

April 22, 2026

SUBMITTED ELECTRONICALLY VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

**Re: Ex Parte Filing:
Promoting Fair and Open Competitive Bidding in the E-Rate Program, WC Docket No. 21-455
Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6**

Dear Madam Secretary:

The E-Rate Advocates (members of the Schools, Health & Libraries Broadband Coalition (SHLB) represent various organizations, and together with SHLB, are collectively referred to as the E-Rate Advocates¹) write to address their concerns with the Commission's draft *Report and Order and Order on Reconsideration* (Draft Order) that would significantly change the E-Rate program's competitive bidding structure.²

At the outset, we clarify that the E-Rate Advocates strongly oppose the adoption of any aspect of the Commission's proposed competitive bidding portal (Bidding Portal). Should the Commission wish to move forward, however, we offer the following suggestions:

- Instead of the Bidding Portal, we propose an alternate approach of a bid document repository (Repository) that addresses the Commission's stated concerns about the competitive bidding process while reducing the increased workload on applicants.
 - This approach would also better align with the Inspector General's recommendation, and would acknowledge that a Bidding Portal is not necessary considering how the program's statistics on program integrity have improved markedly in recent years.³

¹ In addition to SHLB, the other organizations forming the E-Rate Advocates are American Library Association, American Federation of School Administrators and the National Education Association, AASA, The School Superintendents Association, the State E-Rate Coordinators' Alliance, and CoSN – Consortium for School Networking.

² *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, WC Docket No. 21-455 *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order and Order on Reconsideration, Draft on Circulation, FCC-CIRC2604-05 (Apr. 9, 2026) (Draft Order).

³ "Report to Congressional Requesters, GAO-26-107444 (pub. Dec. 4, 2025, rel. Jan. 5, 2025), available at <https://www.gao.gov/products/gao-26-107444> (2025 GAO Report); Letter from Mark Stephens, Managing Director, FCC to Fara Damelin, Inspector General, FCC, re. Inspector General's Top

- A Repository would have several advantages over the proposed Bidding Portal, including: reducing questions during the Universal Service Administrative Company’s (USAC) and Program Integrity Assurance (PIA) review; ensuring document retention for stakeholders during later audits; avoiding potential conflicts with state and local procurement laws; and avoiding unnecessary denials for procedural errors.
- In contrast, the proposed Bidding Portal is overly burdensome, costly, confusing, and inconsistent with the Commission’s streamlining goals.
- Regardless of which approach the Commission ultimately chooses, system changes should not be effective until Funding Year 2029, so that the Commission, USAC, and program stakeholders can ensure implementation of the changes are successful.
 - Based on experience with other system revisions and updates, this additional implementation time is necessary for the Commission to gather stakeholder feedback on business requirements in a 60-day public notice period, conduct robust beta testing, revise the systems before they go live, and ensure the proper user training.

The E-Rate Advocates also include the following suggestions regarding the proposed streamlining rules in the Draft Order:

- The invoicing waiver standard should use the public interest standard rather than the extraordinary circumstances standard as contemplated in the Draft Order.
- The Commission should grant a waiver of the deadline in the first funding year that the Form 486 is eliminated for Consortia members to submit completed FCC Forms 479 to the Consortia lead so that the Consortia lead can proceed to certify FCC Form 471.

I. IF THE COMMISSION DECLINES TO ABANDON ITS PROPOSAL, THE BIDDING PORTAL SHOULD BE REPLACED BY A STREAMLINED BID REPOSITORY, AS RECOMMENDED BY THE INSPECTOR GENERAL’S REPORT

As an initial matter, recent program data and analysis demonstrate that the bidding portal is an overbroad, unnecessary and costly approach. For example, in 2024, the Managing Director of the FCC reported to the Office of the Inspector General that the improper payment error rate for the E-Rate program for FY 2024 dropped from 1.59% to 1.27%, falling below the statutorily defined improper payment threshold of 1.5%. As a result, the letter indicated that “the E-Rate program is no longer considered to be susceptible to a significant risk of improper payments. This reduction is a major accomplishment the FCC has worked diligently on over the course of several years to improve program controls in the E-Rate program.”⁴

Management and Performance Challenges for FY 2025 for the Federal Communications Commission (Oct. 29, 2024) (https://www.fcc.gov/sites/default/files/fy25_fcc_tmpe_mngt-response_10292024.pdf) (Letter to IG).

⁴ Letter to IG at 1.

