

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|-------------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Promoting Fair and Open Competitive |) | WC Docket No. 21-455 |
| Bidding in the E-Rate Program |) | |

COMMENTS OF ILLINOIS OFFICE OF BROADBAND

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SUMMARY

The state of Illinois, through the Illinois Department of Innovation and Technology (“DoIT”) and the Illinois Office of Broadband (“IOB”), operates the Illinois Century Network (“ICN”) for the benefit of schools, libraries, research and governmental organizations, and other anchor institutions throughout the state. Complementing the ICN, the Illinois DoIT also procures E-rate-supported services to connect Illinois schools and libraries to nearby ICN points of presence. By law, and under current E-rate rules, it is required to follow the Illinois procurement code and associated regulations and procedures in order to do so.

In these comments, the IOB urges the Commission not to supplant existing and well-established state and local procurement requirements with a USAC-led federal competitive bidding portal. Doing so would, in many cases, force state and local entities to withdraw from the E-Rate program, because they would be unable to reconcile the new federal requirements with existing state and local mandates.

Rather, the IOB believes that the Commission can achieve its goals by implementing a USAC-managed portal to serve as a document repository. Without disturbing existing state and local procurement requirements, USAC could use such a repository to collect bidding documentation, including proposals submitted by service providers, and bid evaluation and selection records generated by applicants. Doing so will increase the transparency of the competitive bidding process, simplify USAC review and audits of funding requests, and reduce the burden of document retention for applicants.

Finally, the IOB agrees that the Commission should establish a Form 470 filing deadline approximately six weeks before the close of the Form 471 filing window. Doing so would create a period of approximately two weeks between the latest expected E-Rate Allowable Contract Date and the Form 471 filing deadline for applicants to use to review bids, make selections, and prepare necessary documentation in an orderly manner.

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The Illinois Office of Broadband (“IOB”) offers these comments on the Commission’s recent Notice of Proposed Rulemaking (the “Notice”) concerning changes to the operation of the competitive bidding process for the Schools and Libraries Universal Service Support Mechanism (“E-Rate”).¹ While the IOB believes many of the changes discussed in the Notice could benefit applicants, service providers, and the Universal Service Administrative Company (“USAC”) alike, the IOB urges the Commission to take a limited approach.

Specifically, IOB believes that, if the Commission directs USAC to implement a bidding portal, then it should chiefly serve as a document repository to collect and retain records relevant to the competitive bidding process and associated funding request. The USAC portal should not, however, supplant applicants’ existing competitive bidding procedures. Many applicants, including Illinois and many other state and local governments, already operate bidding portals in compliance with state and local procurement laws. It would be impossible to assure that USAC’s portal would comply with the entire myriad of those requirements, and unnecessary to try.

At the same time, a USAC portal could offer programmatic compliance benefits in a complementary role. As a document repository, such a portal could address the concerns raised in the GAO Report and FCC IG Report, streamline program administration for USAC, increase transparency, and reduce the burden of document retention for applicants and service providers alike.

¹ See *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, WC Docket No. 21-455, Notice of Proposed Rulemaking, FCC 21-124 (rel. Dec. 16, 2021).

Background

The IOB, housed within the Illinois Department of Commerce and Economic Opportunity (“DCEO”), is an interagency collaborative effort including the Illinois Department of Innovation and Technology (“DoIT”) and the DCEO, among others.

Among other responsibilities, the Illinois DoIT manages the Illinois Century Network (“ICN”), the state’s 2,000-mile open access fiber network serving over 3,400 K-12, higher education, and library locations across the state. The ICN is a high-performance network built to meet the Internet and Intranet needs of the educational, research, and governmental organizations serving the citizens of Illinois, while enabling interconnectivity, resource sharing, and access to in-state content and cloud resources. The DoIT also conducts procurement of Category One E-Rate supported services that connect schools and libraries to the ICN and to one another.

