

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

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

Comments of AT&T Inc.

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I. Introduction

AT&T welcomes the opportunity to comment on proposals included in the Commission’s NPRM to implement the National Broadband Plan’s vision of improving and modernizing the schools and libraries universal service support mechanism, and thus increase the availability and use of broadband by children and in our communities, as well as to comment on proposals to update the eligible services list.¹ Since its inception twelve years ago, AT&T has worked assiduously with the Commission and the Universal Service Administrative Company (“USAC”) to develop and improve the current E-rate program, and, through its participation in that program as a service provider throughout its 22 states, has gained significant experience and insight into what in the program works and what doesn’t. As the Commission recognizes, the E-rate program has been very successful in assisting schools and libraries across the country to gain access to telecommunications services and the Internet. But, as the Commission also

¹ Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future, CC Docket No. 02-6 and GN Docket No. 09-51, *Notice of Proposed Rulemaking*, 25 FCC Rcd 6872 (2010) (“NPRM”). These comments also apply to the Commission’s Notice of Proposed Rulemaking proposing changes to the eligible services list for E-rateE-rate Funding Year 2011. *See*, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, *Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 6562 (2010) (“ESL FNPRM”).

acknowledges, with more than a decade of experience under our belt, it is appropriate now to “re-examine what is working well and what can be improved in the current program”² in order to advance the federal goals of encouraging ubiquitous deployment of broadband facilities and services to all Americans, and maximizing adoption and utilization of broadband in the nation’s schools and libraries. As discussed in our comments in response to NBP Public Notice #15, AT&T believes that the E-rate program needs fine-tuning to advance the Commission’s broadband objectives; by refocusing support on broadband, and streamlining and simplifying administrative processes and regulatory requirements to reduce burdens and inefficiencies on service providers and applicants alike.³ As discussed more fully below, AT&T believes that many of the proposals in the NPRM would further these objectives, and could be implemented immediately, but others will require a more detailed analysis and trial period to ensure that the proposals will actually serve their intended purpose. AT&T respectfully submits the following, more detailed comments on specific proposals.

II. Streamlining the Application Process.

Proposals:

- 1. Eliminate the requirement that applicants for priority one services file an FCC Form 470 (“470”) and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to state or local governmental procurement requirements.**
- 2. Priority one applicants that are not subject to state or local bidding requirements continue to be required to follow the current E-rateE-rate competitive bidding process by posting a Form 470 and waiting 28 days to select a service provider.**
- 3. Retain the existing competitive bidding requirements as set forth in §54.504 for applications for priority two services.**

² NPRM at ¶ 1.

³ Comments of AT&T in WC Docket No. 05-195, CC Docket No. 02-6 and GN Docket Nos. 09-47, 09-51, 09-137 (filed Nov. 20, 2009) (AT&T NBP PN#15 Comments).

AT&T agrees that the application process should be streamlined, and that, where state and local procurement requirements exist, the integrity of the fund is not likely to be jeopardized by simplification of the E-rate application process. However, AT&T does not believe that *eliminating* the Form 470 where such requirements exist is the answer. The Form 470 and posting requirement play a significant role in the E-rate program for service providers by providing them a centralized resource for obtaining notice, in an equal and fair fashion, that an E-rate applicant is in the market for services. The Form 470 and posting requirements thus promote competition among service providers and help ensure that applicants will obtain services at market driven rates, and thus promote efficient use of limited E-rate funds. Consequently, eliminating the Form 470, even for a segment of E-rate applicants, could (and likely would) decrease the number of offers that applicants receive for E-rate services, reducing competition and increasing the cost of E-rate supported services.

At the same time, however, AT&T agrees that the application process could be streamlined by modifying Form 470 to make it less complicated and error prone. Thus AT&T suggests that for telecommunications and internet services where state and local procurement rules exist the 470 process be reduced to a notice requirement only, using a significantly streamlined form – *i.e.*, a Form 470EZ. Specifically, the form could be modified to reduce confusion and the opportunity for clerical errors by simply requiring applicants to provide notice of their intent to purchase services, identify the applicable E-rate category of services they intend to buy, indicate the amount the applicant anticipates spending on those services, basic information regarding applicable state and local procurement rules (such as bidding deadlines) and, contact information (such as name, number and e-mail address and/or a website address) where interested parties can obtain more details. As long as the posted Form 470EZ provides

service providers notice regarding opportunities to provide E-rate supported services, and the information necessary to obtain additional details regarding those opportunities consistent with applicable state and local procurement requirements then the applicant should be considered in compliance.

