

Before the Federal Communications Commission
Washington, DC 20554

Petition for Rulemaking of Central Texas	:	RM-11841
Telephone Cooperative, Inc., Peoples Telephone	:	CC Docket No. 02-6
Cooperative, Inc. and Totelcom Communications,	:	WC Docket No. 13-184
LLC	:	

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

Contents

I.	Introduction and Summary	1
II.	The High Cost Program and E-rate Program Serve Distinct Purposes and Distinct Customer Groups	2
III.	Competitive Bidding Ensures Fiscal Responsibility and Accountability in the E-rate Program	5
IV.	The FCC Already Established Regulatory Requirements to Coordinate the E-rate and High Cost Programs That the Petitioners Should be Required to Fulfill	9
V.	Both Buying Consortia and Bidding Consortia Serve a Valuable Purpose	11
VI.	Public Information is Not Readily Available about High Cost Program Fund Payments and Availability of Fiber Facilities	13
VII.	Conclusion	16

I. Introduction and Summary

The State E-rate Coordinators' Alliance¹ ("SECA") encourages the Federal Communications Commission ("FCC" or "Commission") to reject the Petition of the Texas Carriers² because their requested E-rate rule changes will eviscerate the competitive bidding requirement, which has been the central tenant of the E-rate program since its inception, will cripple program efficiency and increase funding demand. The Carriers portend to want to improve regulatory policies to conserve universal service funds, but the veneer of their claims is quickly peeled away upon examining **all** the facts, and not just the selective, unsubstantiated claims in their Petition. Service providers, regardless of where their service territory is located, or whether their underlying infrastructure was built with universal service funds, must comply with the rules. Applicants are required to bid all services for which they are seeking E-rate discounts and select the most cost-effective bidder. Likewise, vendors that wish to be considered in the bid evaluation process are required to bid. No company is exempt or should be exempt from the requirement to submit a proposal if they want to sell services to an E-rate customer.

In sum, the Petition selectively omits key facts and offers a distorted view of how the E-rate program currently operates, or how the Carriers wish it would operate. Seeking a wholesale change to the E-rate program rules to award no-bid or sham-bid contracts to certain, select vendors, which would

¹ SECA is composed of State E-rate Coordinator members representing 44 states and two territories. SECA members provide year-round training, assistance and helpdesk support to school, library and consortium applicants and assist E-rate service providers to facilitate their success with obtaining E-rate funding and complying with program rules. State E-rate Coordinators also serve as an interface with USAC and verify the eligibility of schools and libraries and other data points as necessary to ensure program compliance. Many SECA members are also responsible for procuring the contract services and filing statewide or large regional Form 471 applications for state or large regional wide area network services.

² Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., Peoples Telephone Cooperative, Inc. and Totelcom Communications, LLC filed May 22, 2019, RM-11841; CC Docket No. 02-6; WC Docket No. 13-184 ("Texas Carrier's Petition").

be the outcome if Petition was granted, is unthinkable and would undermine the more than 20-year policies underlying universal service that Congress sought to achieve in enacting the Telecommunications Act of 1996.

II. The High Cost Program and E-rate Program Serve Distinct Purposes and Distinct Customer Groups

The E-rate universal service program and High Cost universal service program have the same overall goal but have different statutory directives and different beneficiaries. The High Cost program has been in effect for many years, disbursing funds directly to service providers to offset their costs of service. In the 1996 Telecommunications Act, Congress recognized that schools and libraries have unique needs that require focused universal service support in order to meet their needs. While coordinating programs and policies may be laudable and desirable, it is inaccurate to conclude disbursements of funds from the High Cost program and the E-rate program are fungible; that is, payments under the High Cost program to carriers do not equate to a concomitant reduction in funding demand in the E-rate program. This is a major fallacy in the Petitioners' argument.

The Petitioners would have the FCC believe that because they have received High Cost funds and used those funds to install facilities in their networks, the E-rate program should be precluded from making payments to different carriers that schools and libraries have selected as the most cost-effective solution after completing a lawful competitive procurement. The Petitioners further contend that if the E-rate program pays another service provider to install services to a school or library customer that is located in an area served by one of the Petitioners or presumably any other carrier that receives High Cost funds, these funds will pay for duplicate facilities or what they call "fiber overbuilding."

