



December 6, 2021

Honorable Jessica Rosenworcel, Chairwoman
Honorable Brendan Carr, Commissioner
Honorable Geoffrey Starks, Commissioner
Honorable Nathan Simington, Commissioner
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Promoting Fair and Open Competitive Bidding in the E-Rate Program
Draft Notice of Proposed Rulemaking, WC Docket No. 21-455

Dear Chairwoman Rosenworcel, Commissioner Carr, Commissioner Starks and Commissioner Simington:

The above-named signatory organizations, representing school and library E-rate applicants, appreciate the opportunity to review and comment in advance of the Commission's formal vote scheduled for December 14, 2021, to adopt the E-rate bidding NPRM in WC Docket No. 21-455. We have several recommended changes explained below that are essential to ensure the Commission will develop a full and complete record before adopting any final regulations.

Most concerning is the proposed new national competitive bidding portal for conducting E-rate procurements. The new bidding requirements would be accompanied by detailed procurement procedures without regard for how overly burdensome they may be on E-rate applicants and service providers, whether they conflict with state and local procurement laws, and despite their questionable effectiveness to protect the integrity of the program. We request, therefore, that the Commission seek comment on other alternatives and revisions to the competitive bidding procedures that may be more beneficial, less onerous and more cost-effective.

To address these concerns, we recommend the following modifications to the draft NPRM:

1. The name of the proceeding should reflect a holistic approach for examining how to improve the bidding rules, since there already exists the framework and regulations to promote fair and open competition. The current title implies that there does not currently exist fair and open competitive bidding in the E-rate program. The proceeding name should be re-titled "Improving the E-rate Competitive Bidding Framework" so as to minimize any misconception or confusion regarding the existence of competitive bidding requirements. Our proposed title more accurately describes the crossroads at which we find ourselves, honoring the E-rate program's history of guarding against waste, fraud, and abuse, while also acknowledging there may be opportunities to further refine and improve the program's competitive bidding guidelines without necessarily implementing a new nationwide, federal E-rate bidding portal.

2. The timeline for submitting comments and replies should allow for the development of a full and complete record. We request 90 days from Federal Register publication for the submission of initial comments and 45 additional days for submission of replies. The NPRM could be published in the Federal Register near or during the December holidays. Additionally, in January the E-rate filing window for E-rate funding year 2022 will open and many interested parties will be consumed with finalizing contracts and filing their Form 471 applications to meet the assumed March 2022 Form 471 deadline. In addition, applicants are actively purchasing their ECF-devices and services and distributing those to students and staff in need, all of which are important and time consuming. Further, interested groups that may wish to submit detailed cost information and gather procurement data to comment on the impact of various changes to the competitive bidding process will be constrained with a shorter 30 day comment and 30 day reply comment schedule. Unless the comment and reply comment deadlines are extended, the development of the record will be severely hampered. Because the proposed changes would not take effect until the 2025 funding year, there is no harm in extending the comment period by a few months to allow parties the time to submit thoughtful and well-researched comments on this highly significant proceeding.

3. The draft NPRM should receive comment on a full array of options and improvements to competitive bidding without proposing a comprehensive restructuring of the competitive bidding process by mandating a new federal bidding portal and prescribing detailed bid procedures and requirements. Instead, the Commission should specifically seek comment (without offering any tentative conclusions) on the following five areas to address the concerns raised by the FCC's Office of Inspector General and the General Accounting Office¹:

- A. What areas are considered the most at risk for waste, fraud, and abuse in the competitive bidding process? Specifically:
 - (1) Is there a substantial risk that applicants or service providers may alter proposals to change the outcome of a bid evaluation?
 - (2) Is there a substantial risk that applicants may ignore qualified bids to change the outcome of a bid evaluation?
 - (3) How may the current competitive bidding rules allow for bid collusion and fraud?
 - (4) What solutions or changes to the competitive bidding rules could reduce the potential for collusion and fraud?
- B. What are the existing state procurement laws, local procedures and best practices that promote fair and open competition? What would be the impact of modifications to E-rate bidding requirements on these existing laws and procedures?
- C. What areas of the current E-rate competitive bidding rules may be confusing, burdensome or vague, and therefore subject to inadvertent, but not necessarily fraudulent, competitive bidding infractions leading to funding denials and rescissions? What modifications could be made to resolve the confusion and provide more clarity?
- D. What is the feasibility, necessity and cost-effectiveness of mandating the creation of a new nationwide, federal bidding system for E-rate, and would existing state and local procurement laws and regulations be in conflict?

¹ Federal Communications Commission, Office of Inspector General, Semiannual Report to Congress, October 1, 2016-March 31, 2017, https://transition.fcc.gov/oig/FCC_OIG_SAR_03312017.pdf, at 13-15 (2017 OIG Report); GAO, *Telecommunications: FCC Should Take Action to Better Manage Persistent Fraud Risks in the E-rate Program*, GAO-20-606 (Sept. 16, 2020).

- E. What would be the impact on the competitive landscape and on small applicants and service providers in particular should a new, federal E-rate bidding system be imposed? Would such new requirements dissuade schools and applicants from applying for E-rate? Would applicants be more inclined to hire E-rate consultants if new bidding rules are imposed?

4. The proposal to require all applicants to upload all bidding documents as part of the Form 471 application should be further clarified. The Commission should seek comment on whether such a requirement is appropriate and necessary, and whether the proposed requirement would apply to applicants regardless of the size of the applicant and the amount of their new contracts. The Commission should also clarify that competitive bidding documents are routinely provided to USAC or auditors as either part of pre-funding reviews (standard PIA questions concerning bidding or special compliance competitive bidding reviews); during post-commitment comprehensive audits; and, during payment quality assurance reviews for computing the percentage of improper payments that must be reported annually to Congress. In light of these existing requirements, the Commission should seek comment on whether or not it is appropriate and necessary to establish a uniform regulation to require all bidding documents to be uploaded for all new contracts.

These recommended revisions will ensure that a robust and thorough record of the current mode of operation of the competitive bidding practices will be compiled, including parties' feedback regarding potential changes and improvements. We think this approach will better enable the Commission to make informed decisions on how best to improve the E-rate competitive bidding framework.

We look forward to addressing any questions you may have.

Respectfully submitted,

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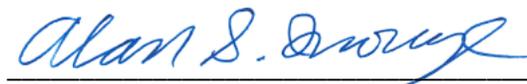
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