

**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
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
Connect America Fund)	WC Docket No. 10-90

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments to discuss the record compiled in response to the Petition for Rulemaking submitted May 22, 2019 in the above-captioned proceedings.² The Texas Carriers’ Petition urges the Federal Communications Commission (the “Commission”) to open a rulemaking proceeding pursuant to Section 1.401³ of its rules to consider amending the agency’s Universal Service Fund (“USF”) Schools and Libraries program (“E-Rate”) rules. Specifically, the Petition seeks more effective use of USF resources through better coordination among programs and by leveraging, where possible, high-quality broadband networks that are already available in rural America and supported by the Commission’s High-Cost program.

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.

I. THE RECORD COMPILED IN RESPONSE TO THE PETITION DEMONSTRATES THAT, AT THE VERY LEAST, A REEXAMINATION OF THE E-RATE COMPETITIVE BIDDING RULES IS NECESSARY TO ENSURE THAT RULES ADOPTED FIVE YEARS AGO ARE FUNCTIONING AS INTENDED.

The Texas Carriers’ Petition – as well as the record compiled in response to a Commission Public Notice seeking comment on the issues raised therein⁴ – supports a rulemaking proceeding to *consider* whether the E-Rate competitive bidding rules are producing unintended consequences that warrant changes. The circumstances as laid out by the Texas Carriers demonstrate that, at the very least, the Commission should be concerned that the E-Rate competitive bidding rules might not be functioning as effectively as they could to ensure that program funds are always spent in the most cost-effective manner possible. When bolstered as well as by other parties’ references to similar instances of “overbuilding,”⁵ sufficient question has been raised about the effectiveness of the current rules to justify further investigation and consideration via a rulemaking proceeding.

To be clear, initiation of a rulemaking proceeding as requested by the Texas Carriers and supported by a number of parties would not enact the proposal contained in the Petition. It is

⁴ Comments of USTelecom—The Broadband Association, RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. Jul. 1, 2019); Comments of WTA – Advocates for Rural Broadband, RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. Jul. 1, 2019); Comments of Barry County Telephone Company and MEI Telecom, RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. Jul. 1, 2019) (“Barry/MEI”); Comments of The Concerned Rural Carriers, RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. Jul. 1, 2019) (“Concerned Rural Carriers”); Comments of Eastex Telephone Cooperative, Inc. and Nortex Communications, RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. Jul. 1, 2019) (“Eastex and Nortex”); Comments of Valley Telephone Cooperative, Inc., RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. Jul. 1, 2019) (“Valley Telephone, pp. 2-4); Comments of The Oregon Telecommunications Association and The Washington Independent Telecommunications Association, RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. Jul. 1, 2019).

⁵ Barry/MEI, p. 2; Concerned Rural Carriers, pp. 2-3; Eastex and Nortex, pp. 2-3; Valley Telephone, pp. 2-4.

rather merely a request for a reexamination of rules adopted five years ago,⁶ a process that would investigate whether amendments to the rules are necessary and, if so, how such revisions should be undertaken. While the Texas Carriers (as well as NTCA in initial comments) present proposals for improvements to the E-Rate competitive bidding rules, the issue for the Commission to decide, now and in response to the Petition for Rulemaking, is simply whether the rules adopted five years ago are achieving the goal of connectivity for anchor institutions in the most efficient and cost-effective manner possible.

When viewed in this manner, the concerns generated by the Texas Carriers' Petition in certain corners seems premature, if somewhat overwrought. Specifically, while some express concern that grant of the Texas Carriers' Petition will wreak havoc upon the E-Rate competitive bidding rules, the opening of rulemaking proceeding is just a first step. NTCA and its members share the concern with respect to any disruptions that would unnecessarily upset efforts to connect schools and libraries without proper process and planning: these community-based providers both serve and patronize many of the schools and libraries that are an important part of the fabric of the rural areas in which these providers' owners and employees live and work. At the same time, NTCA believes, in light of the record generated, it is timely and useful to assess the competitive bidding rules in place over the last five years and to determine if they are achieving the most efficient outcomes possible, including the coordination of resources made available through the High-Cost and E-Rate USF programs. As NTCA noted in its comments, a simple and surgical amendment to the E-Rate competitive bidding process – a single step that

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.

promotes a “sanity check” – can do just that, but thoughtful consideration of this concept and other potential alternatives is precisely what a rulemaking would enable.