The IOB has the lead responsibility within the Illinois state government for policies and programs to expand broadband deployment, affordability, and access, supporting individual consumers, local communities, and broadband providers alike, including oversight and implementation of the Connect Illinois initiative. Through Connect Illinois, the IOB is in the process of awarding \$400 million in state and federal broadband grant funding to support broadband infrastructure investment by Internet service providers, and a further \$20 million capital investment to expand and improve the ICN.²

Discussion

The IOB supports the Commission’s goals in this proceeding to streamline program requirements for applicants and service providers, strengthen program integrity, prevent

² See Press Release, “Gov. Pritzker Launches Connect Illinois, a \$420 Million Statewide Broadband Expansion Under Rebuild Illinois” (Aug. 15, 2019), *available at*: <https://www2.illinois.gov/dceo/Media/PressReleases/Pages/PR20190815.aspx>.

improper payments, and increase transparency in order to decrease the risk of waste, fraud, and abuse.³ In pursuing these goals, however, it is important to remember the GAO’s observation in its Report that, “One of the most common root causes of these improper payments identified by [the] FCC was lack of sufficient documentation to demonstrate program compliance.”⁴ This lack of documentation may as easily arise from weak or poorly implemented recordkeeping practices as it may from any intent to conceal fraudulent activities. Thus, the IOB urges the Commission to approach this proceeding chiefly as an opportunity to help reduce the burden of E-Rate compliance by providing program participants with better and simpler recordkeeping tools. While doing so will inevitably help deter and detect waste, fraud, and abuse, there is no need for the Commission to supplant existing competitive bidding procedures that are working well.

A. The Commission Should Not Preempt State or Local Procurement Requirements

The Notice seeks factual information on the range of existing state procurement laws, local procedures and best practices that promote fair and open competition, and whether creation of a USAC bidding portal would conflict with these requirements.⁵ The IOB believes that it would be functionally impossible for the Commission to comprehensively assess the entire panoply of state and local procurement laws and regulations that may exist across the nation. Even if the Commission were to attempt to do so, it would be impossible for USAC to implement timely updates as these requirements evolve and change over time.

State and local governments are required to follow applicable procurement codes and regulations and have detailed procedures in place to ensure compliance. The Illinois

³ Notice at ¶ 3.

⁴ Government Accountability Office, “FCC Should Take Action to Better Manage Persistent Fraud Risks in the Schools and Libraries Program,” GAO Report 20-606 (Sept. 2020), at 2 (“GAO Report”).

⁵ Notice at ¶ 20.

Procurement Code,⁶ for example, is a comprehensive statute covering some sixteen separate Articles and dozens of individual statutory sections, similar in length and scope to major federal statutes, like the Communications Act of 1934, as amended. In most cases, state and local entities would be unable to devote the resources necessary to understand whether a new, different competitive bidding and contract award process mandated by USAC complies with the existing state and local requirements, which may also change from time to time. Doing so would often mean abandoning decades of experience, carefully tailored procedures, and legal precedent that, together, lend certainty and predictability to existing processes.

Instead, many states, including Illinois, would likely be forced to withdraw from participation in E-Rate, foregoing this critical source of federal funding and undermining the very federal E-Rate policy goals the Commission is working to promote. Faced with implementing a new FCC-mandated competitive bidding process *in lieu of* existing state and local requirements, many applicants would be legally unable to do so, or be challenged with insurmountable implementation obstacles that would prevent them, as a practical matter, from participating in E-Rate.

Fortunately, there is no need for such a “universal” E-Rate competitive bidding portal to supplant existing state and local requirements. The Commission’s rules already require E-Rate applicants to follow all applicable state and local procurement rules, in addition to federal E-Rate competitive bidding procedures. In virtually all cases, those state and local requirements incorporate their own enforcement mechanisms, including protest procedures and the opportunity to file administrative or judicial appeals. Today, school districts, private schools, libraries, and state agencies already conduct countless procurement cycles for all of the goods

⁶ See 30 ILCS 500/1-1 through 500/99-5.

and services they need in order to operate. In the E-Rate context, many large school districts, E-Rate consortia, and state agencies, including the Illinois DoIT, already use robust compliance processes to ensure compliance with applicable state and local procurement rules, as well as federal E-Rate competitive bidding procedures.

