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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte Communication*, CC Docket No. 02-6, GN Docket No. 09-51

Dear Ms. Dortch:

As discussed herein, the Internet2 K20 Initiative recommends that the Commission should rule that an eligible entity should be able to receive E-rate funding for (i) the receipt of lit service from any broadband provider; (ii) the leasing of dark fiber from any broadband provider; (iii) the lighting of fiber, which the eligible entity already owns or otherwise has control over, by any broadband provider; and (iv) the purchase of the right to use dark fiber from any broadband provider. In addition, the Commission should rule that eligibility for the provision of dark fiber should not be dependent on where the modulating electronics are located or who owns the modulating electronics.

An Eligible Entity Should be Able to Receive Funding for the Receipt of Lit Service from any Broadband Provider

In reaching its decision here the Commission should keep two words in mind -- "flexibility" and "competition." The Commission should render a decision that ensures that eligible entities have the maximum amount of flexibility with respect to from whom they receive eligible services, and the Commission should ensure that its rulings promote – rather than undermine or distort – competition. Limiting the types of broadband providers that can provide some or all of the funded services greatly undermines the flexibility that schools and libraries need under this program, particularly in rural and remote parts of the United States, and also undermines the Commission's goals of ensuring that the use of, and benefit from, the funds available are maximized. Accordingly, the Commission should hold that an eligible entity should be able to receive funding for the receipt of lit service from any broadband provider, including from Research and Education Networks ("R&E Networks").[1]

[1] For the reasons set forth in the recent filing of the SHLB Coalition in this proceeding, the Commission has the legal authority to reach this conclusion.

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In Section 8.22 of the National Broadband Plan, the Commission stated as follows:

> [M]ore 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 … Expanding the R&E network model to other anchor institutions would offer tremendous benefits.[2]

These tremendous benefits that the Commission wants and the public needs can only be maximized if R&E Networks (as well as any other broadband providers) are not discriminated against with respect to E-rate. And this discrimination does not just harm the R&E Networks and the other broadband providers, but more importantly it greatly injures schools and libraries and the students and public that they serve. It denies them the flexibility and the options they need to make the best decisions for them. In some instances, their best choice will be to use a telecommunications carrier, but in other instances, if there is no distortion under the E-rate rules, it would be to use an R&E Network or other broadband provider such as a community network to provide the service.[3] Effectively denying schools and libraries this choice denies many of them the opportunity to benefit from multi-party competition, and better themselves, their students and the public. This is not the time to tie the hands of these important anchor institutions, but instead it is the time to free them from regulatory distortions and history that undermine their ability to choose the most economical and capable services available in their marketplace.

If an R&E Network offers a far better service to a school or library (e.g., far greater capacity) than is offered by an incumbent telecommunications carrier, and both offerings (prior to any E-rate discounts) are provided at or about the same cost to the school or library, one would think the school or library would choose the more capable network's service. But E-rate completely distorts this decision making process in that it makes the incumbent telecommunication provider's offering far cheaper than the R&E Network's offering in that only the former's lit service is eligible for E-rate. Therefore, a school or library who cannot afford to pay a non-E-rate discounted rate is forced to choose the far lesser service to the detriment of its students or the public. In many instances, the effect is to only subsidize the lower capacity service, and not the higher capacity service as well, even though they are both offered for about the same price. This is not good policy.

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[2] See National Broadband Plan, Section 8.22 (emphasis added).

[3] For example, several rural counties in Minnesota are deploying fiber to their anchor institutions. Schools and libraries will be offered strands of fiber to be used at their discretion. The county networks will also offer channels to other parts of the state for ISP and other services for educational purposes.

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It would be akin to subsidizing schools for the cost of foods that contain an abundance of fat, but not healthy foods. It distorts the result –ironically -- in the wrong direction.

Moreover, the current E-rate rules are inconsistent with the Commission's repeated statements through the years that it does not want to pick winners and losers in the industry. But that is precisely what E-rate does by allowing some providers' lit services (i.e., telecom carriers) to be E-rate eligible but not other providers' lit services (i.e., other broadband providers, including R&E Networks).

