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July 9, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

Re: CC Docket No. 02-6
GN Docket No. 09-51

Dear Ms. Dortch,

Enclosed herewith for filing in the above-referenced dockets are the Comments of National LambdaRail, Inc.

Respectfully yours,

Randall B. Lowe
James M. Smith

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

COMMENTS OF
NATIONAL LAMBDARAIL, INC.

National LambdaRail, Inc. ("NLR"), by its attorneys and pursuant to the Commission's *Notice of Proposed Rulemaking* (FCC 10-83, rel. May 20, 2010) (the "NPRM"), hereby submits its Comments in the above-captioned proceedings.

I. Introduction and Statement of Interest

As the Commission recognized in its Rural Health Care Pilot Program ("RHCPP") proceeding, NLR is a "not-for-profit nationwide backbone network, dedicated to educational, clinical, and research goals."[1] NLR has participated in prior Commission proceedings to establish a National Broadband Plan for the United States,[2] in accordance with the American

[1] *See In the Matter of Rural Health Care* Support *Mechanism* (Order on Reconsideration), 22 FCC Rcd 2555 (2007) ("*RHCPP Reconsideration Order*").

[2] *See* Comments of NLR in GN Docket No. 09-51, filed June 8, 2009; Reply Comments of NLR in GN Docket No. 09-51, filed July 21, 2009; Reply Comments of U.S. R&E Networks in GN Docket Nos. 09-47, 09-51 and 09-137, filed Jan. 27, 2010; Reply Comments of Commenters Supporting Anchor Institution Networks Networks in GN Docket Nos. 09-47, 09-51 and 09-137, filed Jan. 27, 2010.

Recovery and Reinvestment Act of 2009 (the "Recovery Act").[3] NLR, in partnership with Internet2 and others, recently was awarded a Critical Communications Infrastructure grant of more than $62.5 million in the "BTOP" program administered by the NTIA to construct the United States Unified Community Anchor Network ("U.S. UCAN"), an advanced 100 Gigabit per second network backbone that will link regional networks across the nation.[4] U.S. UCAN's coast-to-coast advanced infrastructure will, in partnership with regional and state research and education networks, connect America's community anchor institutions—schools, libraries, community colleges, health centers and public safety organizations—to enable advanced applications not possible with today's typical Internet service. U.S. UCAN fills a critical gap, linking community anchor institutions together into an open, national network with next-generation capabilities, operated with end-to-end transparency and the high levels of performance uniquely suited to the needs of this community. U.S. UCAN will ensure that life-changing applications such as telemedicine and distance learning are available to all community anchor institutions, including those in areas previously considered too remote or economically depressed to support advanced network services.

As evidenced by this activity, NLR and its partners in the research and education community are poised to provide integral advanced broadband services to schools, libraries and other community anchors throughout the nation under a transformed Universal Service Fund (USF) and particularly the Fund's updated E-Rate program, as envisioned by Recommendation 8.22 of the the Commission's National Broadband Plan ("Plan").[5] As the Plan declared:

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[3] Public Law No. 111-5, 123 Stat. 115, § 6001(k).

[4] *See* NTIA Award Factsheet, at http://www2.ntia.doc.gov/files/grantees/ALL_USCAID.pdf; NLR press release at http://www.nlr.net/release.php?id=62

[5] *Connecting America: The National Broadband Plan,* rel. Mar. 16, 2010.

> One approach to ensure connectivity for facilities that serve public purposes is to give a non-profit institution the mission and capability to focus on serving the broadband needs of public institutions, including health clinics, community colleges, schools, community centers, libraries, museums, and other public access points. In the past, the connectivity needs of research institutions have been met by non-profit research and education (R&E) networks such as Internet2 and National LambdaRail. . . . Today, similar R&E networks provide high-speed (10 Mbps-1 Gbps) connectivity to 66,000 community anchor institutions. But more can be done—it is estimated that only one-third of anchor institutions have access to an R&E network today. This model should be expanded to other community institutions.
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> A group of R&E networks, including Internet2 and the National LambdaRail, . . . have proposed that the federal government and state governments create a non-profit coordinating entity, the "Unified Community Anchor Network," that would support and assist anchor institutions in obtaining and utilizing broadband connectivity. Expanding the R&E network model to other anchor institutions would offer tremendous benefits. . . . Working with the R&E and non-profit community, the federal government and state governments should facilitate the development of an institutional framework that will help anchor institutions obtain broadband connectivity, training, applications and services. . . .[6]

NLR is a party, with Internet2, EDUCAUSE and The Quilt, to Joint Comments filed today in this proceeding, and is also a member of the Schools, Health and Libraries Broadband Coalition ("SHLB Coalition"), which also is filing Comments in this proceeding today. In these individual and supplemental Comments to those Comments, NLR focuses on one issue that is critical to the realization of the Plan's mandate to enhance the provision of high-speed advanced broadband services to schools, libraries and other community anchor institutions nationwide, namely, the need to amend the E-Rate program rules to include as eligible services broadband services provided to E-Rate participants by non-profit R&E networks, such as NLR.

