

ALA American Library Association

Before the Federal Communications Commission Washington, DC 20054

In the Matter of:

Promoting Fair and Open Competitive)
Bidding in the E-Rate Program) **WC Docket No. 21-455**

Comments of the American Library Association

The American Library Association (ALA) is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. For more than 140 years, ALA has been the trusted voice for academic, public, school, government and special libraries, advocating for the profession and the library's role in enhancing learning and ensuring access to information for all. ALA represents the nation's 117,000 libraries, which includes 17,566 public libraries. We appreciate the opportunity to comment on this important issue.

In this Notice of Proposed Rulemaking¹ the Federal Communications Commission (FCC) proposes to establish a centralized, national bidding portal for the E-rate program. The American Library Association strongly opposes the creation of such a portal.² The Commission proposes to make this fundamental change to the E-rate program to address issues of waste, fraud and abuse. While addressing these issues is critical, we are skeptical that a bidding portal will have much success in doing so. Instead, a bidding portal will likely have negative consequences by adding another layer of complexity to this program which may result in some libraries, especially smaller libraries, dropping out of the program.

The Notice states that constructing a bidding portal is primarily based on reports from the Government Accountability Office (GAO) and the Commission's Office of Inspector General (OIG).³ The GAO report identifies "Self-certifications as an inherent overarching key fraud risk that has affected the E-rate

¹ Notice of Proposed Rulemaking. In the Matter of: *Promoting Fair and Open Competitive Bidding in the E-Rate Program* (WC Docket No. 21-455). Released December 16, 2021. (NPRM).

² The American Library Association and six other parties filed a letter with the Commission on December 6, 2021, stating concerns and issues based on an earlier draft of this NPRM the FCC released on November 23, 2021.

³ NPRM, para 2.

program.”⁴ We do not challenge this statement but note that the self-certification process used in any program that distributes funds is—by its very nature—based on a certain level of trust. Certainly, ALA condemns any attempts by nefarious parties to abuse this trust, but we think a bidding portal will have very limited success addressing this issue. Figure 6⁵ in the GAO report highlights examples of how the self-certification process can result in collusion between providers and applicants to defraud the program. But how will a portal prevent such collusion? Comments ALA received from the Arkansas State Library noted that requiring providers to upload documents to a portal will not address potentially fraudulent activity because providers can simply contact applicants directly.⁶ To think that a bidding portal will prevent or minimize such improper behavior underestimates the creativity of bad actors. Thus, when the Commission asks, “Whether a bidding portal would help to promote fair and open competitive bidding and reduce fraud...”⁷ our answer is: Likely not. Our basic point here is that unfortunately—and frustratingly—parties who are intent to defraud the program will find ways to do so, at least initially, even if a bidding portal is implemented.

While we do not think such a portal will be very helpful in addressing issues of waste, fraud and abuse, we do think it will have negative consequences by adding another layer of complexity to a program that is already too complex. The Commission acknowledges this in the NPRM when it cites the *2014 First E-Rate Order* where it stated that requiring applicants to submit “Comprehensive bid information to USAC [Universal Service Administrative Company] outweighs any incremental benefit to the public from the publication of prices for non-winning bids...”⁸ This statement is accurate today as it was eight years ago. Adding a portal requirement will be especially burdensome on smaller libraries which lack staff time and expertise to comply with the current E-rate application and follow-up processes. This concern is aptly stated by Suzanne Reymer from the Montana State Library when she commented that this bidding portal “Will add yet another barrier, making the entire process ever more painful for all applicants especially small ones.”⁹

Another concern we have is that a bidding portal will basically replace local and state procurement processes. We note that rules have been in-place since the program’s inception requiring applicants to follow their own procurement processes.¹⁰ An important point to make is to recognize that our libraries and schools have used their own procurement processes for decades to purchase non-E-rate goods and services for far more dollars than what they receive from the E-rate program. This is graphically illustrated by a blog post from John Harrington at Funds for Learning who stated, “The E-rate program represents roughly one half of one percent of the annual K-12 spending...”¹¹ To further help ensure such purchases are made in a proper manner and that contracts are adhered to, etc., libraries

⁴ GAO. *FCC Should Take Action to Better Manage Persistent Fraud Risks in the E-rate Program*. GAO-20-606, (Sept. 16, 2020) (GAO E-Rate Report), page 16. We find of interest that the two examples GAO reports of self-certification violations are from 1998-2000 and 2003.

