OFFICE OF THE
COCHISE COUNTY SCHOOL SUPERINTENDENT
1415 Melody Lane, Building C
100 Clawson Ave. (physical)
Bisbee, Arizona 85603

Jacqui Clay
SUPERINTENDENT
Telephone No. (520) 432-8950
Fax No. (520) 432-7136

September 19, 2019

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Dear Commissioner O'Rielly:

I am writing in response to your letter to the Cochise County Education and Technology Consortium (CCETC or the County) dated August 26, 2019. I am happy to provide the information you requested about our planned network and the competitive bidding process we conducted to select a vendor for it. CCETC is proud of its efforts to improve broadband capabilities for all of its participating school districts and libraries, and for their students and their patrons, in the most cost-effective manner. We want our students in rural areas to have access to the same educational opportunities as students in urban areas, and we believe a robust, resilient, high-capacity broadband network can be a significant tool that we use to help achieve that goal. We are confident that the facts provided below will allay your concerns about the project.

Unfortunately, it appears that in its meeting with you (as well as in its comments in the Texas Carriers' Petition for Rulemaking proceeding), Valley Telephone Cooperative (Valley Telephone) provided some incomplete and inaccurate information about our project and our competitive bidding process.[1] To ensure that you have all of the facts, we will briefly describe the project and the associated competitive bidding process before we turn to your specific questions.

The Project. CCETC sought E-rate funding to extend fiber to all 47 County school and library locations. CCETC anticipated that the resulting fiber network might also be used to serve government entities not eligible for E-rate funding—with the ineligible network

[1] Letter from Donald L. Herman, Jr. and Clare L. Andonov, Counsel to Valley Telephone Cooperative, to Marlene H. Dortch, Secretary, FCC, RM-11841, WC Docket No. 13-184, CC Docket No. 02-6 (filed Aug. 21, 2019); Comments of Valley Telephone Company, RM-11841, WC Docket Nos. 13-184, 10-90, CC Docket No. 02-6 (filed July 1, 2019) (Valley Telephone Comments).

facilities cost-allocated out, in accordance with the Commission's rules—which would help defray the cost of building the new fiber facilities.[2]

Currently, the schools and libraries in Cochise County are not receiving the bandwidth and service quality they need to adequately serve their students and patrons, and most do not have access to service at the FCC-recommended levels of bandwidth.[3] If you add all of the bandwidth together that the County schools and libraries have access to today, it is less than 6 Gbps in total. The FCC-recommended goal for funding year 2020—next year—is nearly 78 Gbps total, given the number of students and patrons served.[4] The Commission also recommends that each school location have access to scale its capacity to 10 Gbps as part of a wide area network (WAN).[5]

The County planned its fiber project after seeing the success of other Arizona counties in achieving dramatic cost reductions due to the aggregation of locations within a county. Just like those counties, CCETC's goal was to aggregate the needs of all of the County's school and library locations in order to receive the best price and services. Even if some locations in the County currently have a reasonable price for services, the point of aggregating services across a larger number of entities is to get a level of pricing that is better for all locations through volume purchasing.

For example, Tombstone Unified School District (USD) serves approximately 1,000 students. It currently has 200 Mbps for those 1,000 students. The Commission's recommended bandwidth for that size student population is more than 4 Gbps. Similarly, the County's biggest school districts are receiving only 1 Gbps, even though the Commission's recommended levels are 12 to 18 Gbps.

CCETC's project will achieve Commission goals by providing the County's school districts and libraries access to the appropriate amount of bandwidth. Once the project is complete, the schools and libraries will all have access to 10 Gbps bandwidth at each location—per the Commission's recommendation—with a 25 Gbps connection for all

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[2] As you know, the Commission adopted a definition of "consortium" in the *First Modernization Order* that specifically allows government entities, including municipalities, to participate in consortia with E-rate eligible entities. Other than schools and libraries, public entities are not eligible for E-rate funding, but they are allowed to join with schools and libraries to procure and purchase telecommunications, Internet access and other E-rate eligible services. 47 C.F.R. § 54.500 (definition of Consortium); *Modernizing the E-rate Program for Schools and Libraries,* WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8943 ¶ 182 (2014) (*First Modernization Order*).

[3] *First Modernization Order*, 29 FCC Rcd at 8885-86 ¶¶ 34-38.

[4] We do not have current bandwidth for every location that intends to be part of the Consortium, so the total bandwidth recommended amount is higher than this figure.

[5] In fact, the Commission requires that applicants that request state matching funds for special construction must meet the capacity goals and measures that the Commission adopted in the *First Modernization Order. Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15562 ¶ 59 (2014) (*Second Modernization Order*).

locations to access the Internet. This project allows for that scalability to ensure adequate access for several years to come.