II. The Commission Should Explicitly Allow Non-Profit R&E Networks to Participate in the E-Rate Program By Funding All Broadband Services

It is manifestly clear that the Plan's key objective of enlisting and empowering R&E networks to play a major role in providing high-speed, affordable broadband network services to

[6] *Id.* at p.154, Recommendation 8.22.

community anchor institutions throughout the nation, including, critically, the schools and libraries that Congress singled out for favorable treatment in establishing the E-Rate program in section 254(h)(1)(B) of the Telecommunications Act of 1996[7], cannot be fully realized unless these non-profit R&E networks are eligible to provide their services to schools and libraries as eligible E-Rate service providers. As a matter of policy, it is equally clear that the Commission should amend its rules accordingly, inasmuch as the Commission has already recognized that utilizing R&E networks to provide such services can bring "tremendous benefits," including lower prices and greater competition in the market for broadband E-Rate services.[8] Indeed, in deciding to reinvigorate and enhance the E-Rate program's sister USF program for Rural Health Care (RHC) providers through the establishment of the RHCPP, the Commission already has specifically authorized RHCPP partcipants to interconnect with NLR as an eligible provider, expressly finding that "it will serve the public interest to allow [RHCPP] applicants to request funding to support the cost of connecting state and regional broadband networks to NLR. . . ."[9]

Further, as a matter of law, the Commission has also already determined that it may extend eligibility to telecommunications carriers and non-telecommunications carriers alike under section 254(h) of the Act. Again, in the context of the RHC program—whose enabling statutory provision, section 254(h)(2)(A), is both immediately proximate to and virtually identical in its eligibility terms to the next subsection, 254(h)(1)(B), which mandates the E-Rate program— the Commission "has exercised its authority under section 254(h)(2)(A) to establish discounts and funding mechanisms for advanced services provided by both telecommunications

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[7] 47 U.S.C. § 254 (h)(1)(B).

[8] Plan at Recommendation 8.22, *supra* note 6; Remarks of Commissioner Clyburn to the American Library Association, June 26, 2010.

[9] *RHCPP Reconsideration Order,* 22 FCC Rcd 2555, 2556 at ¶ 5 (2007) .

carriers and non-telecommunications carriers."[10] As the Commission further explained in the *RHCPP Order*: "In section 254(h)(2)(A), Congress directed 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 . . . health care providers.' Since 1997, the Commission has made several changes to the RHC support mechanism to make it more viable and to reflect technological changes."[11]

In fact, section 254(h)(2)(A) directs the Commission to enhance access to such advanced telecommunications services ***"for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries"***—that is, for the E-Rate program as well as for the RHC program.[12] Thus, under the same statutory provision and rationale as for healthcare, the Commission can equally include the advanced broadband network services of non-common carriers as eligible services for E-Rate program participants.[13]

Indeed, if anything, the statutory provisons mandating the E-Rate program provide even greater authority for authorizing as eligible the broadband service provided by non-profit, private R&E networks, notwithstanding their non-carrier status, under section 254(h)(1)(B)'s authorization to include as eligible additional "special services" under section 254(c)(3).[14]

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[10] *In the Matter of Rural Health Care Support Mechanism,* 21 FCC Rcd 11111, 11113 ¶ 7 (2006) ("*RHCPP Order*"), *citing 2003 Rural Health Care Support Mechanism,* Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking,18 FCC Rcd 24546, 24557-62, ¶¶ 22-29.

[11] *Id., quoting* 47 U.S.C. § 254(h)(2).

[12] 47 U.S.C. § 254(h)(2)(A) (emphasis supplied).

[13] Finally, as the *RHCPP Order* explained: "Although the Act does not define 'advanced telecommunications and information services,' section 706(c)(1) of the Telecommunications Act of 1996 defines a similar term – 'advanced telecommunications capability' – as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.' *See* 47 U.S.C. § 157 nt." 21 FCC Rcd 11111, 11113 n.9.

[14] As the Commission found in the *Universal Service Report and Order,* 12 FCC Rcd 8776, 9009-10 (1997) (footnotes omitted):

Accordingly, it is clear that the Commission may, under sections 254(h)(1)(B) and 254(h)(2)(A), provide that advanced high-speed broadband services offered by non-profit, private carrier R&E networks are eligible services for reimbursement under the E-Rate program. NLR submits that this change in the E-Rate rules can be accomplished simply by revising the opening words of section 54.501(a) of the Rules to read: " Telecommunications and non-telecommunications carriers providing advanced broadband telecommunications and/or information services, shall be eligible under this subpart . . ."; and by making conforming changes to sections 54.502 and 54.503 of the Rules.

III. CONCLUSION

As the Plan recognizes and indeed urges, the ability of schools, libraries and other community anchor institutions to utilize the services provided by NLR and other non-profit R&E networks would yield "tremendous benefits" to these educational institutions, including higher speeds, lower prices, greater redundancy, increased competition, and more efficient and effective utilization of broadband by these institutions.[15] Yet it will be impossible for E-Rate participants to take advantage of these tremendous benefits unless the Commission affirmatively extends E-

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> We observe that section 254(c)(3) grants us authority to 'designate additional services for support' and section 254(h)(1)(B) authorizes us to fund any section 254(c)(3) services. The generic universal service definition in section 254(c)(1) and the rate provision regarding special services for rural health care providers in section 254(h)(1)(A) are both explicitly limited to telecommunications services. In the education context, however, the statutory references are to the broad class of 'services,' rather than the narrower class of 'telecommunications services.' Specifically, section 254(c)(3) refers to 'additional services,' while section 254(h)(1)(B) refers to 'any of its services'; neither provision refers to the narrower class of telecommunications services. In addition, section 254(a)(1) and (a)(2) mandate that the Commission define the 'services that are supported by Federal universal service support mechanisms' but does not limit support to telecommunications services. The use of the broader term 'services' in section 254(a) provides further validation for the inclusion of services in addition to telecommunications services in sections 254(c)(3) and 254(h)(1)(B). . .

[15] Plan at Recommendation 8.22, *supra* note 6.

Rate eligibility to the advanced telecommunications services offered by these non-profit R&E networks. NLR stands ready to offer its services to E-Rate participants, and respectfully urges the Commission to adopt these necessary revisions to Part 54 of its rules to enable the prompt realization of these important benefits.

Respectfully submitted,

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By _____

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