

**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
	)	

**REPLY 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 reply 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.

Commenters file these reply comments to respond to the comments of a number of industry members who call into question the Commission’s plans to make dark fiber leasing,

from any source, eligible to receive E-Rate funding. Commenters file these comments to urge the Commission to follow through with its proposal.

## **II. THE LEASING OF DARK FIBER, FROM ANY SOURCE INCLUDING MUNICIPALITIES, SHOULD BE ELIGIBLE FOR E-RATE FUNDING.**

A few commenters expressed concern about the Commission’s proposal to allow E-Rate funding to be used to lease dark fiber from any source, including municipalities. We believe that these concerns are ill-founded or based purely on individual economic motives. Conversely, we believe that this proposal would be in the public interest and would aid schools and libraries in obtaining the most economically efficient access to broadband that would presumably be prioritized under the revised E-Rate program.

Verizon and Verizon Wireless (“Verizon”) stated that “[u]sing E-rate support for dark or leased fiber solutions. . . does not make sense.”<sup>1</sup> Verizon expressed specific concern about schools and libraries receiv[ing] E-rate support for dark fiber obtained from third-parties that are not telecommunications carriers, such as state, regional or local government entities.”<sup>2</sup> Verizon further stated that “[i]t is not at all clear that municipalities or other government entities are or would want to be in the E-rate service provider business.”<sup>3</sup> NATOA and other local government entities have filed comments as far back as November 2009 stating the interest of many local governments in greater involvement in the E-Rate program. In fact, our past comments – including the ones just filed in response to this Notice – have repeatedly expressed an interest in local government networks being eligible to receive E-Rate funds from schools and libraries.

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<sup>1</sup> *Comments of Verizon and Verizon Wireless*, CC Docket 02-6, GN Docket 09-51, FCC 10-83, filed Jul. 9, 2010, at 9. It is worth pointing out that we agree with Verizon that there are many instances when dark fiber will not be an economically efficient use of E-Rate funds by a school or library. *Id.* at 10. This does not mean, however, that schools and libraries should not have the *option* to use E-Rate funding to access dark fiber in cases where it *is* the most economically efficient. This determination can most accurately be made by the school or library that seeks to use E-Rate funding.

<sup>2</sup> *Id.* at 10.

<sup>3</sup> *Id.*

We actually believe that the Commission does not go far enough in this case.<sup>4</sup> Nonetheless, to make it unequivocally clear, many local governments want to be involved in the E-Rate program, and local government anchor institution networks should be available to schools and libraries when they are the most efficient source of broadband.

Other industry commenters also expressed concerns about the leasing of dark fiber that we believe are ill-founded and should be disregarded by the Commission. These commenters expressed concerns that municipalities may lack the “experience” necessary to “provide the best service option.”<sup>5</sup> Conversely, other industry commenters express concern about “certain non-carriers” receiving an “inherent cost advantage” of traditional telecommunications carriers.<sup>6</sup> These two arguments are contradictory and are both incorrect.

The efficiency of allowing E-Rate funds to be used for the leasing of dark fiber from “any source” and specifically from municipalities was highlighted by comments filed by the City and County of San Francisco (“San Francisco”).<sup>7</sup> In their comments, San Francisco highlighted the concerns of the San Francisco Public Library System (“SFPL”). Currently, SFPL has to rely on commercial carriers to receive service if they want to take advantage of the E-Rate discount.<sup>8</sup> Although this service is adequate for today’s needs, SFPL has doubts that it will be adequate for future needs.<sup>9</sup> Even if higher bandwidth is available from the carrier, SFPL has determined that

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<sup>4</sup> Verizon is correct that *sometimes* the one-time costs associated with lighting dark fiber may make it an inefficient use of E-Rate funds. But, this only supports Commenters’ past arguments that E-Rate funds should be available for the leasing of lit fiber from local government anchor institution networks. The more options given to schools and libraries, the more likely they will be to find the most efficient option for their particular circumstances.

<sup>5</sup> See *Comments of Sunesys, LLC*, CC Docket 02-6, GN Docket 09-51, FCC 10-83, filed Jul. 9, 2010, at 7-8.

<sup>6</sup> See *Comments of Sprint Nextel Corporation*, CC Docket 02-6, GN Docket 09-51, FCC 10-83, filed Jul. 9, 2010, at 7; see also *Comments of AT&T, Inc.*, CC Docket 02-6, GN Docket 09-51, FCC 10-83, filed Jul. 9, 2010, at 12.

