

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS, THE NATIONAL ASSOCIATION OF COUNTIES, AND
THE NEW AMERICA FOUNDATION'S OPEN TECHNOLOGY INITIATIVE**

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I. INTRODUCTION

The National Association of Telecommunications Officers and Advisors (“NATOA”), the National Association of Counties (“NACo”), and the New America Foundation’s Open Technology Initiative (“NAF”) (collectively “Commenters”) respectfully submit these comments to the Federal Communications Commission (“Commission”) in response to the Commission’s Notice of Proposed Rulemaking, FCC 10-83, released May 20, 2010 (the “Notice”). The Notice proposes changes to the E-rate Program that would be implemented for Funding Year 2011 as part of comprehensive Universal Service Fund (“USF”) reform recommended in the National Broadband Plan (“the NBP”) that was presented to Congress in March 2010.

In general, Commenters support plans to reform the E-rate program to give priority funding to broadband. We also support plans to increase the \$2.25 billion cap, although we believe it should be raised to the maximum sustainable level and not simply adjusted annually for inflation. In addition, although the notice recognizes the importance of local anchor

institution networks, we believe the Commission should go further and explicitly make those networks (that serve schools and libraries) eligible to receive E-rate funding.

II. THE COMMISSION SHOULD GIVE BROADBAND TOP PRIORITY FOR E-RATE FUNDS

In the Notice, the Commission seeks comments on “reallocate[ing] funding so that finite amounts of E-rate dollars can be better targeted to satisfy the educational needs of students and library patrons.”¹ The Notice asks “should [the Commission] give a higher priority to advanced telecommunications and broadband services, rather than voice telecommunications services?”² Commenters strongly believe that the Commission should give higher priority to broadband services. It is clear that demand for broadband service is growing among all sectors of society, while demand for traditional telecommunications services is declining. The Commission should acknowledge this shift by declaring Internet access to be of higher priority than telecommunications services, and directing a larger share of E-Rate funding to broadband services.

The priority system could work in a fashion similar to the current one, with three levels instead of two. Alternatively, instead of fully funding all requests at one priority level before moving down to the next level, a minimum amount could be reserved for the new priority 3, to ensure some funding remains available for traditional telecommunications services. Either of these revised priority systems would be effective in prioritizing broadband for E-rate funding. There are likely other priority systems that could also have a similar effect. Whatever system is chosen, it is critical that broadband services receive top priority under a revised E-rate program.

¹ Notice of Proposed Rulemaking, *In the Matter of Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, FCC 10-83, CC Docket No. 02-6, GN Docket No. 09-51, released May 20, 2010 at ¶ 58 (hereinafter “Notice”).

² *Id.* at ¶ 59.

The governing statute would permit the reprioritization of broadband because Congress expressly acknowledged that universal service is an “evolving level of telecommunications services,” and directed the Commission to take into account not just advances in telecommunications services, but in information technologies and services as well. Furthermore, 47 U.S.C. § 254(c)(3) provides that the definition of universal service is not limited to telecommunications services, because the Commission may designate “additional services” to be eligible, for the benefit of schools and libraries. Indeed, Section 254(c)(3) is the statutory basis for including Internet access in the program, and the statute does not expressly state that telecommunications services must receive a greater share, or any particular share, of available funding. We believe that the Commission has been given the flexibility under the Act to reprioritize broadband to receive primary funding under the E-rate program and believe that such reprioritization is necessary for the future success of the E-rate program and the National Broadband Plan.

III. THE COMMISSION SHOULD MAKE ANCHOR INSTITUTION NETWORKS EXPLICITLY ELIGIBLE FOR E-RATE FUNDS.

We propose to make anchor institution networks that serve schools and libraries eligible for funding under E-rate. Although the Notice does not explicitly propose such a change, making anchor institution networks eligible for funding is suggested by the intent of the Notice.