The Competitive Bidding Process. The RFP requested a quote for high-speed leased lit fiber to all 47 county schools and libraries, with the design of the network to be determined by the bidding service provider for their most efficient network.
The County sought bids for bandwidth speeds in a range from 5 Gbps to 80 Gbps.
As described above, the goal was to install fiber that would be able to serve the schools and libraries at the FCC-recommended bandwidth levels. The RFP indicated that total bandwidth speeds were likely to increase over time.[6]

The County posted its FCC Form 470 on August 20, 2018 and held a bidder's conference a month later on September 25, 2018. Bids were not due until January 11, 2019. As you know, E-rate rules require applicants to leave bids open for 28 days; we allowed potential bidders 145 days after the RFP was released, and we gave potential bidders ample time to ask questions about the RFP.

The County received two bids in response to the RFP, from Cox and Zayo. After a complete evaluation of the two bidders, the County chose Zayo's bid, which offered the most cost-effective level of service. Zayo's bid was also the least expensive. The County compared the pricing of services using both 10 years and 20 years as comparison points. Both bids contained special construction charges, even though Cox was the existing provider for some locations within the County.
We note that Valley Telephone chose not to bid on the project, even though it was aware of the project—having attended the bidders' conference—and the RFP allowed companies to bid on just a portion of the project.

Responses to Your Questions. Below are specific responses to the questions you asked in your letter.

1. **How many school and library locations in Cochise County, in total, already have a fiber-based Internet connection? Have these schools or libraries had capacity/bandwidth demands that the existing service provider was unwilling or unable to provide?**

CCETC cannot fully answer this question. Districts in the County purchase services from a variety of providers. We know that some districts have some access to fiber, although it may not be the highest-quality circuits, as described below. GovNet's schools and libraries are served using microwave. Other districts may be served using copper or fiber; that would be a question better directed to their service providers. What we do know is that many of the entities included in the RFP are receiving under 100 Mbps of bandwidth, presumably because of technological or affordability limitations.
We understand that Valley Telephone already had service to 15 of the locations, and we were prepared to consider its bid to serve these locations or the entire County. We note

[6] RFP at 31. We have attached a copy of the RFP to this letter.

once again, however, that Valley Telephone chose not to submit a bid in response to our RFP, so we had no choice but to conclude that Valley Telephone was "unwilling or unable" to provide the requested bandwidth to the locations where it had facilities. We would have expected that the local service providers that already have fiber infrastructure in place would have an advantage over other bidders. Unfortunately, Valley chose not to bid, so we were not permitted to consider the company for this service. It is our understanding that recipients of high-cost funding are required to bid on E-rate projects for this very reason.[7] But we obviously cannot force them to bid, and frankly, it would not make sense to select a vendor that did not want to provide service to us, for whatever reason.

Contrary to Valley Telephone's statement in its comments in the Texas Carriers' Petition for Rulemaking proceeding, our RFP did not require only one service provider for the project.[8] In fact, the County's RFP specifically indicated that multiple vendors may be awarded.[9]

Without receiving further information from Valley Telephone, our assumption is that it could not provide the bandwidth requested in the RFP or could not make a business case for bidding on the project. There is no allowance under the FCC rules for open and fair bidding procedures to consider a service provider that is not interested enough in a project to submit a proposal.

Further, it is our understanding that Zayo, the winning bidder, explored the possibility of using existing infrastructure owned by other carriers to provide the services. Zayo determined that existing infrastructure was insufficient to meet the County's needs because the existing fiber is direct buried, instead of being encased in conduit, which made it unsuitable for two reasons. First, direct-buried fiber is susceptible to more frequent outages than fiber encased in conduit, which could jeopardize Zayo's ability to meet the reliability standards expected by CCETC. Second, direct-buried fiber is less easily scalable than conduit, so Zayo would be less able to increase capacity as necessary to meet the County's future needs.

2. How many non-E-rate eligible locations owned by the county government are included in the RFP and why were they included in an E-rate proposal? What are the accepted costs under the accepted RFP for providing service to these facilities?

As noted above, CCETC anticipated that the new fiber network might be used to serve ineligible government entities, with the associated costs removed from the E-rate funding request. For this reason, the RFP included eight ineligible locations, for the purpose of

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[7] *Second Modernization Order*, 29 FCC Rcd 15538, 15562-69 ¶¶ 60-76.

[8] Valley Telephone Comments at 3.

[9] RFP at 13. The RFP did express a preference for "a consortium wide single cost per Mbps for all locations," *id.* at 33, and for selecting the fewest offers necessary to meet the County's needs, *id.* at 13. But the RFP explicitly stated that multiple vendors were a possibility. *Id.* at 13.

driving down the costs for the E-rate eligible locations with the additional volume of services requested.

It was never CCETC's intention to seek or use E-rate funding to serve these ineligible locations. Because these locations were not eligible for E-rate support, they were never considered in the evaluation process. Indeed, the RFP included the following language to make it clear to potential bidders that the cost of serving ineligible locations had to be allocated out and would not be considered in the bid evaluation process:

> This RFP includes locations that are not E-Rate eligible. These locations are clearly outlined in the addendum. Your proposal must clearly separate all costs between eligible and ineligible locations. Your proposal must also delineate construction costs by location, for all locations, both eligible and ineligible. The cost of E-rate ineligible locations will not be considered when evaluating costs.[10]

Finally, the County's contract did not include costs for serving the ineligible locations included in the RFP and the County did not seek E-rate funds to serve those locations.

