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August 27, 2010

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

Re: CC Docket 02-6; Schools and Libraries Universal Service Support Mechanism

Dear Ms. Dortch,

On August 26, 2010, the undersigned, Terri Hoskins, David Hostetter, Philip Bowie, and Kevin Carman, all of AT&T, met with Zac Katz of the Chairman's office and Carol Matthey, Patrick Halley, Gina Spade, Regina Brown, James Bachtell, and Rebekah Bina of the Wireline Competition Bureau. The purpose of the meeting was to discuss the Commission's proposal to make dark fiber provided by any provider, including non-telecommunications providers, eligible for E-rate support.

AT&T explained that the statutory language does not support making dark fiber eligible for E-rate funding. Specifically, sections 254(c)(3) and 254(h) discuss making "services" available to schools and libraries, such as telecommunications services or Internet access services. The essential characteristic that distinguishes these as services eligible for funding is they both include a transmission capability through which telecommunications is provided. But, dark fiber is not a "service" as this term is used in section 254(h); it is nothing more than a physical facility that can only be used to provide a service if electronics are attached to it. Further, section 254(h)(1)(B) allows schools and libraries to purchase telecommunications services at discounted rates. Nothing in this section suggests that schools and libraries can obtain funding to create their own telecommunications services using wholesale inputs, such as dark fiber. Indeed, section 254(h)(1)(b) refers to "services provided by a telecommunications carrier serving [the] geographic area," which makes clear

that Congress did not expect those “services” to be provided by schools and libraries themselves.

Likewise, section 254(h)(2)(A) also fails to support the NPRM’s dark fiber proposal. This section requires the Commission to create competitively neutral rules to enhance “access to” advanced telecommunications and information services for schools and libraries. However, dark fiber does not provide “access to” advanced telecommunications or information services. As discussed above, dark fiber would allow schools and libraries to “create” their own services.

While the Commission has previously held that certain “internal connections” may be included in the E-rate program that holding does not apply to dark fiber. The Commission based its holding with respect to internal connections on statutory language and legislative history concerning the importance of bringing advanced services “to classrooms” using the theory that unless inside wiring and other internal connections within a school were funded, the advanced services may not reach the classrooms as Congress intended. See *First Report and Order*, ¶¶ 453, 455-56. These concerns do not apply to dark fiber, which is not needed to extend eligible services to individual classrooms. In the case of internal connections, they at least provided “access to” advanced telecommunications and information services in the sense that they were connected to them. This is not the case for dark fiber. While the Fifth Circuit upheld the Commission’s internal connections policy, it noted that “the best reading of the statute does not authorize the agency’s actions.” *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 441 (5th Cir. 1999). Dark fiber is far more removed than internal connections from the E-rate program’s core goals of promoting affordable access to modern telecommunications and information services, and thus it should not be supported by the program.

In the event the Commission elects to make dark fiber eligible for support, AT&T suggested that it should do so in a manner that furthers the National policy goal of increasing broadband deployment in un-served areas. The Commission should also ensure that dark fiber utilized by schools and libraries to self-provision telecommunications is ineligible for E-rate support because these services would not meet the Act’s definition of telecommunications services as they would not be provided by telecommunications carriers. In addition, funding dark fiber when it is leased by a non-telecommunications carrier such as a municipality to provide telecommunications would violate the Commission’s obligation to establish competitively neutral rules under section 254(h)(2).

AT&T also urged the Commission to adopt safeguards to guard against error, waste, fraud, and abuse and to make modifications to the proposed rules and ESL to promote clarity. The materials used during the meeting are attached.

This notice is being filed pursuant to Sec. 1.1206(b)(2) of the Commission's rules. If you have any questions concerning this filing, please do not hesitate to contact me at 202-457-2041.

Sincerely,

/s/ Mary L. Henze

Mary L. Henze

cc: Z. Katz
C. Matthey
P. Halley
G. Spade
R. Brown
J. Bachtell
R. Bina

Dark Fiber and E-rate Eligibility

A. Proponents of dark fiber eligibility argue

- Services that applicants want/need are not available
- Dark fiber solutions have more capabilities
- Dark fiber is a lower cost broadband solution

B. Switched Ethernet services are readily available

- Telecom carriers have extensive, robust switched Ethernet facilities
 - AT&T alone has 750 Ethernet switches deployed
- Switched Ethernet services offer significant benefits to applicants
 - Flexible: speed, network design, service class
 - Quality: carrier grade equipment, SLAs, diversity
- Switched Ethernet can be more cost effective
 - Fully functioning service; scalable; support and maintenance

C. Proposed eligibility of dark fiber “from any provider” raises numerous questions

- What is it? Not a telecommunications or internet access/information service. Does not provide access to advanced telecommunications or information services.
- What can it be used for? Self provision of telecommunications service? Self provision of Internet access?
- Who owns what? Electronics not eligible; applicant “provides”/owns? Long term leases cannot result in ownership.

