

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Petition for Rulemaking to Amend and Modernize)	RM-11841
Part 54 of the Commission’s Rules to Prevent)	
Waste in the Universal Service Fund E-Rate)	
Program)	
)	
Schools and Libraries Universal Service Support)	CC Docket No. 02-6
Mechanism)	
)	
Modernizing the E-Rate Program for Schools)	WC Docket No. 13-184
and Libraries)	
)	

COMMENTS OF USTELECOM—THE BROADBAND ASSOCIATION

I. Introduction

USTelecom – The Broadband Association¹ respectfully submits these comments in response to the Wireline Competition Bureau’s Public Notice² seeking comment on Texas Carriers’ Petition to prohibit use of E-Rate funds to build fiber networks in areas where fiber networks already exist.³ USTelecom has a long history of supporting overbuilding protections and avoiding duplicative funding in all Universal Service Fund (USF) components and agrees with the Texas Carriers that existing E-rate rules should be reevaluated to ensure that USF

¹USTelecom is the nation’s leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

² *Wireline Competition Bureau Seeks Comment on Texas Carriers’ Petition to Prohibit Use of E-Rate Funds to Build Fiber Networks in Areas Where Fiber Networks Already Exist*, RM-11841; CC Docket No. 02-6; WC Docket No. 13-184, Public Notice, DA 19-493 (WCB May 30, 2019).

³ *Petition for Rulemaking of Central Texas Telephone Cooperative, Inc., et al.*, RM-11841; CC Docket No. 02-6; WC Docket No. 13-184 (filed May 22, 2019) (Petition).

dollars do not subsidize fiber buildout projects in areas where fiber already exists – whether built with government subsidies or solely from private investment. The Commission should expeditiously issue a Notice of Proposed Rulemaking to further explore these policy concerns. Timing is of the essence in order to ensure clarity of rules going into the 2020 E-rate funding year.

II. The Petition Correctly Identifies Overbuilding as a Problem

As discussed previously,⁴ USTelecom agrees that the E-rate program has been a success in bringing broadband to schools and libraries, but the current rules are not carefully tailored to protect existing fiber resources.⁵ Current rules applicable to special construction projects, as reformed in the 2014 *Second Modernization Order*,⁶ allow for USF support of fiber-buildout in any area, including urban and suburban areas, which likely have multiple competitive fiber networks.⁷ The Communications Act provides, and USTelecom supports, that “[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications.”⁸ Yet this USF principle is balanced by an additional principle of targeting USF support to areas lacking comparable, competitive networks.⁹ The *Second*

⁴ Comments of USTelecom, WC Docket Nos. 13-184, 19-2 (filed Apr. 1, 2019).

⁵ Petition at 1-2.

⁶ See *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, Second Report and Order and Order on Reconsideration, WC Docket No. 13-184, *Connect America Fund*, WC Docket No. 10-90, 29 FCC Rcd 15538 (Dec. 11, 2014) (*Second Modernization Order*).

⁷ See *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, Second Report and Order and Order on Reconsideration, WC Docket No. 13-184, *Connect America Fund*, WC Docket No. 10-90, 29 FCC Rcd 15538 (Dec. 11, 2014) (*Second Modernization Order*).

⁸ 47 U.S.C. § 254(b)(6).

⁹ *Id.* at § 254(b)(3) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”).

Modernization Order disturbed the balance between these two principles, thereby allowing for wasteful results affecting all existing providers—both competitive and subsidized.

Then-Commissioner Ajit Pai and Commissioner O’Rielly immediately recognized that the *Second Modernization Order* created the possibility for wasteful overbuilding to the detriment of schools and libraries in need of high-speed connections. In his dissent, Commissioner Pai noted his concern that there were no safeguards in the *Second Modernization Order* to ensure that the money spent in the E-Rate program would be used to close the fiber gap, but instead could be spent to support urban and suburban network providers overbuilding existing and competing networks. He observed that, “[t]he nation’s largest urban school districts could easily soak up all the new funding to overbuild existing fiber networks.”¹⁰ Commissioner O’Rielly offered similar concerns, foreseeing that, “funding will be provided to all comers and we’ll cross our fingers that it finds its way to the right places. . . . I fear that these decisions will lead to untold waste of funding.”¹¹ Commissioner O’Rielly was particularly concerned “about the self-provisioning [of fiber build-out], which could lead to overbuilding, and could ultimately jeopardize service to the community at large.”¹² In 2017, Commissioner O’Rielly observed again that the *Second Modernization Order* “rejected recommendations on the record that the option [that E-rate funding for networks constructed by applicants] not be permitted in areas where broadband is already available” and noted that “[we] continue to hear concerns that universal service funds are being wasted by E-rate applicants overbuilding existing networks in whole or in part.”¹³ And, as recently as June of the current year, Commissioner O’Rielly noted

¹⁰ *Id.* at 15636-7, Dissenting Statement of Commissioner Ajit Pai.

¹¹ *Id.* at 15641, Dissenting Statement of Commissioner Michael O’Rielly.

