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Federal Communications Commission
Washington, D.C. 20554

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

SIXTH REPORT AND ORDER

Adopted: September 23, 2010

Released: September 28, 2010

By the Commission: Chairman Genachowski and Commissioners Copps and Clyburn issuing separate statements; Commissioner McDowell approving in part, dissenting in part and issuing a statement; Commissioner Baker approving in part, concurring in part and issuing a statement.

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I. INTRODUCTION

1. In this order, we take another step toward realizing the National Broadband Plan's (NBP) vision of improving connectivity to schools and libraries by upgrading and modernizing the successful E-rate program (more formally known as the schools and libraries universal service support mechanism).¹ Schools and libraries can serve as anchor institutions for their communities, and certain areas may depend on these anchor institutions to achieve the NBP's goal of affordable access to broadband of at least 1 gigabit per second in every community in the country. Broadband is an essential tool to help educators, parents, and students meet challenges in education and life-long learning. Through broadband, librarians can assist library patrons to improve skills for jobs, apply for employment, or access government resources. Access to broadband – at home or at anchor institutions – is a critical component of enabling everyone in America to develop the digital skills they need to prosper in the 21st century.

2. Since the inception of the E-rate program 13 years ago, the program has helped ensure that almost every school and library across America has Internet access. However, there is more to be done to ensure that the E-rate program helps our children and communities fully participate in the broadband era. We continue to build on our past experience and the experiences of stakeholders to improve the E-rate program. While we recognize the success of the E-rate program, the Commission also appreciates how educators, students, librarians, and the general community use and depend on communications technology that is continuously evolving and becoming more sophisticated. Many of the ways we communicate today – for example, blogging – did not exist in 1997, when the Commission released its first E-rate order. Today, a range of new modes of communication have become routine in the lives of the American people.

3. The Commission is committed to keeping the E-rate program in sync with modern needs and technological capabilities. For example, the Commission recognizes that technology has the potential to facilitate learning outside the classroom walls and beyond regular school hours. Through this order, and future upgrades, the Commission is taking a measured approach to modernizing the E-rate program, while maintaining protections to ensure that E-rate support is being used only for its intended purposes.

4. The NBP, delivered to Congress on March 16, 2010, recommended that the Commission take a fresh look at the E-rate program and identify potential improvements to reflect changes in technology and evolving teaching methods used by schools. In May 2010, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on proposals to ensure that the E-rate program continues to help our children and communities prepare for the high-skilled jobs of the future and reap the full benefits of the Internet.² The Commission received extensive comments in response to the *E-rate Broadband NPRM*, which inform the policy choices made in this order.³

¹ Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010) (National Broadband Plan or NBP), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (last visited Sept. 14, 2010).

² *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872 (2010) (*E-rate Broadband NPRM*).

³ See Appendix C. All comments cited in this report and order are specifically in response to the *E-rate Broadband NPRM* unless otherwise noted.

5. We adopt a number of the proposals put forward in the *E-rate Broadband NPRM*. The revisions we adopt today fall into three conceptual categories: (1) enabling schools and libraries to better serve students, teachers, librarians, and their communities by providing more flexibility to select and make available the most cost-effective broadband and other communications services; (2) simplifying and streamlining the E-rate application process; and (3) improving safeguards against waste, fraud, and abuse.⁴ As a result of these changes, schools and libraries throughout the country can make their limited dollars go further. The changes we adopt will increase the ability of students and the public to utilize broadband services for educational needs. In addition, the changes to simplify the E-rate program will help reduce the cost of participating in the program, thereby making the program more accessible, particularly to smaller school districts and libraries that are often located in more rural areas and may not have staff dedicated to managing E-rate applications and related activities.

6. In particular, in this report and order, we:

- take action on upgrades that can be implemented in funding year 2011 (July 1, 2011 – June 30, 2012);
- enable schools and libraries to better serve students, teachers, librarians, and their communities by providing more flexibility to select and make available the most cost-effective broadband and other communications services by
 - allowing applicants to lease dark or lit fiber from the most cost-effective provider, including non-profit and for-profit entities, so that applicants can choose the services that best meet their needs from a broad set of competitive options and in the most cost-effective manner available in the marketplace;
 - changing our rules to permit schools to allow community use of E-rate funded services outside of school hours;
 - supporting eligible services to the residential portion of schools that serve students with special circumstances;
 - indexing E-rate's funding cap to inflation to preserve the purchasing power of a successful program;
 - seeking proposals for a limited pilot program to establish best practices to support off-campus wireless connectivity for portable learning devices outside of regular school or library operating hours;
- simplify and streamline the program by
 - streamlining the application process to reduce the administrative burden on applicants;
 - removing the technology plan requirement for priority one (telecommunications services and Internet access) services;
 - facilitating the disposal and recycling of obsolete equipment that received E-rate support by authorizing schools and libraries to receive consideration for such equipment; and
- improve safeguards against waste, fraud and abuse by
 - codifying the requirement that competitive bidding processes be fair and open.

⁴ We note that, at this time, we do not address all the proposals raised in the *E-rate Broadband NPRM*.

In addition, the report and order adopts the eligible services list (ESL) for funding year 2011.⁵ We also continue to take other steps outside of the rulemaking process that do not require rule changes, such as revisions to the application forms, to make the E-rate program more user-friendly.

7. This report and order represents a first stage in a multi-stage upgrade of the E-rate program. This order announces changes that will be in place for the upcoming funding year, during which we will continue to consider changes to further improve and modernize the program. We recognize that market offerings, and the way that those offerings are used, are continually evolving. We welcome ongoing feedback on additional ways to upgrade and modernize the E-rate program to give students, educators, libraries, and community members greater flexibility to take advantage of technology to enhance education and sharing of information.

II. UPGRADING E-RATE FOR THE 21ST CENTURY

A. Improving Broadband Access for Students, Teachers, Librarians, and the Communities They Serve

1. Expanded Access to Low-Cost Fiber

8. *Background.* Dark fiber was conditionally eligible for E-rate discounts for several years, through funding year 2003.⁶ In the *Schools and Libraries Third Report and Order*, released in 2003, however, the Commission found that, pending resolution of the regulatory status of dark fiber, it would not be eligible for E-rate discounts.⁷ Most recently, the NBP recommended that the Commission give

⁵ See *Wireline Competition Bureau Announces Comment Deadlines on E-rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and on E-rate Draft Eligible Services List For Funding Year 2011*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, 25 FCC Rcd 7317 (Wireline Comp. Bur. 2010) (*2010 ESL Public Notice*).

