

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

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

**REPLY COMMENTS OF AT&T INC.**

Most commenters recognize that the initial program goal of providing telecommunications services and Internet access to the nation’s schools and libraries has been achieved. However, the variety of opinions expressed on the issues presented in the NPRM demonstrates that the E-rate program is at a cross-road. There are differences of opinion between and among applicants, service providers and associations on most of the issues. Therefore, the FCC must take this opportunity to determine the intent and purpose of the E-rate program for 2011 and beyond.

In this regard, the Commission must clearly articulate the priorities of the E-rate program of the future and design processes that will enable the program to achieve the goals. The Commission stated that the NPRM is the first step in “increasing the availability and use of broadband by children and our communities through the E-rate program to create more opportunities for educational advances.”<sup>1</sup> If the Commission stands by this, the Commission must determine whether it wishes to give priority to broadband service deployment to the un-

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<sup>1</sup> 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 at ¶ 4 (2010) (“NPRM”).

served or under-served or whether it will attempt to support all services. While prioritizing some services over others will undoubtedly help the Commission achieve its goal of increasing broadband deployment and utilization, AT&T believes it is appropriate for the Commission to consider how these priorities will impact applicants and should gradually phase in any changes to ensure applicants are afforded sufficient time to adjust their telecommunications and/or broadband deployment plans or secure alternative funding sources. AT&T provides its reply comments on the proposed changes below.

#### **I. The Commission Should Simplify the FCC Form 470.**

The majority of service providers that submitted comments on this issue agree that FCC Form 470 is a critical part of the E-rate program for service providers.<sup>2</sup> As AT&T and others discussed, the Form 470 and posting requirement play a significant role for service providers by providing a centralized resource for obtaining notice, in an equal and fair fashion, that an E-rate applicant is in the market for services. This process helps to facilitate competition by ensuring that service providers have notice and opportunity to submit a bid.

While many applicants endorse eliminating the Form 470 altogether due to the Form's complexity, AT&T proposes to reduce the Form 470 process to a notice requirement only for those applicants subject to state and local procurement rules by using a streamlined Form

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<sup>2</sup> See e.g. Comments of CloudED Mobility, CC Docket No. 02-6, at p. 6 (filed July 9, 2010) ("CloudED Mobility"); Comments of Conterra Ultra Broadband, CC Docket No. 02-6, at p. 3 (filed July 9, 2010); Comments of Qwest, CC Docket No. 02-6, at p. 2 ("Qwest"); Comments of Sprint-Nextel, CC Docket No. 02-6, at p. 8 ("Sprint-Nextel"); Comments of Sunesys, LLC, CC Docket No. 02-6, at p. 5 (filed July 9, 2010) ("Sunesys"); Comments of Verizon and Verizon Wireless, CC Docket No. 02-6, at p. 14 (filed July 9, 2010) ("Verizon").

470EZ.<sup>3</sup> AT&T's proposal would decrease the burden that the existing form puts on applicants, while balancing the service providers' need for a fair and consistent notification process. Accordingly, the Commission should retain the Form 470 requirement and simplify the form as suggested to help ensure the competitive bidding process remains fair and open.

## **II. The Competitive Bidding Rules Must Be Clear and Non-Discriminatory.**

Despite comments to the contrary, AT&T believes 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 help to ensure that all participants play by the same rules. Several commenters insist that the Commission should not impose a prohibition on gifts and/or meals that are provided by service providers or prohibit applicant's employees or applicant's board members from serving on boards of service providers. Interestingly, schools admit that meals, travel and other gifts are provided by E-rate service providers, but argue that these activities should not be prohibited because they in no way "influence a school district's decision to purchase."<sup>4</sup> Further, commenters indicate that employees of the schools also serve on the boards of entities that provide E-rate eligible services.<sup>5</sup> These comments illustrate that there are differences of opinion on whether various types of conduct violate the FCC's competitive

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<sup>3</sup> See Comments of AT&T Inc., CC Docket No. 02-6, at pp. 3-4 (filed July 9, 2010) ("AT&T Comments").

<sup>4</sup> Comments of Branch ISD Educational Services Agency, CC Docket No. 02-6, at p. 1 (filed July 9, 2010); *See also e.g.* Initial Comments of Pittsburgh School District, CC Docket No. 02-6, at p. 2 (filed July 9, 2010) ("It is not uncommon for vendors to provide travel for district staff to attend a training sessions on the newest technologies, during which training meals are provided.").

<sup>5</sup> Initial Comments of Chester County Community Network, CC Docket No. 02-6, at p. 4 (filed July 9, 2010); Comments of Texas Education Telecommunications Network, CC Docket No. 02-6, at p.2 (filed July 9, 2010); Initial Comments of Westmoreland Intermediate Unit, CC Docket No. 02-6, at p. 2 (filed July 9, 2010).

bidding requirements, and thus the need for a clear list of prohibited conduct to eliminate confusion and to ensure that all participants adhere to the same code of conduct.