In fact, the Notice states, at the very beginning, that:

“Access to broadband at key anchor institutions, including schools and libraries, is a critical component of enabling everyone in this country to develop the digital skills they need to prosper in the 21st century, as important functions of everyday life – including applying for jobs, interacting with federal, state and local government agencies, and searching for health-related information —increasingly migrate online. Broadband is also an important tool to help educators, parents and students meet challenges in education. The long-term success of our workforce and our country depend upon improving learning for both K-12 students and adults. With broadband, students and teachers can expand instruction beyond the

confines of the physical classroom and the traditional school day. Broadband can provide more customized learning opportunities, enabling students and adults to access high-quality, low-cost and personally relevant educational materials. Broadband can also improve the flow of educational information, allowing teachers, parents and organizations to make better decisions tied to each student's needs and abilities. Simply put, broadband can enable new ways of teaching and learning, as well as new ways for individuals to interact with government institutions.”³

The Notice also quotes the NBP which recognized that “state, regional, and local networks,” which include anchor institution networks, can often be “the most cost-efficient solution for anchor institutions to meet the connectivity needs.”⁴

Unfortunately, the Notice stops short of proposing making anchor institution networks that serve schools and libraries eligible for E-rate funding. The Notice only seeks comments on “permitting recipients to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers, such as municipalities and other community or anchor institutions, to allow schools and libraries more flexibility to select the most cost-effective broadband solutions.”⁵

Although Commenters strongly believe that E-rate funding should be available for providers who lease fiber (including dark fiber) from municipalities or anchor institution networks, we believe that this step alone is insufficient to achieve the Commission's goal of maximizing broadband availability at community anchor institutions such as schools and libraries. Rather, in order to ensure the maximization of broadband at schools and libraries, the anchor institution networks that serve many of those facilities must, themselves, be eligible to receive E-rate funds.

³ Notice at ¶ 2.

⁴ *Id.* at ¶ 43 (quoting National Broadband Plan at 153, Recommendation 8.20)

⁵ *Id.* at ¶ 52. Although we believe that the Commission should go further in its proposal, we do support the inclusion of dark fiber for funding. *See infra* Part VI.

The Commission's stated goal, not only with the planned changes to the E-rate program, but with the NBP in general, has been increasing broadband availability, and doing so in a way that will bridge the digital divide. The Notice correctly acknowledges that increasing broadband availability at schools and libraries will go to great lengths to make high-bandwidth broadband more ubiquitous – especially increasing its availability to lower income individuals, children, and the elderly (all target populations for increased broadband adoption). We believe that the most effective way of reaching this goal is to promote the utilization of *all* sources of broadband deployment, especially entities that will deploy broadband to community anchor institutions such as schools and libraries. Making E-rate funding available for the leasing of bandwidth on anchor institution networks by telecommunications carriers is one way to reach this goal – but, by itself, is not the most effective way.

Instead, the Commission should amend the E-rate program to allow *any* entity that will provide broadband to anchor institutions such as schools and libraries to receive E-rate funds. If a state, regional, local, or tribal entity has a network that provides broadband to schools and libraries, they should be able to obtain funding under the E-rate program. This is the most logical way to achieve the Commission's goal of using E-rate to provide ubiquitous broadband at anchor institutions.

To make these anchor institution networks eligible, the Commission could work under the current statutory framework. State communications networks are allowed to provide Internet access and internal connections under the authority of 47 U.S.C. § 254(h)(2)(A) and, under the *Fourth Order on Reconsideration*, the Commission found that state networks are eligible to participate in the same fashion as any other non-telecommunications carrier.⁶ Additionally, there

⁶ See *Federal-State Joint Board on Universal Service*, Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd. 5318, 5428-5430 (1997).

is no difference between the role of a local anchor institution network and a state network, for purposes of this analysis.

The current statutory language could be squared with making local anchor institution networks eligible. The Commission could create an exception for anchor institution networks even in the face of the language of 47 U.S.C. § 254(h)(1)(B), because that statute merely states that “all telecommunications carriers serving a geographic area shall . . . provide . . . services.” Nowhere does the statute say that non-carriers cannot receive funding for providing telecommunications services, or for providing functionalities equivalent to telecommunications services.⁷

Furthermore, the intent behind 47 U.S.C. § 254(h)(2)(A) is to enhance access to information services and, reading the statutory language in this light, the current exclusion of local anchor institution networks is not required by law. Instead, the statutory requirements are satisfied so long as the funded entity provides access to the Internet, or its facility can be used by a school or library to obtain access to an information service. Under the statutory language, the anchor institution network operator need not be providing a “service” for the statutory purpose to be met and if a local government provides broadband capacity that is used by a school or library, the E-Rate should apply, just as it should if the anchor institution network provides transport service on behalf of a school or library.”⁸

Because this proposal is consistent with the text of the statute, and provides schools and libraries with flexibility in how to receive broadband funded by the E-rate program, it is beneficial to the Commission’s goals to adopt our proposal. Therefore, the Commission should make local anchor institution networks eligible for E-rate funding.