This argument presupposes that the High Cost funds were used by the Texas Carriers to install facilities to specifically serve the school and library customers, while at the same time, the E-rate program will pay for those same customers to purchase the same service from a different provider. These circumstances can arise only when the Texas Carriers or any other company let them happen, either by not responding to the school and library customers' Form 470 requests for services (as is the case with the Texas Petitioners) or by submitting a proposal that was rejected as not being the most cost-effective.

When High Cost funds are paid to companies such as the Texas Carriers, it is our understanding that the Companies are obliged to use the funds to foster the availability of broadband service which the FCC defines as 10 Mbps downstream/1 Mbps upstream. But exactly where the facilities are installed and where these services offered are decisions made by each company, and not the end-user customers. Customers – including school and library customers - have little, if any, input over how the companies use the USF money and where they deploy facilities and offer their services.

Further, the speeds considered 'broadband' in the High Cost Program are substantially lower than those that school and library customers typically seek to purchase. It is commonplace for schools and libraries to purchase 1 Gbps or 10 Gbps transmission service to each school or library to meet their connectivity needs.³ Thus, even if a company receives High Cost program money, there is no assurance—and it should not be presumed — that the company will offer broadband service at a speed of 1 Gbps or higher. These services are more in the vein of “Business Data Services” (“BDS”) which the FCC describes as “dedicated point-to-point transmission of data at guaranteed speeds and service

³ See, e.g., *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184 (FCC 14-99), *Report and Order and Further Notice of Proposed Rulemaking* (Released July 23, 2014) at ¶¶ 34, 39. The connectivity goals of the E-rate program are 100 Mbps per 1000 students for Internet access, and 10 Gbps per 1000 students for WAN/last mile connectivity.

levels using high-capacity connections.”⁴ Less than one year ago, the FCC offered traditional rate-of-return companies that elect to receive High Cost funding to transition their BDS offerings to incentive regulation and found “lighter touch regulatory framework will help drive competition for BDS offerings in the communities served by those carriers.”⁵ In other words, the FCC already has acknowledged the benefits of competition for these high speed capacity services, which is completely consistent with the framework of the E-rate program.

It is entirely possible, therefore, that a company that has received High Cost funds to build out its network may have done so in accordance with FCC policies and still not be chosen as the most cost-effective service provider for an E-rate customer. This may occur because the company may not have installed facilities near the E-rate customer and the additional cost of the needed facilities, coupled with the ongoing recurring charges to serve the customer, is not as cost effective as another bidder’s solution. The school or library customer could then qualify to receive approval to pay the winning bidder for the contract costs associated with installing service. Under these conditions it would be and should be appropriate and efficient to use E-rate funds to pay for the new company to install service because the price from the new provider was more cost effective than the price proposed by the other carrier, in spite of the fact that the other company had the benefit of High Cost funds to offset their costs.

Selecting a different company than the High Cost recipient company in such a scenario is an efficient and fiscally prudent outcome, and not a waste of funds as posited by the Texas Carriers. The Texas Carriers are mistaken in the belief that it would be more expensive to pay the other company to install service to these customers. In this scenario, the most cost-effective solution and therefore the

⁴ Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, WC Docket No. 17-144, *Report and Order, Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* (FCC 18-146) (Order released October 24, 2018), ¶ 2.

⁵ *Id.* at ¶ 4.

most fiscally responsible choice is to award the contract to the other company and for E-rate to pay the discount funding portion of the eligible contract costs.

III. Competitive Bidding Ensures Fiscal Responsibility and Accountability in the E-rate Program

By insisting that school and library customers competitively bid their services, the FCC can be assured that the prices paid for E-rate eligible services will be the most cost-effective, and the financial impact on the E-rate fund will be as low as possible. This includes those situations even where there is an incumbent carrier who received High Cost payments and was not chosen as the most cost-effective bidder.

