

Andy Beshear
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Secretary,
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April 22, 2022

Commissioner's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 21-455

Dear Sir or Madam:

The Kentucky Department of Education (KDE) is submitting comments in regard to the Federal Communication Commission's (FCC's or the Commission's) proposed rules for an E-rate Competitive Bidding Portal. As the leader of a statewide consortium, KDE provides network connectivity and internet access to each of Kentucky's 171 K-12 public school districts, made up of 1,789 E-Rate eligible schools and facilities. Kentucky schools have participated in the effective and efficient use of the E-Rate program since the beginning of the program in 1996. We value the vital benefits the program has brought to Kentucky schools throughout the years in assisting with all aspects of connecting students to on-line instructional resources and tools.

With respect to the proposed competitive bidding portal, for a number of reasons KDE opposes the implementation of the required use of a federalized, centralized portal. While KDE acknowledges the need for rules and systems to be in place to prevent waste, fraud, and abuse, little evidence has been offered to demonstrate that a federalized portal is necessary. It appears that the proposed portal is a solution in search of a problem. PIA, PQA, and BCAP audits all serve to protect the competitive bidding process and often require the submission of the documentation associated with competitive bidding. Additionally, the state has its own portal and its own competitive bidding laws and regulations which must be followed. As these laws must be followed, a federalized portal may serve to undermine state law and competitive bidding procedures to the extent that it may deter KDE and/or Kentucky school districts from participating in the E-rate program. Thus, KDE believes that implementation of a federalized competitive bidding portal may, in fact, be self-defeating to the E-rate program.

With respect to some of the specific questions asked by FCC in the NPRM, FCC asks what if no bids are received or no responsive bids are received? FCC proposes that the portal allow applicants in these situations to extend their competitive bidding periods as needed. While allowing applicants to extend the bidding period may be helpful, under certain circumstances extensions may not be allowable under state rules. In addition, simply extending the bid period in no way guarantees that bids will be proffered.

FCC also asks should a Form 470 deadline be established that is more than 28 days from the Form 471 filing deadline, 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? KDE believes that applicants should have the flexibility to have a “waiting period” that is much longer if desired. State-level procurement for services such as connectivity and internet access to all public school districts is large-scale project and potential bidders need far more than 28 days to respond to such a request for proposal.

FCC asks if the bidding portal would interfere with applicants who use a state master contract that requires a mini-bid process? KDE also has a collection of E-rate eligible state master contracts from which public school districts purchase networking equipment. While a bidding portal may not interfere with mini-bids, if a portal is implemented, it will need to be designed in such a way as to accommodate mini-bids. This must not be overlooked.

Also included in the FCC’s inquiries is whether a bid holding period would help applicants avoid inadvertent bidding errors that lead to denials? While holding a bid for a given length of time would prevent 28 day violations, no other errors would be impacted. Based on observations made assisting districts in navigating the E-rate program, this error is very rare. As it stands, the E-rate Productivity Center (EPC) already prevents submission of Forms 471 inside of the 28 day waiting period. This again, appears to be a solution in search of a problem.

As mentioned previously, there are processes already in place – which occur during PIA, PQA, Selective Review, and BCAP Audits – which require the submission of some or all competitive bidding documentation. If a portal were to be implemented, it is strongly recommended that it simply be a repository for all required documentation. KDE strongly urges FCC to avoid adding additional complexity to what can already be a daunting and cumbersome program. Applicants and bidders should always have full access to their documentation.

Last, but certainly not least, it is imperative that if a portal is to be implemented, the development of such it needs to carefully follow software development best practices all the way from initial requirements gathering to user acceptance testing and that sufficient time be allotted to allow for a robust development process to take place. EPC was implemented very quickly and almost entirely without end-user input until the very end of the development process. As a result, EPC had many glitches, errors, and missing functionalities (some of which continue to plague the system) which resulted in end-user frustration and significant expense. Put simply, these things should not be rushed.

KDE urges the FCC to act circumspectly, recognizing that states already have laws, regulations, and systems in place which dictate how competitive bidding is conducted, that these laws and regulations are diverse and unique to each state, and that a centralized, federalized system will inevitably conflict with state procurement processes.