⁷ See 47 U.S.C. § 254.

⁸ See 47 U.S.C. § 254(h)(2)(A).

IV. THE COMMISSION SHOULD RAISE THE FUNDING CAP BEYOND SIMPLY ADJUSTING FOR INFLATION.

In the Notice, the Commission proposes raising the E-rate annual funding cap, which has remained at \$2.25 billion since 2000, so that it will be indexed on an annual basis for inflation.⁹ The Notice estimates that, even though inflation is relatively flat right now, this would increase the cap to approximately \$2.55 billion in the next five years.¹⁰ Although we believe this is a step in the right direction, we urge the Commission to raise the cap outright. In fact, we believe that the Commission should raise the cap to the maximum sustainable level under the current funding regime. Because the cap is not statutory, the Commission is free to raise the cap to the maximum level that fits into overall budget. We understand that such changes are tied to the funding mechanism for USF and that changes to that mechanism would likely be needed. However, we believe that increased funding – to a minimum of a \$3.0 billion cap – is necessary to achieve the broadband deployment goals the Commission seeks to achieve through the modification of the E-rate program. An increased cap (of a minimum of \$3.0 billion in FY 2011) should still be indexed to inflation. Simply indexing the *current* cap to inflation, while a good start and better than a static cap, would miss a unique opportunity to truly transform the E-rate program to make high-bandwidth broadband ubiquitous at schools and libraries around the country.

V. THE COMMISSION SHOULD ALLOW E-RATE FUNDS TO BE USED TO PURCHASE OR LEASE DARK FIBER.

In the NBP, the Commission recommended that schools and libraries be able to purchase or lease dark fiber.¹¹ In the Notice, the Commission seeks to follow through on this recommendation by proposing “to make leased dark fiber from any source eligible for funding as

⁹ Notice at ¶ 84.

¹⁰ *Id.* at ¶ 85.

¹¹ NBP at 237 (Recommendation 11.17).

a priority one service.”¹² In making this proposal, the Notice points out that dark fiber “was conditionally eligible for E-rate funding prior to FY 2004.”¹³

The Notice correctly points out that dark fiber often provides the most cost-effective means for entities to achieve their broadband goals.¹⁴ Allowing funding for the use of dark fiber will allow local, regional, and state network aggregation that will increase efficiency.¹⁵ Making the lease of dark fiber eligible for funding is consistent with the Commission’s goals in the National Broadband Plan and should be part of any amended rules governing the E-rate program.

VI. CONCLUSION

The Commission should, as it proposes, reprioritize funding under the E-rate program so that broadband receives top funding priority. Second, the Commission should make local anchor institutions serving schools and libraries eligible to receive E-rate funds. Such actions would be consistent with the Commission’s goals of increasing the availability of high-bandwidth broadband to schools and libraries and bridging the digital divide. In short, any entity willing to provide broadband to schools and libraries should be eligible to receive E-rate funding to do so. Third, the Commission is taking a step in the right direction by indexing the E-rate funding annual cap to inflation. But, to truly reform the E-rate program so that it will live up to its potential of providing ubiquitous broadband to schools and libraries, the Commission should instead raise the cap outright to the maximum sustainable level, at least \$3.0 billion. Fourth, the Commission should follow through on its proposal to make E-rate funding available for the leasing of dark fiber. For the reasons stated above, we urge the Commission not only to take

¹² Notice at ¶ 53. *See id.* at ¶ 54 (“[A]pplicants would be able to lease fiber capacity that does not include modulating electronics, as long as they provide the electronics.”)

¹³ *Id.* at ¶ 52.

¹⁴ *See id.* at ¶ 53.

¹⁵ For an example of the benefits of adding dark fiber to the Eligible Services List (ESL), see the Comments of the City and County of San Francisco filed in this proceeding.

these actions proposed in Notice, but to take them even further in order to truly promote broadband deployment.

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