AT&T supports the NPRM's proposal to maintain a more rigorous Form 470 process, including the 28-day waiting period, for applicants that are not subject to state or local procurement requirements and for requests for priority 2 services. But even then, AT&T believes that the Commission could simplify the existing Form 470 for these scenarios to minimize the risk of error.

III. Fair and Open Competitive Bidding Rule.

Proposals:

- 1. Codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for services eligible for E-rate support.**
- 2. Propose that the following behaviors constitute inappropriate conduct during the competitive bidding process:**
 - a. An applicant may not have a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information;**
 - b. An applicant may not turn over its responsibility for ensuring a fair and open competitive bidding process to a service provider;**
 - c. Applicant employees or board members may not serve on any board of any type of telecommunications, Internet access, or internal connections service provider that participates in the E-rate program in the same state;**
 - d. Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant;**
 - e. Applicant employees with any role in the selection of vendors may not have an ownership interest in a vendor that is seeking to provide products or services.**
 - f. Once a contract for products or services is signed by the applicant and service provider, a different service provider may not circumvent the bidding process and offer a new, lower price for the same products and services.**

AT&T agrees that codifying the E-rate competitive bidding requirement is appropriate and that publishing a list of conduct that is inappropriate during the bidding process would be beneficial. AT&T believes that these proposals will reinforce the competitive bidding requirements for all E-rate participants (applicants and service providers alike) and provide a firm foundation to ensure that all E-rate participants play by the same rules. While an illustrative list of inappropriate conduct will be helpful, AT&T recommends the Commission also create a process to ensure that the list is updated to include additional conduct that, through experience, the Commission determines to be inconsistent with its objective of ensuring a fair and open bidding process for E-rate supported services.

AT&T generally supports inclusion of the behaviors identified above in the “inappropriate” conduct list, but believes that the Commission should qualify or clarify certain items to ensure that it does not prohibit conduct that would promote other social objectives or benefits, but not compromise the Commission’s competitive bidding goals. For example, AT&T agrees any list of inappropriate conduct should provide that “[a]n applicant may not have a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with “inside information.””⁴ But the Commission should clarify that certain relationships, such as existing relationships between potential applicants and their current service providers, are not inappropriate. For example, where a service provider has built a relationship with an applicant, and obtained information about the applicant (such as information about service history and billing records) legitimately and through the normal course of business, that relationship should not be deemed inappropriate – provided the applicant

⁴ NPRM at ¶ 29; *see also infra* 2.a.

provides all potential bidders the information they need to submit a bid for supported services and evaluates all such bids fairly.

In addition, while AT&T supports a prohibition against offering gifts and meals to E-rate eligible school or library employees and board members,⁵ it does not believe such a rule should be so broad as to prohibit contributions made by a company to E-rate eligible entities so long as the contributions have no relationship to the procurement of E-rate eligible services. For example, many corporate entities, like AT&T, support literacy programs, high-school completion programs, scholarships and other education-based philanthropic programs as good corporate citizens to ensure that the nation produces a productive and innovative work force. AT&T believes that donations and contributions to such causes should be encouraged, and would not undermine the Commission's fair and open bidding objectives so long as they are provided in a way that is completely unrelated to the sales of services to E-rate eligible schools and libraries.⁶ AT&T further believes that an overly broad prohibition against gifts could jeopardize programs that are vital to communities and to the nation's future.

AT&T believes that, once an applicant has signed a contract to obtain supported services from one service provider, it should not be permitted to circumvent the bidding process by seeking an operational SPIN change to obtain those services from another service provider at a lower price.⁷ However, the Commission's proposed example addressing SPIN changes, as currently drafted, inappropriately applies to service providers rather than applicants. Specifically, it states: "[o]nce a contract for products or services is signed by the applicant and

⁵ *Id.*; *see also infra* 2.d.

