

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

In the Matter of)	
)	
Modernizing the E-Rate Program for Schools and Libraries)	WC Docket No. 13-184
)	
Connect America Fund)	WC Docket No. 10-90
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association

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**COMMENTS
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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments to urge the Federal Communications Commission (the “Commission”) to open promptly a rulemaking proceeding in response to the “Texas Carriers” Petition for Rulemaking submitted May 22, 2019 in the above-captioned proceedings.² Pursuant to Section 1.401³ of the rules of the Commission, and in accordance with Section 254 of the Communications Act of 1934, as amended,⁴ the Texas Carriers’ Petition seeks certain amendments to the agency’s Universal Service Fund (“USF”) Schools and Libraries Program (“E-Rate”) rules. Specifically, the Petition seeks more effective use of USF resources generally and E-Rate resources more specifically

¹ NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² Petition for Rulemaking of Central Texas Telephone Cooperative, Inc. et al., RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. May 22, 2019) (“Texas Carriers’ Petition” or “Petition”).

³ 47 C.F.R. § 1.401.

⁴ 47 U.S.C. § 254.

through better coordination and by leveraging, where possible, high-quality broadband networks that are already available in rural America and supported by the Commission's High-Cost USF program.

The Commission should initiate a rulemaking proceeding in the agency's E-Rate dockets as requested by the Texas Carriers. To be clear, NTCA has long supported the E-Rate program, and believes that E-Rate both can help schools and libraries obtain access to more affordable communications services *and* help fill in gaps where connections are not available. NTCA further believes that the E-Rate and High-Cost mechanisms are vital components of a suite of programs aimed at advancing and preserving universal service and that it is vital that they work in concert to promote that statutory mission. But, where the two programs fail to work well in concert, it is important to consider ways to harmonize better their operations. The Texas Carriers' Petition highlights one area where the rules are failing to work in harmony, resulting in potential conflict between the E-Rate and High-Cost programs rather than these mechanisms working in necessary concert. More specifically, the current E-Rate self-construction and competitive bidding rules contain flaws that can lead (and, in the case of the Texas Carriers, have led) to the construction of redundant network facilities rather than using E-Rate resources to "pay down" the cost of obtaining services over connections already funded by the High-Cost USF. The development of more effective safeguards in the E-Rate competitive bidding process, consistent largely with those that NTCA advocated for approximately five years ago,⁵ would help in heading off such conflict. Specifically, this will ensure that more schools and libraries are connected and can get services at affordable rates, while also preventing the good work of the

⁵ Comments of NTCA, WC Docket No. 13-184 (fil. Apr. 7, 2014).

Commission’s High-Cost program from going to waste as networks supported under one program are overbuilt by other networks supported by another program.

To avoid the prospect of such outcomes and to make the best possible use of each program’s resources as they work in concert rather than conflict, the Commission should fine-tune the network self-construction rules adopted in the *2014 E-Rate Second Report and Order*⁶ via a new rulemaking proceeding as requested by the Texas Carriers. The proposal made herein would not require a substantial reworking of the competitive bidding rules adopted in 2014, and NTCA does not seek a fundamental rewriting of those provisions. Rather, the limited safeguards proposed by NTCA in 2014 and discussed further below would add a simple and quick step to the existing competitive bidding processes to ensure *both* that all schools and libraries can be connected *and* that the E-Rate and High-Cost programs will not “cannibalize” one another and waste resources as a result – to the detriment of other schools and libraries that, under fixed program budgets, could have made better use of those resources to obtain connections that do not exist at all today.

NTCA therefore supports a request for a new rulemaking and offers below certain limited safeguards intended to ensure that E-Rate resources in well-served areas are used to solve the particular challenge that each eligible entity faces. Pursuant to NTCA’s proposed safeguards, existing providers with connections in place sufficient to meet an E-Rate applicant’s needs for broadband would be given the opportunity to respond to an application for self-construction filed by a school or library. During this review period, a provider with the facilities in place to serve

⁶ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Connect America Fund, WC Docket No. 10-90, Second Report and Order and Order on Reconsideration, FCC 14-189 (rel. Dec. 19, 2014) (“*2014 E-Rate Second Report and Order*”), ¶¶ 43-54.

the E-Rate applicant at its requested level of service could agree to match the price found in the application for construction of a new connection. In the case where the school or library in question has no broadband access today, and there is no construction planned or underway to deploy facilities to enable such broadband access in that unserved area, the applicant would be required to demonstrate that a “new build” offers the only “cost-effective” solution. Finally, NTCA urges the Commission to explore in a rulemaking proceeding a requirement that school and library consortia seeking support for self-construction be required to invite bids from multiple vendors, including vendors that can only serve a subset of consortia members. In any case, NTCA welcomes a dialogue on this important issue through a rulemaking proceeding, and is interested in reviewing any proposals that others may put forth to ensure that these two vital USF programs can work in concert rather than conflict as they seek to promote their distinct but essential and complementary missions of universal service.

