



April 1, 2019

The Honorable Michael O’Rielly  
Commissioner  
Federal Communications Commission  
455 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Commissioner O’Rielly:

Thank you for your March 7, 2019 letter inquiring about the Universal Service Fund’s (USF) Schools and Libraries program, known as E-rate. We understand your long standing interest in the E-rate program and the build-out of broadband connectivity to America’s schools and libraries. The Universal Service Administrative Company (USAC) is committed to working with the Federal Communications Commission to combat waste, fraud and abuse in the USF programs.

In your letter, you express concerns that E-rate funds may be used to potentially overbuild fiber networks. To better understand the risks of overbuilding, you request that USAC provide certain data to inform your understanding of the current landscape concerning E-rate special construction projects.

In 2014, the Commission issued the *Second E-rate Modernization Order*, modifying the E-rate program to allow applicants to apply for E-rate funding for self-constructed high speed broadband networks beginning in Funding Year 2016.<sup>1</sup> Pursuant to that order, USAC conducts a careful review of E-rate requests for self-construction to determine compliance with the E-rate program rules. These reviews are conducted by a team with advanced knowledge of fiber construction and E-rate program rules. The team ensures that special construction projects meet the following requirements: (1) demonstrate that the self-constructed high speed broadband service is the most cost-effective alternative; (2) the bidder was selected based on a fair and open competitive bid process; (3) build and use the self-constructed services within the same funding year.<sup>2</sup> If the applicant does not satisfy these three requirements, the application is not eligible to receive E-rate funding for self-constructed network services.

Furthermore, E-rate program rules prohibit duplicative services, which the FCC defines as “services that deliver the same functionality to the same population in the same location during

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<sup>1</sup> *Modernizing the E-rate Program for Schools and Libraries, et al.*, WC Docket Nos. 13-184, et al., Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, para. 478-50 (2014) (*Second E-rate Modernization Order*).

<sup>2</sup> *Id.* at 15557-58, paras. 48-50. See also 47 C.F.R. §§ 54.503(a), 54.503 (c)(iii), 54.507(d), and 54.511.

the same period of time.”<sup>3</sup> Thus, USAC is required to deny requests for funding of duplicative services because such requests contravene “the requirement that discounts be awarded to meet the ‘reasonable needs and resources’ of applicants.”<sup>4</sup>

We are providing responses to your specific questions based on the most current available information.

**1. Does USAC understand the E-rate rules to permit funding for special construction projects, whether self-provisioned networks or networks owned by a commercial provider, that would duplicate, in whole or in part, fiber networks that have been built using federal funds?**

In the *Second E-rate Modernization Order*, the Commission “established certain safeguards to ensure that cost-effectiveness remains the benchmark principle of E-rate-supported purchases and that E-rate discounts are not used to purchase unnecessary services.”<sup>5</sup> FCC rules require applicants to select the most cost-effective solution.<sup>6</sup> This means that applicants are required to evaluate cost-effectiveness based on the total cost of ownership analysis over the expected life of the network, including all costs associated with constructing and maintaining the network.<sup>7</sup> Applicants who are considering building their own networks must also seek bids from existing third-party fiber providers and compare the total costs for the different solutions over time.<sup>8</sup> Using the specific bid pricing and other expected costs, the evaluation drives the selection of either using an existing network provider or building their own broadband connections. If the cost of applicant ownership over the life of the network is less expensive than the cost of using an existing network, the applicant can be approved for fiber construction funding of their own network.

**2. Does USAC understand the E-rate rules to permit a consortium to receive funding for the construction of a WAN to provide Internet access to the entire consortium, even where existing fiber-based providers are already capable of serving individual consortium members?**

USAC understands E-rate rules to allow a consortium to receive funding for the construction of Wide Area Networks when doing so is the most cost-effective option.

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<sup>3</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9209, para. 22 (2003) (*Second Report and Order*).

<sup>4</sup> *Id.* at 9209-10, para. 23.

<sup>5</sup> *Request for Review and/or Waiver by Farmington Municipal School District 5*, 33 FCC Rcd 8542, 8543, para. 3 (referencing the *2014 Second E-rate Modernization Order*, 29 FCC Rcd at 15552-53, 15557-58, paras. 38-39, 47-49).

<sup>6</sup> See 47 C.F.R. §§ 54.503(c)(2)(ii)(B) and 54.511.

<sup>7</sup> See *2014 Second E-rate Modernization Order*, 29 FCC Rcd 15557-58 at para. 48.

<sup>8</sup> See 47 C.F.R. § 54.503(c)(iv).