The E-rate program is founded on a competitive bidding framework where the most cost-effective bidder is awarded the contract for services.⁶ The school and library customers must define their requested services and seek competitive bids for the services using the FCC Form 470. E-rate service providers are then invited to submit proposals. After the required waiting period, the customer then evaluates all qualified proposals received, chooses the most cost-effective solution and requests E-rate funding via the FCC Form 471.

All things being equal, if a carrier that received High Cost support has broadband facilities available to provide the requested services, shouldn't that company's bid be more cost effective than any other company that has no existing facilities in place? Awarding the contract to a company that is not the most cost effective would reward the company for charging above-market

⁶ E-rate rules require that price is the primary determinant and most heavily weighted consideration. See, e.g., Modernizing the E-rate Program for Schools and Libraries, FCC 14-99, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 13-184 (Order released July 23, 2014) at ¶12.

prices and impose a bigger drain on the E-rate program. Instead, in these situations, we suggest the FCC should require the High Cost recipient company to explain why they either failed to bid or failed to offer a reasonable price to the school and library customer given that they already received universal service funding to provide these broadband services.

The current competitive bidding model acts to not only to ensure that the E-rate program funds stretch as far as possible, but it also ensures that the costs borne by schools and libraries – the non-discounted costs – are also as low as possible. How would a school or library official explain to their boards of directors or taxpayers that they must sign a contract with a company that did not offer the most cost-effective service? Yet this is the outcome that the Texas Carriers would compel through the bid challenge process they seek to overlay onto E-rate. Not only does the E-rate program have a competitive bidding requirement and safeguards in place to ensure that funds are not wasted, but schools and libraries also have these requirements. We are dismayed that such a change is being proposed that would run afoul of state and local bidding requirements.

The competitive framework is an established pillar of the E-rate program and the fundamental means of ensuring a financially responsible approach to administering the E-rate program. Since the FCC first adopted rules governing the E-rate program in 1997, in the First Report and Order in CC Docket No. 96-45, competitive bidding has been a cornerstone of the E-rate program:

We therefore adopt the Joint Board’s finding that fiscal responsibility compels us to require that eligible schools and libraries seek competitive bids for all services eligible for section 254(h) discounts. Competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about all of the choices available to them. Absent competitive bidding, prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to

participate in the program or the demand on universal service support mechanisms would be needlessly great.⁷

Not only does bidding help control the costs of services and equipment, it also is a vital protection to help guard against waste, fraud and abuse. As far back as December 1997, the Commission reaffirmed the importance of the competitive bidding process, stating:

The competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the *services are provided at the lowest possible rates*.⁸

In 2003, the Commission reiterated the sanctity of the competitive bidding process in the following passages from two different orders:

The Commission's responsibility to combat potential waste, fraud, and abuse in the Commission's program, while promoting goals such as having schools and libraries obtain the most cost-effective services, commands that the limited rules we impose regarding competitive bidding constitute a floor or minimum set of requirements.⁹

A fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources.¹⁰

More recently, in 2010, the Commission stated:

The Commission's competitive bidding rules serve as a central tenet of the E-rate program. They ensure more efficient pricing for telecommunications and information services purchased by schools and libraries and help deter waste, fraud and abuse.¹¹

⁷ Federal-State Joint Board on Universal Service, Report and Order released May 8, 1997, CC Docket No. 96-45 (FCC 97-157), ¶ 480 (footnotes omitted).

⁸ Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration, CC Docket No. 96-45, et al. (FCC 97-420) (December 30, 1997) at ¶ 185 (emphasis added).

⁹ In re Request for Review of the Decision of the Universal Service Fund Administrator by Yseleta Independent School District et al, SLD No. 321479, CC Docket No. 96-45, et seq (FCC 03-313) (December 3, 2003) at ¶ 46.

¹⁰ Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Third Report and Order (FCC 03-323) (December 23, 2003) at ¶ 66.

¹¹ In re Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future, Sixth Report and Order, CC Docket No. 02-6, GN Docket No. 09-51, (FCC 10-175) (September 28, 2010) at ¶ 18.