The DoIT, for example, uses the resources of a state government to support strong compliance and recordkeeping processes. It conducts competitive bidding for its E-Rate state master contract using the Illinois BidBuy portal, as shown below:⁷

Bid Solicitation: 22-448DOIT-ADMIN-B-24950

Header Information

| | | | | | |
|-------------------------|-----------------------------------------------------|-----------------------|-------------------------------------------------|--------------------------------|------------------------|
| Bid Number: | 22-448DOIT-ADMIN-B-24950 | Description: | E-Rate Round 3 Last Mile and WAN Fiber Circuits | Bid Opening Date: | 11/19/2021 02:00:00 PM |
| Purchaser: | Brian Stalets | Organization: | DoIT - Department of Innovation and Technology | Allow Electronic Quote: | Yes |
| Department: | ADMIN448 - Administration | Location: | AA001 - Administration | Available Date : | 10/14/2021 01:00:00 PM |
| Fiscal Year: | 22 | Type Code: | 10 - Invitation for Bid (IFB) | Informal Bid Flag: | No |
| Alternate Id: | | Required Date: | | | |
| Info Contact: | Contact Brian Stalets at brian.stalets@illinois.gov | Bid Type: | OPEN | | |
| Purchase Method: | Open Market | | | | |

Pre Bid Conference: A Pre-Submission conference will be held at 9:30 - 10:30 a.m. CST on Tuesday, October 25, 2021. Please see the attached document for pre-submission meeting details. Attendance is not mandatory, but HIGHLY recommended.

Bulletin Desc: DoIT intends to purchase fiber-based Metro Ethernet services for connectivity between site locations in Illinois. This IFB is issued in conjunction with a Universal Service Fund Schools and Libraries Program E-rate Form 470 pursuant to the DoIT Consortium. Pursuant to CPO Notice 2020.06, State agencies shall only accept electronic submissions for competitive solicitations. Paper responses will not be accepted. For more details, see the attachment titled Notice of Electronic Submissions Only.

| | | | | | |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--|
| Ship-to Address: | Telecommunications 120 West Jefferson Springfield, IL 62702 US Email: doit.psvm@illinois.gov Phone: (217)557-1764 | Bill-to Address: | Department of Innovation & Technology Accounts Payable - Telecom 120 West Jefferson Springfield, IL 62702 US Email: DoIT.AccountsPayable@illinois.gov Phone: (217)524-0596 | Print Format: | |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--|

File Attachments:

- Invitation for Bid - E-rate Last Mile and WAN Fiber Circuits - B-24950.docx
- Invitation for Bid - E-rate Last Mile and WAN Fiber Circuits - B-24950 - Attachment A - Pricing and Site Locations.xlsx
- Invitation for Bid - E-rate Last Mile and WAN Fiber Circuits - B-24950 - Attachment B - E-rate Supplemental Terms and Conditions.docx
- Invitation for Bid - E-rate Last Mile and WAN Fiber Circuits - B-24950 - Attachment C - Required Information for Special Construction.docx
- Forms A Section V.18.1-35.docx
- Forms B-6.docx
- BEP Vendor List-1.htm
- Pre Submission Call Invitation-3.docx
- Notice of Electronic Submission Only v.22.1.pdf
- Pre Submission Call Invitation-Updated 10-18-21.docx
- BEP Vendor Directory-Updated File Format-10-18-21.xlsx
- Pre Submission Call Invitation - Agenda.docx
- Pre-Submission Conference Sign-in Sheet v.20.1-2.pdf
- BEP ADDENDUM B-24950.xlsx
- E-Rate Round 3 - B-24950 - Q-A.docx
- E-Rate Round 3 - B-24950 - BEP Summary from Pre Submission Conference Call.docx
- E-Rate Round 3 - B-24950 - Q-A Follow Up Question.docx
- B-24950 Bid Opening Webex Invite Information.docx
- B-24950 NOA 3.3.22.pdf
- B-24950 Circuit Award List 3.3.22.xlsx
- B-24950 Circuit Award List NOA 2.26.22.xlsx
- B-24950 Notice of Award 2.26.22.pdf

Form Attachments:

Required Quote Attachments

⁷ See BidBuy Illinois Procurement, available at: <https://www.bidbuy.illinois.gov/bsso/external/advsearch/searchBid.sdo?searchFor=/external/advsearch/searchBid>.