II. PROVISIONS TO TARGET E-RATE SUPPORT TO WHERE IT IS NEEDED THE MOST ARE NO DIFFERENT THAN COMPETITIVE OVERLAP PROVISIONS THAT ALREADY EXIST IN THE HIGH-COST PROGRAM.

As noted in initial comments, NTCA has long supported the E-Rate program, as it allows schools and libraries to obtain access to more affordable communications services *and* helps fill in gaps where connections are not available. In rural areas specifically, the E-Rate and High-Cost mechanisms are vital components of a suite of programs aimed at advancing and preserving universal service, and it is vital that they work in concert to target limited funds as they promote their statutory mission. 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. It is in the spirit of extending connectivity to as many rural schools and libraries as possible – by targeting support to where it is needed – that NTCA supports a reexamination of that program’s competitive bidding rules.

Indeed, it is worth noting that neither the Texas Carriers or NTCA are seeking anything not already part of the High-Cost program. In the interest of targeting limited resources to where they are most needed in lieu of “funding competition,” the High-Cost USF program has for several years operated with safeguards similar to those suggested here for the E-Rate program. More specifically, “competitive overlap” provisions in the High-Cost program target support to *only* those areas where no other provider can deliver the requisite level of service.⁷ As one example of how these existing competitive overlap rules operate in practice, model-based High-

⁷ 47 U.S.C. § 54.319.

Cost support is not available in a census block where a provider reports that broadband of a certain speed is available to even just a single location (which could include a school or library connected through E-Rate funding). Indeed, this is the case even if all other locations, residences and businesses alike, in that census block, might not be served. (The High-Cost auction program works in much the same way.) Put another way, there is already a “one-way ratchet” in place that would operate to deny High-Cost USF support to an area where another provider using E-Rate support has already connected a school in that geographical area. Even with the prospect of improved maps that might someday target support on a more granular level, it is highly unlikely that the “genie will be put back in the bottle” and that High-Cost USF support would ever be provided to any individual location that is already connected by another provider through E-Rate support or any other means.

Yet, under current rules the converse is not true – even if a school or library is connected by High-Cost USF-supported fiber, the E-Rate program would currently permit overbuilding of the facilities supported by the High-Cost program to “reconnect” that school or library. In other words, there is no corresponding “competitive overlap” rule in the E-Rate program, thus making the one resident within the High-Cost USF program a “one-way ratchet.” Although the current E-Rate competitive bidding rules attempt to address this through a cost-effectiveness analysis, the Texas Carriers’ Petition and others’ filings in this record indicate that this is not succeeding in all cases – particularly in the event of “large bidders” designing service requests that are structured on district-wide or larger bases and thus geared toward “large sellers”

Certainly, 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, a “new build” may offer the only “cost-effective”

solution – and the Commission should not back away from critical reforms adopted in 2014 that made this a viable avenue for schools and libraries. However, being a responsible steward of resources requires the Commission to attempt to stretch the impact of every USF dollar to ensure that as many schools and libraries as possible have access to the support necessary to meet their communications service needs. It would be difficult for the Commission to justify application of “targeting” provisions to one program and not the other, particularly given the commendable efforts of NTCA members to deploy fiber to deliver high-speed broadband to the schools and libraries in their high-cost rural areas.⁸ At bottom, E-Rate funds should be used to solve the specific challenge that an institution faces in terms of availability or affordability, and based on the record before it, the Commission should consider whether existing program rules meet that standard.

III. 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.

⁸ In 2018, NTCA surveyed its members and found: (1) 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; (2) 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; and (3) 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. 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](https://www.ntca.org/sites/default/files/documents/2018-12/2018%20Broadband%20Survey%20Report_FINAL.pdf)

Respectfully submitted,

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