In 2016, the FCC likewise found, in describing the purpose of the competitive bidding requirement, that:

In order to protect against waste, fraud and abuse, Commission rules require schools, libraries and consortia to seek competitive bids for all services eligible for E-rate support.¹²

The FCC has been loath to permit exceptions or exemptions from competitive bidding. In the beginning of the program, the exemption for pre-existing contracts was construed narrowly to foster competitive bidding.¹³ Contract extensions signed without first rebidding the service are strictly construed and are only permissible when they are included in the originally signed contract. Applicants must post Form 470 applications for the specific service category for which they seek proposals in order to qualify for E-rate discount funding on their Form 471 applications. Applicants that post Form 470 applications and do not wait the entire 28-day period for receiving bids before signing contracts are denied funding as a competitive bidding violation. Changes to RFP documents that are classified as “cardinal changes” require the 28-day bidding period to be restarted from the date of issuance of the change. In short, in the more than 20 years of the E-rate program’s existence, the FCC has gone to great lengths in its rulemaking proceedings and appeal decisions to define specific competitive bidding requirements that applicants must follow, in order to conduct a fair and open competitive bid and to enable all interested bidders to have the same opportunity to meaningfully participate in the bid.

Any effort to impede the competitive bidding process will frustrate the Commission’s twin goals of ensuring the most efficient pricing **and** protecting against waste, fraud and abuse. The challenge process that the Texas Carriers propose could nullify contracts that were awarded after complying with a

¹² Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Sweetwater City Schools et al., File Nos. 917099, 919406, et al., (DA16-1465) (December 30, 2016) at ¶ 2.

¹³ Federal-Joint Board on Universal Service, CC Docket No. 96-45, *Order on Reconsideration*, DA97-1433 (July 10, 1997).

host of state and local bidding requirements as well as E-rate requirements. The challenge process allows these vendors to sit on the sidelines and not compete for customers' business during the lawful procurement. Then, after all is said and done, and with the unprecedented advantage of knowing the cost(s) proposed by the awarded service provider, the companies could attempt to appropriate the contract away from the most cost-effective bidder for themselves using the excuse that the High Cost recipient company already has subsidized facilities available to serve the customers. Unnecessary months of delay would be added to the procurement and application cycle, while allowing essentially a bid protest under the guise of a USF challenge to be lodged outside of the state procurement requirements. Such a challenge process is unnecessary and unfair to all the bidders and the E-rate applicants. E-rate applicants would continue to be required to comply with all such requirements while the Texas Carriers would be exempt from them. It makes a mockery of the competitive bidding process and should be rejected.

IV. The FCC Already Established Regulatory Requirements to Coordinate the E-rate and High Cost Programs That the Petitioners Should be Required to Fulfill

Recognizing the importance of efficiently disbursing universal service funds across all programs, in the December 2014 E-rate Order, the FCC directed carrier recipients of High Cost universal service funds that they must participate in E-rate procurements:

The Commission stated:

60. To ensure that schools and libraries have access to affordable broadband service in high-cost areas, we establish an obligation for recipients of high-cost support to offer broadband service in response to a posted FCC Form 470 to eligible schools and libraries at rates reasonably comparable to rates charged to schools and libraries in urban areas for similar services. We agree with commenters that such an obligation will assist us in narrowing the connectivity gap between rural and urban schools and libraries and

help rural schools and libraries achieve the connectivity targets we adopted in the *E-rate Modernization Order*.

63. Imposing an obligation on recipients of high-cost support to offer affordable high-speed services in response to a posted FCC Form 470 to schools and libraries also makes the most efficient use of limited universal service support while ensuring affordable access to broadband service to eligible schools and libraries. In high-cost, hard to serve areas, we expect that recipients of high-cost support will be best situated to offer affordable broadband service to eligible school and libraries. Obligating these recipients to offer affordable services to schools and libraries in high-cost areas increases the likelihood that schools and libraries will receive affordable broadband service at the lowest cost to the E-rate program. At the same time, this obligation 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.¹⁴

Indeed, companies such as the Texas Carriers that receive High Cost support and do not bid on FCC Form 470 applications are subject to FCC enforcement action.¹⁵ The Texas Carriers however, failed to mention this obligation or responsibility in their Petition.