⁶ Dark fiber first became conditionally eligible, effective January 24, 2001. See USAC website, Schools and Libraries, Eligible Services List, available at http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101701.pdf, at 33 (last visited Sept. 14, 2010). The ESL for funding year 2003 stated that “[s]ervice providers can lease fiber capacity that does not include modulating electronics to schools and libraries, if the applicant provides the electronics to modulate the fiber.” See USAC website, Schools and Libraries, Eligible Services List of the Schools and Libraries Support Mechanism for Funding Year 2003, available at http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101802.pdf, at 33 (last visited Sept. 14, 2010) (Funding Year 2003 ESL); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26944, n. 156 (*Schools and Libraries Third Report and Order*).

⁷ *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26943-44, paras. 76-77. The ESL released for funding year 2004 stated that “[t]he FCC has not resolved whether unlit dark fiber is a telecommunications service. Pending resolution of this issue, it is not eligible for funding.” See USAC website, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism for Funding Year 2004, available at http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101003.pdf, at 30 (last visited Sept. 14, 2010); *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994) (finding that the Commission had failed to provide a sufficient analysis for concluding that dark fiber service was a common carrier service in the context of a request to detariff the service and suspending the Commission order pending proceedings on remand). That decision addressed the regulatory status of dark fiber in another context, prior to the development of the E-rate program. In 2008, the Commission released an order on remand finding inadequate evidence in the record to conclude that certain dark fiber arrangements constituted common carriage. *Local Exchange Carriers’ Individual Case Basis DS3 Service Offerings*, CC Docket No. 88-166, Order on Remand, 23 FCC Rcd 569 (2008) (*Dark Fiber Remand Order*). As a consequence, the Commission vacated prior Commission orders that subjected Bell operating companies’ dark fiber offerings to common carrier regulation. *Id.* at 573, para. 8. Additionally, in 2008, the Commission released a notice of proposed rulemaking that, among other things, asked commenters to refresh the record on whether dark fiber should be an eligible service for purposes of the E-rate program. See (continued...)

schools and libraries more flexibility to purchase the most cost-effective broadband solutions, including the option of leasing or purchasing dark fiber.⁸ The NBP also recommended that federal and state policies should facilitate the “use of state, regional and local networks when that is the most cost-efficient solution for anchor institutions to meet their connectivity needs.”⁹

9. *Discussion.* Pursuant to sections 254(c)(3), (h)(1)(B), and (h)(2) of the Act, we include dark fiber on the ESL and allow eligible schools and libraries to receive support for the lease of fiber, whether lit or dark, as a priority one service,¹⁰ from *any* entity, including but not limited to telecommunications carriers and non-telecommunications carriers, such as research and education networks; regional, state, and local government entities or networks; non-profits and for-profit providers; and utility companies.¹¹ Accordingly, we amend section 54.502 of our rules to allow any entity to

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Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703, 11710-11, para. 17 (2008). Most recently, in the *E-rate Broadband NPRM*, we sought comment on permitting recipients to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers, such as municipalities and other community or anchor institutions, to allow schools and libraries more flexibility to select the most cost-effective broadband solutions. *E-rate Broadband NPRM*, 25 FCC Rcd at 6893-94, paras. 52-54. Specifically, we proposed to add leased dark fiber to the ESL with the same conditions as when it was previously on the ESL. *Id.* at 6894, para. 54.

⁸ NBP at 237 (NBP Recommendation 11.17).

⁹ *Id.* at 153 (NBP Recommendation 8.20).

¹⁰ As explained herein, the E-rate program has been capped at \$2.25 billion a year. 47 C.F.R. § 54.507(a). Requests for discounted amounts for E-rate services, however, have almost always exceeded that cap. Thus, the Commission has established a priority system for allocating E-rate funds to eligible services. 47 C.F.R. § 54.507(g)(1). All eligible requests for priority one services are funded first; any E-rate funds remaining are then used for priority two services, mainly internal connections, on a discount level basis. 47 C.F.R. § 54.507(g)(1)(i), (ii).

¹¹ 47 U.S.C. §§ 254(c)(3), (h)(1)(B), and (h)(2); *see, e.g.*, Sentinel Technologies Comments at 5; Education & Libraries Networks Coalition (EdLiNC) Comments at 13-14; Wisconsin Department of Public Instruction (WDPI) Comments at 6-8; State of Alaska Comments at 7; Utah Education Network (UEN) Comments at 8-9; Sunesys Comments at 7-8; State Consortium Group (SCG) Comments at 6; Research and Education (R&E) Network Community Comments at 5-6; NY State Education Department (NYSED) Comments at 7; Dell Comments at 2-3; Council of the Great City Schools (CGCS) Comments at 4-5; Conterra Ultra Broadband Comments at 6-7; E-rate Management Professionals Association (EMPA) Comments at 14; CA Department of Education (CDE) Comments at 12-13; NC Department of Public Instruction Comments at 3; State E-rate Coordinators' Alliance (SECA) Comments at 35-36; Internet2 K20 Initiative (Internet2) Comments at 2; E-rate Provider Services (EPS) Comments at 10; NY State Office of Children and Family Services Comments at 3; NW-LINKS Comments at 7; Schools, Health and Libraries Broadband (SHLB) Coalition Comments at 7-9; Letter from Harold Feld, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 27, 2010). A number of commenters suggested that we extend our proposal to allow non-telecommunications carriers to offer all leased fiber, not just leased dark fiber, to schools and libraries. *See, e.g.*, NC Department of Public Instruction Comments at 3; Internet2 Reply Comments at 3; SHLB Coalition Comments at 9; SCG Reply Comments; SECA Reply Comments at 14-15; CA K-12 High Speed Network (CA K-12 HSN) Reply Comments at 2; CDE Reply Comments 4-5; National Association of Telecommunications Officers and Advisors (NATOA) Comments at 7-8; NATOA Reply Comments at 4-5; City and County of San Francisco (San Francisco) Reply Comments at 7-8; Letter from Steve Traylor, NATOA, Jeffrey Arnold, National Association of Counties and Carolyn Coleman, National League of Cities, to Chairman Julius Genachowski, Federal Communications Commission, GN Docket No. 09-51, CC Docket No. 02-6 (dated Sept. 16, 2010). *But see* Verizon and Verizon Wireless (Verizon) Comments at 9-10; Qwest Comments at 5 (opposes the leasing of dark fiber); AT&T Comments at 11-14 (suggests deferring proposal until the Commission has gathered more information about the economies and other costs of dark fiber solutions and the potential impact on fund resources due to operational costs and operating broadband networks); National Cable and Telecommunications Association (NCTA) Comments at 2-4 (raises concerns about the potential cost to the E-rate program and asserts that it runs against principles of E-rate program).

