

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**Reply Comments of
Communications Workers of America**

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The Communications Workers of America (CWA) submits these reply comments in response to comments made on the Commission's Public Notice seeking public input into its Notice of Proposed Rulemaking regarding the Schools and Libraries Universal Support Mechanism (E-Rate) and A National Broadband Plan for Our Future (NBP). CWA is a labor organization, representing more than 700,000 workers in communications, media, airlines, manufacturing and public service. CWA members have an interest in these proceedings as workers, as parents, and as community residents who benefit from the E-Rate program.

In these reply comments, CWA will focus on three issues: 1) support for raising the cap on funds available for the E-Rate program; 2) opposition to the proposal to expand E-Rate funding eligibility to "dark fiber" networks; and 3) a discussion of how the Commission can ensure that E-Rate network providers protect workers' rights and labor standards. In the first case, the Commission's proposal to index the funding cap to inflation coupled with raising the annual cap are important steps towards addressing the underlying issue of demand for E-Rate funding consistently outstripping the supply. Such action will advance the Commission's goal of bringing one gigabyte broadband access to anchor institutions as recommended by the National Broadband Plan. In the second case, CWA does not believe that including dark fiber networks among the broadband services eligible for E-Rate funding will prove cost-effective for schools and libraries, nor will it provide the level of service that these institutions require. In particular, CWA questions whether schools and libraries will have the quality, trained staff needed to plan, service, and maintain leased fiber networks. CWA recommends, at a minimum, that the Commission defer implementation of expanded eligibility for dark fiber networks pending further study.

Raising the Annual Cap. While E-Rate has successfully increased connectivity at schools and libraries across the country, the program has never kept up with the demand. CWA agrees with commentators such as the the American Library Association (ALA) that favor the Commission’s proposal to index the funding cap to the rate of inflation.¹ However, CWA also finds the current cap on the E-Rate fund of \$2.25 billion to be far too low. CWA agrees with the recommendation of the Education and Library Networks Coalition (EdLiNC) that the annual cap should be raised to at least \$4 billion annually.² This number should also be adjusted annually to the rate of inflation and to account for the evolution of technology and pricing standards. The original cap was set using “estimates” that the Commission itself acknowledged would be insufficient over the long term, and the result of this inflexible policy has been historic underfunding and resource rationing.³ Under the current cap, once funding for Priority I obligations (such as internet connectivity and equipment) have been met, the percentage of funds remaining for Priority II projects (internal connections, basic maintenance on those connections) has steadily approached zero.⁴ The Commission has better information than it did when the current cap was set a dozen years ago, and a more realistic funding level is not only possible but it is absolutely necessary to ensure that students and members of the public have access to the high-speed Internet connectivity that they need. Raising the cap to this level will also make progress toward the NBP goal of providing one gigabyte broadband access to anchor institutions.

¹ American Library Association Comments, CC Docket No. 02-6, GN Docket No. 09-51 (July 9, 2010) p. 17

² Education & Libraries Networks Coalition Comments, CC Docket No. 02-6, GN Docket No. 09-51 (July 9, 2010) p. 1.

³ *Id.*, p. 4.

⁴ *In the Matter of Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan For Our Future*, Notice of Proposed Rulemaking, CC Docket No. 02-6, GN Docket No. 09-51, p. 28 (“NPRM”).

Dark Fiber. The Commission proposes to “provide greater flexibility to recipients to choose the most cost-effective bandwidth solutions for their connectivity needs by allowing the leasing of low-cost fiber from municipalities and other entities that are not telecommunications carriers.”⁵ While CWA supports the Commission’s intent to reduce cost and maximize benefits to E-Rate participants, we disagree with the Commission’s proposal to include “dark fiber” networks among the eligible network solutions. In particular, we are concerned that schools and libraries that attempt to run their own networks with leased fiber will not have the trained workforce to operate and maintain their networks – challenges that they do not have to deal with when they purchase services from commercial providers that employ trained, career technicians.

Leasing fiber may, at first glance, seem like a method to keep costs down. But after a careful examination, it is not clear that dark fiber offers cost-savings over purchase of Internet connectivity services from a commercial provider. While the cost of a lease on dark fiber might initially be less than a purchase of Internet connectivity, there are myriad additional costs associated with dark fiber networks that are generally included with the purchase of services from a traditional provider. Some of these costs include the additional electronics necessary to get the facility on line, including a stockpile of additional equipment for necessary repairs, the maintenance and upkeep of the network and all of its components, as well as additional power, lighting and conduit infrastructure at the end-user’s facility.⁶ Additionally, a network will require regeneration equipment to ensure the integrity of the broadband signal, and synchronization, testing, and maintenance of the equipment and fiber. Further, such a network must be designed and have a capacity plan, alarm monitoring equipment, and an actual person

⁵ *Id.*, p. 4.

who can react to the alarm to prevent signal degradation.⁷ Providing support to dark fiber networks opens the possibility for stranded investment of E-Rate dollars.