**3. Since the 2014 E-rate Orders, how many applicants have requested E-rate funding for special construction of consortium-wide WANs, and how much funding was requested by these applicants?**

In the E-rate program, § consortia applicants can request funding for consortia-wide WANs. USAC does not have specific data for special construction requests of consortia-wide WANs because the application does not require to indicate if the connection is for a WAN; instead, we maintain information on special construction in general (of which WAN projects would be a subcategory). Since the 2014 E-rate Orders, 43 consortia applicants have requested funding for fiber construction. These include last-mile builds for existing leased lit and leased dark fiber networks (also known as special construction), as well as build-outs of applicant owned networks (also known as self-provisioned). Since 2016, 17% of the requested fiber funds accounted for the build out of applicant-owned networks, which means that the remaining funding requests are for last-mile buildouts using existing providers’ networks.

The following is a comprehensive list of requests for special construction in the E-rate program.

	<b>Requested Funding for Special Construction</b>	
<b>Fund Year</b>	Applicant Count	Requested Funding Amount
2016	18	\$51,720,647.72
2017	19	\$74,132,465.23
2018	33	\$291,989,477.10
<b>Totals</b>	<b>70</b>	<b>\$417,842,590.05</b>

**4. How many requests for consortium-wide WAN projects have received funding commitments, and what is the total amount of funding committed for such requests?**

As discussed in Question 3 above, USAC does not have information on consortium-wide WAN projects. We have information on special construction projects, of which WAN special construction projects would be a subset. The following information is for all special construction projects:

	<b>Committed Funding for Special Construction</b>	
<b>Fund Year</b>	Applicant Count	Funded Amount
2016	18	\$20,372,642.25
2017	18	\$33,622,942.41
2018	29	\$148,403,904.13
<b>Totals</b>	<b>65</b>	<b>\$202,399,488.79</b>

**a. How many of those WAN projects would result in overbuilding another provider’s network, in whole or in part?**

We are unable to answer this question because we do not have data about WAN projects. In addition, we do not have sufficient data to determine whether E-rate funded projects duplicate other provider’s networks. Carriers’ deployment data for fiber networks are proprietary information and not publicly available and other publicly available sources, such as study areas codes (SACs) and the National Broadband Map, are not sufficiently detailed to make this determination. For example, SACs often cover very large areas - e.g. almost a third of the state of California is covered by a single SAC - and the National Broadband Map collects data at a census block level.

**b. How many of those WAN projects would result in overbuilding, in whole or in part, providers that receive funds the High Cost or Rural Health Care programs?**

As indicated in Question 4(a), USAC does not have sufficient data to determine whether E-rate funded projects duplicate other provider’s networks.

**5. How many consortium-wide WAN projects have been denied on cost-effective grounds?**

As discussed in Question 3 above, USAC does not have information on consortium-wide WAN projects. We have information on special construction projects, of which WAN special construction projects would be a subset. To date, there are three consortium applicants that requested E-rate funding for special construction that were denied for not selecting a cost effective offering.

<b>Special Construction Funding Requests Denied for Cost Effectiveness</b>		
<b>Fund Year</b>	<b>Applicant Count</b>	<b>Funding Request Amount Denied</b>
2016	1	\$33,116.81
2017	2	\$2,073,275.54
2018	0	\$0.00
<b>Totals</b>	<b>3</b>	<b>\$2,106,392.35</b>

**6. How many consortium-wide WAN projects are currently awaiting a funding decision by USAC?**

As discussed in Question 3 above, USAC does not have information on consortium-wide WAN projects. We have information on special construction projects, of which WAN special construction projects would be a subset. To date, there are nine consortium applicants with pending funding requests.

<b>Special Construction Applications Pending Funding Decision</b>		
<b>Fund Year</b>	<b>Applicant Count</b>	<b>Funding Request Amount Pending</b>
2016	0	\$0.00
2017	2	\$3,291,604.75
2018	7	\$82,378,069.31
<b>Totals</b>	<b>9</b>	<b>\$85,669,674.06</b>

7. **To the extent that USAC has approved funding requests for the construction of consortium-wide WANs that partially or fully overbuild existing fiber providers, and considers such projects, whether self-provisioned or owned by a commercial provider, to be eligible for funding under current E-rate rules, has USAC alerted the FCC of the overbuilding risk created by such projects? Has USAC alerted the FCC of an apparent gap in current program rules that permits USAC approval of such projects?**

As indicated in Question 4(a), USAC does not have sufficient data to determine if approved special construction funding partially or fully overbuilds existing fiber networks.

USAC engages with staff of the Wireline Competition Bureau on a regular basis to discuss a broad range of issues related to the administration of the E-rate program, including special construction applications. We will continue to keep the Bureau staff fully apprised of all issues related to fiber applications.

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USAC’s mission is to ensure that all requested E-rate funds are committed and disbursed in compliance with FCC rules, and to protect the USF from waste, fraud and abuse. We remain committed to working in concert with FCC staff to address challenges and concerns related to the administration of the E-rate program.

Please let us know if you have any additional questions or concerns.

Sincerely,



Radha Sekar  
Chief Executive Officer