Instead, the Carriers contend that they were prevented from bidding on the consortia Form 470 applications and associated RFPs. Yet they fail to provide any supporting facts, such as any Form 470 or Form 471 application numbers, or even the names of the E-rate applicants, from whose procurements they claim they were barred from participating.

In order to determine if this accusation was accurate, SECA reviewed the Form 470 and the RFP documents of the TX procurements at the center of their Petition and found that they do not corroborate this accusation and, in fact, the documents clearly refute this claim.

¹⁴ 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).

¹⁵ *Id.* at ¶ 67.

SECA identified each Form 471 application for funding submitted by any Texas consortium and that requested special construction funding in FY 2016 through FY 2019. Upon examination of each associated Form 470 and the available RFP documents, we did not identify a single Form 470 or RFP that contained any restrictive terms that explicitly or implicitly excluded the Texas Carriers.

- There is no language in any RFP or Form 470 that establishes a prerequisite that the bidder must submit a proposal to provide service to every location included in the proposal.
- There is no language in the RFP that indicates that bidders are not allowed to rely on subcontractors.
- There is no language in the RFP that compels bidders to use their own facilities and not rely on leased facilities to provide service.

The names of the bidders who respond to each Form 470 is not a matter of public records that SECA can examine to see whether any of these carriers submitted proposals. But given their complaint or statement that the bids prevented them from doing so, we surmise that they did not participate or try to participate in any of these consortia procurements. Considering the FCC's directive that High Cost carrier recipients **must** respond to FCC Form 470 applications, at the very least, these Carriers should be required to produce evidence of their efforts to participate in the procurements, and the specific language in the Form 470 or RFP documents that prevented them from submitting a proposal. We found none.

V. Both Buying Consortia and Bidding Consortia Serve a Valuable Purpose

The E-rate program has long recognized the benefit and value of consortia applications as an efficient means to procure cost effective services at the state and regional level. Indeed, consortium purchasing can drive down the prices paid by schools and libraries for E-rate supported services. By aggregating demand and serving as the procurement agent, consortia leads provide a valuable service to

ensure universal connectivity among all participating schools and libraries, particularly our smallest and most rural schools and libraries. In fact, in many states, it is the statutory responsibility for educational service centers to act as broadband/technology aggregators on behalf of their members. The Petitioners' criticism of consortia applications should be rejected out of hand.

The Carriers also do not bother to explain why they failed to consider creating a sellers' group of companies – a bidding consortium -- that joined together to submit bids. Subcontracting with other companies to respond to a consortia RFP is a common practice. Companies will join to prepare a comprehensive proposal that offers to serve all the locations or as many locations as possible for which the RFP requests service. Frequently one company will serve as the company of record that submits the RFP under their name and will rely on the other companies as subcontractors to fulfill the service requirements. Unless an RFP has an outright explicit prohibit against subcontracting, which we submit none of the Texas consortia RFPs contained, the Texas Carriers could have created a sellers' group of companies and bid on any of the Texas consortium procurements as another possible approach.

The concept of bidding consortiums is not novel or new. In fact, some states have made statewide awards to a conglomerate of companies. For example, in South Dakota, SDN Communications is made up of more than 450,000 miles of fiber that includes facilities from 17 different companies in South Dakota, eight in Minnesota and one in Iowa. These companies are the owners and members of SDN Communications.¹⁶ SDN has bid on and received contract awards for substantial portions of the South Dakota K12 network since at least 2001. Similarly, Wisconsin has over seventy ILECs that are all part of a large statewide provider consortium that bid and won the contract for the state's BadgerNet network which provides broadband connections and internet access for 640

¹⁶ <https://sdncommunications.com/who-we-are/member-companies/>

Wisconsin K-12 schools and public libraries. Seller consortium groups of companies are commonly formed either on a permanent or ad hoc basis to respond to large consortium procurements. The Texas carriers appear not to have considered this option or concluded that it was not worth the effort.