II. BACKGROUND/STATEMENT OF INTEREST

To provide context with respect to the interests of NTCA members in the E-Rate program specifically, and their track record of success in serving schools and libraries more generally, it must be stated that these rural operators have made it a point to ensure that the schools and libraries in the areas they serve have access to the high-capacity broadband connections they need to achieve their respective missions. These small providers have leveraged a mix of entrepreneurial spirit, community commitment, private capital, High-Cost USF support, Rural Utilities Service (“RUS”) programs, and other initiatives to deliver a better broadband future to

many schools and libraries across rural America. In 2018, NTCA surveyed its members⁷ and found:

- The vast majority of primary/secondary schools are connected to respondents' networks via fiber (82.4%) while 89.9% of primary/secondary schools in respondents' service areas can receive service of 25 Mbps or greater.
- Public libraries are connected to the network via fiber with the second-highest frequency, at 73.7%, with 83.9% being able to receive service of 25 Mbps or greater.
- Respondents report in 2018 that the maximum broadband speed they make available to anchor institutions in their area is 1,233 Mbps (mean), and that the average broadband speed purchased by these institutions is 196 Mbps.

Initiation of a rulemaking proceeding to fine-tune the competitive bidding rules for the E-Rate program in a surgical way is necessary to ensure that this success continues and that the highly valuable and successful E-Rate and High-Cost USF programs can continue to work together to leverage substantial investments such as those noted below while also filling gaps for those schools and libraries that unfortunately still do lack connections. More specifically, NTCA supports the Commission initiating a rulemaking proceeding to seek public comment on possible limited amendments to the Part 54 E-Rate competitive bidding rules to address the potential for E-Rate supported network self-construction to an individual school or library that already has access to a broadband connection that is: (a) supported by the High-Cost USF program or was built leveraging some other governmental program funds; and that is (b) capable⁸ of delivering

⁷ NTCA–The Rural Broadband Association, 2018 Broadband/Internet Availability Survey Report, p. 10; available at: https://www.ntca.org/sites/default/files/documents/2018-12/2018%20Broadband%20Survey%20Report_FINAL.pdf

⁸ In this case, consistent with long-standing Commission practice, “capable” would be defined as a provider being able to use its owned assets to deliver service at the requested speed/capacity, without extraordinary construction efforts or commitment of resources, within 10 business days of request from an E-Rate program applicant in receipt of an approved application for program funds.

speeds meeting the FCC’s current definition of broadband E-Rate program’s “speed targets” at an affordable rate.

III. THE COMMISSION SHOULD INITIATE A RULEMAKING PROCEEDING TO INCORPORATE TARGETED SAFEGUARDS INTO THE E-RATE SELF-CONSTRUCTION RULES AND TO MODIFY ITS COMPETITIVE BIDDING PROVISIONS IN ORDER TO PROTECT THE INTEGRITY OF THE UNIVERSAL SERVICE FUND.

As NTCA has previously stated, meeting the important public policy goal of ubiquitous access to high-capacity broadband service requires the careful coordination of the four discrete but interconnected USF programs.⁹ This includes leveraging the success stories found in the High-Cost program, as well as utilizing other federal programs, public-private partnerships, and private investment to achieve the broadest possible set of public policy benefits. Unfortunately, the E-Rate competitive bidding rules adopted in 2014 to encourage network construction on the part of program beneficiaries can – if not amended as discussed herein – unintentionally undermine the goals of each of the individual programs and even turn them into competing initiatives that undermine the common goal of enabling sustainable communications access.

A. The Commission should reevaluate its E-Rate self-construction/competitive bidding rules via a rulemaking proceeding.

When it adopted its current self-construction rules in 2014, the Commission found that its competitive bidding rules were sufficient to prevent “overbuilding.”¹⁰ The Commission at the

⁹ NTCA Comments, CG Docket No. 17-310 (fil. Feb. 2, 2018) (supporting the Commission's goal of facilitating greater provision of telehealth in rural America and discussing ways the agency can assess accurately the needs of rural areas, identify the resources necessary to meet those needs and set into motion a holistic determination of how the various elements of the USF, particularly High-Cost support, can be leveraged to support rural health care); Comments of NTCA, WC Docket No. 11-42, et al., (fil. Aug. 31, 2015), pp. 8-14 (supporting the Commission’s goal of modernizing the Lifeline program and discussing why, for the low-income consumers in rural areas, coordination and calibration of the Lifeline and High-Cost programs is essential).