The BidBuy Portal allows state agencies to post public solicitations, Invitations to Bid, amendments, Q/A responses, notices concerning pre-bid information sessions, due dates, and other germane information to the procurement process. It is a general purpose tool, used both for E-Rate and non-E-Rate procurement. Information posted in the BidBuy portal can be accessed by all potential bidders equally, without the need for registration or login credentials, ensuring that the competitive bidding process is “fair and open” under the Commission’s rules.⁸

The Commission may not, or at least should not, preempt these state and local compliance mechanisms by requiring the entire E-Rate competitive bidding process to take place within a different portal managed by USAC.⁹ It would be inefficient, burdensome, and unnecessary for the Commission to supplant the Illinois BidBuy portal, and others like it. These portals are often tailored to meet specific needs of individual state and local government purchasers, including the specific requirements of state and local procurement codes and open records acts, akin to the federal Freedom of Information Act. By definition, any universal portal administered by USAC could not be designed to meet these individualized needs. It would be unreasonable, unnecessary, and, as discussed above, ultimately unsuccessful, for the Commission, in effect, to require state and local governments to review and amend their procurement rules to accommodate the use of a generic USAC portal for procurement of services supported by E-Rate as an exception to their general procurement frameworks.

Thus, the Commission should not “require prospective service providers to respond to applicant requests for services and equipment by uploading bids into a bidding portal managed by

⁸ 47 C.F.R. § 54.503(a).

⁹ Notice at ¶ 21 (seeking comment on potential obstacles and technical challenges the Commission should consider, as well as “the impact of these proposals on applicants’ bidding processes”).

USAC, rather than by submitting bids directly to applicants,”¹⁰ to the extent that such a process would replace those already in place. Illinois, for example, would remain obligated to use the BidBuy portal that has been designed to comply with all requirements of state procurement law and processes. It would not be feasible to conduct E-rate procurement using any different portal in order to meet federal E-Rate requirements. Thus, Illinois schools and libraries, and likely those in other states and localities facing similar circumstances, would no longer be able to seek E-Rate funding because, in order to comply with the federal competitive bidding process, they would be simultaneously unable to follow mandatory state and local requirements.

Moreover, it would unnecessarily complicate the development and launch of a USAC portal to incorporate the two-way information flow between applicants and service providers that would be necessary to move the entire competitive bidding process into a USAC-administered portal. The competitive bidding process can be dynamic, as applicants host information sessions, respond to service provider questions, issue RFP amendments if needed, and take other steps to ensure a “fair and open” process.

Rather, that process is best left outside of any USAC portal, as it is today. E-Rate applicants need flexibility to develop bidding requirements, procedures, and conditions that meet their individual needs and state and local procurement laws. Applicant bidding and bid evaluation procedures must be carefully designed to implement the specific bidding, bid evaluation, and record retention requirements mandated under state procurement laws and regulations, as well as their individual procurement policies or procedures. Applicants should be permitted to continue to require service providers to follow these requirements, in addition to submitting required competitive bidding documents in the USAC portal.

¹⁰ Notice at ¶ 10.

B. Any USAC Portal Should Function Solely as a Document Repository to Improve E-Rate Program Efficiency and Integrity

While the Commission should not require applicants to conduct their E-Rate competitive bidding process entirely within a USAC portal, the Notice also seeks comment on other ways in which a USAC-administered bidding portal could streamline compliance while reducing bid collusion and the risk of fraud.¹¹ The IOB believes that a USAC-administered portal, properly conceived and implemented, could fill a beneficial role as a complement to applicants' existing competitive bidding processes. Specifically, the USAC portal could enhance existing processes as a tool to streamline the submission and processing of funding requests, simplify compliance with record retention and other federal requirements, and create greater program transparency.

1. Applicants and Service Providers Should Continue to Comply with Applicant Bidding Procedures, Even if They Must Also Upload Key Documents Through a USAC Portal

Collection and storage of competitive bidding records by USAC could advance the Commission's goals to enhance compliance with E-Rate rules and requirements without the profound impacts on state and local procurement procedures described above. To do so, the IOB believes that the Commission could direct USAC to collect and store key documents that memorialize key milestones in the competitive bidding process, as follows:¹²

First, service providers should be required to upload their proposals and any supporting materials to a USAC document portal at the time they submit them to the applicant. Doing so

¹¹ Notice at ¶ 12 (“Would a bidding portal complement or supplement existing rules and procedures to reduce bid collusion and the risk of fraud in the competitive bidding process? Are there solutions other than a bidding portal or changes to the competitive bidding rules that could likewise reduce bid collusion and the risk of fraud?”)