D. If dark fiber becomes eligible, safeguards are necessary to prevent error, waste, fraud, and abuse.

1. Cost Effectiveness and Readiness

- Upfront cost effectiveness test based on total cost to applicant for a functioning broadband service
 - Require cost effectiveness analysis during PIA for all applications requesting support for dark fiber
 - Provide detailed guidance to applicants on how to evaluate carrier provided vs. dark fiber bids
- Require applicant proof that it has the funding and resources to use dark fiber to create and maintain functioning broadband for duration of the dark fiber lease

2. Competitive Bidding

- All providers of dark fiber, public and private, must be subject to same competitive bidding rules.
- Relationship between applicants and entities such as municipalities or membership based networks raise new issues that must be resolved.

3. Reinstate 54.518

- Proposed rules eliminate 54.518, the WAN requirements, in order to centralize all discussion of eligible services in the ESL. However, legal status of ESL unclear
- Commission should reinstate at least part of 54.518 to codify existing prohibition on schools and libraries building or owning networks.

4. Modify Proposed ESL Categorization

- Proposed 2011 ESL lists dark fiber in Miscellaneous category of Priority 1 services, suggesting it is eligible for both telecommunications and internet access and information services.
- Dark fiber should be moved to Internet Access and Information service category, only.

AT&T National Ethernet Coverage

Widely Available

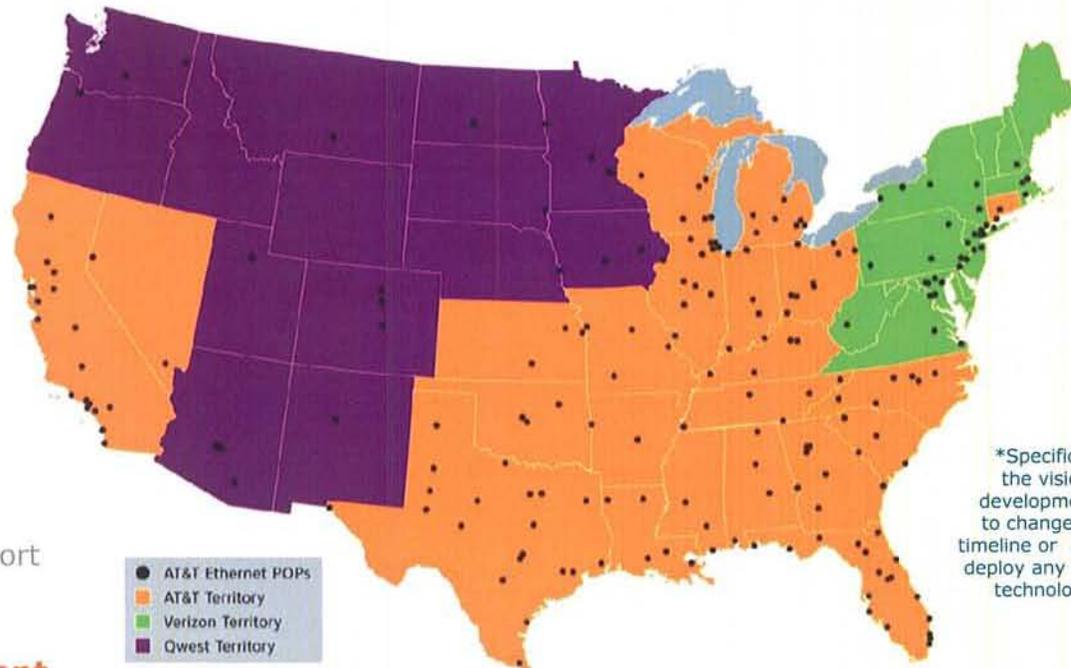
- Deep 22 state access coverage
- Extensive interconnections with certified Ethernet access suppliers
- Additional 30+ countries via common MPLS core network

Access to WAN Services

- AT&T Managed Internet Service
- AT&T OPT-E-WANSM
- Ethernet Private Line Service
- AT&T MPLS Private Network Transport

Broad Metro Ethernet Deployment

- 360+ metro markets in the 22 states
- Over 750 switches deployed
- Largest volume of ports in service
- Recent expansion of Ethernet over Copper
- More than 1,300 wire centers equipped



AT&T's network includes more than **880,000 fiber route miles** worldwide, with up to **99.999 percent reliability**