⁶ For example, if such donations/contributions are made based on objective criteria, and are not contingent on the purchase of E-rate supported services, they should be permitted.

⁷ NPRM at ¶ 29; *see also infra* 2.f.

service provider, *a different service provider* may not circumvent the bidding process and offer a new, lower price for the same products and services.”⁸ Often times, applicants solicit service providers for pricing information for services, and those service providers are unaware, and have no way of knowing, that the applicants already have existing agreements for those services and may be soliciting information in order to circumvent the competitive bidding process. In these situations, it would be unreasonable and inappropriate to apply the prohibition to service providers, and thus place the burden on them to ascertain whether an applicant is soliciting pricing information in order to circumvent the bidding process. Therefore, AT&T proposes the following edits to ensure that responsibility for compliance with the competitive bidding requirements is placed on the appropriate party, potential applicants.

Once a contract for products or services is signed by the applicant and service provider, a different service provider *an applicant* may not circumvent the bidding process and offer contract *for* a new, lower price for the same products and services *without following the same bidding process that was used in the award of the original contract (pursuant to state and/or local procurement requirements or filing an FCC Form 470)*.

Potential applicants likely are the only entities that have knowledge of their existing agreements and therefore are the only program participants in a position to ensure that any post-agreement pricing is obtained in compliance with the competitive bidding process. AT&T’s proposed edits ensure that the appropriate program participant is identified in the example and that all service providers are treated equally.

AT&T believes the proposed list of inappropriate conduct should be expanded to encompass not only service providers and applicants but also consultants and/or agents of applicants to ensure a fair and open competitive bidding process. As the Commission no doubt is aware, E-rate applicants increasingly rely on E-rate consultants to assist them in fulfilling their obligations under the E-rate program. AT&T expects this trend will continue as applicants

⁸ *Id. (emphasis added)*.

increasingly seek E-rate funding for more complex broadband services and equipment. The Commission should modify its proposed list of “inappropriate conduct” to recognize this marketplace reality, and thus add “consultants and/or agents of the applicant” to every instance where the current example references “applicant” or “employees” of an E-rate applicant. For example, one of the highlighted scenarios states:

Current proposal:

Applicant employees with any role in the selection of vendors may not have an ownership interest in a vendor that is seeking to provide products or services.

AT&T’s proposed modification:

Applicant employees **and consultants and/or agents of the applicant** with any role in the selection of vendors may not have an ownership interest in a vendor that is seeking to provide products or services.

This slight modification would help prevent potential conflicts of interest in the competitive bidding process by affirmatively recognizing consultants and the role they often play in this process.

Similarly, AT&T believes the E-rate program would benefit from increasing the regulatory oversight of consultants who administer the competitive bidding process on behalf of applicants. As noted above, many E-rate applicants utilize consultants to assist them in the E-rate application and procurement process. In many instances, these consultants have a wealth of knowledge regarding all aspects of the E-rate program, and provide valuable services to schools and libraries, especially those schools and libraries that cannot afford dedicated telecommunications and/or information technology departments. Because of the increasing reliance of applicants on consultants for compliance with E-rate program requirements, the Commission should consider whether to exercise more direct regulatory oversight over such consultants to minimize inappropriate conduct and/or relationships involving consultants. Such

oversight could include tracking and monitoring consultant participation and adoption of a certification requirement, requiring E-rate consultants to attest to compliance with applicable E-rate rules and requirements.