In addition, by removing the discrimination, and giving eligible entities maximum flexibility to choose the right provider for them, the Commission will also stretch the use of the money that is available for E-rate.[4] Given that the Commission cannot permit the E-rate cap to be unlimited, it needs to ensure the dollars are stretched as much as possible to get the most bang for its E-rate buck. It can only do that if it does not effectively take options off the table for eligible entities that would allow them to get more (or at least the same) for less money.

An Eligible Entity Should be Able to Receive Funding for the Leasing of Dark Fiber from any Broadband Provider

Eligible entities should be able to receive funding for the leasing of dark fiber. By maximizing their flexibility to select the right option for them, eligible entities will in many instances be able to save significant costs. There simply is no merit to either of the two primary arguments raised by opponents of this approach. First, the opponents claim that they are concerned the fund will be too quickly depleted if the leasing of dark fiber is eligible. But the opposite is true. Schools and libraries will generally only lease dark fiber, rather than purchase a lit service, where the former costs less than the latter. Moreover, the amount of funding provided for the dark fiber would be amortized over the term of the lease (with the funding provided only in connection with the strands actually lit). Thus, there should be no concern of prematurely depleting the fund, and, in fact, such leasing will allow fund dollars to be stretched much further. That is, schools and libraries will make rational decisions and therefore will only use dark fiber where it is cost-effective to do so. Accordingly, more – not fewer – projects will be able to receive funding if dark fiber is an option.

The opponents' second argument is in essence a claim that schools and libraries are not intelligent enough to make the right decisions and therefore their options should be more limited.

[4] For example, with respect to connections from Dallas to Houston, certain carrier prices for lit services were approximately four times greater than R&E Network prices for the same services. With this modification, in these circumstances, certain consortiums of schools would draw approximately $1,500 from the e-rate fund rather than close to $6,500.

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The truth is that many schools and libraries are savvy with respect to E-rate and others that are not can certainly get the help they need from experts in the field. Policy decisions should never be based on the incorrect presumption that schools and libraries are not operated by intelligent people. Schools and libraries are operated by people who either know the information they need, or know how to find it otherwise.[5] Moreover, if there is any concern on this point, the Commission should encourage more entities who are experts in the field, as well as the appropriate associations, to take action to ensure that schools and libraries are properly informed of their options and the ramifications of those choices.[6]

Indeed, the lack of credibility of the opponents arguments can perhaps best be seen by AT&T's claim that "[d]ark fiber is far … removed … from the E-rate program's core goals of promoting affordable access to modern telecommunications and information services."[7] Nothing could be further from the truth. The program's core goal of ensuring that these critical anchors institutions receive affordable modern telecommunications and information services is greatly enhanced by making dark fiber eligible, as in many instances it will allow schools and libraries to get far better services or pay far less money. What the Commission and Congress care about is the end result: ensuring schools and libraries get what they need at affordable prices and the last thing the Commission or Congress would want to do is unnecessarily restrict the means by which schools and libraries can do so. AT&T's claim to the contrary is the ultimate example of placing form over substance.

Moreover, for all of the reasons set forth earlier herein (flexibility, pro-competition, reduced costs, etc.), the eligibility of the leasing of dark fiber should extend to the provision of dark fiber by any broadband provider, including R&E Networks. In fact, R&E Networks and other broadband providers have received numerous grants from NTIA in connection with BTOP. This government money will not be fully utilized in the most effective manner possible if such R&E Networks and other broadband providers are not provided an opportunity to offer innovative services to schools, including dark fiber, under E-rate.[8]

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[5] A consortium of 41 school districts in North Dakota, the Great Western Network, combines the use of the state network and private leases from six ISPs to provide video and data coverage. The fiber leases consist of over 950 miles of leased and/or consortium-owned fiber. Over the years these fiber leases have decreased in price per mile. This is due mainly to increased pressure by the schools to revisit options for connectivity and spurs market competition.

