

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

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

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby comments in response to the Commission’s *Notice of Proposed Rulemaking*, FCC 21-124, released December 16, 2021, in the captioned proceeding (“*NPRM*”). These comments are filed in accordance with the revised schedule set forth in the Wireline Competition Bureau’s *Order Granting Extension of Time*, DA 22-284, released March 16, 2022, in the proceeding.

WTA is a national trade association that represents more than 360 rural telecommunications carriers (“Rural LECs”). Most WTA members – either directly or via Internet service provider (“ISP”) subsidiaries – furnish voice and broadband services in rural areas that contain schools and libraries that participate in the Schools and Libraries (“E-Rate”) support program.

WTA opposes the *NPRM* proposal that bid responses to FCC Form 470 be submitted through a new bid portal managed by the Universal Service Administrative Company (“USAC”) rather than continuing to be sent directly to the actual applicants for E-Rate support. WTA believes that such a new bid portal will entail jurisdictional conflicts, time delays and other added costs and complications that will disrupt and discourage E-Rate participation without significantly

strengthening program integrity, preventing improper payments, or reducing the risk of fraud, waste or abuse.

WTA members are very concerned that the proposed new portal will conflict with a variety of state, local and tribal procurement statutes, regulations and procedures. The simple answer to the question asked in paragraph 20 of the *NPRM* is that the creation and mandatory use of a national E-Rate bid portal will conflict with a significant number of state and local (as well as tribal) procurement requirements. At minimum, it will require service providers submitting bids in certain jurisdictions to submit such bids in more than one way because of differing state, local and tribal requirements. More important, the procedures incorporated into a national E-Rate bid portal will conflict directly with a variety of state, local and tribal procurement requirements. For example, some states such as Arizona and Pennsylvania have requirements that bids be opened at public meetings or under other conditions that will be impossible to comply with via a bid portal. Other states such as Texas allow the use of sealed proposals where appropriate state officials determine that competitive bidding procedures are not practical or are disadvantageous to the state. There are also differences among states with respect to procurement procedures for state master contracts versus individual school contracts, and with respect to the handling of bidding service provider questions and proposed substitutions. The Utah Education and Health Network (“UETN”), a consortium which files E-Rate applications for Utah schools and libraries, has already submitted comments stating that the E-rate bid portal proposal would put it into direct conflict with the applicable Utah procurement statute as well as University of Utah procurement policy.¹ The critical point is that there are so many differing state, local and tribal procurement statutes, regulations and policies (as indicated by one early commenter, “the requirements for procurement

¹ Letter from Ray Timothy, UETN CEO and Executive Director, to the Federal Communications Commission, WC Docket No. 21-455, dated December 3, 2021.

in California are different than the requirements for procurement in Arizona, Texas and Virginia”²) that the proposed national bid portal will be unable to avoid a significant number of material conflicts with state, local and tribal law. Given that E-Rate applicants are required to comply with all applicable state and local procurement rules as well as E-Rate competitive bidding requirements, the likely and varied differences between the bid portal and state, local and tribal law will subject school and library applicants to conflicts that, at minimum, will require them to incur substantial additional legal and consulting fees and that are likely to preclude participation in the E-Rate program by otherwise qualified applicants in some jurisdictions.

Second, it is not clear what initial and ultimate responsibilities USAC will have with respect to the contemplated bid portal. If the proposed bid portal is limited solely to serving as a depository for bids that are collected there and then forwarded by USAC without inspection to the E-Rate applicants for review and selection at a certain time, how will the cost of constructing and maintaining such bid portal be justified with respect to the various stated goals regarding program integrity and reduction of fraud, waste and abuse? On the other hand, if USAC is to be tasked with reviewing bids submitted through the bid portal (or if USAC’s role is expanded in the future to include such review), what will be the additional costs, personnel requirements and delays inherent in having USAC provide some degree of initial or more elaborate review of thousands of E-Rate bids during the bidding window prior to each July 1-June 30 plan year? In either eventuality, it appears that the costs of the proposed bid portal to the Commission and USAC (without even considering the increased compliance costs and disruptions to E-Rate applicants) can significantly outweigh any benefits.

² Comments of Infinity Communications & Consulting, WC Docket No. 21-455, at p. 3.

Third, while there are certainly some bad actors that will seek to take advantage of any and every government program, it does not appear that there currently exists any significant, much less widespread, fraud or misrepresentation of compliance with E-Rate competitive bidding requirements. The Commission can presently rely upon USAC's program integrity assurance and audit authority, plus the resources of state, local and tribal authorities, to discover and deter irregularities in E-Rate competitive bidding. WTA submits that it is much more efficient and effective to give USAC (in cooperation with state, local and tribal agencies) the flexibility to look for E-Rate competitive bidding irregularities and to focus their investigations on them, rather than to saddle USAC with a mass of thousands of annual E-Rate bid documents that are more likely to make it easier for the few bad actors to hide their activities.

Finally, the Commission needs to keep in mind that E-Rate program participants are predominately schools and libraries that are focused upon providing educational and information services to children and other members of the public. The challenges of operating today's schools and libraries are complex and time-consuming, and do not leave a lot of time, energy or resources available for these entities to keep up with E-Rate and other regulatory changes. In addition, most school and libraries are operated by honest, public-spirited people who have chosen these careers over more lucrative private industry jobs. WTA recognizes that there have been some bad actors that have taken advantage of the E-Rate program, but believes that the vast majority of E-Rate applicants, participants and service providers have been honest and trustworthy entities that have used their E-Rate support to advance their essential educational and informational missions. Rather than imposing new bid portal and other new regulatory burdens upon the vast majority of honest and compliant E-Rate participants, the Commission should free up USAC to more effectively battle fraud, waste and abuse by limiting the imposition of additional general regulatory

and filing requirements and by allowing USAC to focus instead upon situations and circumstances where wrongdoing is suspected.

In sum, WTA urges the Commission not to adopt the proposed new E-Rate bid portal. In addition to the conflicts and complications that a national portal will generate with respect to state, local and tribal procurement law, it is further likely to reduce or preclude participation by some schools and libraries in the E-Rate program by causing disruptive delays and by increasing the cost of completing annual service arrangements. Finally, the Commission can much more effectively deter fraud, waste and abuse by giving USAC the resources and flexibility to search out unusual and suspicious circumstances rather than bogging it down with mounds of routine paperwork that enhance the opportunities for bad actors to conceal their wrongdoing.

Respectfully submitted,
WTA – ADVOCATES FOR RURAL BROADBAND

/s/ Derrick B. Owens
Senior Vice President of
Government and Industry Affairs
/s/ Eric Keber
Vice President of Government Affairs
400 Seventh Street NW, Suite 406
Washington, DC 20004
Phone: (202) 548-0202

/s/ Gerard J. Duffy
Regulatory Counsel
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast, LLP
2120 L Street NW, Suite 300
Washington, DC 20037
Phone: (202) 828-5528

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