⁵ GAO E-Rate Report, page 22.

⁶ Communication to ALA staff from Jennifer Chilcoat, Arkansas State Librarian. Received April 26, 2022.

⁷ NPRM, para. 12.

⁸ *Id.* para 7.

⁹ Comment by Suzanne Reymer, Montana State Library E-Rate Coordinator. WC 21-455. Filed February 17, 2022. And in an email ALA received from Stephanie Bailey-White, Idaho State Librarian, she stated: “Right now, our small and rural libraries already have issues with keeping track of their E-rate process including when their forms are due, which forms are due and why they are due. Adding another layer, with a bidding portal, to this process may just have them stop utilizing the E-rate process altogether.” Received February 2, 2022.

¹⁰ NPRM, footnote 15.

¹¹ *FCC Aims to Nationalize K-12 Purchasing*. John Harrington, Funds for Learning blog post, January 14, 2022 (<https://www.fundsforlearning.com/news/2022/01/fcc-aims-to-nationalize-k-12-purchasing/>)

and schools are overseen by independent boards of control and are audited on a regular basis following the Government Accounting Standards Board (GASB) audit procedures. If these local processes and follow-up audits are good enough for all other purchases by libraries and schools, they should be good enough for services supported by the E-rate program.

A bidding portal will be especially problematic for large, regional and state consortium applicants. State applicants in particular must follow state procurement regulations that are often defined in state statutes. A local library may get its board to change its procurement processes to comport with an E-rate bidding portal¹² but it is a much larger and far more complex and difficult issue to work through the legislative process to get changes made to procurement processes set in state statutes.¹³ We think the December 7, 2021, letter submitted to the Commission by the California K-12 High Speed Network¹⁴ does an excellent job of outlining the many issues that a bidding portal will have with state procurement laws. Rather than restating these issues, we encourage Commission staff to review this letter closely.

State governments often release bids for broadband connectivity, internet access and related network equipment. The resulting “State Master Contracts” can be used by libraries and schools to purchase E-rate eligible services and equipment at very competitive prices. But these State Master Contracts are often only completed after lengthy and complex bidding processes. For example, there may be several prospective bidder conferences, the state may release Q&As to clarify bidding requirements, there are often extensions to bid response deadlines, and there can be a secondary round of bid responses seeking best and final offers.¹⁵ Any E-rate bidding portal will need to have considerable flexibility to accommodate the many variables that arise in large state procurements. Considering this, we advocate that bids released by state government agencies resulting in State Master Contracts should not be required to use any E-rate bidding portal.¹⁶

In determining which party is responsible upload all bids and related documents to the portal, the Commission suggests that applicants be responsible for this and not service providers.¹⁷ We oppose this suggestion. Making our libraries and schools responsible for this will increase their workload and needlessly place them in a precarious position that could jeopardize their funding. For example, what if a library inadvertently fails to upload a bid? Or what if it unintentionally forgot to upload attachment #3 from a bid it received that has four attachments? Will USAC deny the library’s funding in such cases?

In further attempts to address possible bidding collusion between providers and applicants the Commission seeks comments about prohibiting applicants from viewing any bids received until a specified time has passed—like the current 28-day waiting period. (A bidding portal facilitates this

¹² Changing local ordinances may be possible but this does not mean that integrating them into a portal will be any easier than state procurement laws.

¹³ *Id.* para 20.

¹⁴ Letter submitted by the California K-12 High Speed Network. WC 21-455. Filed December 7, 2021. The Utah Education and Telehealth Network (UETN) also filed a letter December 3, 2021, stating that the proposed E-rate bidding portal “Would be in direct conflict with Utah State Law....”

