

**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
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

The Schools, Health & Libraries Broadband (SHLB) Coalition appreciates this opportunity to submit these reply comments in response to the Commission’s notice of proposed rulemaking on E-rate competitive bidding. The initial comments filed in this proceeding show overwhelming opposition to the idea of creating a federal competitive bidding portal from virtually the entire E-rate community. SHLB continues to submit that the proposed federal competitive bidding portal is unnecessary, wasteful, inconsistent with several state laws¹, and would discourage smaller schools and libraries from participating in the E-rate program.

One party in particular, a small group of incumbent telephone companies called “Rural Companies”, supports the proposal.² The Rural Companies express support for the portal, but do not explain how or why it would reduce fraud risk. Rather, they appear to be using this

¹ The initial comments identify potential conflicts with the proposed bidding portal in Arizona, California, Illinois, Kentucky, Mississippi, Nebraska, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, and Wisconsin. Additionally, many other states that were not specifically identified in the comments require practices such as sealed bids and public bid openings that would be inconsistent with the Commission’s proposal. See, e.g., K.S.A. 72-6760 (requiring Kansas public schools to use sealed bids for the purchase of materials, goods or wares greater than \$20,000).

² However, this support is not shared among all rural companies. For example, WTA – Advocates for Rural Broadband, a national trade association that represents more than 360 rural telecommunications carriers, opposes the proposal for a new bidding portal. See Initial Comments of the WTA – Advocates for Rural Broadband, WC 21-455, filed April 27, 2022.

proceeding to re-state old arguments that the lawful decisions of local school systems to choose an alternate provider of service should be overturned. They make several unsubstantiated claims of waste and fraud in the E-rate program without providing evidence to support these unfortunate allegations. While they repeatedly maintain that schools received E-rate funding for special construction in areas they already serve, the fact that some schools and libraries obtained such E-rate support for special construction projects does not prove that there is waste in the program. There may be several valid and lawful reasons why a school system would choose a competitive provider, such as:

- An existing provider fails to bid on the project (as in Texas discussed below).
- An existing provider has fiber somewhere in the region but not to the specific desired school or library locations.
- An existing provider submitted a bid that was not the most cost-effective solution for the school/library needs. SHLB members report that incumbent providers often price their services at such a high level that it is more economic for the applicant to engage in special construction.
- An existing provider's fiber may be unreliable or old.

Essentially, the Rural Carriers raise an argument about overbuilding that the Commission considered two years ago and chose not to address. The overbuilding policy was not raised in the NPRM and is a diversion from the issue at hand. While the overbuilding discussion does not fit in this proceeding, it is important to clarify briefly that there are significant factual disputes regarding the Texas and Arizona examples cited by the Rural Carriers. In Texas, the incumbent telephone companies submit that they did not bid on the project because they did not know about the pending RFP, but SHLB members are certain that

the service providers did in fact know about the RFP and participated in a bidder conference meeting specifically about the project. In Arizona, the Rural Carriers submit that the school system chose a more expensive project than the bid submitted by Valley Telephone, but the school system chose the winning bidder because there were significant quality of service issues involved that applicants are allowed to consider under the E-rate rules.

Regardless of who is correct about the facts in these particular cases, a couple of isolated misunderstandings should not be a reason to subject thousands of schools, libraries and vendors across the whole country to an onerous and new competitive bidding portal. No party filing comments in this proceeding demonstrated any significant evidence of waste or fraud in this proceeding that would justify such a comprehensive change in the E-rate processes. In fact, one SHLB member calculated that the amount of recovered funds from unlawful activity in the E-rate program amounts to less than 0.16 percent of all E-rate funding since the program began in 1998.³

The Rural Carriers raise one particular idea, however, that may be worthy of further discussion. They submit that the competitive bidding process could be improved if applicants identify all of the ZIP codes covered by an E-rate consortia bid application. Making this information available more easily to potential bidders could increase the number of bids that applicants receive. On the other hand, some SHLB members report that this is unnecessary because the service providers can already search for these bidding opportunities through USAC's

³ See SHLB Webinar recording and slides on May 25, 2022, available at <https://www.shlb.org/webinars#WatchRecording>. (Jim Kerr, Principal at KB & Associates, slide #3, said as follows: "According to the DOJ website there has been \$88,815,297.49 in recovered funds from USAC participants in Waste, Fraud and Abuse cases since 1998. With \$57,105,319,188.65 in Committed Funds since E-Rate's inception this equates to 0.16%. Most of these violations would not have been discovered if the NPRM were implemented. Only 13 companies and 39 individuals have been prosecuted over 25 years.")

open data portal.⁴ Including all the ZIP codes could be an onerous new obligation on applicants that could also result in rejections of otherwise legitimate E-rate applications if a mistake is made in listing ZIP codes. USAC’s Download 470 Information tool allows a vendor to scan a list (and download if desired) of 470s identified by Billed Entity Number. Were USAC to require each of those summary records to include all ZIP codes, the list would become unmanageable particularly for large applications. On the other hand, the Commission could consider requiring each Form 470 to include all the ZIP codes so that potential bidders have access to the full geographic scope of the proposal. Many consortia applicants already provide this information, so it is not clear that adopting a rule to this effect is necessary.

The SHLB Coalition has previously suggested that improving the search capability on the USAC website would provide benefits to both applicants and service providers, but we caution that any new policy on ZIP codes should not become a “gotcha” that results in denials.⁵ Also, SHLB is not suggesting that any new policy to include all ZIP codes in a service territory should be considered or apply to Category Two applicants. The Rural Carriers do not address Category Two applications and there is no reason to think that the burden of new ZIP code rules would provide any benefit to Category Two procurements. SHLB looks forward to further conversations on this matter.

One final point deserves emphasis: the GAO report did not recommend adoption of a competitive bidding portal. The Government Accountability Office (GAO) in its 2020 report on the E-rate program identified “opportunities to misrepresent compliance with competitive

⁴ USAC currently provides three tools to service providers to search for FCC Form 470 bidding opportunities. See USAC, *Step 2: Responding to Bids, Reviewing the FCC Form 470*, <https://www.usac.org/e-rate/service-providers/step-2-responding-to-bids/> (last visited May 27, 2022).

⁵ For example, applicants should not be penalized for inadvertent under-listing or over-listing ZIP codes in their Form 470.

bidding requirements as an underlying fraud risk for the E-Rate program.” The GAO report then recommended that the Commission pursue three different remedies to improve the process, all of which the FCC said it would implement.

GAO made three recommendations: 1) that the FCC work with USAC to conduct a fraud risk assessment; 2) that the FCC and USAC implement data-analytic activities to detect and prevent fraud; and 3) that the FCC direct USAC to clearly define and fully document data fields in E-rate program computer systems. The FCC agreed with and is implementing these recommendations. The Commission should not move forward on the idea of a competitive bidding portal until the Commission has completed and evaluated the success of these steps.

Respectfully submitted,

A handwritten signature in cursive script that reads "John Windhausen, Jr." with a period at the end.

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