

Congress of the United States
Washington, DC 20515

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March 11, 2022

The Honorable Jessica Rosenworcel
Chair
Federal Communications Commission
45 L Street N.E.
Washington, DC 20554

Dear Chair Rosenworcel:

We write to applaud your efforts to improve the E-Rate program by providing greater transparency and competition to support broadband access at eligible schools and libraries.¹ Certain aspects of the E-Rate Program, especially the use of competitive bidding for special construction funds, could better serve students and preserve the integrity of the Universal Service Fund (USF). As billions of dollars are being made available for broadband, it is critical that the Federal Communications Commission (FCC) takes steps to ensure its programs are being administered effectively.

The E-Rate program plays an important role in providing discounted Internet service to eligible schools, libraries, and consortia. In 2014, the Commission expanded the use of E-Rate funds for special construction projects,² which can be used to build self-provisioned broadband networks that are owned and operated by applicants (*e.g.*, a school district).³ The Commission's rules permit eligible schools or libraries to have substantial control over the selection criteria in the competitive bidding process.⁴ These procedures permit the applicant to identify, request, and select the services it desires. Due to the lack of upfront controls and self-certifications, GAO has identified these procedures as a fraud risk.⁵

¹ See, Notice of Proposed Rulemaking, "*Promoting Fair and Open Competitive Bidding in the E-Rate Program*," Federal Communications Commission, Docket No. 21-455. Available at: <https://www.fcc.gov/document/promoting-fair-and-open-competitive-bidding-e-rate-program>.

² See, Report and Order and Further Notice of Proposed Rulemaking, "*In the Matter of Modernizing the E-Rate Program for Schools and Libraries*," Federal Communications Commission, WC Docket No. 13-184." Adopted July 11, 2014. Available at: <https://www.fcc.gov/document/fcc-releases-e-rate-modernization-order>.

³ See, 2021 Eligible Services List. Available at: <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-list/>

⁴ See, 47 C.F.R. 54.503; and, USAC Form 470 User Guide. Available at: <https://www.usac.org/wp-content/uploads/e-rate/documents/e-rate-productivity-center/Filing-FCC-Form-470.pdf>

⁵ See, Government Accountability Office, "*FCC Should Take Action to Better Manage Persistent Fraud Risks in the Schools and Libraries Program*," September 2020. Page 14. Available at: <https://www.gao.gov/assets/gao-20-606.pdf>.

Over time, E-Rate funds have been used to support self-provisioned networks that have overbuilt networks of private sector providers of broadband services.⁶ In fact, some of these providers have received high-cost support from the Universal Service Fund to expand broadband access in many of the areas in which eligible schools, libraries, or consortia have requested and received special construction funds to build self-provisioned networks.⁷ The Commission has long worked to prevent duplication between existing Federal broadband subsidy programs, but duplication *within* the Universal Service Fund presents a unique challenge.

As the Commission proceeds to consider changes to the E-Rate competitive bidding rules⁸ and other related programs,⁹ we recommend the following to ensure Federal broadband programs are designed to continue our shared goals of supporting affordable broadband access for schools and libraries.

1. **Competitive Bidding Rules.** As the Commission considers ways to improve its competitive bidding rules, it should extend the 28-day RFP period to 60 days to provide time for broadband providers to review an RFP and determine if using existing facilities could lower the cost of meeting the needs of eligible schools, libraries, or consortia. In addition, the Commission should establish a challenge process for these providers to challenge an award for a self-provisioned network if their service territory substantially overlaps with existing facilities used to provide broadband service. Finally, the Commission should consider utilizing the FCC's forthcoming Broadband DATA Act maps to limit the use of an RFP for self-provisioned networks in areas that are substantially served by a broadband provider's existing facilities. These changes could preserve E-Rate funding to provide greater discounts to schools while still meeting the broadband needs of eligible schools, libraries, and consortia through other support mechanisms designed for such purpose.
2. **Expanding E-Rate Outside the Classroom.** As the Commission considers a petition to expand the definition of "classroom" to include households in which a student resides, it should consider whether E-Rate is the appropriate USF mechanism to connect students at home. The Commission has long used the high-cost support programs, including the Rural Digital Opportunity Fund, to connect unserved households, and Congress has appropriated significant funding through the

⁶ See, Petition for Rulemaking of Central Texas Telephone Cooperative, Inc. et al., RM Docket No. 11841; CC Docket No. 02-6; WC Docket No. 13-184 (Filed May 22, 2019) ("Texas Carriers' Petition) available at: <https://www.fcc.gov/ecfs/filing/10522043215849>; and Letter to Marlene Dortch, Secretary, Federal Communications Commission, from Donald Herman and Clare Andonov, Counsel to Totelcom Communications, LLC filed March 10, 2020, WC Docket Nos. 13-184, 10-90 and CC Docket No. 02-6.

⁷ *Id.*; and, "Comments of Concerned Rural Carriers," July 1, 2019. WC Docket Nos. 13-184, 10-90. Available at: <https://ecfsapi.fcc.gov/file/1070167184779/19-07-1%20Concerned%20Rural%20Carriers%20Comments%20to%20ERate%20Petition%5B1%5D.pdf>

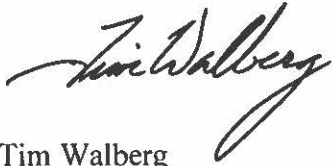
⁸ *Supra*, Note 1.

⁹ See, Eligible Services List for the Emergency Connectivity Fund. Available at: https://www.fcc.gov/sites/default/files/ecf_esl.pdf; See, "Petition for Expedited Declaratory Ruling and Waivers Allowing the Use of E-Rate Funds for Remote Learning During the COVID-19 Pandemic," Schools, Health & Libraries Broadband Coalition. January 26, 2021, WC Docket No. 13-184. Available at: <https://www.shlb.org/uploads/Policy/E-rate/SHLB%20et%20al.%20Remote%20Learnng%20Petition%201-26-21%20FINAL.pdf>, P.L. 117-58 Division F, Title I, Section 60104(b).

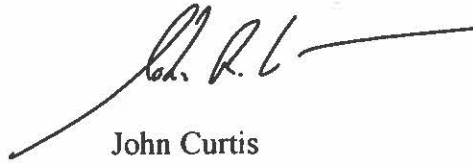
Infrastructure Investment and Jobs Act.¹⁰ For those who have access to broadband, but cannot afford it, Congress authorized the Affordable Connectivity Program for such purpose. However, expanding the E-Rate program in the manner suggested by the petition could not only jeopardize stability of the E-Rate program but also undermine existing federal broadband support programs.

Thank you for your attention to this important matter.

Sincerely,



Tim Walberg
Member of Congress



John Curtis
Member of Congress



Debbie Lesko
Member of Congress



Dan Crenshaw
Member of Congress

¹⁰ P.L. 117-58, Division F, Title I, section 60102(b)(2)