provide supported telecommunications in whole or in part via fiber.¹² Specifically, we require applicants that choose to lease dark (*i.e.*, unlit) fiber to light it immediately and to use the lit fiber to meet their broadband needs in order to receive E-rate support.¹³ Our decision today will not allow applicants to use E-rate discounts to acquire unneeded capacity or warehouse dark fiber for future use. Because dark fiber has not been classified as either a telecommunications service or Internet access, we hereby include it in the miscellaneous section of the ESL. For purposes of funding year 2011, we direct applicants to select either the telecommunications service or Internet access box on the FCC Form 471 for type of service requested when applying for funding for leased dark or lit fiber, based on the type of provider they select to provide the leased dark fiber service.¹⁴ We emphasize that selecting a telecommunications carrier as a service provider does not absolve schools and libraries of their obligation to adhere to the Children's Internet Protection Act (CIPA) requirements when they use that service to obtain Internet service or access to the Internet.¹⁵ Furthermore, we amend section 54.518 of our rules to clarify that states acting as service providers are treated the same as telecommunications carriers or other non-telecommunications providers when applicants are leasing a wide area network (WAN).¹⁶

10. Section 254 of the Act gives the Commission authority to designate "telecommunications services" and additional services as eligible for support under the E-rate program.¹⁷ In the *Universal Service First Report and Order*, the Commission designated all commercially available telecommunications services as services eligible for support (or discounts) under the E-rate program.¹⁸ At the same time, the Commission determined that it could provide E-rate support for additional, non-telecommunications services, particularly Internet access, email, and internal connections, provided by both telecommunications carriers and non-telecommunications carriers pursuant to sections 4(i) and 254(c)(1), (c)(3), (h)(1)(B), and (h)(2).¹⁹ The Commission reasoned that such services enhance access to

¹² See Appendix A, 47 C.F.R. § 54.502(a)(2) as amended herein.

¹³ That is, an applicant cannot receive E-rate funding for dark fiber until it is lit. If the dark fiber is leased beginning July 1, but the applicant does not light the fiber until August 1, E-rate support will only be available beginning August 1.

¹⁴ See *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (November 2004) (FCC Form 471) (requiring applicants to select the type of service to be provided in Block 5 of the form). Thus, if the applicant has selected a telecommunications carrier to provide the leased dark fiber, the applicant should select the telecommunications services category. In all other instances, the applicant should select the Internet access box. Both dark fiber and telecommunications will be funded as priority one services.

¹⁵ Congress included CIPA as part of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554 §§ 1701 *et seq.* Section 1721 of CIPA amends section 254(h) of the Act. 47 U.S.C. § 254(h) (requiring schools and libraries that have computers with Internet access to certify that they have in place certain Internet safety policies and technology protection measures); 47 C.F.R. § 54.520(c)(i).

¹⁶ See Appendix A, 47 C.F.R. § 54.518 as amended herein.

¹⁷ 47 U.S.C. § 254(c)(1), (c)(3), (h)(1)(B), and (h)(2)(A). Congress charged the Commission with establishing competitively neutral rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms and libraries, and also provided the Commission with the authority to designate "special" or "additional" services eligible for universal service support for schools and libraries. 47 U.S.C. § 254(c)(3).

¹⁸ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006-9008, paras. 431-434 (1997) (*Universal Service First Report and Order*), *aff'd in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (subsequent history omitted); *see also* 47 U.S.C. § 254(c)(1) and (c)(3).

¹⁹ *Universal Service First Report and Order*, 12 FCC Rcd at 9008-15, paras. 436-449, and 9084-9090, paras. 589-600; *see also* 47 U.S.C. §§ 154(i) and 254(c)(1), (3), (h)(1)(B) and (h)(2). *But see* Letter from Mary Henze, AT&T, (continued...)

advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries.²⁰ Thus, pursuant to this authority, we now include on the ESL leased dark and lit fiber provided by both telecommunications carriers and non-telecommunications carrier providers, as described below.

11. Although lit fiber is already eligible for funding as either a telecommunications service or an Internet access service (depending upon how it is used by an eligible school or library and who is providing the service),²¹ under current implementation of section 254, an applicant cannot lease the lit fiber for voice telecommunications from a non-telecommunications carrier.²² State networks and other providers, however, may be able to provide the voice telecommunications, even if they are not “offering it to the public for a fee,” as is required of a telecommunications carrier.²³ Section 254(h)(1)(B) requires telecommunications carriers to provide universal service to schools and libraries; it does not, however, stand as a bar to our authority to allow non-telecommunications providers to provide such services and participate in the E-rate program.²⁴ As explained below, drawing a distinction between telecommunications carriers and entities other than telecommunications carriers in this specific context would unduly limit the flexibility of schools and libraries to select the most cost-effective broadband solutions to meet their needs, which would be inconsistent with our schools and libraries policies. We find that broadening the scope of potential suppliers of broadband increases competitive options, which in turn enhances choice and reduces cost. Thus, pursuant to section 254(c)(3) and (h)(2) and section 4(i), we now include lit and dark fiber provided by non-telecommunications providers on the ESL. We conclude that eligible schools and libraries should be free to meet their communications needs by leasing fiber from entities other than telecommunications carriers that are able to provide schools and libraries the same services that a traditional telecommunications carrier can provide a school or library over a fiber network.

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to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 27, 2010) (AT&T August *Ex Parte*) (arguing that section 254(h) of the Act does not apply to dark fiber because dark fiber is a facility rather than a service); Letter from David Cohen, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 30, 2010) (USTelecom *Ex Parte*).