<sup>7</sup> *Comments of the City and County of San Francisco*, CC Docket 02-6, GN Docket 09-51, FCC 10-83, filed Jul. 9, 2010.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

the price (even with the E-Rate discount) is prohibitive.<sup>10</sup> On the other hand, San Francisco operates a middle mile broadband network that could provide the needed bandwidth for SFPL through dark fiber leasing. However, without the E-Rate discount, the cost to San Francisco is not conducive to such a plan.<sup>11</sup>

San Francisco's comments highlight the part of the solution that the Commission is missing and some commenters are ignoring. In many cases, leasing dark fiber will be the most efficient use of E-Rate funds. In some of those cases, the greatest efficiency may be from leasing dark fiber that is owned by a non-telecommunications entity. Sometimes, that non-telecommunications entity (that is the most efficient source of excess fiber) will be a local government anchor institution network. When commenters highlight the undeniable additional costs associated with lighting dark fiber (which may still be more efficient than obtaining service from a telecommunications carrier) they fail to point out the most logical solution – allowing E-Rate funding to be used to also lease *lit* fiber that is part of a local government anchor institution network. This is exactly what NATOA has been proposing since before the National Broadband Plan was released.

In urging this extension to the Commission's proposal, Commenters were joined by the New York State Education Department ("NYED") which filed comments arguing that although dark fiber leasing should be eligible for E-Rate funding, this eligibility should extend to "lit" municipal fiber.<sup>12</sup> NYED correctly pointed out that from a technical view, the decision to fund dark fiber leasing, but not lit fiber, is neither logical nor efficient.<sup>13</sup> If the Commission is to

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<sup>10</sup> *Id.*

<sup>11</sup> *See id.*

<sup>12</sup> *Comments of New York State Education Department*, CC Docket 02-6, GN Docket 09-51, FCC 10-83, filed Jul. 9, 2010, at 7.

<sup>13</sup> *See id.*

reach its goal in this proceeding, to maximize the effectiveness of the E-Rate program, it should permit E-Rate funds to be used to lease lit (as well as dark) fiber from any source.

Every case will have specific facts and circumstances. Whether the source is dark fiber from a telecommunications carrier, lit fiber from a local anchor institution networks, or the reverse, or some other option, the Commission should increase the options available to schools and libraries to the greatest extent possible. The point of the E-Rate program is to assist schools and libraries – we should be seeking to give them as many options as we can.

### **III. LOCAL GOVERNMENT BROADBAND NETWORKS CAN PROVIDE EFFICIENCIES FOR SCHOOLS AND LIBRARIES THAT, IN SOME CASES, THE PRIVATE SECTOR CANNOT MATCH.**

In many cases, local governments can leverage institutional synergies and economic incentives to create unique efficiencies for schools and libraries. As a result, local governments can implement these declining-cost, scale economy networks in a manner that actually passes the full declining cost savings and other externalities through to the anchor institutions and their constituencies.

An example of this comes from Montgomery County, Maryland, where elementary schools served over the County's own fiber optic network, FiberNet, receive connections of a symmetrical 100 Mbps for an annual operating cost of \$71 per megabit per site. In contrast, those elementary schools served over T1 circuits leased from the phone company pay an annual per megabit cost per site of \$1,826 after the E-Rate discount is taken into account. Without the E-Rate subsidy to the carrier, the cost per megabit per site would be \$3,652 per year. The County plans future upgrades to 1 Gbps at an incremental cost of \$7.11 for each additional megabit per site. The County also notes that the per site costs decrease as additional sites are added, a

realization of economies that are not available to those schools receiving T1 circuits from the carrier.<sup>14</sup>

In the absence of government networks, anchor institutions often cannot purchase comparable high capacity circuits from the private sector because the anchors cannot afford such private sector pricing for such bandwidth (even with the E-Rate discount); rather, they would simply cap their bandwidth needs and never deploy better applications that require more bandwidth. In other cases, the bandwidth is just not available to the anchor institutions at any price. In this way, there is usually no alternative to a government anchor institution network to provide high bandwidth to anchor institutions.

#### **IV. CONCLUSION**

The Commission should move forward with its proposal to make the leasing of dark fiber from any source eligible for E-Rate funding starting in Funding Year 2011. Furthermore, the Commission should go further and make the leasing of lit fiber from local anchor institution networks eligible for E-Rate funding. The best way to maximize the benefits of the E-Rate program and provide the most efficient use of funds is to provide schools and libraries with as many options as possible so that they can choose the broadband source that will provide them with the most efficient option.

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<sup>14</sup> For more information, please see the Reply Comments filed by Montgomery County, Maryland in this proceeding on July 26, 2010.

Respectfully submitted,

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