¹² *See id.* at ¶ 31 (“We seek comment on what other types of communications between service providers and applicants and procurement activities should be captured in the portal, and how to implement this in a way that is streamlined and easy to use for E-Rate program participants. Are there other types of functionality that should be considered for the bidding portal, and how should these functions be implemented in a way that will help support fair and open competitive bidding?”).

will provide a definitive record of the information that was submitted and available to the applicant through the competitive bidding process. Under the IOB's proposal, there is no need to require applicants to wait a specified amount of time before they can access bids submitted in response to their FCC Form 470 service requests, as discussed in the Notice.¹³ While service providers would upload their proposals to the USAC document portal, they will also submit their proposals directly to the applicant following the applicant's prescribed procedures. In Illinois, bid opening takes place at a prescribed date and time, and procurement officials are not permitted to access or review the bids in advance. Thus, the IOB sees no reason for the USAC portal to prevent access to bid documents uploaded by service providers, because Illinois procurement officials would not review them prior to the bid opening time in any event. Nevertheless, the IOB has no objection if the Commission believes this sort of "time lock" would have value.

Second, once it selects the winning bidder, the applicant should also use the same USAC document portal to submit its Form 471 together with bidding records analogous to those required with requests for support from the rural healthcare mechanism, including: (1) its bid evaluation criteria and completed bid scoring worksheets or matrices; (2) an explanation for any disqualified bids; (3) a list of people who evaluated bids (along with their title/role/relationship to the applicant organization); (4) the notice of award and signed contract or other legally binding agreement for eligible services from the service provider;¹⁴ and (5) all correspondence

¹³ Notice at ¶ 16.

¹⁴ Unlike in the RHC context, the Commission should permit schools and libraries to upload formal board approval for the award only when it becomes available. Because school (or library) board approval may not become available until after the E-rate filing window closes, the Commission's rules permit a school or library to submit a Form 471 funding request once it has "a signed contract or other legally binding agreement for eligible services" from the service provider. 47 C.F.R. § 54.504(a); *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99, 29 FCC Rcd 8870 (2014) ("*E-rate Modernization Order*") at

with service providers concerning the Form 470 request for services prior to and during the bidding, evaluation, and award phase of the process, including all questions received in response to its request for services (including the identity of the asking party and date the question was submitted) and any answer provided by the applicant.

This incremental change should not be expected to burden applicants in any material way, and the minimal short-term increase – consisting of uploading the required documents to the USAC portal – would be more than offset because it reduces the burden of complying with the Commission’s document retention rules over the long term.¹⁵ E-Rate document retention rules already require applicants to create and maintain the document types identified above, so the obligation to upload them to the USAC portal at the time of the funding request, and the information they contain should alleviate several concerns raised in the FCC IG Report and GAO Report. Requiring applicants to backstop their certifications with more detailed documentation of their competitive bidding and selection processes will increase transparency and help address the GAO’s concerns that USAC relies too heavily today on self-certification.¹⁶ Similarly, the FCC’s Office of Inspector General recently recommended creation of an online competitive bid

¶ 203; *Schools and Libraries Universal Service Support Mechanism, Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14 Commerce City, Colorado*, et al., CC Docket No. 02-6, Order, FCC 07-35, 22 FCC Rcd 6019 (2007), at ¶ 9 (Commission granted a waiver for schools that “had to have their commitments with service providers approved by their governing boards or their agreements with service providers were contingent upon getting USAC’s approval of funding before they could legally enter into the contract. As a result, these Petitioners were unable to sign a legally binding agreement prior to filing their FCC Form 471 as required by . . . our rules”). *Cf.* 47 C.F.R. § 54.23(c) (requiring rural healthcare providers to provide “board minutes, or similar documents related to the service provider selection/award” at the time of the funding request).

¹⁵ 47 C.F.R. § 54.516(a)(1) (requiring schools, libraries, and consortia to retain all relevant documents for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request, and to maintain asset and inventory records of equipment purchased as components of supported category two services for a period of 10 years after purchase).