VI. Public Information is Not Readily Available about High Cost Program Fund Payments and Availability of Fiber Facilities

The Texas Carriers state that some of the schools in the various consortia may already have access to fiber facilities but this too is another unsubstantiated assertion. We know of no publicly available data source that E-rate applicants can consult to locate where such facilities exist,¹⁷ let alone whether the facilities were deployed with the assistance of universal service support. Without this publicly available information, it would be impossible for an E-rate applicant to know whether their bid award may be subject to a challenge process, should the Petitioners' request be granted. This, too, is another flagrantly unfair aspect of their proposal. Even if an applicant wanted to ensure that they invited High Cost recipient companies to submit proposals, if their state or local procurement laws allowed them to send the RFP/Form 470 to a specific vendor, they have no way of even identifying such companies. This is yet another reason why the bidding process requires companies to submit bids, and not for applicants to try to locate such companies. The Companies guard their facility maps as highly proprietary and do not readily part with such information to their customers or prospective customers.

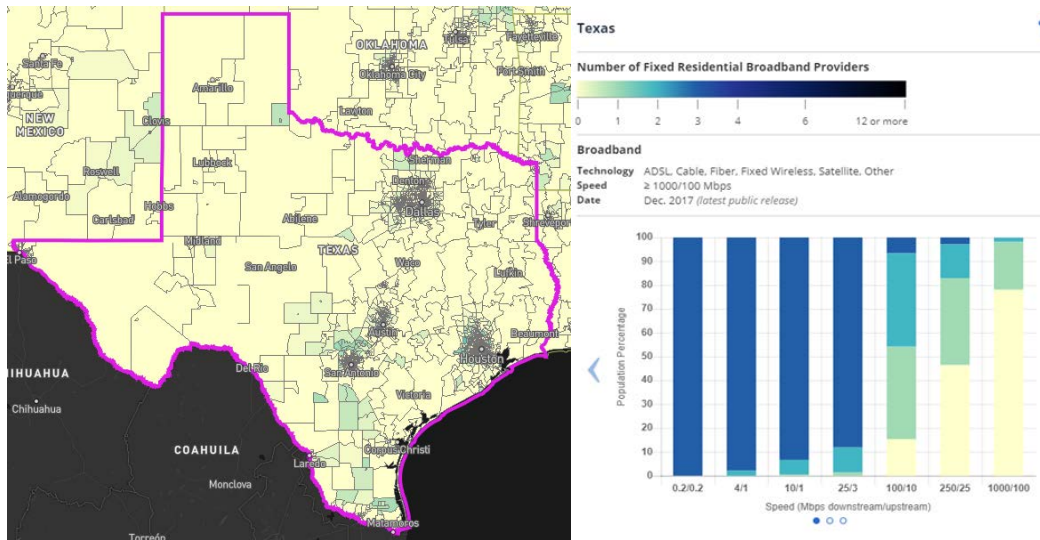
¹⁷ The lack of such data being publicly available has long been frustrating not just E-rate applicants but for consumer and public interest groups who advocate for accessible and affordable broadband.

After scouring the FCC's and USAC's websites, no such information could be found. Both sites describe the multitude of universal service high cost programs but neither site has a list of the service provider recipients and the location of their subsidized facilities.¹⁸

According to the FCC's Broadband map, broadband services at a downstream speed of 1000 Mbps and 100 Mbps upstream are available to 22% of the population in Texas. The remaining 78% of the population have no access to these broadband speeds.¹⁹ There appears to be one provider that offers this speed of service that reaches 20% of the population and two providers that reach 1.71% of the population. However, even these locations and availability of these services are not easily identified and requires an E-rate applicant to search each individual address of a school to determine whether there is suitable service available. Nor do the maps identify the names of the vendors that offer the services or which vendors receive USF support in each area where their service may be available. The following information is what we found when we searched the FCC's Form 477 broadband map page for Texas.

