

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

COMMENTS OF AT&T, INC.

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I. INTRODUCTION AND SUMMARY

AT&T Inc., on behalf of itself and its affiliates (collectively, “AT&T”), respectfully submits these comments in response to the Notice of Proposed Rulemaking (Notice) seeking input on whether interconnected VoIP¹, which has been on the eligible services list (ESL) for the 2007 and 2008 funding years, should be retained as an eligible service under the Act going forward,² and whether certain other services should be designated for E-rate funding eligibility in Funding Year 2009.³ AT&T believes that the Commission should continue to designate interconnected VoIP for E-rate support and that the Commission may continue to do so consistent with the Act’s language and intent, regardless of whether it ultimately classifies interconnected VoIP as a “telecommunications service” or an “information service.” In addition, AT&T offers some brief comments on a few other services mentioned in the Notice (network-based firewalls and anti-virus/anti-spam software), as presented more fully below.

II. DISCUSSION

A. Consistent with Section 254 of the Act, Interconnected VoIP Service Should Be Designated for E-Rate Support.

The Commission states that it is now time to “address the issue of the inclusion of interconnected VoIP service in future funding years in the universal service program in the E-

¹ The Commission has defined interconnected VoIP service as a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s premises; (3) requires Internet protocol compatible premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the PSTN. Notice at ¶ 8. The terms “interconnected VoIP” or “VoIP,” which are used in these comments interchangeably, refer to the service as defined by the Commission.

² Notice at ¶ 1.

³ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, FCC 08-173 (Rel. July 31, 2008) (Notice). The list of proposed services for the eligible services list (ESL) beginning in Funding Year 2009 consists of the following: filtering software, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, certain wireless Internet access applications, and more broadly classified basic telephone service. Notice at ¶ 1.

rate context.”⁴ The Commission “tentatively concludes” that VoIP should be designated as a supported service for E-Rate funding, further “tentatively concludes” that “it is administratively and operationally appropriate” for the service to be funded on a Priority 1 basis, and seeks comment on its conclusions.⁵ AT&T agrees with the Commission’s tentative conclusions and, indeed, believes the Commission should make its conclusions permanent.

Section 254 governs the determination of what services can be supported under the universal service program’s E-rate mechanism.⁶ Section 254, as the Commission observed, permits the Commission “to designate ‘telecommunications services’ and certain additional services [as] eligible for support under the E-rate program.”⁷ Whether interconnected VoIP is a “telecommunications service” or an “information service” is a classification issue presently before the Commission in the *IP-Enabled Services* proceeding.⁸ It is not necessary for the Commission to answer that broader classification question in this E-rate docket, however, because Section 254 permits the designation of interconnected VoIP for E-rate funding regardless of whether the Commission ultimately concludes it is a “telecommunications service” or an “information service.”

1. The Commission May Designate Interconnected VoIP Services for E-Rate Funding If They Are “Telecommunications Services.”

As the Commission is aware, Section 254(c)(1) describes universal service as “an evolving level of telecommunications services that the Commission shall establish periodically taking into account advances in telecommunications and information technologies and

⁴ Notice at ¶ 12.

⁵ Notice at ¶ 13.

⁶ 47 U.S.C. § 254.

⁷ Notice at ¶ 2; *See* 47 U.S.C. § 254(c).

⁸ *See In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking (2004) (*IP-Enabled Services*). AT&T, as a matter of record, believes that interconnected VoIP is an information service, not a telecommunications service. *See* Comments of SBC Communications Inc., in *IP-Enabled Services*, WC Docket No. 04-36, at 2-3 (submitted May 28, 2004).

services.”⁹ When read in conjunction with Section 254(h), which establishes the E-Rate program, these two sections authorize the Commission to provide E-Rate support to schools and libraries for eligible telecommunications services. Thus, to the extent the Commission ultimately concludes that interconnected VoIP services are “telecommunications services,” it may provide E-Rate support for them.