3. Will the backbone network that would be used to provide service to these county government locations be the same backbone network used to provide service to the eligible locations? If not, is there a separate construction cost for the county locations?

To be clear, any discussion of serving additional, E-rate ineligible government locations is theoretical, given that we are unaware of any plans to extend service to those locations. Undoubtedly, there would be additional construction costs if the County ever asked Zayo to extend service to those government locations, but those costs would not be funded by the E-rate program.

4. Does the RFP include a request to build fiber to the Cochise Technology District's Superintendent's private residence? If so, please explain why and the estimated cost of doing so.

CCETC initially sought to bring fiber construction to the District Office of Cochise Technology District. Because of the very rural nature of this county, the governing board of the district has rented office space from the superintendent at his home. In other words, the RFP sought to extend fiber not to the superintendent's private residence, but to an eligible technology office in the same location. However, once the evaluation team reviewed the winning proposal and noted the high cost of bringing the fiber to the District Office of Cochise Technology District, the team determined that the cost was not worth the benefit, and immediately dropped that location from the project. No funding for that location was requested in the Form 471.

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[10] RFP at 28; *see also id.* at 33.

5. **Did County leadership or your office monitor, supervise, or oversee the CCETC RFP preparation? Did you or your office approve the inclusion of non-eligible locations within the RFP?**

Yes, our office oversaw the CCETC RFP preparation. As we have explained, it was never CCETC's intention to seek E-rate funding for ineligible locations; they were mentioned in the RFP merely as possible additional locations that could also be served, in the hope that including additional locations would drive down the price of serving E-rate eligible locations. The Commission has specifically allowed certain entities that are not eligible for E-rate to be included in RFPs.[11]

6. **Did County leadership or your office conduct any cost analysis for fiber buildout and service to those schools and libraries that are unserved by existing providers? If so, please provide documentation of such analysis.**

All schools and libraries are currently served by existing providers. As we noted above, we do not have the details of the technologies used to provide those services. Many entities are receiving very low bandwidth services via fiber, copper or microwave. More importantly, that is the point of the competitive bidding process: potential service providers conduct a cost analysis and submit their best offer to provide the requested services.

7. **Given the extensive costs involved, what efficiencies were presented to justify combining service to all the schools and libraries within the district under one provider? Please provide documentation and evidence of such representations.**

Since the Commission revised its rules in the *Modernization Orders*, county-wide projects in Arizona have seen an average of approximately 80 percent reduction in the monthly recurring costs versus the costs prior to the project. These substantial cost savings are the result of the aggregation of multiple county-wide locations into one RFP. In the *First Modernization Order*, the Commission encouraged applicants to join together to purchase services. Specifically, the Commission noted that "[b]y aggregating potential demand in the bidding process and using the FCC Form 470 process to attract bidders, a consortium can drive down the price of eligible services even for its members who wish to order services on their own."[12]

As noted above, the County schools and libraries have access to less than 6 Gbps Internet access today, even though the FCC-recommended goal is more than 78 Gbps total, given the number of students and patrons served.[13] If each school or library had to purchase its own connection to the Internet to meet the recommended FCC bandwidths, they would have to purchase three times as much bandwidth. The schools and libraries are able to have a lower total bandwidth connection to the Internet (25 Gbps) than recommended by

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[11] *See supra* n.2.

[12] *First Modernization Order*, 29 FCC Rcd at 8941 ¶ 177.

[13] We do not have current bandwidth for every location that intends to be part of the Consortium.

the Commission because not all schools and libraries will be using the connection at the same time—another benefit of the consortium approach.

8. What private entities or consultants worked with the county to prepare its RFP?

No private entities worked with the county to prepare the RFP. The consultant used on this project is Frank Vander Horst of Yavapai County Education Service Agency (YCESA). YCESA is part of the Yavapai County School Superintendents office and is a governmental non-profit agency. YCESA provides E-rate consulting primarily to small rural schools and libraries at cost. This service is provided by YCESA as most for-profit consultants cannot afford to help these rural areas.

Mr. O'Rielly, my loyalty is to the students of Cochise County, not to any particular telecommunications company. My goal is to ensure that the school districts in Cochise County have equitable technology opportunities, at a comparable price to any school district in this state or nation. If there was any doubt of my intent, it could have been communicated in a more personal, efficient manner where clarity, positive relationships and collaboration could flourish. I hope this letter and the outcome of this communication will open doors to better and true communications that will serve our education system well.

I hope this information is helpful. Please do not hesitate to contact me, if you have additional questions. We have submitted a copy of this letter in the Commission's relevant E-rate dockets, and we would be grateful if you would also post a copy of this response to your letter on your office's website.

Sincerely,

Jacqui Clay
School Superintendent
Cochise County

cc: Radha Sekar, CEO, USAC
Joe Casey, CIO, Cochise County
Britt Hanson, Chief Civil Deputy, Cochise County Attorney