Additionally, this past December, the U.S. Government Accountability Office (GAO) released a report identifying nine requirements and leading practices to oversee and prevent fraud, waste, and abuse in awards. It found that, of the several federal programs it reviewed, the E-Rate program was the **only one** that had documented procedures for **all nine** requirements.⁵ These excellent reports are the result of significant existing program protections to guard against waste, fraud, and abuse.⁶

Should the Commission desire to collect additional applicant and service provider information related to the competitive bidding process, however, we propose that the Commission could implement a simpler bid Repository instead of the Bidding Portal. A Repository approach would acknowledge the program's considerable improvement on waste, fraud, and abuse in recent years. The Repository would allow USAC to collect, review, and store bid responses, completed vendor evaluation and scoring criteria, and the final contract,⁷ all of which would be uploaded after the conclusion of the competitive bidding process.⁸

A bid Repository approach would reduce the significant and costly burdens to applicants and service providers posed by the portal while still meeting the Commission's goals to protect program funds. **First**, a bid Repository approach would better align with the recommendations made by the Government Accountability Office and the Commission's Inspector General's (IG) recommendation.⁹ The draft item notes that the IG recommended that USAC create an "online bid repository" and the GAO suggested that a repository would allow "USAC direct access to obtain and monitor bidding information submitted by bidders without having to request such

⁵ *2025 GAO Report*. This development, as well as the decrease in the improper payment rate, occurred after the Commission first proposed the establishment of the Bidding Portal. Yet both are largely ignored in the Draft Order.

⁶ A non-exhaustive list of current funding request review procedures includes: (1) surveys of service providers to confirm the number of bidders listed is correct; (2) extensive PIA procedures that are approved annually by the Commission and are designed to ensure that funding is approved only when applicants demonstrate their compliance with all program regulations; (3) audits that include both E-Rate recipients and service providers, pursuant to an audit plan that is approved by the Commission; (4) extensive pre-funding competitive bidding selective reviews that augment the regular pre-funding review procedures; (5) invoice reimbursement reviews to ensure disbursements are approved only for expenditures that comply with program rules; and (6) post-commitment special compliance reviews that examine whether funding was approved for equipment or services that did not comply with program rules. Each protection is designed to either prevent approvals of funding that do not comply with program rules, or to detect non-compliance at the post-commitment phase in which case approval is rescinded and disbursed funds are subject to recovery and recoupment.

⁷ The Commission should significantly reduce the voluminous list of required documentation as contemplated in the Draft Order. *See* Draft Order, para. 16, n.66.

⁸ We strongly urge the Commission not to require document upload 1) during the competitive bidding process (so that program participants can focus on the bidding process), or 2) by the FCC Form 471 application deadline (as this could delay submission and increase chances of application denials). The Commission should not deny funding requests if the required documents are not submitted by a certain deadline. Instead, we suggest USAC notify applicants that their FCC Form 471 application reviews could be delayed until the documents are submitted to the Repository.

⁹ FCC Office of Inspector General, Semiannual Report to Congress (October 1, 2016 – March 31, 2017). Page 13. https://transition.fcc.gov/oig/FCC_OIG_SAR_03312017.pdf

information.”¹⁰ It would meet the IG, GAO and Commission goals of reducing questions during USAC and PIA review and ensure document retention for stakeholders during later audits.

Second, it would avoid potential legal and procedural conflicts with State and local procurement laws, especially when there are overt inconsistencies in the Draft Order.¹¹ For example:

- The Draft Order requires that vendors be permitted to submit questions anonymously, while state and local procurement regulations may not allow for submission of anonymous questions because the questions are required to be submitted by email to a particular email address. The Bidding Portal rules appear to prohibit this practice since all questions must be submitted only in the Bidding Portal and answers must be posted only in the Bidding Portal.
- The Draft Order suggests that the Bidding Portal will supplement and not replace existing state and local bid procedures. State and local procurement rules, however, may require the submission of bids directly in the state/local portal, or may require bids be mailed, emailed or physically delivered to a particular procurement officer. Accordingly these bid procedures appear at odds with the restriction that bids must only be submitted in the proposed E-Rate Bidding Portal.
- Confidentiality or transparency of bid documentation currently is governed by state law. The Draft Order suggests that confidentiality of data will be maintained in accordance with federal privacy laws. That means state laws will no longer govern the preservation of confidentiality of these documents or allow their public release when required by state open records statutes.¹²
- The Draft Order fails to contemplate the scenario where the bid deadline for state and procurement is missed but the E-Rate deadline is met. Under state law, the bid is disqualified.

Rather than address all the issues raised by numerous state-level agencies during the NPRM phase,¹³ the Draft Order suggests that any inconsistencies can be addressed via a waiver

¹⁰ Currently, competitive bidding documents are requested by USAC during pre-funding competitive bidding reviews either in connection with the regular program integrity procedures or through its “selective review” process.

¹¹ The Draft Order states that it “rejects commenters’ views that state and local procurement requirements alone are sufficient” to protect the program. Draft Order, para. 20. But that statement ignores the fact that the Commission has additional competitive bidding rules, including the price-as-the-primary factor rule, the 28-day rule and the gift rules, that in many cases, go beyond what state and local procurement processes require. It also ignores the robust and comprehensive reviews and audits USAC already conducts to confirm compliance.

