

**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)	

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

The National Association of Telecommunications Officers and Advisors (“NATOA”)¹ submits these reply comments in response to the Notice of Proposed Rulemaking adopted on December 16, 2021, seeking comment on proposed changes to the E-Rate program to implement a central document repository, or bidding portal, and other potential changes to the E-Rate bidding process.² The NPRM arises out of recommendations from the Commissioner’s Office of Inspector General and the Government Accountability Office to protect E-Rate funds.

NATOA has long supported the Commission’s efforts to safeguard E-Rate funds from waste, fraud and abuse and efforts to enhance accountability and transparency. However, we share the concerns expressed by many commenters that the changes proposed in the NPRM may be inconsistent with E-Rate applicants’ state and local bidding requirements and unduly complicate the bidding process, thereby hindering E-Rate participation.

¹ NATOA’s membership includes local government officials and staff members from across the nation whose responsibility is to develop and administer communications policy and the provision of such services for the nation’s local governments.

² 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) (“NPRM”).

1. Inconsistency with State and Local Bidding Requirements Would Make the Proposed Bidding Portal Unworkable and May Deter Participation.

Many commenters explained how the bidding portal proposal would interfere with existing state and local bidding and procurement processes, which would likely cause significant issues for applicants and may cause some to have to drop out of the E-Rate program.³ We agree with these concerns and support calls to refrain from taking any action in this docket that might interfere with existing procurement processes.

Commenters noted a range of conflicts and potential conflicts with state and local procurement processes. SECA, for example, includes a list of potential conflicts that may arise between a new bidding portal and state and local procurement requirements, ranging from requirements to use existing bidding portals to requirements for sealed bids to specific bid opening requirements.⁴ The Illinois Office of Broadband describes its bidding portal and notes that “the Illinois BidBuy portal, and others like it ... 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”⁵ IOB goes on to explain that “Illinois, for example, would remain obligated to use the BidBuy portal ... [t]hus 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.”⁶ Similarly, SHLB describes the different procurement requirements at the state, county and city level within

³ See, e.g., Comments of the State E-rate Coordinators’ Alliance (SECA) WC Docket No. 21-455 (Apr. 27, 2022) (“SECA Comments”) at 14-16; Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, WC Docket No. 21-455 (Apr. 27, 2022) (“SHLB Comments”) at 7-9; Comments of INCOMPAS, WC Docket No. 21-455 (Apr. 27, 2022) (“INCOMPAS Comments”) at 6-8.

⁴ SECA Comments at 14-16.

⁵ Comments of Illinois Office of Broadband (IOB), WC Docket No. 21-455 (Apr. 27, 2022) at 6.

⁶ *Id.* at 7.

California, illustrating the complexity of standing up a new portal that would not interfere with existing legal requirements.⁷

WTA makes the point succinctly: “The critical point is that there are so many differing state, local and tribal procurement statutes, regulations and policies ... that the proposed national bid portal will be unable to avoid a significant number of material conflicts with state, local and tribal law.”⁸

Because the record demonstrates that applicants will be unable to comply with state and local procurement laws and processes—or, at a minimum, encounter significant difficulties in doing so—we urge the Commission not to move forward with any proposals that may impact or interfere with state and local procurement processes.

2. Unnecessary Complication May Deter Participation.

We also agree with the many commenters who expressed concern that the complications, confusion and burdens that may arise from an E-Rate bidding portal may deter applicants from participating in the E-Rate program.⁹ For example, SHLB states that the “proposed requirements would introduce needless delay and complication into an already complex process.”¹⁰ Verizon states that “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.”¹¹

We are particularly concerned that this deterrent effect may have a disproportionate impact on smaller schools and libraries that have fewer resources to direct toward new compliance

⁷ SHLB Comments at 8-9.

⁸ Comments of WTA – Advocates for Rural Broadband, WC Docket No. 21-455 (Apr. 27, 2022) at 2-3.

⁹ See, e.g., SHLB Comments at 9-12; Comments of the American Library Association, WC Docket No. 21-455 (Apr. 27, 2022) (“ALA Comments”) at 1; INCOMPAS Comments at 4-6.

¹⁰ SHLB Comments at 10.

¹¹ Comments of Verizon, WC Docket No. 21-455 (Apr. 27, 2022) at 1.

obligations and will be most impacted by the loss of E-Rate support if they are unable to comply. As the American Library Association noted, “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.”¹² INCOMPAS expresses similar concerns: “There are limited resources and staff to implement the changes contemplated by the institution of a single bidding portal and for smaller schools, libraries, and service providers, INCOMPAS has significant concerns that the implementation of such a portal will be disruptive to the program’s mission and be especially difficult for these entities to successfully transition to using.”¹³

3. Conclusion

Given the record that has developed in this docket indicating the likely conflict with state and local procurement processes and the confusion and complexity the proposed bidding portal could add to the E-Rate process, we urge the Commission to reconsider the proposals outlined in the NPRM.

Respectfully submitted,



Nancy L. Werner
General Counsel
NATOA
3213 Duke Street, #695
Alexandria, VA 22314
(703) 519-8035

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¹² ALA Comments at 1.

¹³ INCOMPAS Comments at 5.