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O'Rielly Gets Pushback on Calls to Prohibit USF Support for E-rate Overbuilds

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FCC Commissioner Mike O'Rielly renewed calls to prohibit E-rate funds to schools and libraries that receive broadband service from one provider when another has already received USF dollars at the same location. "It's awful enough when the government subsidizes network builds in areas where the private sector can or does provide service, but it's a separate layer of hell when E-rate money goes to an area already being subsidized by the FCC," O'Rielly told an FCBA USF seminar. O'Rielly has corresponded with school superintendents and consortium leaders in Texas and Arizona about their plans to build self-provisioned wide-area networks that would overbuild a local incumbent's fiber facilities. "I have never been presented with credible evidence that E-Rate funded overbuilding has been anything other than wasteful for the USF," he said, citing "copious evidence of bidding matrices designed to favor a particular outcome and schools buying far more bandwidth than they use or need."

Texas incumbent carriers seek new rules favoring the local incumbent ISP over an overbuilder in E-rate funding awards. Educators pushed back (see 1907170021).

"We know from presentations and filings before the FCC that the E-Rate funded overbuilding trend is the result of shortcomings in our rules and overly-permissive support," O'Rielly said Wednesday. "Stricter safeguards and a better alignment of incentives are necessary if the practice of self-construction is to be continued at all." He wants new rules to address "gamesmanship" and correct the way bid requests might favor self-construction.

Some panelists said funding overbuilders is a good use of ratepayer funds if competitors come in with a lower bid than the incumbent. "We don't think there's an overbuilding problem with E-Rate today," said John Windhausen, executive director for the Schools, Health & Libraries Broadband Coalition. Competitive bids can save millions of dollars per school district, he said. He challenged O'Rielly's statement schools are building excess capacity: "They're building to meet FCC rules on bandwidth." Schools' bandwidth needs increase "every single year,"

Windhausen said. "You don't want to build a new network every single year. You want to build one that will last decades."

Incompas has also weighed in on the Texas matter, said General Counsel Angie Kronenberg. "Claims that small local incumbents are being overbuilt hasn't been demonstrated." In some cases, a competitor bids on a school or library in a market served by a local incumbent where that incumbent hasn't delivered fiber to the schools. Kronenberg noted an incumbent that serves a school or library should be able to come in with a much lower bid than a new competitor. Incumbent prices often remain high even after a new competitor enters the market, she said. Windhausen said some incumbents don't submit E-rate bids at all in a given year, and in some cases have complained only later. He said an anchor institution shouldn't be forced to consider a provider that doesn't bid.

"We have to think long and hard" about rules for such overbuilding, especially when some overbuilders receive up to 90 percent or 100 percent reimbursement and the anchor institutions don't have to put any funding up themselves, said Mike Saperstein, USTelecom vice president-policy. "That doesn't seem to be a good deal."

Net Neutrality, Lifeline

Following a court decision on net neutrality that remands to the FCC certain rules on Lifeline (see 1910010018), some attorneys told us at the gathering Wednesday they expect the FCC to open a rulemaking to clarify it. Of more concern is lack of clarity on new minimum broadband service standards in the program set to take effect Dec. 1 (see 1909180043).

O'Rielly is digesting Tuesday's ruling, and how the FCC will address remanded Lifeline issues. "Lifeline decisions need to be made," he told us in Q&A, adding he hadn't talked to Chairman Ajit Pai's office about it. O'Rielly said broadband's an important component of Lifeline, and he wouldn't like to strike down the program: "There are Americans who need this program."

O'Rielly has resisted changes to the USF contribution factor to assess fees on broadband connectivity or usage. Panelists said political pressure to address the issue may increase as the contribution factor continues to grow (see 1907110020). Kronenberg said most see the need for revision, but there's no agreement. "Without that agreement on what should be assessed and how it should be assessed, it's hard to see a way forward."

"So many people rely on USF," Windhausen said. "There's more urgency to solve this problem now than we have seen in the past." He said it may make sense to have broadband services pay in, especially since so much USF support goes to broadband deployment.

Fees collected from wireless services are a growing portion of the USF base, said Matt Gerst, CTIA vice president-regulatory affairs. But USF supports wireless primarily in Lifeline, one of the smaller USF programs in terms of funding, he noted.

O'Rielly would like better performance and transparency by Universal Service Administrative Co., which he referred to as a "black hole." He raised concerns USAC has been tasked with even more responsibility in recent months with three major projects, the auction for the Rural Digital Opportunity Fund, new Rural Health Care rate databases, and the digital opportunity data

collection. "I have expressed skepticism as to USAC's ability to handle these new roles and would have much preferred to put them out for bid, along with USAC's entire contract, for that matter," he said. Meantime, he wants the FCC to "take great pains to ensure that USAC's role in our mapping effort is purely ministerial and avoid USAC's inappropriate assumption of an adjudicatory role in any challenge process we adopt." He wants changes to the USAC board to ensure no inherent conflicts of interest.

Windhausen, too, shared concerns USAC lacks expertise to handle the RHC rate database, and said it should hire experts that do. "USAC is not a rate-setting organization," he said. "I'm not sure they're up to the task."

written by Monica Hogan

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