

**Before the
Federal Communications Commission
Washington, DC 20554**

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

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its comments in response to the Notice of Proposed Rulemaking adopted in the above-referenced proceedings.¹ For the reasons explained below, the Commission should not include dark fiber among the services covered by the E-rate program. In addition, to the extent the Commission decides to support services used to access the Internet from “off campus” locations, it should do so in a competitively and technologically neutral manner.

INTRODUCTION

The schools and libraries universal service support program, commonly known as the E-rate program, is one of the Commission’s most important achievements. As the *Notice* explains, since its inception 12 years ago, the E-rate program helped bring broadband Internet access to at least 97 percent of American schools.² The National Broadband Plan analyzed the use of broadband for educational purposes and the performance of the E-rate program and made a variety of recommendations for improving the program.³

¹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking (rel. May 20, 2010) (*Notice*).

² *Id.* at ¶ 3, n.3.

³ CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (“Plan”) at 236-39.

The *Notice* represents the Commission’s first step in implementing the E-rate recommendations contained in the Plan. The Commission solicits comment on “what is working well and what can be improved” in the current E-rate program.⁴ In particular, the Commission proposes three sets of reforms in the *Notice* – streamlining the application process, providing greater flexibility in choosing services, and expanding the reach of broadband beyond the classroom.⁵

A number of cable operators participate in the E-rate program and NCTA generally is supportive of the reforms proposed in the *Notice*. Two proposals, however, raise concerns. As explained below, NCTA does not support the proposal to subsidize the purchase of dark fiber by schools. In addition, to the extent the Commission adopts the proposal to support services that enable the “off campus” use of equipment, such a policy should be implemented in a technologically neutral manner that does not discriminate against wireline providers.

I. DARK FIBER SHOULD NOT BE A SUPPORTED SERVICE UNDER THE E-RATE PROGRAM

In the National Broadband Plan proceeding, a number of parties suggested that dark fiber may be the most cost effective way for a school to obtain Internet access and that E-rate participants should be permitted to use dark fiber as part of their broadband solutions.⁶ The *Notice* proposes to add leased dark fiber to the list of supported services, subject to certain conditions that were imposed prior to dark fiber being removed from the list in 2003.⁷

NCTA opposes the proposal to subsidize the lease of dark fiber by schools. Allowing schools to lease dark fiber under the E-rate program would run counter to the principle,

⁴ *Notice* at ¶ 1.

⁵ *Id.* at ¶ 4.

⁶ *Id.* at ¶ 53; Plan at 237.

⁷ *Notice* at ¶ 54. Support for dark fiber was conditioned on the recipient providing the necessary electronics and using the fiber immediately. *Id.*

established in other parts of the program, that schools may not request funding for more services than are necessary for educational purposes.⁸ A well-run fiber network can support multiple advanced telecommunications and broadband services for multiple customers. Consequently, providers typically do not deploy dedicated fiber strands to meet the needs of E-rate recipients. Rather, they set up wide area networks or provide other services to schools while using additional capacity on those fiber strands to serve other customers in the community. Devoting a fiber network for the sole use of a school (or even a school district) would amount to over-investment in infrastructure because it goes beyond meeting the needs of students and teachers.⁹ Such an outcome should not be supported by federal subsidies paid for by all telecommunications service customers.

The proposal to add dark fiber appears to be premised on the assumption that leasing dark fiber would be less expensive than buying finished services, but that is not necessarily the case. Unlike most of the services that are supported under the current E-rate program, dark fiber does not actually provide value to students unless the school has the resources and expertise necessary to install and maintain the equipment necessary to light the fiber. For many schools systems, it may not be feasible to provide this level of support. As a result, as compared to buying finished services, leasing dark fiber is more likely to result in wasted investment. And even if it is feasible for a school to light the fiber and maintain the equipment, the total cost could be higher than if the school had purchased retail services from a broadband provider. Given the limited

⁸ See Notice at ¶ 50, citing *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740, 1745, ¶ 11 (2010) (“In order to reduce the likelihood of waste, fraud, and abuse, and to guard against additional costs being imposed on the E-rate program . . . schools participating in the E-rate program are not permitted to request funding for more services than are necessary for educational purposes.”).

⁹ NCTA’s concern applies even if the school or library were allowed to lease dark fiber from municipal and other government networks. In fact, leasing (or sub-leasing) dark-fiber facilities from government entities may impose additional risks if the government network is not managed well or becomes too costly to operate and is abandoned.

funding available under the program, the better approach is not to include dark fiber as a supported service at this time.¹⁰

Adding dark fiber as a “priority one” service also could undermine other goals identified in the *Notice*. As described in the *Notice*, demand for priority one services has increased significantly over the life of the program, which means that less funding is available for priority two services, particularly internal connections.¹¹ Given the importance of internal connections to the effective use of broadband services, the *Notice* devotes considerable attention to proposals that would provide more, and more consistent, funding for internal connections.¹² Absent evidence that leasing dark fiber will be less expensive than purchasing retail services, adding dark fiber as a priority one service could increase demands on the program and limit the funding available for internal connections.