¹² Additionally, some applicants will not release confidential information to bidders unless they sign an NDA or attend a job walk in person (such as detailed campus drawings). This has been allowed with the current FCC Form 470 but is unclear about whether it will also be allowed under the proposed Bidding Portal.

¹³ Arkansas State Library: <https://www.fcc.gov/ecfs/search/search-filings/filing/1203110706421>; California K-12 High Speed Network, which is funded by the California Department of Education: <https://www.fcc.gov/ecfs/document/1207638527272/1> (Comment to Draft NPRM);

process.¹⁴ We disagree and believe that these issues are too important to leave to a later waiver process.

Third, the proposed Bidding Portal would place complex administrative burdens on applicants, service providers, and USAC personnel that a Repository approach would alleviate. As contemplated in the Draft Order, the Bidding Portal does not simply act as a document repository; it replaces – **or duplicates** – the *entire competitive bidding process* and creates rigid, complex rules around areas like communications, access, and documentation. These changes will impact applicants and service providers across the program—from smaller or more rural participants with limited resources, to larger ones managing complex procurements or multi-year contracts. Those subject to state and local procurement rules would now need to duplicate that process in the Bidding Portal. Such administrative burdens could ultimately deter applicants and service providers from participating in E-Rate, which would directly contradict the program’s statutory goals to ensure affordable broadband access to schools and libraries. This could be especially detrimental to vulnerable community members who wholly rely on their anchor institutions for broadband access to complete digital tasks.

Furthermore, the Bidding Portal as proposed generates additional questions and issues that are not addressed in the Draft Order. For example, the Commission proposes no estimate for how much the Bidding Portal will cost, and does not quantify how this expense compares to any potential benefit, although the Commission recognizes that many commenters raised this issue in the record. Such cost information is especially important here, given its potential impact on the Universal Service Fund contribution factor.

There are also various rules around the Bidding Portal’s application that are unnecessary, ambiguous, and potentially conflicting in the Draft Order. We are concerned that where the rules remain ambiguous or confusing, applicants stand a greater chance of having their funding denied should they make procedural Bidding Portal mistakes, even if such errors would have no impact on the integrity of the competitive bidding process. Should the Commission move forward with

<https://www.fcc.gov/ecfs/search/search-filings/filing/1052757847539> (Reply Comments); Illinois Office of Broadband <https://www.fcc.gov/ecfs/search/search-filings/filing/10427140615612> (Initial Comments); Iowa Department of Education: Iowa Department of Education: <https://www.fcc.gov/ecfs/search/search-filings/filing/1203110706421> (Initial Comments); Kentucky Department of Education: <https://www.fcc.gov/ecfs/search/search-filings/filing/10427076758626> (Initial Comments); Nebraska Department of Administrative Services, Office of CIO: <https://www.fcc.gov/ecfs/search/search-filings/filing/10427261225002> (Initial Comments); Administrator of the Oklahoma Universal Service Fund: <https://www.fcc.gov/ecfs/search/search-filings/filing/10426569204163> (Initial Comments); PEPPM/CSIU (Pennsylvania Master Contract): <https://www.fcc.gov/ecfs/search/search-filings/filing/1042511866385>; South Dakota Department of Education: <https://www.fcc.gov/ecfs/search/search-filings/filing/1042728494322> (Initial Comments); Utah Education and Telehealth Network: <https://www.fcc.gov/ecfs/search/search-filings/filing/1203110706421> (Comment to Draft NPRM); Wisconsin Department of Public Instruction: <https://www.fcc.gov/ecfs/search/search-filings/filing/10427215398919> (Initial Comments).

¹⁴ Draft Order, para. 23.

the proposed Bidding Portal as contemplated in the Draft Order, we urge it to review our list of recommendations in **Exhibit A**, and our list of questions for clarification in **Exhibit B**.

Finally, the Bidding Portal directly contradicts the Commission’s many recent efforts to streamline program rules and regulations, including those contemplated via the *Delete, Delete, Delete* notice;¹⁵ the Public Notice seeking comments on how administration of the Universal Service Fund (USF) can be reformed to make it more efficient;¹⁶ and even the various streamlining actions the Commission plans to take in the Draft Order.