²⁰ See *Universal Service First Report and Order*, 12 FCC Rcd at 9008-15, paras. 436-449, and 9084-9090, paras. 589-600.

²¹ See USAC website, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism for Funding Year 2010, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf, at 2-3 (last visited Sept. 14, 2010) (Funding Year 2010 ESL).

²² *Id.*

²³ See 47 U.S.C. § 153(46). Congress defined “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” *Id.*

²⁴ See 47 U.S.C. § 254(h)(1)(B).

12. Commission precedent refutes the contention that leasing dark fiber is not a “service.”²⁵ Because dark fiber is a service, we do not have to decide whether we could otherwise fund it under section 254(h). Moreover, like internal connections, which the Commission has found to be services for purposes of the E-rate program,²⁶ dark fiber is part of the transmission path that enables the requisite functionality (delivery of voice, video and/or data) to be delivered to the classroom. Further, contrary to opponents’ arguments,²⁷ we find that dark fiber does enhance access to advanced telecommunications and information services consistent with section 254(h)(2)(A). As discussed below, allowing schools and libraries to lease fiber from any provider will give the institutions more flexibility to select the most cost-effective broadband solutions.²⁸ It should also increase competition among providers of fiber and ensures that schools and libraries can pay less for the same or greater bandwidth, which should increase access to advanced telecommunications and information services, including Internet access. Additionally, if schools and libraries are able to receive additional capacity for less money, this should free up E-rate funding to help other schools and libraries meet their connectivity goals.

13. As instructional technology requires greater bandwidth, applicants will benefit from having the freedom to select from more options for broadband access. If more providers bid to provide services to schools and libraries, the resulting competition should better ensure that applicants – and the E-rate program – receive the best price for the most bandwidth. If schools and libraries are able to receive the same – or better – capacity for less money, the program should save money that can be spent on other services to help schools and libraries meet their connectivity goals. We thus find that allowing schools and libraries to lease fiber from any provider will best serve the purposes of the E-rate program.²⁹

14. The designation of dark and lit fiber provided by telecommunications carriers and non-telecommunications carrier providers as services eligible for E-rate support should help schools and

²⁵ See *In the Matter of Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, 8 FCC Rcd 2589, 2593, paras. 17-18 (1993) (finding that even “the provision and maintenance of fiber optic transmission capacity between customer premises where the electronics and other equipment necessary to power or ‘light’ the fiber are provided by the customer” -- referred to as “dark fiber” -- is a “wire communication,” i.e., a communication service, because, among other things, the provider of dark fiber still owns, maintains, and repairs the fiber and merely leases it to the customer for a term of months or years), *remanded on other grounds*, *Southwestern Bell Telephone Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994); see also *Nonaccounting Safeguards of Sections 271 and 272, Second Order on Reconsideration*, 12 FCC Rcd 8653, 8683 n.110 (1997) (citing to the *Dark Fiber Decision* for the proposition that the leasing of network facilities is a communications service); *Global NAPS, Inc. v. New England Tel.*, 156 F.Supp.2d 72, 78 (D. Mass. 2001) (finding that the FCC treats the leasing of dark fiber as the provision of a telecommunications service); *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1478 (D.C. Cir. 1994) (“The provision of the fiber optic lines without the necessary electronic equipment to power the fiber is commonly known as ‘dark’ fiber service . . .”). But see, e.g., *AT&T Ex Parte*; *USTelecom Ex Parte*.

²⁶ See *Universal Service First Report and Order*, 12 FCC Rcd at 9015-17, paras. 450-453.

²⁷ See *AT&T Ex Parte* at 2.

²⁸ See *infra* paras. 13-18.

²⁹ See, e.g., EdLiNC Comments at 14; R&E Network Community Comments at 5-6; NC DPI Comments at 3; NY State Office of Children and Family Services (NY OCFS) Comments at 3; SHLB Coalition Comments at 8. But see Sprint Comments at 7-8 (supports proposal if recipient leases only from a municipality or other community or anchor institution but not when it leases from commercial entities that are not telecommunications carriers); Sunesys Comments at 7-8; ESPA Comments at 4-5 (telecommunications carriers should only provide fiber service since they have the ability and resources to best support a recipient’s needs); San Francisco Reply Comments at 3-8; Clark County School District Reply Comments at 2-4; E-rate Consultants, Inc. Reply Comments at 2; City of Hartford and Hartford Public Schools (Hartford) Reply Comments at 3; NATOA Reply Comments at 2-5; SCG Reply Comments at 2-6; SECA Reply Comments at 13-15; NBP at 9 (Goal No. 4).

libraries save money or receive additional capacity for the same or fewer dollars. Commenters provided many examples of schools and libraries that are using fiber today because it is the most cost-effective solution for them, even without E-rate support.³⁰ For example, the Tri-County Educational Service Center in Wooster, Ohio, which serves more than 30,000 students in 19 school districts across three Central Ohio counties, has been able to save 50 percent over traditional carrier services through the use of dark fiber, along with a 750 percent increase in network performance.³¹ Such cost savings will help E-rate funds go further.

15. Furthermore, the increased capacity available through fiber will enable schools and libraries to develop and deliver a wide variety of educational programs and services to students and library patrons. For example, the bandwidth used by San Francisco's public libraries has increased over the past five years, from 1.44 megabits per second (Mbps) to 50 Mbps, but even 50 Mbps is currently insufficient for San Francisco to deliver the bandwidth-intensive content available on the Internet through its libraries' online resources and databases.³² San Francisco's public library branches serve as community anchors, both as centers for digital literacy and as hubs for access to public computers.³³ While their bandwidth needs are increasing, their local government and school district budgets are shrinking.³⁴ Currently, San Francisco's public libraries must rely on commercial telecommunications services in order to take advantage of E-rate discounts.³⁵ As bandwidth needs continue to increase, the ability to receive E-rate discounts on leased fiber will provide another option for schools and libraries, such as those in San Francisco, to access the bandwidth they need to deliver the most cost-effective services to their students and patrons, thus enhancing access to advanced telecommunications and information services. Our action today encourages collaboration with local, state, and federal agencies to more effectively utilize existing facilities and resources to meet the broadband needs of schools and libraries across the nation.³⁶

16. We are not persuaded by commercial service providers' arguments that entities other than commercial service providers cannot be trusted to serve applicants adequately, or that schools and libraries are unequipped to lease dark fiber.³⁷ There are a variety of entities — from telecommunications carriers to non-traditional providers, including research and education networks; regional, state, and local government entities and networks; other non-profit and for-profit providers; and utility companies — that are successfully provisioning fiber solutions. For example, the City of San Francisco has provisioned

³⁰ See, e.g., San Francisco Reply Comments; EdLiNC Comments at 14; CA K-12 HSN Reply Comments; Internet2 Reply Comments; Letter from John Windhausen, Jr., Coordinator, Schools, Health and Libraries Broadband Coalition, to Sharon Gillett, Chief, Wireline Competition Bureau, CC Docket No. 02-6 (dated Aug. 27, 2010) (SHLB *Ex Parte*); Letter from Doug Mah, Administrator, K20 Educational Network, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 12, 2010) (K20 *Ex Parte*).