IV. Wireless Services Outside of School

Proposals:

- 1. Adopt the National Broadband Plan recommendation to provide full E-rate support for wireless Internet access service used with portable learning devices that are used off premises.**
- 2. What other safeguards, if any, should be imposed to mitigate against the risk of non-educational use at home that is not directly supervised by the recipient of funding.**
- 3. Whether recipients of funding should be required to have policies and procedures in place to mitigate the risk that E-rate funded wireless connectivity is not used for non-educational uses off-premises.**
- 4. How funding for this wireless connectivity might increase over the next several years if this rule were adopted.**
- 5. Whether it should limit wireless Internet access for mobile devices on a trial basis.**

The Commission should allow E-rate support for wireless Internet access services used with portable learning devices off-premises. As the NPRM acknowledges, today's educational systems increasingly require students to have access to information outside of the classroom.⁹ Providing E-rate support for off-campus wireless broadband Internet access has the potential almost instantaneously to lessen the "digital divide" between students that have broadband Internet access at home and those that do not. At the same time, however, this proposal carries with it the risk that such support could be used for non-educational purposes. Accordingly, AT&T believes the Commission should implement this proposal on a short-term trial basis to ensure that the Commission and USAC have the opportunity to gather operational experience necessary to ensure that such services are used consistent with E-rate program goals and that support for those services is made available on an equitable basis. The Commission also could

⁹ NPRM at ¶ 46.

use the trial to determine the magnitude of the risk of *non-educational use* of such services, and whether the costs of measures to prevent that risk outweigh the potential benefits of those measures. AT&T notes in this regard that it may not be possible to completely prevent non-educational use of such services while students are off school property. The Commission thus should consider whether, in light of experience, it is even possible to enforce a strict prohibition against non-educational use, or whether some non-educational use should be anticipated and, within reason, permitted.

In any event, AT&T suggests that the Commission require applicants to have policies, procedures and operations in place to address both non-educational use and inappropriate use (under CIPA and any other applicable federal or state laws) before an applicant is permitted to request funding for off-premises wireless Internet access services.¹⁰

In addition, because it is difficult or impossible to forecast what the demand would be for off-premises wireless Internet access services, the Commission should limit funding for this application until it is in a better position to estimate demand for the service and the amount of support that likely will be necessary for it. The Commission also should reiterate that schools participating in the E-rate program may not request more services than are necessary for “educational purposes” and that schools’ are prohibited from selling, reselling or transferring discounted services and/or network capacity that were obtained through the E-rate program.¹¹

V. Expanded Access to Low-Cost Fiber

Proposals:

1. Permitting recipients to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers, such as municipalities

¹⁰ Children’s Internet Protection Act, 47 U.S.C. § 254(h)(6); 47 C.F.R. § 54.520.

¹¹ Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, *Order And Notice Of Proposed Rulemaking*, 25 FCC Rcd 1740 (2010) at ¶ 3 (“After-Hours Order”).

- and other community or anchor institutions, to allow schools and libraries more flexibility to select the most cost effective broadband solutions;**
- 2. Applicants must provide the modulating electronics.**

As AT&T previously has made clear, it shares the Commission's view that expanding deployment of broadband facilities and services to anchor institutions, including schools and libraries through the E-rate program, will facilitate realization of the National Broadband Plan's ("NBP") ambitious objective of ensuring that all Americans have access to broadband.¹² However, we disagree that allowing applicants to lease dark fiber from any provider, including non-telecom providers and municipalities or other community anchor institutions would necessarily be an effective means to that end; much more analysis would be needed before the Commission reasonably could determine whether leasing dark fiber really would provide a cost effective broadband solution for schools and libraries.

In order for the National Broadband Plan (NBP) to achieve its goal of increasing broadband access and utilization in the nation, end users must have access to *functioning broadband services*, and fiber is but one component of those services. In order to function, broadband services also require other components, such as electronics to light the fiber, and additional power, lighting, and conduit infrastructure at the end-user's premises. They also require regeneration equipment to ensure the integrity of the broadband signal, and that the equipment and fiber be synchronized, tested and maintained. The network to provide such services also must be designed and have a capacity plan, and alarm monitoring equipment, as well as personnel to monitor alarms to prevent signal degradation. Additionally, such services require development and implementation of service restoration plans for out of service conditions (e.g. spare parts inventory for electronics and resources to replace those spare parts, and equipment and trained personnel to repair a fiber cut), as well as interconnection facilities to

¹² See AT&T NBP PN#15 Comments at 1-2.

connect any local broadband network to the Internet. In short, there is far more to providing a functioning broadband service than simply providing dark fiber or mere transmission capacity on lit fiber. Thus, while AT&T agrees that schools and libraries should be able to choose from a number of options at varying price points to meet their broadband needs,¹³ authorizing funding for dark fiber or spare capacity on lit fiber is likely to be penny-wise and pound-foolish. Even if the cost for accessing dark fiber or spare capacity is low to begin with, the ultimate cost of providing the requisite broadband functionality likely would be higher in the long run because the institutions leasing that capacity may, and likely will, lack the facilities, experience and personnel necessary to provide and maintain a complete broadband service efficiently.

