

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Promoting Fair and Open Competitive Bidding
in the E-Rate Program

WC Docket No. 21-455

COMMENTS OF VERIZON¹

While Verizon supports efforts to ensure that E-Rate is administered effectively and without waste, fraud, or abuse, the Federal Communications Commission (Commission) should not adopt its proposal to create a new E-Rate bidding portal through which service providers would be required to submit bids to USAC instead of directly to E-Rate applicants.² Such a portal would only add unwelcome complexity to what is an already extremely complex program, and could seriously burden and deter program participation, without significantly improving the current competitive bidding process.

I. The Notice Does Not Demonstrate a Need for the Proposed Bidding Portal, which May Conflict with Local Procurement Rules

The Commission’s proposal is based on the recommendation of its Office of Inspector General and the U.S. Government Accountability Office (GAO) that a central bidding portal “could strengthen program controls by allowing USAC direct access to obtain and monitor bidding information submitted by bidders without having to request such information from the

¹ The Verizon companies participating in this proceeding are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, Notice of Proposed Rulemaking, WC Docket No. 21-455, FCC 21-124 (Dec. 16, 2021)(“*Notice*” or “*Competitive Bidding NPRM*”).

applicants or service providers.”³ Combating waste, fraud, and abuse and enhancing program integrity are laudable goals that Verizon supports, but the *Notice* does not cite any instances of misconduct in the bidding process that the proposed portal would have prevented or addressed, and that would justify its implementation now.⁴ Moreover, the record already contains evidence that the existing competitive bidding process is functioning well.⁵

Currently, E-Rate applicants must provide information on losing bids and evaluation materials to USAC upon request. Requiring instead that applicants provide this and other information to USAC upfront through a new bidding portal not only seems unnecessary, but would significantly burden both applicants and USAC, which would have to house and cull through an enormous amount of data.⁶ The Commission declined to implement a similar

³ Competitive Bidding NPRM ¶ 9, citing GAO, *Telecommunications: FCC Should Take Action to Better Manage Persistent Fraud Risks in the E-rate Program*, GAO-20-606, 19 (Sept. 16, 2020) (“2020 GAO E-Rate Report”).

⁴ Rather, the Notice simply points to the 2020 GAO E-Rate Report as a basis for the proposal, stating that the report “highlights that USAC does not have a proactive way to monitor the bidding information submitted by bidders and must rely on requesting such information from applicants or service providers after the culmination of the bidding process” and “identifies opportunities to misrepresent compliance with the competitive bidding rules and processes as an underlying key fraud risk and notes that such an opportunity exists because of the lack of visibility into the competitive bids that applicants receive.” *Competitive Bidding NPRM* ¶ 11.

⁵ See *Impact of Modernization on the E-rate Competitive Bidding Process: Funding Years 2017 to 2021*, attached to Letter from John D. Harrington, Funds for Learning, LLC, to Marlene H. Dortch, FCC, WC Docket No. 21-455, at 2, 14 (Mar. 30, 2022) (“Funds for Learning Letter”) (noting that from 2017 to 2021, the “level of competition [in the program] has increased significantly while the price of goods and services has dropped dramatically” and “E-rate dollars are subject to robust public accountability via online published data, and, when necessary, USAC can require applicants to provide additional documentation or forfeit their funding.”); Comments of Dale McDonald, National Catholic Educational Association at 1 (“NCEA Comments”) (“The small number of abuse cases should not disrupt a process that has worked for decades.”).

⁶ See, e.g., Comments of Los Angeles Unified School District at 1 (“LA Unified School District Comments”) (noting the burdens the proposal would place on applicants and stating that “the new bidding portal would discourage service providers’ willingness to submit bids and proposals”); Comments of Cristo Rey Jesuit High School at 3 (“[I]f [the bidding] process is unmanageable for small schools, they won’t participate. The ERate Process becomes just too

proposal in 2014, finding that the burdens would outweigh any public benefit.⁷ In the *Notice*, the Commission acknowledges that implementing the proposed bidding portal would require significant development and implementation resources from the Commission, USAC and E-Rate participants, and questions whether operationalizing such a portal is even possible by the start of funding year 2024 given the technical and logistical challenges.⁸ Indeed, it is questionable whether USAC has the resources to take on such a task and securely manage what at least one party estimates to be 20,000 different jurisdictions and a total of 84,000 local procurements each year.⁹

hard and stressful. Nonprofits that run Head Start schools are already reducing their use of ERate because of the current complexities.... Making it harder to apply because of a desire to create a proposal repository on the front end of the process to catch a small number of bad actors, who have taken under 1% of the funds fraudulently, adds time delays that can't be recovered and has a ripple effect through the applicants to the vendors.”); Comments of Michela Lowry, HWC Consultants at 1 (“For smaller providers, the E-Rate process can be bureaucratic and daunting, and we’re concerned that this new portal may deter them further from participating.”); Comments of Suzanne Reymer, Montana State E-Rate Coordinator at 1 (“E-Rate is already too complicated, time intensive and stressful for the part time staff at these libraries....The only possible benefit would seem to be that the onus of record keeping for 10 years of bids or lack thereof become[s] the responsibility of USAC.”).

⁷ See *Modernizing the E-Rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8938, ¶ 165 (2014)(declining to require public disclosure of certain pricing information, including available pricing from service providers or bid responses, finding that the “current burden to applicants of submitting comprehensive bid information to USAC outweighs any incremental benefit to the public from the publication of prices for non-winning bids, which, by definition, were not the most cost-effective choice”).

⁸ *Competitive Bidding NPRM* ¶ 33.