2. The Commission Also May Designate Interconnected VoIP Services for E-Rate Funding If They Are “Information Services.”

In addition to the telecommunications services designated for universal service support under Section 254(c)(1), Section 254(c)(3) authorizes the Commission to designate so called “special services” for support under the E-Rate program where doing so is consistent with the purposes of Section 254(h).¹⁰ In particular, Section 254(h)(2)(A) instructs the Commission to “establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms”¹¹

Relying on the combination of Section 254(c)(3) and 254(h)(2)(A), as well as section 4(i), the Commission held in the *Universal Service Order* that it may provide E-Rate support for Internet access services,¹² which the Commission has classified as an information service.¹³ As the Commission explained, “section 254(h)(2)(A) does not limit support to telecommunications carriers.”¹⁴ Rather, “the language of section 254(h)(2) grants the Commission broad authority to enhance access to advanced telecommunications and information services, constrained only by

⁹ 47 U.S.C. § 254(c)(1). See Notice at ¶ 6; *Second Report and Order*, 18 FCC Rcd 9202 at ¶ 1.

¹⁰ See 47 U.S.C. §§ 254(c)(3) and (h).

¹¹ 47 U.S.C. § 254(h)(2)(A).

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC 8776 at ¶¶ 589-93 (1997) (*Universal Service Order*).

¹³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 (1998) (Stevens Report).

¹⁴ *Universal Service Order*, 12 FCC 8776 at ¶ 592.

the concepts of competitive neutrality, technical feasibility, and economical reasonableness.”¹⁵ Thus, “pursuant to the authority in sections 254(h)(2)(A) and 4(i) of the Act, non-telecommunications carriers will be eligible to provide the supported non-telecommunications services to schools and libraries at a discount.”¹⁶

This same analysis, which has provided the statutory basis for E-Rate support of Internet access for more than a decade, would apply equally to interconnected VoIP services in the event the Commission ultimately classifies them as “information services” under the Act.¹⁷ Thus, regardless of whether the Commission ultimately classifies interconnected VoIP services as “telecommunications services” or “information services,” the Commission will have a solid legal foundation for any decision to provide E-Rate funding for those services.

In addition to being legally sound, providing E-Rate funding for interconnected VoIP services would also promote the overarching policy objective of making advanced services available to schools and libraries across the nation. Indeed, the Commission recognized the benefits today, and prospectively, to schools and libraries that VoIP offers:

Further, as the Commission also noted in the *2006 Interim Contribution Methodology Order*, the use of and revenue from interconnected VoIP services has grown dramatically in recent years. The number of interconnected VoIP service subscribers grew from about 150,000 at the end of 2003 to 4.2 million at the end of 2005. Thus, we believe that schools and libraries could benefit from the same cost efficiencies and service features that have led many consumers to choose this technology.¹⁸

¹⁵ *Id.* at ¶ 591.

¹⁶ *Id.* at ¶ 590. The Commission subsequently reached the same conclusion with respect to E-Rate funding for voice mail services, which it has also classified as information services under the Act. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and FNPRM, 18 FCC Rcd 9202 at ¶ 28. (*Second Report and Order*).

¹⁷ *See* Notice at ¶ 12 (citing 254(c)(3)) n.35 (citing 254(h)(2)(A)).

¹⁸ Notice at ¶ 12 (footnote citations omitted).

Without question, the market for VoIP continues to grow as more consumers and businesses demand it, and more providers begin to offer ever more innovative VoIP services to meet that demand.¹⁹

Accordingly, the Commission should facilitate schools and libraries' ability to choose VoIP for educational purposes by ratifying its "tentative conclusion" that interconnected VoIP should be designated for E-rate funding. Obviously, Section 254's educational purposes prescription applies to any requests for funding, but interconnected VoIP is not a service for which that will be hard to demonstrate. As the Commission observed in the Notice, VoIP service "enhances the options available to schools and libraries to effectuate meaningful communications among parents, teachers, and school and library administrators."²⁰ AT&T agrees.

Moreover, the Commission and USAC now have over two years' experience reviewing and processing funding requests for interconnected VoIP, and there is no indication that there are any problems determining the eligibility and propriety of those requests.²¹ USAC's ability to manage these requests, assuming the Commission ratifies the *status quo*, should be seamless under the circumstances. Thus, AT&T would support the Commission's tentative conclusion that "it is administratively and operationally appropriate for interconnected VoIP service to be processed as a Priority 1 service."²²

¹⁹ See *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7520 (2006).