¹⁵ NPRM, para 30-32. The Commission acknowledges these and additional issues in this section of the NPRM. We think these issues provide further justification to exclude state bids and resulting state master contracts from being required to use any E-rate bidding portal.

¹⁶ *Id.* para 22. In this paragraph the Commission asks if there are situations in which E-rate participants should be exempt from using a bidding portal. (In the 2014 E-rate Modernization process we advocated for State Master Contracts to be exempt from E-rate procurement rules. *Modernizing the E-rate Program for Schools and Libraries*. WC Docket No. 13-184. Comments of the American Library Association, p. 28. Filed September 16, 2013.)

¹⁷ *Id.* para.14.

because USAC would control when applicants could view any bids uploaded by providers.)¹⁸ There appear to be concerns that if applicants can open bids as they are received, which is currently permitted, they could share some details from one bidder with another more favored bidder. We do not know how often this happens but think such behavior by applicants seldom occurs because it is very likely prohibited by local or state procurement rules or by language in the provider’s response that prevents such sharing. We also note that imposing a single bid opening date will still not prevent collusion between unscrupulous applicants or providers.

In addition to the bidding portal, the Commission proposes to require E-rate applicants to adhere to the same document requirements as participants in the Rural Health Care (RHC) program.¹⁹ We find the list of these additional requirements to be overly intrusive, time consuming and likely overwhelming for many applicants, especially our smaller libraries and schools. The proposed added documentation includes the applicant’s bid evaluation worksheets, an explanation of why they disqualified or did not accept certain bids, a list of staff who evaluated bids, any documents related to the winning bid, and all correspondence with any providers who bid on the applicant’s form 470.²⁰ If the intent here is to make it as difficult as possible for smaller libraries to participate in this program, these requirements will help make such an intent a reality. We find such requirements are totally at odds with one of the Commission’s professed goals in this proceeding of “Streamlining program requirements for applicants and service providers....”²¹ We are very concerned that a significant number of current E-rate participants, especially smaller libraries, may abandon the program entirely due to this additional documentation burden. To minimize the impact on smaller libraries, we request they be exempt from any bidding portal. One straight-forward way the Commission could do this is by establishing an E-rate funding request threshold under which applicants would be exempt from using any portal.²²

The Commission asks if applicants should be prevented from filing their 471 forms “until required documents are uploaded into the portal?”²³ One important question is: When will the Commission (or USAC) know that the applicant has uploaded all required documents? Will this determination rely on applicant self-certification, a process the Commission has flagged in this Notice as a serious concern? Directly related to this issue the Commission states that insufficient documentation is “One of the most common root causes of E-Rate program improper payments.”²⁴ If, as part of the payment review process, USAC determines it does not have sufficient documentation from an applicant how will a bidding portal address this issue? Applicants cannot upload documentation they do not have.

* * *

In conclusion, the American Library Association thinks that implementing a bidding portal will have a minimal impact on issues of waste/fraud/abuse in the E-rate program, but it will have a negative impact on applicants, especially our smaller libraries and schools. Thus, we strongly oppose an E-rate bidding

¹⁸ *Id.* para 15-17. This proposed bid holding period is partly based on a 2017 GAO report referenced in footnote 43.

¹⁹ *Id.* para 24.

²⁰ *Id.* footnote 60. This footnote has a more complete list of the proposed requirements.

²¹ *Id.* para 3.

²² In our Modernization comments filed September 16, 2013, we advocated that applicants requesting less than \$5,000 in E-rate funding be exempt from E-rate procurement regulations. In our 2013 comments we estimated that two-thirds of our libraries would be exempt under this amount, and most of these would be smaller libraries. For present purposes, we propose \$10,000 to adjust for inflation and to look ahead at least 5 years.

²³ *Id.* para 25.

²⁴ *Id.* para 8.

portal and request that the Commission not proceed with creating one. Thank you for listening to our concerns.

Respectfully submitted,

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