In addition, CWA notes that if dark fiber becomes eligible for E-Rate funding, monies will flow out of the system to subsidize entities that do not pay into the E-Rate program.⁸ As E-Rate distributes support to entities that do not themselves contribute, the telecommunications companies that do contribute end up subsidizing them, without any effective support from the fund itself. This could eventually undermine the sustainability of the E-Rate fund.

It is unlikely that schools and libraries, especially those institutions serving the nation's rural and low-income areas, will have on-hand the technical expertise to manage a complicated broadband network, or be able to afford to dedicate staff to network maintenance.⁹ Managing complex broadband networks requires highly-skilled career technicians with the experience and expertise necessary to ensure quality service. A dark fiber lease leaves schools and libraries on their own to try to find their way in a very technical field which is not a part of their core mission.

Further, dark fiber providers may not have access to poles and other attachments necessary to build-out networks to anchor institutions. For example, Maine Fiber Company received a \$25.4 billion Broadband Technologies Opportunity Program (BTOP) grant under the American Recovery and Reinvestment Act to build a duplicative fiber-optic network which it claims will enable it to connect schools, libraries, and other anchor institutions. However, because Maine Fiber is a "dark fiber" company, and not a telecommunications provider, it did

⁶ AT&T Comments, CC Docket No. 02-6, GN Docket No. 09-51 (July 9, 2010) p. 11.

⁷ *Id.*

⁸ *See* Qwest Communications International Inc. Comments, CC Docket No. 02-6, GN Docket No. 09-51 (July 9, 2010) p. 6.

not have the right to attach its facilities to poles and other attachments. Maine Fiber had to go to the Maine legislature with a request for special legislation that would give a “dark fiber” company the right to attach to utility poles. Maine Fiber wanted the benefits, but none of the obligations, of a telecommunications provider. The Commission can ensure that such unnecessary and costly delays can be avoided by maintaining its current policy to limit E-Rate funding to commercial providers. At a minimum, Commission rules must ensure that any dark fiber project funded through E-Rate has obtained all the necessary permits and access to facilities that it needs to build and operate its network.¹⁰

The Commission need not expand eligibility to dark fiber networks in order for schools and libraries to aggregate demand in order to realize efficiencies and cost-savings. Rather, schools and libraries and other anchor institutions can partner with commercial service providers to build and manage their networks. Aggregated demand can lead to lower prices, especially in high-cost areas, and commercial providers can allow long-term budget forecasting as well as protect schools and libraries from sudden price spikes (such as purchasing replacement parts when equipment fails, or fluctuating energy prices) that are part and parcel of running one’s own network. With this approach, schools and libraries will be able to enjoy lower costs that are insulated from uncertainty, and ensure delivery of high-quality, reliable broadband service. E-Rate currently supports high-bandwidth, fiber-based services such as gigabit Ethernet.

Protection of Workers’ Rights and Labor Standards. The Commission should also ensure that any E-Rate recipients abides by sound labor practices and provides no less than

⁹ *Id.* pp. 12-13.

¹⁰ Eric Russell, “Bill Pushes ‘Three-Ring Binder’ Network Project Forward, *Bangor Daily News*, April 7, 2010 (available at <http://www.bangordailynews.com/detail/140709.html?print=1>). The legislation that passed the Maine legislature is LD1778, An Act to Enable the Installation of Broadband Infrastructure.

prevailing wages and benefits. CWA is not aware of such provisions in existing E-Rate rules. CWA recommends that the Commission adopt, at a minimum, the provisions adopted in the Implementing Guidance for the American Recovery and Reinvestment Act (ARRA). Those guidelines require any ARRA grant recipient to abide by all labor laws, including wage and hour, occupational safety and health, and collective bargaining laws “to ensure that American workers are safe and treated fairly.” The guidelines encourage agencies awarding funds to “support entities that have a sound track record on these issues and are creating good jobs” and requires all recipients to abide by prevailing wage laws.¹¹ The Commission should adopt such provisions in its E-Rate rules in order to ensure that E-Rate funded projects promote quality well-paying jobs in the communications sector.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Debbie Goldman".

Debbie Goldman
Telecommunications Policy Director

Monday, July 26, 2010

¹¹ Office of Management and Budget, Peter R. Orszag, Memorandum for the Heads of Departments and Agencies, M-09-15, April 3, 2009 (available at http://www.whitehouse.gov/omb/assets/memmoranda_fy2009/m09-15.pdf).