¹⁰ 2014 E-Rate Second Report and Order, ¶ 51.

time specifically declined to adopt safeguards proposed by NTCA – similar to those proposed below – in part because the agency found that “because E-Rate applicants’ requests for bids are publicly available, providers all have an equal opportunity to bid to provide E-Rate services and...existing providers...capable of providing service at the targeted speeds...will be well situated to offer very competitive pricing through the competitive bidding process.”¹¹

Unfortunately, the Texas Carriers highlight the need for a reevaluation of the self-construction rules. Specifically, as the Petition states, a regional-based consortium sought and received E-Rate funding – including special construction funds – for fiber connections to schools that already had such connections available to it supported by the High-Cost USF program.¹² In addition, the scope and scale of the requested Wide Area Network edged out smaller providers with existing fiber connections that could have served individual institutions on a more cost-effective basis.¹³ Contrary to the views of the *2014 E-Rate Second Report and Order*, the Texas Carriers were not “well situated to offer very competitive pricing through the competitive bidding process” *because they were effectively boxed out by a bid structure that did not reasonably enable participation by smaller operators that already had connections to only a subset of the locations at issue.*

In short, the result stemmed from a fundamental flaw in the Commission’s E-Rate competitive bidding rules that came together to produce an inefficient result: “big buyers” only turned to “big sellers,” and the “safeguards” enacted in 2014 failed to catch this or to enable a meaningful chance at participation by smaller operators. Now, two USF supported connections

¹¹ *Id.*

¹² Texas Carriers’ Petition, p. 2.

¹³ *Id.*

will be available to the same school in some instances. The Texas Carriers' Petition provides evidence that the "safeguards" adopted in 2014 are not up to the task and should be reevaluated via a rulemaking proceeding.

B. Limited competitive bidding safeguards that drive proper coordination of the USF programs will produce the greatest community-wide impact of fund dollars by leveraging broadband networks already built and directing resources to where they are needed the most.

It is important to reiterate that the proposals contained herein are based on NTCA members' belief and experience that the E-Rate program is a vital part of the broader fabric of universal service programs. Each of the four USF programs plays a complementary role in making broadband service available to rural schools, libraries, homes, businesses, low-income consumers, and rural health care facilities that would otherwise lack access.

As noted in Section II, *supra*, RLECs have made incredible strides in deploying high-capacity, fiber-based broadband connections to the schools and libraries in their service areas. While work remains to be done in some areas to be sure, any effort by the Commission to complete that work must not overlook where progress has already been made. A redundant connection newly built and supported by the E-Rate program would waste resources that could be used by another school or library in the next county or the next state to obtain existing services at a more affordable rate or to obtain connections where none exist at all. Indeed, the worst possible outcome should be seen as a case in which one rural school has two USF-supported connections while another lacks any connectivity altogether – and the limited safeguards proposed by NTCA should help to align the two programs and address such concerns.

1. Limited safeguards should ensure that redundant connections are not supported by multiple USF programs.

As is the case in other USF programs, the Commission’s E-Rate policies should look to target the program’s limited funds to where they are needed most. E-Rate resources in RLEC service areas (and other well-served areas) should be used to solve the particular challenge that each eligible entity faces, whether that be availability or affordability – and that can be done in the context of the current competitive bidding process with only minor modifications as proposed below. Specifically, NTCA observes that where an individual school or library in question already has robust connections in place today that support broadband speeds that are reasonably likely to be used by the school in the foreseeable future (or such connections are in the process of being constructed in the area), the problem to be solved then is not how to connect the school, but how to ensure that the school can obtain a reasonable level of broadband for its mission at a reasonable price on an ongoing basis. Where existing facilities are already in place, at the very least, an application for construction of a new connection (either as an individual connection or as part of a consortium) to a school or library should therefore trigger a 30-day review to ensure that the E-Rate applicant is given the best price possible. During this review period, a provider with the facilities already in place to serve the E-Rate applicant at its requested speed (within 10 business days) can agree to match the price found in the application for construction of a new connection. If the provider fails to do so, then the E-Rate applicant can include the connection within its larger consortium bid. It may also be worth considering whether changes to the existing competitive bidding rules to address situations of partial availability (*e.g.*, near-net or lack of last-mile access) or even how “cost-effectiveness” is measured more generally, but in the first instance, even just a rule addressing the concern about overbuilding in the case of already-

connected schools and libraries should at the very least help to address concerns such as those highlighted by the Texas Carriers.