The Commission's proposal fails to address any of these considerations, or address how applicants will obtain all of the other components necessary to operate a broadband network, other than proposing that applicants be required to provide modulating electronics. The proposal also fails to address whether applicants seeking funding for dark fiber or other capacity first would be required to show that they had secured funding for these components and other operations before applying for E-rate support for such capacity. Plainly, providing funding for fiber capacity without some assurance that the applicant has access to all of the other components necessary to operate and maintain a broadband network would significantly increase the risk of additional waste, fraud and abuse in the E-rate program. Accordingly, AT&T urges the Commission to defer implementation of this proposal until it has gathered more information about the true economic and other costs of dark fiber solutions and the potential impact on fund resources due to operational costs and the learning curve associated with operating broadband networks. Among the issues the Commission should analyze are: whether schools and libraries are likely to successfully operate a broadband network when many municipal-owned networks

¹³ NPRM at ¶ 53.

have failed because they lack in-depth knowledge of the industry and underestimate network deployment and operating costs?¹⁴ If a school leases dark fiber or other spare capacity from a municipal network, what protections would it have if the municipality cannot continue to operate? What happens if an applicant receives E-rate funding for dark fiber and in only a few years determines that it can no longer financially support its network?¹⁵

Given the uncertainty surrounding these issues, we believe a better approach to achieve the goal of providing schools and libraries access to cost effective broadband facilities and services would be to encourage municipalities and other community anchor institutions to work with commercial service providers to build and manage their networks. Where multiple state and/or local entities join together to aggregate demand, they can obtain services more cost-effectively, particularly in high cost areas, through state-wide master purchasing contracts that offer broadband access. Rates under these contracts typically are postalized, or non-distance sensitive, providing predictability and significant cost savings for locations in rural or high cost areas. These contracts also provide anchor tenants with the certainty that the funds budgeted for their broadband needs will cover all costs associated with the service, covering both network deployment and operating costs. We believe these types of arrangements can and do provide cost effective solutions for all community anchor institutions, including schools and libraries, without the financial or operational risks associated with leasing fiber from a state or local government.

¹⁴ See, Robert D. Atkinson and George Ou, *Why Municipal Fiber Hasn't Succeeded*, The Information Technology & Innovation Foundation (Apr. 3 2009), at <http://www.itif.org/publications/why-municipal-fiber-hasn%E2%80%99t-succeeded>.

¹⁵ Because of the high up-front costs, dark fiber leases must be a long term proposition. Consequently, the Commission should require applicants to demonstrate that they have long term budget approval (well beyond the initial funding year) to cover the applicants' portion of the operational expenses.

If the Commission nevertheless were to decide to provide support for self-provided broadband networks using dark fiber, the Commission would have to consider what, if any, regulatory requirements should apply to these networks. For example, should law enforcement have the ability to intercept messages and/or conversations on these networks under CALEA?¹⁶ Similarly, if applicants deploy VoIP solutions to replace PSTN-interconnected telecommunications services, are the applicants required to comply with the E-911 rules and regulations? Also, the Commission should consider whether pricing regulation and/or cost allocation requirements should apply if the applicant leases fiber from an affiliated state or local government or other community or anchor institution to ensure that those entities do not use E-rate funding to subsidize non-educational uses. These are but a few of the issues raised by funding self-provided broadband networks.