II. IF THE COMMISSION ADOPTS THE PROPOSED BIDDING PORTAL OR BID REPOSITORY, IT SHOULD DELAY THE EFFECTIVE DATE AND GATHER MEANINGFUL FEEDBACK FROM STAKEHOLDERS BEFORE AND DURING THE DEVELOPMENT PROCESS

Whether the Commission adopts the Bidding Portal as proposed or a simpler bid Repository, the E-Rate Advocates urge the Commission to conduct meaningful stakeholder engagement practices to ensure the likelihood of a streamlined and successful implementation. Specifically, we ask:

- Once the business requirements for the portal are drafted, they should be released to the public for a minimum of 60 days for comment.
- Also prior to use of the portal/repository, the Commission should also require USAC to conduct beta testing with stakeholders for a minimum of 60 days.
- After the beta testing, USAC will need time to address portal framework concerns and questions, and to correct errors and ensure functionality as intended.
- After portal/repository implementation, the Commission should establish a clear process for stakeholders and USAC to communicate with each other and to work with FCC staff to clarify and remediate issues in a timely way. The Commission should also publicly release guidance to USAC when stakeholders have questions, similar to the FAQ that was established for the ECF program.

Because the proposed steps above are essential to a successful implementation, the Commission should postpone the portal/repository effective date to Funding Year 2029, making it ready by July 1, 2028. Additionally, the Commission should allow a one-year grace period in the first year of implementation so applicants are not denied funding for procedural errors. The Commission has previously granted blanket waivers when new rules are adopted to account for transitional issues.

We believe that the suggestions above are necessary, especially given USAC’s past development and implementation of new online systems, without stakeholder input, has been turbulent. In 2016, the Commission directed USAC to overhaul the online filing system, and the E-Rate Productivity Center (“EPC”) was implemented without any advance input from

¹⁵ *Delete, Delete, Delete*, GN Docket No. 25-133, Public Notice (rel. Mar. 12, 2025).

¹⁶ *Wireline Competition Bureau and Office of the Managing Director Seek Comment on Reforms of USAC Processes and Oversight*, CC Docket Nos. 96-45, 97-21, DA 26-367 (rel. Apr. 15, 2026).

stakeholders. To this day, applicants have to work through a two-stage application process because USAC did not work with stakeholders to plan the new system.¹⁷ This Bidding Portal is at least as complex, if not more so, than the EPC filing system, considering the volume of documents it must be capable of managing, and the ability to partition documents into public and non-public sections of the portal. The lessons learned from EPC need to be applied to the design and implementation of the Bidding Portal, and stakeholder feedback and involvement is vital before the system is implemented.

Similarly, USAC has been challenged to implement online systems in the Rural Health Care program (RHC). For example, the Commission recently directed USAC to create a new invoicing system only for the Telecom program. That system was not available for service providers to invoice until six months into the funding year, and afterwards USAC was not able to reimburse service providers for another few months. Also, prior to Funding Year 2025, the Commission delayed the RHC application window in order to allow USAC to address issues that arose as system changes were being made.¹⁸

Unfortunately, the Bidding Portal design is a new information collection subject to a narrow review and comment standard under the Paperwork Reduction Act that does not allow stakeholders to offer substantive input. Experience has shown that by time the information collection is submitted to OMB for review and approval, the design has already been finalized and it is extremely difficult to effectuate any changes.¹⁹ Given the reality that system design

¹⁷ USAC's April 15, 2016 newsbrief, which extended the form 471 filing deadlines due to the system challenges, summarized the situation. USAC's E-Rate Vice-President wrote, "*We recognize the delays applicants have encountered due to unexpected complications with the implementation of USAC's new IT system.*" He further explained that an extension of the filing window would be granted in two phases. The second phase was for consortia and library applications, because "*consortia and libraries are unable to complete their applications until their member/related school district(s) finalize their discount rates in the system.*" (emphasis added). The design of the system had a fundamental flaw that could have been overcome far more efficiently and successfully had stakeholders had an opportunity for comment about the design parameters. USAC devised the system without sufficiently conferring with the people who would have to use the system – applicants and service providers.

<https://www.usac.org/s/newsbriefs/2016/News-Brief-2016-04-15.pdf>

¹⁸ *Rural Health Care Support Mechanism*, WC Docket No. 02-6, and *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, DA 25-224 (WCB 2025) ("The drawn out application process resulting from delayed access to the FCC Form 460 and the migration of that form to the new RHC Connect application platform provide the necessary special circumstances supporting waiver of section 54.621(a)(1).").

¹⁹ Technically commenting parties are permitted to offer changes to the information collection, but any such requested changes to E-Rate forms/information collections have been rejected in the past. Most recently SECA filed PRA comments with OMB concerning the FCC Form 500, requesting a form revision that was rejected by the FCC because they concluded that the requested change is a "system-related change rather than a change in the information being collected." See Extension 3060-0853 WiFi Hotspots SS Comment Language_Final Version November 2025.docx, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202511-3060-025, ICR Reference No: 202511-3060-025. Similarly, a public comment submitted by an E-Rate stakeholder filed PRA comments requesting changes to the EPC contract module as part of the review and renewal of FCC Form 471 were rejected because the FCC again found that the requested revisions were system-related change rather than

changes and requested revisions are outside the purview of the comment process under the Paperwork Reduction Act, it is all the more imperative that stakeholders have the opportunity to comment on the system design *before* the information collection is submitted to OMB for approval.