³¹ See EdLiNC Comments at 14; see also SHLB *Ex Parte* at 5-6, Attachments 1-3 (providing examples of the cost savings of providing dark fiber to schools and libraries).

³² See San Francisco Comments at 3; San Francisco Reply Comments at 7.

³³ San Francisco Comments at 3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See NBP at 153-155 (NBP Recommendations 8:20, 8:22).

³⁷ See, e.g., AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; National Telecommunications Cooperative Association (NTCA) Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT & T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14; Communications Workers of America (CWA) Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5.

dark fiber to 10 campus sites of City College of San Francisco, one of the largest college systems in the country.³⁸ The City College network has enabled the implementation of new classes, allowed expansion of computer labs, and facilitated deployment of new educational applications that would not have been possible with City College's previous networking environment.³⁹ Additionally, in the last 13 years, non-profit national and state research and education networks have deployed almost 25,000 miles of a national fiber infrastructure to more than 66,000 community anchor institutions.⁴⁰

17. Some commercial service providers argue that school and library information technology (IT) professionals are unlikely to understand how to use leased dark fiber.⁴¹ We find no evidence in the record supporting that assertion, and note that many schools and libraries have expert, professional IT staff.⁴² We believe applicants are generally in the best position to know their needs, resources, and capabilities, and to procure from the full range of competitive options in the marketplace the most cost-effective broadband solutions for those needs. Nor are we persuaded by suggestions that we should not provide flexibility to allow schools to lease dark fiber or other spare capacity from a municipal network because the schools would be unprotected if the municipality cannot continue to operate.⁴³ It is unclear why a municipality would be more likely to discontinue service than a private company, and, in any event, our rules permit schools and libraries to change service providers under certain circumstances when the service provider ceases operations or is unable to perform.⁴⁴ Further, we are not convinced that schools and libraries purchasing services from other governmental or non-profit entities will raise conflict of interest issues or financial conflicts related to their employees.⁴⁵ We believe our competitive bidding

³⁸ See San Francisco Reply Comments at 5.

³⁹ *Id.* at 5-6.

⁴⁰ See Internet2 Reply Comments at 1 (providing examples of the abilities of a non-telecommunications carrier to deploy broadband).

⁴¹ See generally AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; National Telecommunications Cooperative Association (NTCA) Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT & T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14; Communications Workers of America (CWA) Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5.

⁴² See, e.g., San Francisco Reply Comments at 4 (stating that San Francisco regularly consults with departments and agencies connected through its existing fiber network to develop hardware configurations and network engineering required to extend service).

⁴³ See, e.g., AT & T Comments at 13; NCTA Comments at 3, n.9.

⁴⁴ See, e.g., *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*) (allowing service provider identification number (SPIN) changes whenever an applicant certifies that (1) the SPIN change is allowed under its state and local procurement rules and under the terms of the contract between the applicant and its original service provider, and (2) the applicant has notified its original service provider of its intent to change service providers). The Commission also stated that SPIN changes are no longer restricted to those categories enumerated in the USAC guidelines (*i.e.*, service provider refuses to participate, has gone out of business, or has breached its contract). *Id.* at 5501, para. 6. See also USAC website, Schools and Libraries, SPIN Change Guidance, available at <http://www.usac.org/sl/about/changes-corrections/spin-change-guidance.aspx> (last visited Sept. 14, 2010).

⁴⁵ See Letter from L. Charles Keller, Wilkinson, Barker, Knauer, LLP, counsel for Cox Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, GN Docket No. 09-51, at 2 (dated Sept. 16, 2010) (*Cox Ex Parte*).

rules protect against any such waste, fraud, and abuse of the E-rate program.⁴⁶ To the extent the Commission finds violations of its rules, such as sharing of inside information during the competitive bidding process, the Commission will require USAC to adjust its funding commitment or recover any disbursed E-rate funds through its normal processes.

18. Commenters that opposed including leased dark fiber on the ESL also argue that schools and libraries will be unaware of or unable to bear the additional cost of installation.⁴⁷ They also argue that leased fiber may include more capacity than needed by a school or library system for educational purposes.⁴⁸ We are not persuaded by such arguments. The Commission's competitive bidding rules serve as a central tenet of the E-rate program. They ensure more efficient pricing for telecommunications and information services purchased by schools and libraries and help deter waste, fraud and abuse. Thus, while not all schools and libraries may choose to use leased fiber to meet their broadband needs, our rules require all applicants to select the service or equipment offering that will be the most cost-effective means of meeting their educational needs and technology goals.⁴⁹ Our rules also require schools and libraries to have the necessary resources to support any non-discounted portion of the eligible services, in order to make the most effective use of E-rate funding.⁵⁰ We believe these two rules will ensure that all applicants that choose to use a leased fiber solution are considering the full range of costs associated with implementing leased fiber and are not requesting funding for more capacity than necessary for their educational needs. We also emphasize, in this context, the importance of applicants making "apples-to-apples comparisons when evaluating competing bids to meet their needs. Providing services using dark fiber may involve a number of additional costs beyond lease payments for fiber connectivity, and those costs should be factored in to a total-cost comparison across bids.