¹⁶ GAO Report at 14 (identifying “self-certifications as an inherent overarching key fraud risk that has affected the E-rate program”).

repository to enhance its “ability to deter and detect fraud, waste, and abuse during the competitive bidding process.”¹⁷ In light of the impact of the Commission’s *Net56 Order*,¹⁸ capturing this documentation up front will also mitigate the risk that an applicant’s ability to demonstrate compliance (for example in a future Special Compliance Information Request, Payment Quality Assurance (“PQA”) review, or audit under the E-Rate Beneficiary and Contributor Audit Program (“BCAP”)) will deteriorate as a result of churn in personnel, change in personnel responsibilities, or simply the passage of time.

2. A Document Repository Could Offer Compliance and Administrative Benefits for All Parties

This two-step approach to a USAC document portal could effectively streamline the compliance burden on all parties – applicants, service providers, and USAC alike. The discipline and clarity imposed by the requirement to upload key competitive bidding records to a USAC portal will aid in the compliance efforts of all applicants and service providers, and especially smaller schools and libraries that may not have staff members who specialize in E-Rate compliance. Moreover, collection and storage of key competitive bidding records in a USAC-managed portal will aid applicants and service providers in complying with E-Rate document retention requirements.¹⁹ This approach will help ensure that records are preserved and remain readily available to USAC, eliminating the burden on the applicant and service providers to

¹⁷ Federal Communications Commission, Office of the Inspector General, “Semiannual Report to Congress October 1, 2016-March 31, 2017” (May 4, 2017) at 13 (“OIG Report”). While the OIG Report suggested that the service providers use the repository “instead of directly submitting bids to applicants,” the OIG’s goals would be served as well or better under the approach proposed by the IOB here.

¹⁸ *Schools and Libraries Universal Service Support Mechanism, Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc. Palatine, Illinois*, CC Docket No. 02-6, Memorandum Opinion and Order, FCC 17-1, 32 FCC Rcd 963 (2017), at ¶ 9 (disavowing any binding effect of the administrative limitations period adopted by the Commission in the E-Rate *Fifth Report and Order*).

¹⁹ 47 C.F.R. § 54.516(a)(1); Notice at ¶ 27. See also USAC “April 2022 E-Rate News Brief,” Apr. 22, 2022 (urging applicants to “take the time now to organize and file all documents related to your application in a manner that will allow you to easily locate and retrieve them for any future needs”).

independently maintain those records and produce them in response to requests from USAC reviewers and auditors.

A USAC document portal would also help address the current mismatch between the Commission's finite document retention requirements and program participants' infinite exposure to recovery of support.²⁰ Applicants and service providers today can never be entirely confident in destroying any E-Rate compliance records, no matter how old, making the Commission's prescribed document retention periods confusing. Under Commission precedent, applicants and service providers may be asked to prove that payments of E-Rate support were proper based on a myriad of program compliance requirements, sometimes decades after the services were provided and payment made.²¹ Even careful applicants and service providers may face unreasonable challenges in doing so, if normal staff turnover and document retention policies have depleted institutional memory of the events in question. In contrast, once competitive bidding documents are uploaded to a USAC document portal, they may be stored indefinitely, reducing the storage and retrieval burden on applicants and service providers alike.

Similar benefits would also accrue to USAC staff, streamlining administration of the E-Rate program. Ensuring that a definitive set of all competitive bids and related materials are immediately available will aid the Schools and Libraries Division ("SLD") in performing a faster, more streamlined, more efficient review of the Form 471 funding request. The benefits will flow to all types of both pre-commitment and post-commitment reviews. A USAC document portal would reduce the need for the SLD to issue document requests, and eliminate the time needed for the applicant to compile and submit its response and filing for extension of

²⁰ Compare *Net56 Order* at ¶ 9 (eliminating any effective time bar on recovery of E-rate funds) with 47 C.F.R. § 54.516(a)(1) (ten-year document retention requirement).