III. THE COMMISSION SHOULD USE THE PUBLIC INTEREST STANDARD RATHER THAN THE EXTRAORDINARY CIRCUMSTANCES STANDARD FOR INVOICING

The E-Rate Advocates support the Commission’s efforts in the Draft Order to streamline and simplify the E-Rate application process for applicants and service providers, including allowing a 15-day grace period for invoicing. We do urge the Commission, however, to change the waiver standard for late-filed invoices so that petitioners do not have to demonstrate “extraordinary circumstances” in order to receive relief for minor technical invoicing errors. We instead ask the Commission to direct the Bureau to use the public interest standard that applies to waivers of all other E-Rate program rules.²⁰ The Commission successfully relies on the general waiver standard in most other contexts, including in addressing requests for waiver of other E-Rate rules, and could and should also apply it to the invoice deadline rules.

As discussed above, in the *E-Rate Modernization Order* the Commission directed the Bureau to grant waivers of E-Rate invoice deadlines only under “extraordinary circumstances.”²¹ The stated purpose of the standard was to provide “certainty” to applicants, allow the Commission to identify unused funds for carry-forward to other funding years, ensure the efficient operation of the program, and to incentivize applicants to timely file their invoices. This higher standard – that does not apply to any other E-Rate rule – is not necessary to achieve those goals and instead has resulted in the denial of significant funding, which especially harms applicants and small businesses.²²

a change in the information being collected. 3060-0806 Extension SS (Forms 470 and 471) final version_9.2024.docx, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202408-3060-010, ICR Reference No: 202408-3060-010. Both of these examples pointedly illustrate that by time the information collection is submitted to OMB, any suggested changes are considered “system related changes” and not changes to the information collection and the FCC has no obligation to consider the merits of these requested revisions. It is for these reasons why our requests for stakeholder involvement in the design and system architecture are vitally important to be incorporated into the final Report and Order.

²⁰ Under the Commission’s waiver standard, a rule may be waived when the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*), taking into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. A waiver may be granted if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²¹ *E-rate Modernization Order*, 29 FCC Rcd at 8966, ¶ 240.

²² The Commission has addressed more than 1,400 appeals of invoicing issues since the rule adoption in 2015. Likely many more appeals of funding denials have been submitted but not yet addressed.

Applicants are already incentivized to submit invoices on time. Being late will require a waiver from the Commission – a process that entails time, effort and the possibility the waiver will not be granted. That should be penalty enough, without a complete loss of funding. In addition, the program is not harmed if the Commission allows these waiver requests to be more easily granted by the Bureau. The Commission can still identify funding for carry-forward, and collect any necessary funds in later funding years.²³ Program efficiency will not be harmed, as the program participants now submit appeals for myriad denials, some of which are not decided by the Commission until later funding years, and those delays do not harm program efficiency.

The Commission generally and correctly recognizes that errors can and do occur, and that program participants should not be unduly penalized for such procedural mistakes.²⁴ Waivers for these types of errors routinely are granted in all stages of the E-Rate process with the exception of the invoicing deadline. There is little to be gained by invoking strict adherence at this point in the process after participants have successfully completed a competitive bidding procurement, service provider selection, and installation and delivery of services. When, as in this case, all of these steps have been followed consistent with E-Rate requirements, adoption of a more rigorous waiver standard at the invoicing stage is unnecessarily punitive.

IV. THE COMMISSION SHOULD GRANT A WAIVER IN THE FIRST FUNDING YEAR FOR CONSORTIA APPLICANTS TO FILE FCC FORM 479.

With the elimination of the Form 486, which the E-Rate Advocates fully support, the Commission states that consortia applicants will need to collect the completed annual FCC Forms 479 from consortia members prior to the Billed Entity certifying a consortium's CIPA compliance on the FCC Form 471 application.²⁵ While the E-Rate Advocates understand the need to adjust the timing of the submission of FCC Forms 479 to the Consortium Billed Entity, this is a considerable change in the workflow of the Consortium Billed Entity. This may be especially challenging for those Consortia leads that will be conducting new competitive procurements during the first year that this change takes effect. Accordingly, to ensure there is sufficient time for Consortia leads to revise their workflows and collect the completed FCC Forms 479 from their members, the E-Rate Advocates request the Commission to provide an option, in the first year that the new rule goes into effect, for Consortia leads to certify either that they have already collected the FCC Forms 479 from all their members as of the certification date of their FCC Form 471 application, or alternatively certify that they will collect a completed FCC Form 479 from all consortium members within 120 days of service start or funding commitment, whichever is later. This approach will ensure the deadline is in alignment with the

²³ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, FCC 03-101, para. 62 (2003).