19. In order for schools and libraries to utilize and make the most efficient use of dark fiber, we include as eligible certain costs associated with leased dark fiber.⁵¹ Specifically, we include as

⁴⁶ See Appendix A, 47 C.F.R. § 54.503 as amended herein. Our E-rate rules and requirements, including the competitive bidding rules, apply to all applicants and service providers, irrespective of the entity providing the fiber network. See Letter from Mary L. Henze, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, at 3 (dated Sept. 16, 2010) (AT&T September *Ex Parte*) (urging the Commission to ensure that all providers and purchasers of dark fiber are subject to all the same E-rate rules and requirements in order to ensure that the E-rate program continues to be fair and open).

⁴⁷ See AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; NTCA Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT&T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14.; CWA Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5; Cox *Ex Parte* at 2.

⁴⁸ See generally AT & T Comments at 10-14; Charter Communications, Inc. Comments at 4-5; NTCA Comments at 24; Qwest Comments at 5-6; Sunesys Comments at 7-9; Verizon Comments at 9-10; AT&T Reply Comments at 5-6; CenturyLink Reply Comments at 8-14.; CWA Reply Comments at 3-5; Norlight Telecommunications, Inc. Reply Comments at 3-5; Cox *Ex Parte* at 4.

⁴⁹ See Appendix A, 47 C.F.R. § 54.503(c)(2)(vii) as amended herein; see also Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471) (requiring applicants to certify in Block 6 that they have secured access to all of the resources necessary to use the services purchased effectively).

⁵⁰ See Appendix, A, 47 C.F.R. § 54.503(c)(2)(vii), (c)(2)(vi) as amended herein; see also 47 C.F.R. § 54.508(a).

⁵¹ For purposes of the E-rate program, we will consider Indefeasible Rights of Use (IRU) purchase arrangements as a lease of dark fiber. To the extent an IRU contract contains significant upfront charges, and consistent with our existing requirements regarding upfront costs associated with the purchase of telecommunications services, applicants must amortize upfront, non-recurring charges where the upfront charges "vastly exceed" the monthly recurring charges. See *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-(continued...)

eligible maintenance costs and installation charges.⁵² Providing support for maintenance costs and installation charges will enhance access to advanced telecommunications and information services by helping schools and libraries make use of an existing or new local fiber network.⁵³ At this time, however, we decline to extend support to cover special construction charges that may be incurred to build out connections from applicants' facilities to an off-premises fiber network, preferring to seek further comment in a subsequent proceeding on the potential effect of such changes on the fund.⁵⁴ We also do not include as eligible the cost of modulating electronics needed to light dark fiber. The applicant is therefore responsible for covering these costs in order to receive E-rate funding for the lease of dark fiber.⁵⁵ While we conclude that including leased dark fiber on the ESL should provide greater flexibility to E-rate participants to meet their bandwidth needs and reduce their overall cost of broadband, we nevertheless limit funding in this manner pending further inquiry into the potential impact on the E-rate fund of allowing related costs.

2. Community Use of Schools' E-rate Funded Facilities and Services

20. *Background.* The Act provides that E-rate discounts be given to eligible schools and libraries for educational purposes.⁵⁶ To implement this provision, in the *Universal Service First Report and Order*, the Commission required schools and libraries to certify, among other things, that services would be used solely for "educational purposes."⁵⁷ The Commission noted that all of the certification requirements were intended to encourage accountability on the part of schools and libraries.⁵⁸ Subsequently, as noted above, the Commission clarified the meaning of "educational purposes" as "activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons."⁵⁹ As a result, use of services and facilities funded by E-rate for non-educational purposes would not be an eligible use, and schools are required to reduce their funding request by the proportion of the total use of the services and facilities that is ineligible.⁶⁰

21. In 2001, the Commission granted the State of Alaska a limited waiver of section 54.504(b)(2)(v) to allow members of certain remote communities to use excess service obtained with E-

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149423, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 18598 (2000) (*Brooklyn*). As we noted in *Brooklyn*, we do not intend to disfavor or discourage multiyear or pre-paid contract agreements between service providers and eligible schools and libraries, when the appropriate circumstances are present for such contracts. *Id.*

⁵² This includes charges for installation within the property line.

⁵³ See 47 U.S.C. § 254(h)(2).

⁵⁴ Special construction charges include costs for design and engineering, project management, digging trenches, and laying fiber.

⁵⁵ See SHLB *Ex Parte* at 5 (indicating that the costs of "lighting" a dark fiber connection are relatively small compared to the costs of deploying and installing the fiber).

⁵⁶ 47 U.S.C. § 254(h)(1)(B).

⁵⁷ 47 C.F.R. § 54.504(b)(2)(v) (2009) (requiring applicants to certify on their FCC Form 470 that E-rate services would be used solely for educational purposes); *Universal Service First Report and Order*, 12 FCC Rcd at 9079, para. 577.

⁵⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 9076, para. 570.

⁵⁹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, paras. 17-18 (*Schools and Libraries Second Report and Order*); 47 C.F.R. § 54.500(b).

⁶⁰ 47 C.F.R. § 54.504(g) (2009).

rate support when the services were not in use by schools or libraries.⁶¹ In November 2009, as part of the Commission's development of the NBP, the Commission sought comment on whether the E-rate program should be modified to allow the general community to use E-rate supported broadband services and facilities located at schools.⁶² In February 2010, in the *E-rate Community Use Order and NPRM*, on our own motion, we waived sections 54.504(b)(2)(v) and 54.504(c)(1)(vii) of our existing rules, which require applicants to certify on their FCC Forms 470 and 471 that the services requested will be used solely for educational purposes.⁶³ We extended this waiver through the close of funding year 2010 (June 30, 2011).⁶⁴ The waiver allows schools to open their facilities, when classes are not in session, to the general public to utilize services and facilities supported by E-rate. We also sought comment on whether we should make this change permanent.