[6] The opponents also make a half-hearted attempt to claim that the Commission does not have the authority to make dark fiber eligible, completing ignoring, among other things, that dark fiber was previously eligible and there was never any change in the law since that time to remove the Commission's authority to have dark fiber be deemed eligible.

[7] AT&T Ex Parte Filing, 02-6 (August 27, 2010).

[8] Many R&E networks that received a BTOP grant will likely lease or sell fiber to rural schools. The network will provide either lit or unlit fiber so the rural school can connect to a regional K12 consortium network to receive ISP and video services. The only affordable option for rural schools in these regions today is T1s.

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The Eligibility for the Provision of Dark Fiber Should Not be Dependent on Who Owns the Modulating Electronics or Where the Equipment is Located

The eligibility for the provision of dark fiber should not be dependent on who owns the modulating electronics or where the equipment is located. There is no reason whatsoever to reduce the options to eligible entities on this basis, which would, among other things, undermine the Commission's goals here of stretching E-rate dollars as far as possible.

An Eligible Entity Should be Able to Receive Funding for the Lighting of Fiber, which the Eligible Entity Already Owns or Otherwise has Control Over, by any Broadband Provider

For all of the reasons stated above, the Commission needs to provide eligible entities with flexibility to make the best, and most cost-effective, choices with respect to their services, and therefore an eligible entity should also be able to receive funding for the lighting of fiber, which the eligible entity already owns or otherwise has control over (including via a lease), by any broadband provider.

An eligible entity often already has expertise with switches, routers and optronics that is necessary to light fiber and E-rate already funds many of these components within school buildings as part of internal connection funding. Denying a school the ability to use E-rate to purchase optronics to light dark fiber leases forces a school to lose the scale economies built in to the E-rate-funded internal connections equipment only to be forced to invest in duplicative infrastructure and optronics from a provider. For efficiency and maximization of available funds, the Commission needs to allow schools and libraries the flexibility and choice to maximize the capacity of their existing equipment to create the most cost effective, capable and efficient networks. [9]

An Eligible Entity Should be Able to Receive Funding for the Purchase of Dark Fiber from any Broadband Provider

For all of the reasons set forth earlier regarding the leasing of dark fiber, an eligible entity should also be able to receive funding for either the monthly lease of dark fiber, or for the purchase of dark fiber from any broadband provider. Once again, this will allow schools and libraries to save money in many instances with respect to their broadband needs (and thereby allow E-rate dollars to be stretched even further) without depleting the fund. The purchase amount, in terms of E-rate

[9] The Great Western Network built a new network on existing fiber from their previous analog network. The new network is used for both video and data. The cost is consistent with costs of delivering multiple T1s to each site.

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funding, would need to be amortized over the useful life of the fiber (and with the funding provided only in connection with strands actually lit).

The Internet2 K20 Initiative is directly aware of instances where state education networks have found that dark fiber purchases for fibers that can be lit at 1, 10, 40 or 100 Gbps over the 20 year life of a fiber right-to-use are less expensive over as little as a 60 month period than T1, DS-3 or OC3 legacy services that are E-rate eligible. The result is the USF is currently set up to fund 240 months of lesser eligible service when a vastly more capable service could be put in place for ¼ of the cost to the school and the E-rate program. Because the gigabit or faster dark fiber lease is not E-rate eligible, schools do not have the choice to select the better service and are forced to opt for a less capable legacy service.

Conclusion

If the Commission adopts the proposals referenced herein, it will be a win, win, win, win. That is, (i) schools and libraries, including in rural areas, will have far greater options; (ii) they will in numerous instances either save money, get far better services, or both; (iii) the e-rate fund will be able to fund a greater number of services to a greater number of schools and libraries; and (iv) those providers who have had very limited competition in this area because e-rate funding distorted the environment and gave them an unfair advantage will now have to take more steps to benefit eligible entities, which could also result in reduced costs to such entities.

Respectfully submitted,

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