²⁴ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*); see also *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools, et al.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (Wireline Comp. Bur. 2010).

²⁵ Draft Order, para 56.

deadline that Consortia applicants currently have, and enable them to have sufficient time to comply with the new rule.

V. CONCLUSION

In conclusion, the E-Rate Advocates urge the Commission to reconsider the adoption and implementation of the proposed Bidding Portal.

Should the Commission decide to move forward with a change to the current E-Rate system, we suggest that it could focus its efforts on establishing a simpler, more streamlined bid Repository and not try to oversee in real time all aspects of the bidding process after receipt of bids.

We thank the Commission for taking the time to consider these requests. Please do not hesitate to contact me if you have any questions.

Respectfully,

/s/ Kristen Corra

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cc via email: Danielle Thumann
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EXHIBIT A

The following are recommendations raised by program stakeholders concerning the proposed Bidding Portal and those sections concerning the FCC's efforts to streamline the program as contemplated in the Draft Order.

Bidding Portal

Should the Commission proceed with implementing the proposed Bidding Portal as contemplated in the Draft Order, we recommend that it consider incorporating these recommendations into the final Report and Order.

- 1. Prior (pre-bid) actions/conversations/correspondence and post bid actions/conversations/correspondence should not be conducted via the Bidding Portal.** The Draft Order requires participants to use the Bidding Portal for document upload during the competitive bidding process, including any correspondence with service providers **prior to** and during the competitive bidding, evaluation, **and award phase of the process** that occurred outside of the bidding Portal.²⁶ However, pre-bid conversations and actions taken after the competitive bidding process is closed are not typically captured as part of the “competitive bidding” process. Therefore, we think it is important to both applicants and service providers that the Commission clarify that the requirement to upload any documents to the Bidding Portal starts when the FCC Form 470 is filed and the real time uploading requirement ends once the competitive bidding process is closed (the applicant prescribed deadline or the commencement of bid evaluation). This means that any bid-related actions, conversations, and correspondence that occur after the competitive bidding process is closed can be conducted outside of the Bidding Portal. This would cover, for example, situations where applicants hold interviews with bidders or ask for product demonstrations after bids are submitted, but before the final bid evaluation occurs; situations where the applicant opts to issue a Best and Final Offer or engage in a multi-stage bid process.
- 2. The Commission should reduce the amount of upload Requirements.** The Draft Order includes a voluminous list of the types of documents and communications participants must upload to the Bidding Portal.²⁷ We think this list is unnecessarily detailed and suggest instead that participants only need to upload bid responses, the completed bid evaluation, and any resulting final contract.
- 3. The Commission should reconsider the requirement for applicants to upload all supporting competitive bidding documentation for previously bid multi-year contracts that already are associated with approved prior year funding requests.** Mandating this upload is a duplication of work already completed. For large procurements in particular (statewide or large consortia, especially those that used a

²⁶ Draft Order, para. 16, n.66 (emphasis added).

²⁷ *Id.*

state's bidding portal), this would be a significant administrative burden and could needlessly delay the funding approval process.

4. **Mini-bids should not have to be conducted inside the Bidding Portal.** Applicants utilizing an E-Rate qualified multi-award master contract are not required to post a FCC Form 470.²⁸ This is because a FCC Form 470 was posted when the master contract was bid in compliance with the E-Rate competitive bidding process. Further, only the vendors that were awarded a contract under a multi-award master contract are eligible to respond to a mini-bid request and therefore other vendors are not qualified to submit a bid. The Commission should permit applicants to upload mini-bid documentation when they upload their signed contracts.
5. **The Commission should clarify additional areas of inconsistency regarding how the Bidding Portal will function alongside state and local bidding requirements.** As stated previously above, we are concerned about overt inconsistencies in the Draft Order regarding how the Bidding Portal will function alongside state and local bidding procedures. Should the Commission adopt the Bidding Portal proposal as contemplated in the Draft Order, it should consider and address the following concerns:
 - The Draft Order requires that vendors be permitted to submit questions anonymously, while state and local procurement regulations may not allow for submission of anonymous questions because the questions are required to be submitted by email to a particular email address. The Bidding Portal rules appear to prohibit this practice since all questions must be submitted only in the Bidding Portal and answers must be posted only in the Bidding Portal.
 - The Draft Order suggests that the Bidding Portal will supplement and not replace existing state and local bid procedures. State and local procurement rules, however, may require the submission of bids directly in the state/local portal, or may require bids be mailed, emailed or physically delivered to a particular procurement officer. Accordingly these bid procedures appear at odds with the restriction that bids must only be submitted in the proposed E-Rate Bidding Portal.
 - Confidentiality or transparency of bid documentation currently is governed by state law. The Draft Order suggests that confidentiality of data will be maintained in accordance with federal privacy laws. That means state laws will no longer govern the preservation of confidentiality of these documents or allow their public release when required by state open records statutes.²⁹
 - The Draft Order fails to contemplate the scenario where the bid deadline for state and procurement is missed but the E-Rate deadline is met. Under state law, the bid is disqualified.