22. *Discussion.* We conclude that we should revise our rules to permanently allow schools to open their facilities, when classes are not in session, to the general public to utilize services and facilities supported by E-rate. Specifically, we revise sections 54.503 and 54.504 of our rules to require applicants to certify that "[t]he services the applicant purchases at discounts will be used *primarily* for educational purposes."⁶⁵ This is consistent with the standard we adopted in the *Community Use Order*.⁶⁶ Thus, schools must primarily use services funded under the E-rate program, in the first instance, for educational purposes. To primarily use services supported by E-rate, E-rate recipients must ensure that students always get first priority in use of the schools' resources.⁶⁷

23. Our experience convinces us that our decision will expand the benefits of using E-rate funds. For example, after we waived the rule in February 2010, the State of West Virginia allowed community use of school Internet access and networks by offering evening community technology training lab classes and school technology nights.⁶⁸ Most notably, during the April 2010 Upper Big Branch coal mining disaster, a school in West Virginia whose students were on spring break provided community access to its facilities to be used as a government and media command center during the rescue and eventual search and recovery efforts.⁶⁹ We thus find that permitting community use of E-rate services and equipment during times when classes are not in session (non-operating hours) will promote broadband access. Moreover, this decision is consistent with Congress's directive to consider how anchor institutions, such as schools, can ensure access to broadband service.⁷⁰ We remain focused on Congress's

⁶¹ *Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, CC Docket No. 96-45, Order, 16 FCC Rcd 21511 (2001) (*Alaska Order*).

⁶² See *NBP Public Notice #15*, GN Docket Nos. 09-47, 09-51, 09-137, CC Docket No. 02-6, WC Docket No. 05-195, Public Notice, 24 FCC Rcd 13560 (2009).

⁶³ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740 (2010) (*E-rate Community Use Order and NPRM*); 47 C.F.R. §§ 54.504(b)(2)(v), 54.504(c)(1)(vii) (2009).

⁶⁴ See *E-rate Community Use Order and NPRM*, 25 FCC Rcd at 1740.

⁶⁵ See Appendix A, 47 C.F.R. §§ 54.503(c)(2)(v) and 54.504(a)(1)(vii) as amended herein.

⁶⁶ See *E-rate Community Use Order and NPRM*, 25 FCC Rcd at 1745-46, paras. 11-12.

⁶⁷ 47 U.S.C. § 254(h)(1)(B).

⁶⁸ See Letter from Julia Benincosa, West Virginia Department of Education, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Aug. 2, 2010).

⁶⁹ *Id.*

⁷⁰ See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

primary purpose in establishing the schools component of the E-rate program: to ensure that educators, students, and school personnel have access to advanced telecommunications and information services for educational purposes.⁷¹ At the same time, there are many times when schools are out of session – evenings, weekends, school holidays, and summer breaks, for example – and we conclude that it is in the public interest to allow greater use of government-supported services and facilities during those times, particularly because that enhanced access comes at no additional cost to the E-rate program. Moreover, we find that the revised rules are consistent with the overarching goals of universal service to promote access to telecommunications and information services,⁷² and that no provision of the Communications Act prohibits this use of E-rate supported services.

24. To reduce the likelihood of waste, fraud, and abuse, and to guard against expanding the cost of the E-rate program, we set forth certain conditions for schools that choose to allow the community to use their E-rate funded services.⁷³ First, schools participating in the E-rate program may not request funding for more services than are necessary for educational purposes to serve their current student population. This condition is necessary to ensure that E-rate funds that schools receive remain targeted to the educational needs of the institution and its students. This is essential to preserve limited funds and to carry out Congress's intent in establishing the E-rate program.⁷⁴ To the extent that a school desires to augment services beyond that which is necessary for educational purposes, it must use other, non-E-rate funded resources. Any community use of the services purchased under the E-rate program must be incidental and not increase overall costs to the E-rate program.

25. Second, any community use of E-rate funded services at a school facility shall be limited to non-operating hours of the school and to community members who access the Internet while on a school's campus.⁷⁵ Thus, the public can utilize a school's facilities and services during times when the school is not in session, such as after school hours, weekends, school holidays, and summer breaks. Services supported by E-rate funds must, in the first instance, be used for educational purposes, and students, educators, and other school personnel shall always get priority in the use of these resources. Further, the decision about whether to allow community access rests with the school, and we thus leave it to schools to establish their own policies regarding specific use of their services and facilities, including, for example, the hours of use.⁷⁶ We decline at this time to provide guidance on after-hours community

⁷¹ 47 U.S.C. § 254(h)(2).

⁷² See 47 U.S.C. § 254(b).

⁷³ See, e.g., *E-rate Community Use Order and NPRM*, 25 FCC Rcd at 1745-47, paras. 11-13.

⁷⁴ See *Verizon E-rate Community Use NPRM Comments* at 2.

⁷⁵ But see *Communities Connect Network (CCN) E-rate Community Use NPRM Reply Comments* at 1-2 and *Stephan Ronan E-rate Community Use NPRM Reply Comments* at 1 (seeking elimination of limiting public use to on-campus activity and encouraging the Commission to allow other entities to access a school's unused bandwidth during non-operating hours).

⁷⁶ As required by CIPA, under current program rules, schools receiving E-rate discounts must certify that they are using "technology protection measures" to block access to inappropriate content by minors. See *Consolidated Appropriations Act, 2001*, Pub. L. No. 106-554 §§ 1701 *et seq.* Section 1721 of CIPA amends section 254(h) of the Act. 47 U.S.C. § 254(h); see 47 C.F.R. § 54.520(c)(1)(i) ("The Internet safety policy adopted and enforced pursuant 47 U.S.C. § 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of computers by minors, harmful to minors."). As long as schools are in compliance with CIPA requirements, we leave specific policymaking decisions up to individual schools to address.

use policies.⁷⁷ We find that schools are in the best position to establish their own individualized policies, including ways in which to inform the public of the hours of operation to the general public.⁷⁸ While we are sensitive to placing additional administrative burdens on applicants, we plan to include a box on the FCC Form 471 when we next revise this form for applicants to check if they are taking advantage of this rule change. We believe checking a box indicating community use, without requiring additional, specific information, will enable the Commission to develop a better understanding of where such community use is occurring while at the same time minimizing applicants' reporting burden. In addition, we urge schools to make their community use policies and hours publicly available on their websites. Additionally, schools can submit their success stories directly to the Commission regarding the community's use of their E-rate funded facilities and services at the Commission's website, http://www.fcc.gov/wcb/tapd/universal_service/schoolsandlibs.html, in the section titled "E-rate Community Use Success Stories."