Adding dark fiber to the list of eligible services thus raises a host of issues that must be addressed to ensure the success of the NBP and avoid wasteful disbursement of E-rate funds. The Commission must take the time to analyze the risks associated with funding dark fiber for private networks and determine whether E-rate funding of “low cost” fiber would, in fact, provide applicants cost-effective and efficient broadband solutions. Even if the Commission were to find that funding dark fiber could offer such solutions, in order to protect the integrity of the fund, it should require applicants to submit detailed proposals for those solutions that include (at a minimum) network and operations plans and a description of the financial arrangements the applicants have made to procure the requisite electronics, ongoing maintenance, operations, personnel, and interconnection facilities necessary to operate the proposed private broadband networks.

¹⁶ Communications Assistance For Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.)

VI. Targeting Support for Broadband Services

Proposals:

1. **Seeking specific proposals to re-prioritize E-rate funding to support higher bandwidth connectivity that will enable such applications to be delivered to students and libraries across the country.**
2. **Whether there are any specific telecommunications services, Internet access services or priority two services on the eligible services list that should receive lower priority in E-rate funding so that the FCC can target funding toward higher bandwidth connectivity.**

As AT&T discussed in its Comments in response to NBP Public Notice #15, we agree the Commission should consider creating a mechanism that gives higher priority to the broadband service needs of schools and libraries, particularly those that currently have no broadband service or Internet access.¹⁷ Such a mechanism should be designed to solve the technology problems that face schools and libraries in 2010 and meet current policy goals. Today's educational technology landscape is very different from that of 1997. Since then, the E-rate program has succeeded in meeting the narrow-band objectives of the 90's and first decade of this century. But now, the program must evolve to meet the new broadband challenges of the 21st century, and not just in small incremental ways, but in fundamental ways by re-prioritizing funding to focus on broadband, and modifying the eligible services list to phase out funding for non-broadband services.¹⁸

In its comments in response to NBP Public Notice #15, AT&T offered one proposal for refocusing the E-rate program to ensure that all schools and libraries obtain the benefits of broadband. In particular, AT&T suggested that the Commission could consider dividing the E-rate program into two major sections. A "Facilities Section" could be designed to fund non-

¹⁷ See Comments of AT&T Inc., Schools and Libraries Universal Service Mechanism, CC Docket 02-6, NBP Public Notice #15, GN Docket Now. 09-47, 09-51, 09-137 (filed November 20, 2009).

¹⁸ For example, AT&T has proposed gradually reducing and ultimately eliminating discounts for basic telecommunications services to refocus the fund on broadband technologies. Obviously any changes in the eligibility of recurring services should be phased in to allow schools and libraries to adjust their budgeting and service requirements.

recurring costs for facilities design, engineering and deployment. A “Recurring Charges Section” could be designed to fund on-going support of eligible recurring charges. Under such a bifurcated approach, the “Facilities Section” could be designed to better accommodate the application, discount, and disbursement mechanisms for services that require significant up-front network investment and would therefore serve as a catalyst for broadband deployment. The “Recurring Charges Section” could be designed specifically to address the unique, recurring features of ongoing broadband service contracts.

This bifurcated approach would allow the Commission to consider providing higher funding priority within the “Facilities Section” to applicants with very limited or no existing broadband service. By doing so, the Commission could assure funding for new broadband infrastructure in schools and libraries that currently are unserved or underserved by broadband, and thus allow them to catch up with institutions that already have access to broadband facilities and services. Any remaining E-rate funds within the “Facilities Section” could be used to defray the non-recurring costs for facilities design, engineering and deployment by applicants that already have access to adequate broadband facilities and services, but which are seeking to upgrade them.

Undoubtedly, there will be other proposals and ways in which the Commission can leverage the E-rate to achieve its broadband objectives, and ensure that children across America cross the digital divide and obtain the benefits of broadband. But, whatever course the Commission pursues, it simply must begin the process of refocusing the E-rate program on broadband,

VII. Predictable Internal Connections Funding for More Schools and Libraries

Proposals:

1. **Establishing a flat per student cap per school district for each funding year, with the applicant's discount rate applied after the cap is determined. Libraries would receive the same discount as the public school districts in which they are located;**
2. **Whether there should be a minimum amount for which a school, library, or school district is eligible, not tied to the number of students;**
3. **Revising section 54.507 to set aside a defined amount of funding from the \$2.25 billion for internal connections before priority one funding is allocated. If, so, what is the appropriate amount to set aside for internal connections.**
4. **Eliminate funding for basic maintenance for internal connections.**