¹² *Id.*

¹³ See Letter of Michael O’Rielly, Commissioner, FCC, to Chris Henderson, CEO, Universal Service Administrative Co. (Feb. 9, 2017) (*Feb. 2017 O’Rielly USAC Letter*).

the “pernicious consequences of USF-funded overbuilding” and specifically highlighted the lack of guardrails in the E-rate program fiber buildout competitive rules aimed to avoid such outcomes.¹⁴

USTelecom previously expressed similar concerns¹⁵ about the risk that rule changes would allow E-rate funding to be used to overbuild networks, and proposed that special construction charges for fiber-buildout should only be allowed where there are no comparable, competitive options. USTelecom’s 2013 comments in this proceeding stated that, “support for owned fiber should be limited to schools and libraries in areas that do not already have commercially-deployed fiber. This is similar to the approach the Commission took with respect to the Connect American Fund (CAF), which provides support only in areas lacking an unsubsidized competitor.”¹⁶ In 2014, we noted that, “given the widespread access to fiber by the nation’s schools, it is unclear whether any additional support through the kind of ‘deployment fund’ described in the notice is necessary. At most . . . the Commission would only need to commit a limited amount of E-rate funds to a narrow range of schools that do not have any or have inadequate high-speed broadband connections under E-rate program’s existing system.”¹⁷

Those concerns remain relevant today for *all* existing service providers. USTelecom supports the Petition’s overall position that “overbuilding is not only wasteful and an inefficient use of governmental program funds, but it also reduces the pool of funds available to rural schools and libraries that actually need fiber broadband connection,”¹⁸ but the Petition does not

¹⁴ Michael O’Rielly, Commissioner, FCC, Remarks Before the Hudson Institute (June 25, 2019).

¹⁵ See *supra* n. 4.

¹⁶ See Reply Comments of the United States Telecom Association, WC Docket No. 13-184, (Nov. 8, 2013) at 6.

¹⁷ See Comments of the United States Telecom Association, WC Docket No. 13-184, (Apr. 7, 2014) at 4-5.

¹⁸ Petition at 3.

go far enough in its requested relief. By targeting only “safeguards which would discourage overbuilding of existing federally supported fiber networks,”¹⁹ the Petition ignores the plight of competitive providers who are consistently overbuilt with E-rate funding. Such overbuilding changes cost structures for those investing in the networks and deprives efficient funding to other unserved areas most in need.

The following E-rate-related projects are but a few examples where school districts in urban, or suburban areas are seeking funding to support fiber construction despite the existence of competitive fiber options serving the school district. Importantly, all but one of these school districts is eligible for an E-rate discount rate of 90%. In other words, not only is the program subsidizing overbuilding, but it is also often providing *additional* subsidies for new builds over existing infrastructure without any check on cost effectiveness. In some of these cases, the applicant was able to, or hopes to, leverage state support and the associated E-rate match, resulting in discount rates for the applicant of 100% or 95%, giving the applicant little or no skin in the game. Sadly, for self-owned projects where the applicant would own the network, the broader community will not be able to benefit from this additional fiber network.

One USTelecom member with existing infrastructure in the area that would be served by the E-rate funded network was told: “[w]ith the build out cost virtually free, the monthly recurring costs with the selected vendor are more cost effective.” That fact gives rise to situations like these where funds are sought to overbuild an existing fiber provider:

- Grosse Pointe School District, MI, submitted an E-rate application in funding year 2018 for one-time special construction charges of approximately \$667,000 to support a self-provisioned fiber network;

¹⁹ *Id.* at 1.

- Beaumont Independent School District, TX, serving the city of Beaumont, TX, submitted an E-rate application in funding year 2018 for one-time special construction charges of approximately \$3.7 million to support a fiber-buildout project;
- Cado Parish School District, LA, serving Shreveport and Bossier Cities, submitted an E-rate application in funding years 16 and 17 for \$4 million and \$5 million respectively to support a fiber-buildout project;
- San Antonio School District, TX, submitted an E-rate application in funding year 2018 for one-time special construction charges of approximately \$6.2 million to support a fiber-buildout project;
- Twin River Unified School District, CA, just aside of Sacramento, CA, submitted two E-rate applications in funding year 2018 and 2019 for \$4.5 million and \$2.2 million respectively to support a fiber-buildout project;
- Ector County School District, TX, serving the city of Odessa, TX, submitted an E-rate application in funding year 2018 for one-time special construction charges of approximately \$6.3 million to support a comprehensive fiber WAN construction project.²⁰

Funding such overbuilding is a disincentive for competitive builders, generally serving the larger market, to invest their limited capital. Therefore, the Petition errs in focusing only on the problems with overbuilding federally-supported fiber networks; all forms of overbuilding are problematic.

²⁰ Individual information about these applications can be found through the funding search tools provided on the USAC website. Universal Service Admin. Co., Tools, <https://www.usac.org/sl/tools/default.aspx> (last visited July 1, 2019).

III. Conclusion

The Petition addresses important risks of the E-rate program funding fiber overbuild networks. The Commission should expeditiously launch a rulemaking proceeding aimed at ensuring that the E-rate program not subsidize fiber buildout projects in areas where fiber already exists – whether build with government subsidies or solely with private investment.

Respectfully submitted,

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