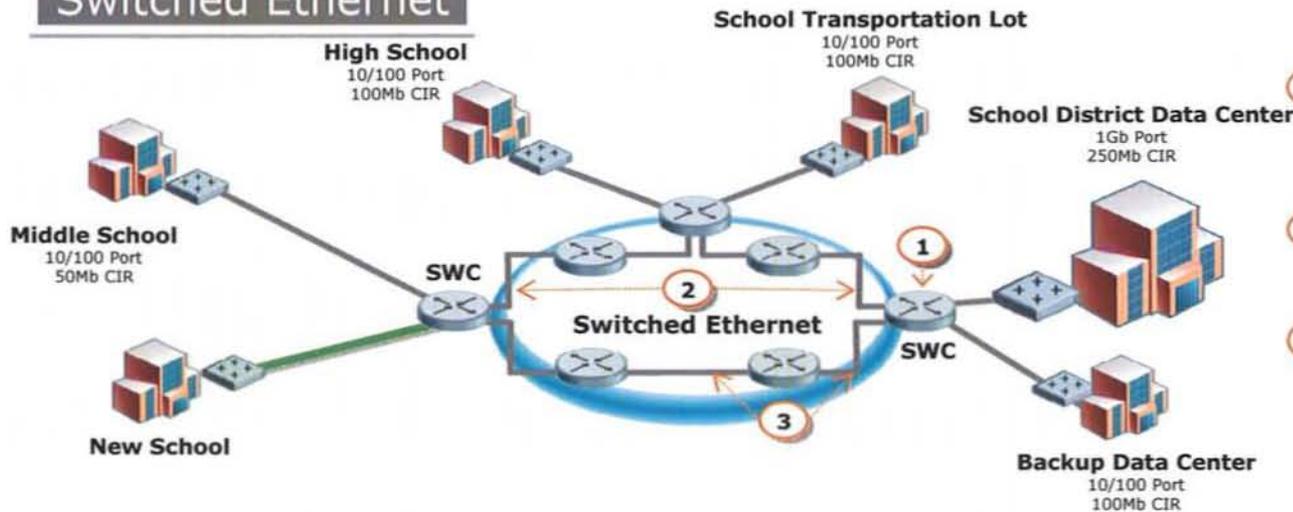
Benefits of Carrier Switched Ethernet

| Features | Benefits |
|---|--|
| <ul style="list-style-type: none">• Single Platform supporting various types of Ethernet transport methods<ul style="list-style-type: none">– Pt-to-Pt, Point-to-Multipoint (hub & spoke) and Any-to-Any• 2 Mb to 1000 Mb speeds with support for<ul style="list-style-type: none">– 4 classes of service for traffic fine tuning– Ethernet over Copper options• Industry-Leading SLAs• Conforms with industry standards (Metro Ethernet Forum) | <ul style="list-style-type: none">• Carrier grade Ethernet for consistent experience• Several available speed choices• Can be configured several ways• Separate physical networks can be logically linked together (e.g. schools and first responders)• Choose your level of service• Available in 22 states• The agility to change speeds and locations as needed• Diversity options for more network protection |

Benefits of Carrier Switched Ethernet

— Existing Fiber
 — New Fiber

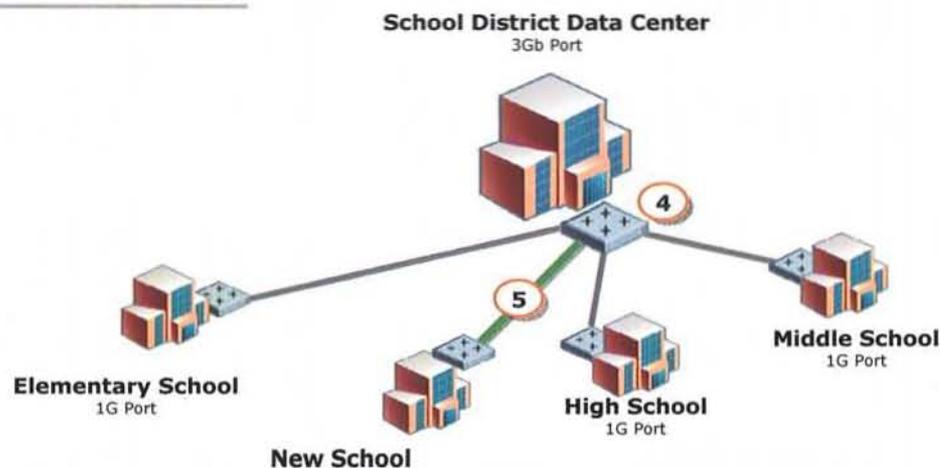
Switched Ethernet



Carrier Switched Ethernet

- 1 With carrier switched Ethernet, the carrier **aggregates** all customer traffic in the carrier's Ethernet switches, enabling committed information rates
- 2 Core network is **reusable**, limiting the amount of new fiber needed to connect a new school
- 3 With carrier switched Ethernet, there is **redundancy** in the core network that enables network availability guarantees

Private Fiber



Private Fiber

- 4 With private fiber, the customer must aggregate all its traffic using customer premise equipment (routers) - depending on the size of the network, the customer may have to invest heavily in CPE to aggregate all traffic running to the data center
 Customer CPE represents a **single point of failure** - if it fails, the entire school district network fails
- 5 For a new location served by private fiber, new fiber from the new location to the data center is required - less of a chance to reuse previous fiber investments or switches

Cost Comparison

Dark Fiber Lease

- Fiber Lease (IRU)
- Network Installation
- Fiber Route Monitoring
- Break/Fix Dispatch

- \$?
- \$?
- \$?
- \$?
- \$?
- \$?

Total Cost of Functioning Service

Carrier Switched Ethernet

- Access to Carrier Fiber
- Network Installation
- Fiber Route Monitoring
- Break/Fix Dispatch
- Electronics to Light the Fiber
- Core Network Diversity
- 24x7 Network Edge Device Monitoring/Fault Isolation
- Equipment Spares
- Field Diagnostic Equipment
- Training and Retention of Technical Staff

Total Cost of Functioning Service

Contracted Services