Similarly, the Commission must ensure that any list of prohibited conduct applies equally to all service providers and applicants regardless of whether E-rate eligible services are provided by private-sector or public-sector providers. The comments in this proceeding demonstrate that E-rate funded services are often being provided to applicants by entities that were created by the school districts and/or state or local governments. And, it appears that the boards of these entities often include employees of the schools they serve.<sup>6</sup> These entities play a number of roles for the schools, including service provider, technology planner, and applicant, creating a risk that applicants will opt to purchase service from such entities regardless of price or value. Moreover, these entities' role as service providers could increase substantially as the Commission sets the priorities for the E-rate program for the future.<sup>7</sup> Accordingly, the Commission must ensure that any conduct that it deems inappropriate under the competitive bidding rules applies on a non-discriminatory basis to relationships between applicants and any service provider, regardless of whether that service provider is private-sector or public-sector.<sup>8</sup>

In addition, AT&T agrees with CTIA that the inquiry into the Form 470 process and the corresponding competitive bidding requirements presents an excellent opportunity for the

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<sup>6</sup> *Id.*

<sup>7</sup> See NPRM at ¶ 54, proposing to allow applicants to lease dark fiber from any provider.

<sup>8</sup> This concept applies to all aspects of the E-rate program. For example, R&E Networks seemingly proposes modification to the rules for the E-rate program that would give it special treatment. See e.g. Comments of Educause, Internet2, National LambdaRail and the Quilt ("R&E Network Community"), CC Docket No. 02-6 (filed July 9, 2010). However, fraud, waste and abuse of E-rate funds can arise whether applicants utilize non-profit or for-profit organizations; thus, the Commission should frown upon any proposal that, on its face, benefits one entity over another.

Commission to clarify specific aspects of the competitive bidding rules, as requested in CTIA and US Telecom’s joint petition (“Petition”), regarding application of the lowest corresponding price obligation.<sup>9</sup> Like the proposed list of inappropriate conduct, granting the Lowest Corresponding Price Petition would ensure that the requirements are interpreted and applied similarly by all participants.

### **III. The E-Rate Program Should Not Fund Access to Dark Fiber.**

Numerous commenters agree with AT&T that allowing applicants to lease dark fiber from any provider would not be an effective means to facilitate rapid deployment of broadband facilities and services to schools and libraries.<sup>10</sup> As AT&T discussed in detail, dark fiber is only one component of a broadband network; many other components must be deployed and many operations issues must be addressed before a broadband network can actually provide broadband services. Given the uncertainty of how applicants plan to address these issues and the risk that this uncertainty would impose on the E-rate program, the Commission should focus its efforts on ensuring that applicants have access to broadband services with known and proven capabilities.<sup>11</sup>

Although many applicants endorse the idea, they appear simply to assume that leasing fiber will be less expensive than buying complete services without considering the cost of the

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<sup>9</sup> Comments of CTIA – The Wireless Association, CC Docket No. 02-6, at p. 3 (filed July 9, 2010) (“CTIA”).

<sup>10</sup> AT&T Comments at pp. 10 - 14; Comments of Charter Communications Inc., CC Docket No. 02-6, at p. 4 – 5 (filed July 9, 2010); Comments of the National Cable and Telecommunications Association, CC Docket 02-6, at p. 2 – 4 (filed July 9, 2010); Qwest at pp. 5 - 6; Sunesys at pp. 7 - 9; Verizon at pp. 9 – 10.

<sup>11</sup> The City and County of San Francisco state that increasing the capacity of the AT&T Opt-E-Man Ethernet service is prohibitive; however, the City and County of San Francisco must consider that the prices for end-to-end Ethernet service include the benefits of dependable and predictable end-to-end service with service guarantees and a work-force that stands behind the service while private networks do not offer these benefits.

other necessary components and operations of the proposed private networks – costs that could (and likely would) drive the cost of a “dark fiber” solution above that of a complete service. At the same time, applicants raise valid concerns associated with limited budgets in this financially difficult time and look to the FCC to increase the E-rate funding cap to provide *further subsidization* of existing service requirements.<sup>12</sup> The million dollar question is: how will applicants fund the high up-front costs associated with building and operating a broadband network (which are not E-rate eligible), when they rely so heavily on E-rate funds for their existing needs. This uncertainty creates a significant risk that any investment in such networks will be wasted investment. Accordingly, as AT&T stated in its comments, the better approach to achieve rapid deployment and utilization of broadband services is “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.”<sup>13</sup> These arrangements provide cost-effective solutions for schools and libraries without the financial and operational risks associated with leasing dark fiber and self-provisioning broadband services.

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<sup>12</sup> Comments of the American Association of School Administrators and the Association of Educational Service Agencies, CC Docket No. 02-6, at p. 2 (filed July 9, 2010) (“AASA”); Comments of Miami-Dade County Public Schools, CC Docket No. 02-6, at pp. 8–9 (filed July 9, 2010). Comments from the Wisconsin Department of Public Instruction, CC Docket No. 02-6, at p. 10 (filed July 9, 2010).

<sup>13</sup> AT&T Comments at p. 13.