²⁰ Notice at ¶ 12.

²¹ Notice at ¶ 12 ("We tentatively conclude that it is administratively and operationally appropriate for interconnected VoIP service requests to be processed as a Priority 1 service.")

B. The Commission Can Satisfy CIPA By Requiring Certification for the Underlying VoIP Broadband Connection.

The Commission also asks whether it should require E-rate applicants seeking funding for interconnected VoIP service to certify compliance with CIPA.²³ The Commission’s concern here, however, is largely addressed by the realities of the VoIP platform. If an applicant is seeking support for an “over the top” or “bring your own broadband” VoIP service, then the applicant would necessarily be obtaining Internet access separately and would certify CIPA compliance with regard to the Internet access service (and not the interconnected VoIP service). If, on the other hand, the applicant is seeking support for facilities-based VoIP (*i.e.*, VoIP integrated with broadband transmission), there would not be an Internet access service for which the applicant would need to certify CIPA compliance. In neither case would there be a need for the applicant to certify CIPA compliance for the interconnected VoIP service.

C. The Commission Should Revisit Its Decision to Categorize Interconnected VoIP as “Miscellaneous.”

Under current Commission regulations, applicants are directed to categorize interconnected VoIP services as “miscellaneous” and to include requests for such services in the Internet access portion of their funding applications. The Commission asks whether “miscellaneous” remains appropriate for VoIP, or whether another category would be more appropriate.²⁴

So long as interconnected VoIP services continue to be treated as Priority 1 services, which is a result that AT&T supports, the particular categorization of those services appears to

²² Notice at ¶ 13.

²³ In the Notice, at ¶ 13, the Commission asks whether labeling VoIP service as an “Internet access service” would raise certification questions under the Children’s Internet Protection Act (CIPA), 47 U.S.C. § 254(l). Those requirements, as the Commission noted, mandate that E-rate funded Internet access or internal connections have technology that blocks or filters obscene or other harmful material from being accessed by minors. *See* Notice at ¶ 13.

²⁴ Notice at ¶ 13.

be an academic issue without much (if any) practical significance. Nonetheless, AT&T believes that it may be more logical to treat interconnected VoIP services as a separate, stand-alone category of eligible services, like telecommunications services, Internet access and internal connections are treated today, instead of shoe-horning them into a “miscellaneous” category and lumping them together with Internet access. Indeed, given the Commission’s decade-long reluctance to classify VoIP services as either “telecommunications services” or “information services,” it seems appropriate that interconnected VoIP services be treated separately from other eligible services.

D. Firewall and Anti-Virus/Anti-Spam Services Should Be Eligible.

The Commission asks whether firewall services and anti-virus/anti-spam software should be E-Rate eligible.²⁵ AT&T believes that firewall and anti-virus/anti-spam capabilities should be eligible for E-Rate support and should be funded at the Priority 1 level.²⁶ Firewalls, anti-virus and anti-spam capabilities provide customers with protection for their Internet services and equipment, and are deployed ubiquitously across the consumer and business Internet marketplace. Indeed, as part of its online safety initiative known as OnGuard Online, the Federal Trade Commission, in conjunction with the Internal Revenue Service, the U.S. Postal Inspection Service, the Securities and Exchange Commission and the Departments of Justice, Homeland Security and Commerce (as well as numerous private sector organizations) expressly recommends that: “at a minimum, your computer should have anti-virus and anti-spyware software, and a firewall.”²⁷

²⁵ Notice at ¶¶ 18, 20 and 21.

²⁶ Notice at ¶ 20.

²⁷ See <http://www.onguardonline.gov/topics/computer-security.aspx#3>.

In light of the critically important role of firewall and anti-virus/anti-spam capabilities in safeguarding reliable data delivery, and protecting the equipment and network operating systems over which Internet access is provided, such capabilities would appear to be “integral, immediate, and proximate to the education of students or the provision of library services to library patrons” using the Internet. Thus, these capabilities should satisfy the “educational purposes” test in section 54.500(b) of the Commission’s rules, enabling them to be eligible for E-Rate support. Accordingly, the Commission should expressly conclude that firewall and anti-virus/anti-spam capabilities may be funded through the E-Rate program at the Priority 1 level.

Respectfully Submitted,

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