

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

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

REPLY COMMENTS OF AT&T, INC.

I. INTRODUCTION

AT&T Inc., on behalf of itself and its affiliates (collectively, “AT&T”), respectfully submits these reply comments with respect to the Notice of Proposed Rulemaking (Notice) seeking input on whether certain services (*e.g.*, interconnected VoIP¹), and other things (*e.g.*, dark fiber), should be designated for E-rate funding eligibility. There is virtual unanimity that interconnected VoIP should continue to be designated for E-rate support. AT&T shares the majority view, and encourages the Commission to give effect to the great weight of service provider and applicant opinions expressed in this proceeding by making VoIP a permanently eligible service. In so doing, the Commission will effectuate the E-Rate program’s fundamental purpose of ensuring “access to advanced telecommunications and information services” for eligible schools and libraries which is, in the American Library Association’s words, “paramount.”²

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 Comments of the American Library Association at 1.

Almost as unanimous is opposition to dark (*i.e.*, “unlit”) fiber’s designation for E-rate funding eligibility, whether on a Priority 1 or Priority 2 basis. The broad consensus among those commenting on dark fiber’s E-Rate eligibility is that it cannot qualify for any E-Rate funding as a matter of statutory construction, and that its inclusion would frustrate – not aid – the policy goals underlying the E-Rate program. The opposition to dark fiber’s inclusion in E-Rate is not surprising. The case for exclusion is long-established, and there is nothing that has occurred since the Commission last addressed the question (in 2003) that would warrant a different outcome. There were, however, a couple of commenters expressing support for dark fiber’s E-Rate eligibility: the Council of Great City Schools and Lexington Public Schools District. These positions were presented without discussion of, or regard to, precedent or other statutory support, and are unpersuasive on the merits. The Commission, thus, should reject these recommendations for reasons that AT&T will discuss briefly below.

II. DISCUSSION: DARK FIBER SHOULD REMAIN INELIGIBLE.

A. The Commission’s 2003 declaration of ineligibility was correct.

In the Notice, the Commission asks whether dark fiber should be eligible for E-rate discounts.³ For plain reasons, with which most commenters appear fully to agree,⁴ dark fiber should not be eligible. Dark fiber has never been found to be a telecommunications service, information service or internal connection for E-rate purposes. Indeed, as Verizon points out, the Commission found in 2003 that dark fiber is not a “functioning service” for E-Rate

³ Notice at ¶ 17.

⁴ *See* Comments of American Library Association at 5; Comcast’s Comments at 5-6; Embarq’s Comments at 14; Funds for Learning’s Comments at 10; Qwest’s Comments at 2-3; SECA’s Comments at 9-10; Verizon’s Comments at 10-12.

purposes.⁵ Moreover, unlike internal connections, which are eligible for support because they are used in conjunction with other services as “an essential element in the transmission of information within the school or library,”⁶ dark fiber is merely an unlit glass strand in the ground or on poles outside the school or library that performs no transmission function at all because, as its name suggests, it is “dark.” Commenters advocating E-Rate eligibility for dark fiber make no effort to address this fundamental flaw in their argument.

B. The Council of Great City School’s evidence of dark fiber’s cost-effectiveness is fatally incomplete.

The Council “feels” that there are “long-term cost-savings” associated with treating the leasing of dark fiber “networks” as a Priority 1 service, and that if the Commission makes dark fiber eligible, it can reap these E-rate savings by eliminating the “middle man,” *i.e.*, telecommunications providers that “lease the same dark fiber from a third-party carrier, inflate the cost, and charge beneficiaries the higher price.”⁷ In support of its argument, the Council presents a single anonymous anecdote – the experience of a “district” that allegedly solicited bids for dark fiber, and purchased “required bandwidth at 3% of the cost of obtaining a comparable provisioned telecommunications service.”⁸ The Council, though conceding that “exact cost-effectiveness may vary” in a given situation, nevertheless declares, based on this anecdote, that E-rate cost-savings “can be significant” if applicants are allowed to lease dark

⁵ See Verizon’s Comments at 10 (quoting *Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, ¶ 76 (2003)).

⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 at ¶ 459 (1997) (*Universal Service Order*).

⁷ Comments of the Council of the Great City Schools at 4.

⁸ *Id.*

fiber, and the only real losers are those who “stand to lose substantial future profit.”⁹ The Council’s argument entirely lacks merit.

In order for the Commission to evaluate the issue properly, it must see *all* of the costs of providing actual network services that would be entailed in leasing and lighting dark fiber networks, not just anecdotal information about purchasing dark fiber alone. In its comments, the Council failed to include any discussion of the costs of lighting the fiber (*e.g.*, the cost of the lasers and electronics on both ends of the fiber), or maintaining service once the fiber is lit. Nor did the Council explain whom it expected to pay for these costs. These costs are likely to be substantial, and the process of lighting dark fiber requires significant expertise. Without this cost information, the Commission has no basis to judge the merits of the Council’s claims about cost-effectiveness, let alone grant its request for dark fiber E-Rate support.¹⁰

Moreover, the Commission should be mindful that applicants for E-Rate support typically do not have expertise in the business of constructing networks and providing telecommunications and Internet access service. The development, operation and management of sophisticated optical-fiber networks are highly complex undertakings, and carriers and other service providers that offer these services often have decades of network ownership and management experience that allows them to operate such networks successfully. Thus, the Commission should be careful not to assume that E-Rate applicants necessarily possess the

⁹ *Id.*

¹⁰ The Commission would be wise to credit Verizon’s observation that “there is no way for the Commission or the USAC to know whether dark fiber is eventually going to be used for eligible services.” Verizon’s Comments at 12. *See also Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 at ¶ 90 (“[W]aste, fraud, or abuse of [the E-Rate] program harms those schools and libraries who cannot receive their discount requests due to insufficient resources.”) Even though The Council acknowledges (at 4), as it must, that “dark fiber that will not be utilized immediately” should not be funded, The Council fails to explain what “immediately” and “utilized” mean, or how the Commission or USAC can ensure that the dark fiber is, in fact, “utilized immediately” for valid educational purposes.

expertise needed to turn dark fiber into functional telecommunications and Internet access services in a cost-effective manner.

III. CONCLUSION

The record before the Commission firmly supports permanent E-Rate eligibility for interconnected VoIP, and just as firmly supports continued exclusion of dark fiber from eligibility. For clear statutory and E-Rate policy reasons, the Commission should credit the substantial majority views on both of these issues and preserve the *status quo* on VoIP and dark fiber.

Respectfully submitted,



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