The NPRM seeks comment on a number of proposals designed to ensure that a greater cross-section of applicants have access to funds to improve their internal connections. AT&T urges the Commission to refocus the E-rate program on providing support for broadband services and internal connections to those schools and libraries that do not have any, or have only inadequate, broadband services today. To that end, AT&T proposes that the Commission defer implementation of the foregoing proposals for modifying its funding of priority two services until it completes a thorough review of the internal connections needs of applicants. As the Commission itself acknowledges,¹⁹ many of the same applicants have received E-rate funding for internal connections repeatedly while other applicants have never received funding for priority two services.²⁰ Before it modifies its priority two funding policies, the Commission must determine how many schools and libraries lack internal connections of any sort, as well as those that lack connections capable of supporting broadband services. Until the Commission is

¹⁹ NPRM at ¶¶ 62 – 64.

²⁰ For example, an analysis of commitment data that is publicly available through E-rate Central's E-rate Organizer (www.eratecentral.com), indicates that an applicant received a total of approximately \$1.7 billion in priority two commitments from funding year 2000 through funding year 2009 while their priority one commitments for telecom and Internet access services averaged \$41 million over that same time period (for a total of \$414 million). What does this ratio of internal connections spending vs. telecom/Internet access spending mean vis-a-vis issues such as service utilization, equipment upgrade cycles, etc.? Is it an appropriate/efficient ratio? USAC and the FCC may already have analyzed this type of data, and if so, it should share the results. If not, this is the type of analysis that would be appropriate before making modifications to P2 funding.

able to size the scope of the problem, it will be in no position to determine whether the foregoing proposals are appropriate or another approach altogether will be necessary to ensure that all schools and libraries have adequate internal connections.

Once the needs are assessed (and assuming “priority two” continues to exist as a separate category), AT&T suggests that the Commission prioritize funding for internal connections within the priority two category for applicants that do not have any internal connections, regardless of their standing on the current discount matrix. Only once all applicants have internal connections adequate to support broadband should applicants that currently have such connections, but want to upgrade them, receive funding. At the same time, the Commission should cease funding for all internal connections that cannot support broadband. The Commission also should consider discontinuing funding for basic maintenance for internal connections to the extent necessary to ensure that adequate funding is available to ensure that all applicants have internal connections adequate to support broadband.

VIII. Other Proposals

1. Disbursement Simplification

In addition to streamlining the application process as discussed above, the Commission should consider proposals to streamline disbursement of E-rate funding, and increase the efficiency of the fund. Recently, AT&T and others proposed changes to the fund disbursement process that would simplify the E-rate program and make the program operate more efficiently by removing service providers from the middle of the fund disbursement process.²¹ That

²¹ See, e.g., Comments of AT&T Inc., Schools and Libraries Universal Service Mechanism, CC Docket 02-6, NBP Public Notice #15, GN Docket No. 09-47, (filed November 20, 2009); See also Comments of AT&T Inc., In re Matter of National Broadband Plan for Our Future, GN Docket No. 09-51 (June 8, 2009), at 90; Mary L. Henze, AT&T Ex Parte re: WC Docket No. 05-195, Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; CC Docket 02-6, Schools and Libraries Universal Service Support Mechanism (Sept. 14, 2007).

proposal, if adopted, would simplify significantly the disbursement process; reduce the error and waste that is almost unavoidable in the current system; and return schools/libraries and service providers to a normal commercial relationship.

Currently, schools and libraries either get an E-rate discount on their service-provider bills or pay their service provider in full and subsequently obtain reimbursement from the Universal Service Fund, again, *via* their service provider. In either case, the applicants' receipt of USF funding is largely dependent upon extensive and ongoing coordination among three parties - the applicant, the service provider and USAC. It is an unnatural, time and resource intensive method for providing schools and libraries with what should only be a benefit (savings on their communications purchase) not a burden. Requiring coordination among these organizations not only is costly and inefficient but also increases the risk of error, further increasing the costs of all concerned.