⁹ See, e.g., Funds for Learning Letter (noting that “Trusting USAC to receive and manage 83,994 proposals each year using the EPC system, runs contrary to most applicants’ views. The majority do not have a favorable impression of EPC. USAC has spent millions of dollars and seven years trying to improve the system that applicants still find lacking in many regards. These shortcomings include documented problems with the Form 470 RFP notification system – problems the FCC has yet to adequately address, despite seven years of development.”). See also NCEA Comments at 2 (“Given its past record of dealing with complex issues, it is difficult to see USAC having the capability to design the portal such that it is minimally inconvenient

Moreover, some entities have already indicated that required use of the proposed bidding portal could conflict with state and local procurement rules, which differ by state and which E-Rate applicants are required to follow.¹⁰ One school district has already told the Commission that, for bid solicitations over a certain amount, “California law requires public advertisement in a newspaper of general circulation,” bids to be securely submitted, [and] for bids to be publicly opened, among other things.¹¹ Yet, complying with the Commission’s bidding portal proposal would necessarily mean that the district could not comply with its state’s procurement requirements because, for example, under the Commission’s proposal, bidding communications would have to occur through the portal (which would not permit newspaper advertisement) and opening bids in public may not be permitted due to the proposed bidding communications prohibition.¹² Given these observations, it is understandable that stakeholders “would be hesitant to participate in solicitations due to risks of non-compliance with [a state’s] procurement requirements.”¹³

This school district has also pointed out that compelling it to use “a separate, E-rate only, bidding portal would be duplicative of existing efforts with issuing solicitations and communicating with vendors, time consuming and therefore wasteful of public resources, and

while also providing flexibility to handle multiple issues specific to applicants in any timely fashion. Recall the lack of success of USAC's data collection efforts around pricing!”).

¹⁰ *Competitive Bidding NPRM* ¶ 20.

¹¹ LA Unified School District Comments at 2.

¹² *Id.* at 2. Another commenter points out that a Utah statute requires the purchasing entity to advertise “[o]n the main website for the procurement unit; or on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice,” which could run afoul of the Commission’s proposal. *See* Comments of Infinity Communications and Consulting, Inc. at 3 (“Infinity Comments”).

¹³ LA Unified School District Comments at 1.

would likely generate confusion among potential bidders,” all of which may deter participation in what is a crucial program providing critical equipment and services for so many.¹⁴ This is particularly true in cases where the participant is soliciting both eligible and non-eligible goods and services. The existence of an E-rate only portal could force participants to issue and manage parallel solicitations, to which service providers likewise would need to create and submit parallel bids, potentially doubling the administrative burden and cost of procuring services.

II. At Most, the Commission Should Require Only that Applicants Submit Bidding Documentation when Filing FCC Form 471 in the EPC

If the Commission determines that some action must be taken to strengthen E-Rate program integrity, it should dispense with the bidding portal proposal and, at most, adopt its proposal that E-Rate applicants submit competitive bidding compliance documentation at the time they submit their FCC Form 471 in the E-Rate Productivity Center (EPC) when seeking funding for eligible services, similar to what the Rural Health Care program currently requires.¹⁵ This proposal would avoid upending the current local procurement processes at play while simultaneously providing USAC with relevant data should anyone suspect program fraud. It would also be less burdensome for USAC and E-Rate participants, and already has some support in the record.¹⁶ E-Rate applicants are already required to use the EPC online portal, whereas creating, maintaining, and requiring use of a new bidding portal would divert crucial resources

¹⁴ *Id.* at 2.

¹⁵ *Competitive Bidding NPRM* ¶ 24.

¹⁶ NCEA Comments at 3 (arguing that “the least troublesome process would be to file all the paperwork on all bids in a national depository when 471 is uploaded so that USAC will have data if fraud, etc. is suspected”); Infinity Comments at 4 (noting that submitting bid responses and bid evaluation documents at the time an applicant files FCC Form 471 should be permitted, and such documents should be submitted through the current EPC portal, not a new bidding portal).

from other aspects of the program and add unnecessary burdens to what is already a complex program.

III. Limiting Communications to the Proposed Bidding Portal Is Unnecessarily Burdensome

Separately, the Commission also seeks comment on whether communications between service providers and applicants should be required to occur via the bidding portal, if the proposal is adopted.¹⁷ This would be a significant, unnecessary, and unduly burdensome change to how providers and applicants currently communicate about requests for proposals and bids. As USAC guidance makes clear, service providers may only communicate with applicants that are soliciting bids for supported services to obtain “information needed to submit responsive bids.”¹⁸ Requiring that these time-sensitive communications be funneled through the bidding portal could significantly delay service providers’ submission of bid responses, and could result in applicants receiving fewer responsive bids. And the participant and service provider personnel who are involved in solicitations often also have ongoing service and account responsibilities. Requiring these personnel to partition their communications depending on the subject matter would complicate and possibly delay response time on time-sensitive matters.

CONCLUSION

While Verizon supports the Commission’s commitment to protecting against waste, fraud, and abuse in the E-Rate program, there is scant evidence to conclude that creation of a central bidding portal is necessary or would substantially improve the integrity of the program,

¹⁷ *Competitive Bidding NPRM* ¶ 30.

¹⁸ See USAC | E-Rate | Service Provider Process | Step 2: Responding to Bids, available at <https://www.usac.org/e-rate/service-providers/step-2-responding-to-bids/>.

yet it would add unwelcome complexity to an already complicated program and potentially deter critical program participation. As discussed above, the record already contains evidence that the existing competitive bidding process is working well. If the Commission ultimately determines it must take some action, it should only require that applicants submit documentation demonstrating compliance with the competitive bidding rules when they submit their FCC Form 471 to seek funding, as applicants do in the Rural Health Care program.¹⁹

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Respectfully submitted,

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¹⁹ *Competitive Bidding NPRM* ¶ 24.