If the Commission nevertheless decides to add leased dark fiber to the list of supported services, it should include protections to ensure that the program is only supporting dark fiber where it is the most cost effective approach and where the school system can demonstrate that it has the resources and expertise to operate the facilities over the long term. In addition, pursuant to Section 254(h)(3), any school that receives E-rate support for dark fiber should be prohibited from selling excess capacity on that fiber or selling services that use any excess capacity.¹³ Absent such protections, it is almost certain that some funding will be wasted on facilities that are not used to their potential or are diverted for uses not contemplated by the E-rate program.

¹⁰ While some larger schools districts may have the resources to operate and maintain dark fiber facilities and should not be prohibited from doing so, the E-rate program should not subsidize those efforts.

¹¹ *Notice* at ¶¶ 62-66.

¹² *Id.* at ¶¶ 67-83.

¹³ 47 U.S.C. § 254(h)(3).

II. ANY SUPPORT FOR “OFF CAMPUS” INTERNET ACCESS SERVICES SHOULD BE AVAILABLE ON A COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL BASIS

The National Broadband Plan documents the importance of home broadband access in today’s educational environment. As noted in the Plan, “[o]nline educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries.”¹⁴ The Plan recommends that the Commission address this concern by funding wireless Internet access service used with a portable learning device (e.g., a laptop computer) off school premises and the *Notice* solicits comment on this recommendation.¹⁵

NCTA agrees with the findings in the National Broadband Plan that access to broadband at home is increasingly important to success in school. As NCTA explained in a letter filed earlier this year, “the instructional use of broadband is no longer confined to the classroom or limited to school hours; the use of broadband has become a critical component of the American educational system.”¹⁶ In recognition of these developments, NCTA created the Adoption Plus (A+) program, a proposed two-year public-private partnership to promote broadband adoption for up to 3.5 million middle school-aged children eligible for the National School Lunch Program in approximately 1.8 million low-income households that do not currently receive broadband services.¹⁷

¹⁴ Plan at 236.

¹⁵ *Id.* at 239; *Notice* at ¶ 45.

¹⁶ See Letter from Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association, to Julius Genachowski, Chairman, Federal Communications Commission, GN Docket No. 09-51 (filed Mar. 1, 2010) (NCTA Letter).

¹⁷ Comments of the National Cable & Telecommunications Association on National Broadband Plan Public Notice #16, GN Docket No. 09-51, et al. (filed Dec. 1, 2009).

If the Commission provides support for off campus Internet access or other services or equipment, it must do so on a competitively and technologically neutral basis. While there is great demand for wireless devices and access, not all students will have wireless devices and not all applicants will be able to afford to buy such devices for their students. All students should have an equal opportunity to access educational content, school records, assignments, and other materials from outside school premises, regardless of the type of equipment they use. Accordingly, if the Commission provides support for off campus Internet access, it should make such support available for both wireless and wireline access.

As recognized in the *Notice*, providing support for off campus use of Internet access services raises potential concerns about waste, fraud, and abuse.¹⁸ If the Commission does expand the E-rate program in this way, it cannot require that such support be used “solely” for educational purposes. Applying such a standard to use of Internet access in the home would be impossible to monitor and counterproductive given all the non-educational benefits that arise from a home Internet connection. Instead, the Commission should apply a more realistic standard¹⁹ and should adjust the amount of support to reflect the mixed educational/non-educational use of such services.

There are a variety of ways in which support for off campus Internet access could be implemented. For example, arrangements could be made through the school to provide discounts for wireline high-speed Internet service and wireless modems in students’ homes. Alternatively, discounts could be made available to other community institutions, such as community centers, where students might be expected to use Internet access for homework and

¹⁸ *Notice* at ¶ 50.

¹⁹ For example, NCTA has argued that the Commission could read Section 254(h) to “include support for residential broadband services to households where it is reasonably likely that such service would be used for educational purposes.” NCTA Letter at 2.

other educational purposes if it were available. Provided there are appropriate safeguards to ensure that recipients of such support are reasonably likely to use it for educational purposes, as discussed above, the Commission should permit school districts and library systems to experiment with a variety of options to ensure that all students have Internet access outside of school premises, not just those that use wireless technology.

CONCLUSION

NCTA supports the Commission's efforts to update the E-rate program so that it can be even more effective in promoting the use of broadband for educational purposes. Most of the proposals in the *Notice* should help the Commission achieve this goal, but for the reasons explained in these comments, we encourage the Commission (1) not to adopt the proposal to support dark fiber and (2) to expand the proposal for off campus access to include all technologies.

Respectfully submitted,

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