¹⁸ The Telecommunications Access Policy Division of the FCC's Wireline Competition Bureau has information about the various high cost programs including a link to the FCC maps, but a review of each link did not reveal this information. <https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund#block-menu-block-4> Similarly, USAC's web site lists the over 10 different high cost funds but has no such listing. <https://www.usac.org/hc/funds/default.aspx>. USAC's quarterly filings to the FCC has Schedule HC-01 which provides quarterly projected high cost support by state and by study area, but this information does not help an E-rate applicant determine whether there is a subsidized carrier that is obligated to provide service to a particular school or library. See e.g., <https://www.usac.org/about/tools/fcc/filings/2019/q3.aspx>. The Carriers' claim that they provide service to some of the locations for which service was requested in one of the Texas E-rate consortium RFPs and for which they received high cost support must be disregarded in the absence of their submission of substantiating evidence.

¹⁹ <https://broadbandmap.fcc.gov/#/>



The vast amount of the yellow region in the map shows the areas where there is no 1000 Mbps/100 Mbps service available at all. The light green pockets show the areas where one provider is available, and the darker green shaded areas depict the areas where less than 2% of the population are served by two vendors. This information is fraught with uncertainties and is insufficient to assist E-rate applicants. There obviously was good reason why the FCC imposed the obligation on USF High Cost recipient carriers to identify E-rate applications where the carriers must submit proposals since the carriers are in control of the data and knowledge of where their facilities exist, and whether they may provide service to a particular location.

Moreover, the FCC itself has recognized the inherent limitations of the Form 477 data. In its August 4, 2017 Further Notice of Proposed Rulemaking in WC Docket No. 11-10, the Commission observed that the definition of “availability” in the Form 477 reported data may or may not mean that the service provider does in fact offer service to new customers.²⁰ In other words, there is no conclusive

²⁰ Modernizing the FCC Form 477 Data Program, Further Notice of Proposed Rulemaking, WC Docket No. 11-10 (FCC 17-103) (August 4, 2017) at ¶33 (footnotes omitted; emphasis in original). Chairman Pai reiterated the importance of this proceeding in recent letters to members of the House of Representatives and Senate in which he stated that the FCC has initiated a “top-to-bottom review of the Form 477 process to ensure

way for an E rate applicant to know, in the absence of conducting a competitive bid, whether there are available vendors to provide them with the requested service. And even if there was such a be-all, end-all database, it would be a futile gesture for an applicant to undertake this effort to consult such a data base since the company with the facilities would be free to submit a proposal that is more expensive than its competitors, and then later challenge a contract awarded to the most cost-effective bidder under the guise of conserving universal service program resources. This is an illogical outcome that should not be allowed to occur.

VII. Conclusion

The Petitioners seek relief from the E-rate competitive bidding requirements in order to retain their foothold in their geographic service areas, attempting to create a smokescreen under the veil of concern about fiber overbuilding. Over 20 years ago, Congress enacted the Telecommunications Act of 1996 and established the E-rate program which has been founded upon the principle of competitive bidding to exert cost controls and to protect against waste, fraud and abuse. The E-rate program has fulfilled Congress's intent by relying on competition to help lower prices and to preserve the integrity of E-rate supported services and purchases. The Texas Carriers' petition that seeks to thwart and roll back competition should be dismissed.

Further, the Petitioners' complaint has been shown to be of their own making due to their failure to participate in the Texas procurements. No vendor deserves no-bid contracts, not even ones that have been received High Cost support. E-rate was not founded on a bedrock principle of protectionism, and the rules should not be amended to start this now. The existing competitive bidding process, no matter

that broadband data was more accurate, granular and ultimately useful to the Commission and the public.”
<https://www.fcc.gov/chairman-pais-letters-congress>.

how challenging the process may be, is sound. It is consistent with state laws and lowers out-of-pocket costs for schools and libraries and stretches E-rate dollars to the fullest. The Petition, therefore, should be rejected.

Respectfully submitted,

A handwritten signature in cursive script that reads "Debra M. Kriete".

Debra M. Kriete, Esq.
Chairperson, State E-rate Coordinators' Alliance
1300 Bent Creek Blvd, Ste 102
Mechanicsburg, PA 17050
717 232 0222 voice
717 256 0098 fax
dmkriete@comcast.net

Dated: July 1, 2019