²⁸ <https://www.usac.org/e-rate/applicant-process/selecting-service-providers/state-master-contracts/>.

²⁹ Additionally, some applicants will not release confidential information to bidders unless they sign an NDA or attend a job walk in person (such as detailed campus drawings). This has been allowed with the current FCC Form 470 but is unclear about whether it will also be allowed under the proposed Bidding Portal.

6. **The Commission should not limit the number of individuals that the applicant (or service provider) allows access to the Bidding Portal.** Restricting access to the Bidding Portal to three individuals as contemplated in the Draft Order³⁰ is a change from the current E-Rate program process. It creates unnecessary potential for processing delays, missed deadlines, or additional complexities, especially during periods of employee turnover. Anyone that the applicant or service provider has granted full rights should be able to access and download bidding documents. We agree there must be a primary contact, which is the Account Administrator, but granting Bidding Portal access to additional individuals should be an applicant decision.
7. **USAC should perform competitive bidding reviews in the first year of an awarded contract.** This will ensure that any competitive bidding issues related to the proposed Bidding Portal process are detected when the contract is first cited in support of a funding request. This will ensure program compliance and diminish any potential harm to applicants subject to funding clawback which occurs when a bidding issue is identified in later years of a multi-year contract.
8. **Documents uploaded to the Bidding Portal should establish compliance with the 10-year document retention requirement.** The Draft Order suggests that the Bidding Portal is beneficial to applicants because it will assist in ensuring compliance with the recordkeeping requirements.³¹ However, the Draft Order also states that applicants still have an independent document retention obligation even for documents uploaded to the portal.³² If the Commission truly intends for the Bidding Portal to assist applicants with recordkeeping compliance, the additional independent document obligation is an unnecessary burden that does not further this goal. We ask the Commission to confirm that documents uploaded to the Bidding Portal do not also have to be retained locally by the applicant for 10 years past the last day of service.
9. **The Commission should clarify requirements concerning applicant bidding portals with the proposed E-Rate Bidding Portal.** When applicants utilize their own bidding portals for their E-Rate bids, bidders must comply with all the state/local portal bidding requirements, in addition to and not in lieu of the national E-Rate Bidding Portal. Further, the Draft Order should clarify that the submission of bids according to state and local bid requirements outside the national E-Rate Bidding Portal does not violate the Commission's rules so long as the bids are also uploaded to the national E-Rate Bidding Portal.
10. **Multiple copies of the same SPAM bid need only be disqualified once in the bid evaluation.**
11. **When a FCC Form 470 includes both E-Rate eligible and ineligible consortium members, the E-Rate Bidding Portal requirements govern only the E-Rate eligible members.**

³⁰ Draft Order, para. 35, n.147.

³¹ Draft Order, para 32.

³² *Id.* at n.139.

- 12. When a service provider submits a question in the Bidding Portal, an email alert should be sent to the FCC Form 470 contact(s) and the applicant's Account Administrator.** Without this notification, questions could go unnoticed for a lengthy amount of time.
- 13. The Bidding Portal should have the functionality for vendors "follow" a 470 for updates (for example, if it has been changed or updated in any respect).**

Transition of Services

- 1. The Commission should clarify that any requirements to include additional information on application forms will not be effective until Funding Year 2027, at the earliest.**
- 2. The Commission should remove the conditions for the grant of a waiver if funding has been denied during a transition to a different service provider or to a different bandwidth.** Applicants did not have notice that they should have provided this information during the application process and whether the delay in the implementation was outside of the service provider's control is not within the applicant's control and the applicant should not be penalized for any delay in the provision of services.

EXHIBIT B

The following are questions raised by program stakeholders concerning the proposed Bidding Portal as contemplated in the Draft Order that the Commission should clarify.

1. **Notice and Summary of Conferences and Meetings** - The Draft Order requires applicants to post a notice and summary of service provider conferences or other meetings they conduct related to their bid.³³
 - a. What information needs to be in the summary (besides a list of attendees)?
 - b. Are service providers able to correspond with applicants about these meetings and does the applicant need to respond?
 - c. Must any such correspondence between the parties related to such conferences or other meetings be done via the Bidding Portal?
 - d. If such conferences or meetings occur over the span of a week (rather than for one day), does the applicant need to file the summary within two business days of a meeting that occurs within that timeframe or when the period of time for conferences has elapsed? If the latter, would an applicant file individual summaries for each meeting that occurred during that time period, or can it combine those meetings into one summary?
 - e. The Draft Order states that applicants can continue to hold conferences or other meetings that are **generally open to the public**. Can the Commission clarify that applicants are not *required* to make conferences or other meetings open to the public?