Instead of granting applicants a "promise" to fund, the Commission should authorize USAC to provide funding directly to schools and libraries which, in turn, could use such funding to pay their service providers directly. For example, USAC could place E-rate funds into dedicated accounts for applicants that receive funding approval through the current process. Successful applicants could then draw on these accounts to pay for E-rate services in a manner more akin to a regular market transaction. This simplified process would place schools and libraries directly in control of their E-rate funding and make the entire E-rate process less daunting and time consuming for these often resource-strapped institutions. In addition it would reduce the time and costs USAC currently must devote to monitoring and auditing the funding process to prevent waste, fraud and abuse.

2. Proposed Changes to Section 54.504(e) – Rate Disputes Rule

Although the text of the NPRM itself does not propose or otherwise discuss any changes to the E-rate program's Rate Disputes Rule,²² based on a comparison of the text of the existing rule to that contained in Appendix A to the NPRM, it appears that the Commission is proposing to modify that rule. The following compares the text of the existing rule to the proposed rule in Appendix A:

Existing rule:

(e) Rate disputes. Schools, libraries, and consortia including those entities, and service providers may have recourse to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they reasonably believe that the lowest corresponding price is unfairly high or low.

(1) Schools, libraries, and consortia including those entities may request lower rates if the rate offered by the carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant school, library, or consortium including those entities is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.²³

Proposed rule:

(e) Rate disputes. If they reasonably believe that the lowest corresponding price is unfairly high or low, **applicants** may have recourse to the Commission, regarding interstate rates, and to state commission regarding intrastate rates.

(1) Applicants may request lower rates if the rate offered by a carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant applicant is not similarly situated to and subscribing to a similar set of services to the customer.²⁴

²² 47 CFR §54.504(e).

²³ *Id.*

²⁴ NPRM at Appendix A (emphasis added).

As stated above, this proposal only appears in Appendix A to the NPRM. The Commission fails to offer any explanation or rationale for the proposed changes or to identify what problem it seeks to cure.

Regardless of what, if any, substantive change the Commission is attempting to effect, the rule as revised is internally inconsistent. While subsection 2 appears to contemplate that service providers may continue to request higher rates if they can show the lowest corresponding price (LCP) is not compensatory, as they can under the current rule, the main body of the rule appears to authorize only *applicants* to have recourse to the relevant commission if they believe the LCP is “unfairly high or low” (of course, it is hard to see when or how an applicant would claim that the LCP is too low, suggesting that the modification of the main body of the rule to exclude “service providers” was inadvertent). If the Commission determines that some modification to the existing rule is necessary, it should remove this inconsistency. To the extent the Commission intended only non-substantive changes to the existing rule, and thus to continue to allow service providers to request higher rates for interstate or intrastate services, it should add the term “service providers” back into the text of the main body of section 54.504(e). If on the other hand, the Commission intends to substantively change the rule, it should explain what change it intended, and the rationale for that change, as required by the Administrative Procedures Act.

3. Administrative Matters Related to the Eligible Services List (ESL)

AT&T supports the Commission’s proposals for modifying the process for updating the ESL for each funding year. AT&T agrees that requiring USAC to submit the proposed ESL to the Commission by March 30th each year will provide additional time for the Commission to review and analyze the public comments filed on the proposed ESL. AT&T also suggests that

the Commission publish the final ESL at least 30 days earlier than the existing deadline. The additional time will provide applicants additional time to identify their funding needs and plan their E-rate activity for the next funding year.

AT&T also supports the Commission's proposals to delegate responsibility for releasing a public notice seeking comment on the proposed ESL to the Wireline Competition Bureau (WCB) and to provide it greater flexibility regarding publication of the final ESL. In this regard, AT&T believes that delegating this responsibility to the WCB is a more efficient use of Commission's resources and that the Commission should have the flexibility to determine whether the final ESL should be published by an order or a public notice.

IX. Conclusion

As discussed above, AT&T agrees that the E-rate program must be modified to ensure that broadband services are deployed in the nation's schools and libraries; however, many of the NPRM's proposals require modification and/or additional analysis to ensure they will deliver the desired outcome.

Respectfully submitted,

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