²¹ *Net56 Order* at ¶ 9.

time requests, enabling faster funding decisions. Ready availability of these documents in USAC’s own records may also promote more positive funding decisions and fewer denials (at least to the extent caused by a lack of availability of competitive bidding documentation), reducing the burden on USAC to resolve pre- and post-commitment reviews. The records will also remain available for future reviewers, for example in the context of a Request for Review of a funding denial, Special Compliance Review, PQA review, BCAP audit, GAO inquiry, or other federal analysis of the integrity and efficiency of the E-Rate program. The IOB suggests, for example, that the required documents be drawn from USAC’s existing Document Retention and Audit Documentation lists.²²

Finally, this approach would closely align the Commission’s E-Rate competitive bidding procedures with those already in effect for the Rural Health Care program, as the Notice proposes.²³ By requiring service providers to upload their proposals directly to the portal at the time they submit them to the applicant, it will effectively implement that Commission proposal²⁴ while placing the compliance obligation directly with a party (*i.e.*, the service provider) that has a vested interest in ensuring the applicant receives and considers its proposal. Because the service provider must frequently submit its proposal through a portal designated by the applicant in any event, the additional upload to the USAC portal should not be expected to create any significant new administrative burden for service providers.²⁵

²² See USAC “Schools and Libraries (E-rate) Program - Documentation for Auditors Checklist” (June 2018, available at: <https://www.usac.org/wp-content/uploads/about/documents/pdf/audit/Audit-PDF.pdf>, and USAC “Schools and Libraries (E-rate) Program Applicant Document Retention List” (Apr. 2021), available at: <https://www.usac.org/wp-content/uploads/e-rate/documents/resources/e-rate-program-applicant-document-retention-list.pdf>.

²³ Notice at ¶ 24.

²⁴ *Id.*

²⁵ *Id.* at ¶ 30.

C. The Commission Should Create an Administrative Buffer Between the Form 470 Filing Deadline and the Close of the Form 471 Filing Window

In the Notice, the Commission seeks comment on whether “the ability to file an FCC Form 470 be closed for a certain period of time before the FCC Form 471 window closes to allow for both a minimum number of days (*e.g.*, a 28-day waiting period) plus additional time (*e.g.*, two weeks) for applicants to review bids and make service provider selections.”²⁶ The IOB agrees that it would serve the public interest to establish a Form 470 filing deadline approximately six weeks before the close of the Form 471 filing window. Doing so would create a period of approximately two weeks between the latest expected E-Rate Allowable Contract Date and the Form 471 filing deadline.

By providing applicants with that additional time, the Commission will promote and facilitate stricter compliance with E-Rate competitive bidding rules. With the benefit of additional time, applicants that might otherwise rush to beat the close of the Form 471 filing window will be able to pursue a more orderly process for reviewing and scoring proposals, negotiating and executing service contracts, and finalizing compliance documentation for upload to the USAC document portal.

The Commission will also likely avert a substantial portion of the requests it currently receives for waiver of the Form 471 filing deadline. With additional time after the Allowable Contract Date to prepare and submit their Form 471 funding requests, more applicants are likely to meet the filing deadline, reducing the administrative burden on the Commission. Conversely, if the Commission were to establish a USAC document portal *without* providing adequate time for applicants to finalize, consolidate, and upload the required documents before the Form 471 filing window closes, it is possible that *more* applicants could struggle to comply and the number

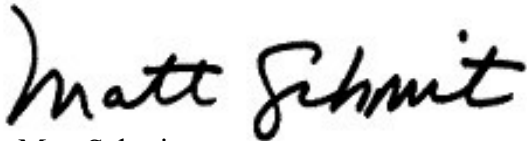
²⁶ *Id.* at ¶ 17.

of waiver requests would increase. Such a two-week buffer would also help ensure that USAC is able to publish all Form 470 filings in time for the Allowable Contract Date to arrive before the Form 471 filing window closes.

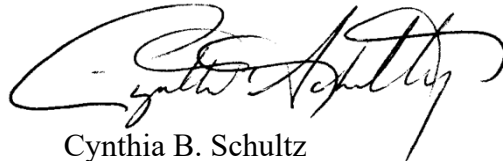
Conclusion

For the foregoing reasons, the Commission should *not* require the use of a USAC portal for the entire competitive bidding process. The IOB agrees, however, that a USAC portal that functions as a document repository for competitive bidding could provide compliance and administrative benefits for program participants, USAC, and the FCC alike.

Respectfully submitted,



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