#### **IV. The E-rate Program Should Fund Off-Premises Wireless Services.**

AT&T continues to support the funding of off-premises wireless services. Commenters generally agree that learning continues when students leave school grounds and the availability of wireless Internet access off campus would improve the learning experience. But numerous commenters oppose funding these services through the E-rate program primarily because they fear that funding these services would be a “major drain” on the E-rate fund.<sup>14</sup> AT&T believes the Commission can address these concerns by developing a plan to gradually integrate these services into the program, even as it transitions support away from legacy telecommunications services. For example, CSM proposes that the Commission initiate a pilot program for these services with a funding cap that gradually increases over a three year period while funding for other services is gradually reduced.<sup>15</sup> The Commission should implement a proposal such as this to immediately get wireless broadband in the hands of students.

Commenters also suggested that it would be impossible to ensure CIPA compliance when students utilize these services off campus. AT&T believes, that through partnerships between applicants and software firms, solutions could be developed to help applicants control inappropriate use. Also, as AT&T observed, it simply may not be possible to completely prevent non-educational use of such services; and accordingly the Commission should consider whether the benefit of these services justifies a waiver of the non-educational use restrictions. In sum, AT&T believes that the Commission should not allow these issues to prevent funding of services that could provide an invaluable service to students.

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<sup>14</sup> See American Association of School Administrators and Association of Educational Service Agencies Comments at p. 5; See also American Library Association Comments at pp. 14-15.

<sup>15</sup> Comments of CSM Inc., CC Docket No. 02-6, at p. 13 (filed July 9, 2010).

## **V. The Commission Should Simplify the E-rate Fund Disbursement Process.**

The Commission should give serious consideration to modifying the back-end disbursement process. As AT&T and other commenters recognize, there is no reason to require the service provider to be a middleman in the disbursement process.<sup>16</sup> The current process is inefficient and is rife with opportunities for delay and inadvertent errors. Instead, the Commission should immediately adopt AT&T's proposal to authorize USAC to provide funding directly to schools and libraries.

In both the Service Provider Invoicing (SPI) process and the Billed Entity Applicant Reimbursement (BEAR) process, coordination is required between three parties: the applicant, the service provider, and USAC. Simply put, there is no need for the service provider to be involved in the administration of either of these processes. Instead, the Commission should adopt AT&T's proposal and transition the applicant/service provider relationship to a normal customer/supplier relationship. This proposal would produce the following tangible benefits: (1) it would greatly simplify the program, (2) it would provide applicants immediate access to funds, which they can use to pay their service providers' bills, and (3) it would greatly reduce the time and expenses associated with USAC's monitoring and auditing of the funding process.

For the Commission to address simplification of the front-end application process while ignoring the more complex back-end process is to miss an opportunity to make the entire E-Rate administrative process more efficient and effective. Although AT&T believes that both the SPI and BEAR process should be simplified, the Commission, at a minimum, should adopt CloudED

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<sup>16</sup> AT&T Comments at pp. 18 – 19; CloudED Mobility at p. 7; Sprint-Nextel at pp. 9 – 10.

and Sprint-Nextel's proposal to allow USAC to send BEAR disbursements directly to the applicant.<sup>17</sup>

#### **VI. The Commission Can Not Increase the Funding Cap Over and Above Indexing For Inflation.**

In response to the NPRM, many applicants express concern that supporting additional broadband services or giving priority to broadband services will jeopardize E-rate funding of legacy technologies. As a result, the majority of applicants call for an increase to the funding cap (well above the proposal to index the fund for inflation) to ensure that supply meets the demand.<sup>18</sup> But doing so would result in further pressure on the entire Universal Service fund (USF), of which E-rate is only one part, and further escalation of the contribution factor. As we previously have explained, because universal service contributions are based on interstate, retail telecommunications revenues, which have been in steady decline for some time, the contribution factor has been spiraling out of control.<sup>19</sup> Any increase in the E-rate fund beyond its present \$2.25 billion per year cap will exacerbate already mounting pressure on the USF overall and increase the burden on consumers of telecommunications services, who ultimately pay for USF and, thus for E-rate. Accordingly, the FCC should not consider any increase in the E-rate funding cap unless or until it completes comprehensive reform of the contribution methodology.

#### **VII. Technology Plans Should Be Required for Certain Services.**

Technology plans have played an important role in the E-rate program as they require an applicant to carefully consider how it will use E-rate funds. While technology plans may not be

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<sup>17</sup> *Id.*

<sup>18</sup> *See infra* note 12.

<sup>19</sup> Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Telecommunications Industry Revenues* (September 2009).

necessary for simple telecommunications services, such as POTS, AT&T believes this requirement is still warranted for complex services. For example, if an applicant seeks funding for complex network architectures or high bandwidth services that on their face appear to provide unproven features or excessive bandwidth, the applicant should be required to demonstrate how the services will be utilized and why E-rate funding should be granted. In these instances, this requirement will help protect the integrity of the E-rate fund by ensuring that applicants are requesting funding for proven services and for services that correspond to their existing needs.

Respectfully submitted,

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