2. **Communications outside of the portal but during the competitive bidding process** - While we acknowledge that the Draft Order contemplates a prohibition on communications between service providers, applicants, and any representative thereof outside the bidding portal,³⁴ we ask the Commission to clarify the process should communications inadvertently happen outside of the portal.
 - a. Is there anything that would be considered a “de minimus” communication that would not need to be uploaded to the portal?
 - b. We ask the Commission to clarify that when an applicant receives any correspondence or bids outside the Bidding Portal the applicant is not responsible for uploading this information to the portal.
 - c. We ask the Commission to clarify that applicants are under no obligation to notify service providers that all such correspondence must be submitted via the Bidding Portal.
 - d. If the service provider uploads something different than what was mentioned outside of the portal, we ask the FCC to clarify that only documents uploaded to the portal can be part of any bid review or evaluation process.
 - e. We ask the FCC to confirm that any correspondence, bids or other documents received outside of the portal do not have to be retained by the applicant.

³³ Draft Order, para. 25

³⁴ *Id.*

3. **Applicants that do not receive any bids** - If an applicant does not receive a bid response after posting its Form 470, can the Commission clarify that the current rules allowing applicants to contact providers will still apply after the portal is initiated. Does the applicant need to upload any and all correspondence regarding what providers they have contacted?
4. **Confidentiality** - Can the Commission clarify that service providers who submit questions in the Bidding Portal can do so without having to include any identifying information from their company? This also applies to the Commission's rule that an applicant must post a meeting summary to the Bidding Portal that includes a list of attendees. Past guidance has suggested that bidders shouldn't know who they are competing against. If there is identifying information in questions and meeting summaries submitted to the Bidding Portal, service providers will know who else is potentially bidding.
5. **Security** - For security reasons, some applicants require potential vendors to email them directly for floor plans or other building/campus layout documents. How will the Bidding Portal handle this?
6. **Bid Disqualification** - If a vendor does not submit bids to both an applicant-required portals and the E-Rate Bidding Portal, can the Commission clarify that the applicant can disqualify that vendor's bid?
7. **Competitive bidding exemptions** - Can the Commission clarify if the Bidding Portal requirements extend in any way to applicants who utilize competitive bidding exemptions (such as a CABIO or Tribal Libraries exemption)? Do applicants need to upload exemption documentation into the portal (such as correspondence the applicant sends to a service provider, asking questions about whether it meets the CABIO criteria)?
8. **Data Analytics** - The Draft Order directs USAC to incorporate data analytics and other tools to select specific FCC Form 471 applications for additional review and to detect potential competitive bidding violations during pre-commitment reviews.³⁵ What type of data analytics and tools would USAC use to select applications for additional review? What information would USAC look for during this process?
9. **Bid Response Template** - The Draft Order states that the Bureau will take comments on a service provider bid response template.³⁶ When will this comment period happen?
10. **Bid Evaluation Process** - Does a single individual looking at the bid begin the evaluation process? Will service providers have access to the evaluation materials and final contract uploads?
11. **State and Local Preemption Waivers** - The Draft Order states that to the extent that there is a true conflict between the competitive bidding portal and state or local laws,

³⁵ Draft Order, para. 34.

³⁶ Draft Order, para. 37.

parties may request a waiver of the Commission's rules.³⁷ Which party should request such a waiver?

- 12. Audit Log** - The Draft Order states that the Bureau and USAC will develop an audit log that would show a date and time for when a bid is received, opened, and downloaded, and by whom.³⁸ Can the Commission clarify how the audit log process will work? Will applicants and service providers who bid both have visibility to the audit log?
- 13. Access to the Portal** - The Draft Order restricts portal access to the applicant's Account Administrator and up to two other authorized users (including consultants).³⁹ Do these access restrictions only apply to applicants, or do they also apply to service providers? What access will state E-Rate coordinators have?
- 14. Non E-Rate Eligible Bids** - Would service providers who are only bidding on non E-Rate eligible components need to respond via the Bidding Portal (and comply with other Bidding Portal communications and documentation requirements)? Additionally, an applicant may seek a bid for components that are otherwise E-Rate eligible, but they cannot be included in the bid because the applicant is over its E-Rate budget. Are these types of "ineligible" components subject to Bidding Portal communication and documentation requirements?
- 15. FCC Form 470** - Will the FCC Form 470 be relocated to the Bidding Portal? Will the Guiding Statements format of the FCC Form 470 remain, or will the FCC Form 470 be updated to allow applicants to select from a list of service requests?

³⁷ Draft Order, para. 23.

³⁸ Draft Order, para. 27.

³⁹ Draft Order, para. 35.