Ultimately, the goal of this framework is to stretch the impact of every USF dollar (E-Rate or High-Cost) to ensure that as many schools and libraries as possible have access to the support necessary to meet their communications service needs. As it relates to the Texas Carriers' Petition, this framework is intended to enable E-Rate resources in well-served areas to be used to solve the particular challenges that an institution faces, *rather than enabling duplicative and inefficient network builds that divert resources that could have helped connect other schools down the road or in the next county or state*. Such a result not only harms E-Rate applicants, but allowing for the funding of networks via E-Rate to the very same locations where the High-Cost program already supports networks in place also threatens to substantially erode the public's belief in the integrity of the USF.¹⁴

2. Safeguards should also ensure that consortia cannot default to single, larger vendors, so that redundant connections are not supported by multiple USF programs.

The *2014 E-Rate Modernization Order* adopted several reforms to encourage the increased use of consortium purchasing.¹⁵ NTCA appreciated the Order's directive that

¹⁴ It should also be noted that the High-Cost USF program *already contains* similar safeguards in the form of "unsubsidized competition" rules that target support only to those areas where no other provider can deliver the requisite level of service to a customer. 47 U.S.C. § 54.319. In this regard then, what NTCA is proposing is not conceptually different than the provisions that apply to the High-Cost USF program itself. Put another way, it is striking to consider that while the High-Cost USF rules would preclude model-based or auction support to a provider, for example, in a census block where a single school or library is connected by high-speed broadband from another provider (even though residential locations in that census block might not be served as well), the converse is not true – *even if the school itself is connected by High-Cost USF-supported fiber, the E-Rate program would currently enable overbuilding of the facilities supported by the High-Cost program*.

¹⁵ *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 (rel. Jul. 23, 2014) ("2014 E-Rate Modernization Order"), ¶¶ 177-181.

“consortia do not need to solicit or select a single vendor able to provide service to all members of a consortium.”¹⁶ Unfortunately, it would seem that despite this language – only an admonition and not a rule – some consortia purchasers have taken “the path of least resistance” and sought out “big sellers” which, as the Texas Carriers demonstrate, has led to redundant USF supported connections to a single institution.

As an initial matter, it is worth stating that a number of NTCA members provide service to consortia today, and a number of RLEC-owned state networks provide service over large geographic areas encompassing dozens or more schools, school districts, and libraries that have banded together to seek out cost efficiencies. In some cases, a consortium may indeed be the most efficient method by which a group of schools and/or libraries receive the broadband connectivity they need. Having said that, the Commission’s 2014 admonition has not been sufficient to prevent the scenario of which NTCA warned¹⁷ and which led to the filing of the Petition at issue here.

Going forward, NTCA urges the Commission to explore in a rulemaking proceeding how school and library consortia seeking support for self-construction might be required to invite bids from multiple vendors, including vendors that can only serve a subset of consortia members. While consortium purchasing can be an effective opportunity for a group of schools or libraries to work together to obtain access to the communications services they need in a cost-effective manner, it is critical to ensure that “big buying” does not translate into “big selling.” As NTCA noted in 2014, contracts can be put out for bid in a manner that effectively “boxes out” smaller

¹⁶ *Id.*, ¶ 179.

¹⁷ Comments of NTCA, WC Docket No. 13-184 (fil. Sep. 15, 2014), pp. 7-9.

operators and thus enabling only larger service providers to qualify to bid. The Texas Carriers appear to have experienced just such a scenario, representing a failure to leverage existing capacity (funded at least in part by the High-Cost USF program), expending limited resources that could have been put toward supporting more affordable services over existing facilities or undertaking the expensive effort of construction in other areas where facilities truly do not exist. Again, *NTCA does not seek to eliminate E-Rate applicants' use of consortia purchasing*; rather, NTCA merely seeks to ensure that the use of such option is truly “cost effective” and will enable providers of all sizes to deliver services where they can in their local communities.

IV. CONCLUSION

For the reasons as set forth above, the Commission should initiate a rulemaking to evaluate targeted amendments to its E-Rate self-construction and competitive bidding rules.

Respectfully submitted,

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