26. Third, as set forth in the Act and our rules, schools' discounted service or network capacity may not be "sold, resold, or transferred by such user in consideration for money or any other thing of value."⁷⁹ Specifically, schools may not charge for the use of services and facilities purchased using E-rate funds. The Commission concluded, however, in the *Universal Service First Report and Order*, that section 254(h)(3) of the Act does not prohibit an eligible entity from charging fees for any services that schools or libraries purchase that are not subject to a universal service discount.⁸⁰ Thus, the Commission found that an eligible school or library may assess computer fees to help defray the cost of computers or training fees to help cover the cost of training because these purchases are not subsidized by the universal service support mechanisms.⁸¹ Similarly, we agree with the Massachusetts Department of Telecommunications and Cable (MDTC) and Sprint that schools should not be prohibited from recovering costs reasonably associated with permitting community access, such as additional electricity, security, and heating costs used to facilitate community access.⁸²

27. We emphasize that the revision of our rules creates an opportunity for schools, but not an obligation. Schools may have any number of reasons to decide not to open their facilities to the general public to utilize services and facilities supported by E-rate during non-operating hours.⁸³ For example,

⁷⁷ See Massachusetts Department of Telecommunications and Cable (MDTC) *E-rate Community Use NPRM* Comments at 5 (urging the Commission to provide guidance to schools to help establish individualized policies to best facilitate public access to broadband services while not interfering with the primary purpose of the E-rate program to enhance education).

⁷⁸ See SECA *E-rate Community Use NPRM* Reply Comments at 1-2 (suggesting schools use less formal and more effective ways to inform the public, such as school Web sites, local papers, school newsletters and school community associations).

⁷⁹ 47 U.S.C. § 254(h)(3) (except as allowed by section 54.513 of the Commission's rules); see also 47 C.F.R. §§ 54.504(b)(2)(v); 54.504(c)(1)(vii) (2009).

⁸⁰ See *Universal Service First Report and Order*, 12 FCC Rcd at 9074, para. 567; 47 C.F.R. § 54.513(b).

⁸¹ See *Universal Service First Report and Order*, 12 FCC Rcd at 9074, para. 567; 47 C.F.R. § 54.513(b).

⁸² See MDTC *E-rate Community Use NPRM* Comments at 6 (stating that if schools were forced to pay such costs out of their own pockets it would undermine the financial benefit to schools); Sprint *E-rate Community Use NPRM* Comments at 2 (cautioning that some E-rate contracts provide services on a tiered rate schedule, potentially causing use by the general public during non-school hours to result in overage charges).

⁸³ See, e.g., EdLiNC *E-rate Community Use NPRM* Comments at 2 (stating that the Commission must make clear that it is each school's decision whether to grant community access to their facilities and Internet connectivity during non-school hours); MDTC *E-rate Community Use NPRM* Comments at 5 (stating that the Commission should include language in its order permitting public access at the schools' discretion); National Association of State (continued...)

some schools may find that school activities utilize all or almost all of the E-rate supported services, or that there is not a public need for use during non-operating hours in a particular school. We therefore stress the optional nature of these rule revisions, leaving this decision up to individual recipients of E-rate funding.

3. Expanding Access for Residential Schools that Serve Unique Populations

28. *Background.* In the *Universal Service First Report and Order*, the Commission provided support for internal connections “only if it is necessary to transport information all the way to individual classrooms.”⁸⁴ The Commission subsequently elaborated on this policy in the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is “not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings.”⁸⁵ Consistent with these orders, internal connections to dormitory rooms, study centers within dormitories, teachers’ centers, and residential programs have been found to be ineligible for support under the E-rate program.⁸⁶

29. In the *Schools and Libraries Second Report and Order*, the Commission clarified the scope of what constitutes educational purposes, recognizing that the technology needs of participants in the E-rate program are complex and unique to each participant.⁸⁷ Specifically, the Commission defined educational purposes as follows: “[A]ctivities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as ‘educational purposes.’”⁸⁸ The Commission found that activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.⁸⁹ The Commission noted that, in certain limited instances, the use of telecommunications services offsite would be

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Utility Consumer Advocates (NASUCA) *E-rate Community Use NPRM* Comments at 2 (commenting that opening schools for public use should be voluntary, i.e., up to the management of each school); California Public Utilities Commission (CPUC) *E-rate Community Use NPRM* Reply Comments at 2 (supporting general public use of a schools’ Internet access during non-operating hours, at the school’s discretion).

⁸⁴ See *Universal Service First Report and Order* 12 FCC Rcd at 9017-18, 9021, para. 459; see also *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

⁸⁵ *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; see also 47 C.F.R. § 54.506(a).

⁸⁶ See *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*) (finding that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms); *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002) (denying funding for a teachers’ training center, despite its occasional use for student classroom instruction); *Requests for Review of the Decisions of the Universal Service Administrator by Eagle Hill School, et al.*, File No. SLD-84941, et al., 24 FCC Rcd 12714, 12718, para. 7 (Wireline Comp. Bur. 2009) (denying funding to dormitory and residential facilities).

⁸⁷ See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

⁸⁸ *Id.*; 47 C.F.R. § 54.500(b).

⁸⁹ See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

considered integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose.⁹⁰

30. In the *E-rate Broadband NPRM*, we recognized that precluding funding for services in non-instructional buildings does not take into account the special circumstances of institutions that provide residential living arrangements to meet the unique challenges of certain residential student populations. In these circumstances, services to the residential areas of these schools might be considered to be used for educational purposes because these schools serve students with special needs or who may have no option but to live at school.⁹¹ We sought comment on whether and how to address this situation.⁹² Specifically, we proposed to revise our rules to allow residential schools that serve populations facing unique challenges, such as Tribal schools or schools for children with physical, cognitive, or behavioral disabilities to receive E-rate funding for priority one and priority two services in those residential areas.⁹³

31. *Discussion.* We adopt our proposal to allow residential schools that serve unique populations – schools on Tribal lands; schools designed to serve students with medical needs; schools designed to serve students with physical, cognitive or behavioral disabilities; schools where 35 percent or more of their students are eligible for the national school lunch program;⁹⁴ or juvenile justice facilities – to receive E-rate funding for all supported services provided in the residential areas of those schools.⁹⁵ We find that, because these schools also serve as residences to the students, the supported E-rate services will be used primarily, if not exclusively, for educational purposes, and thus support is consistent with our rules and with the purposes of section 254.⁹⁶ As the Commission stated in the *Schools and Libraries*

⁹⁰ *Id.* at 9208-09, para. 19. The following are examples off-site activities that the Commission determined are integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose: a school bus driver's use of wireless telecommunications services while delivering children to and from school, a library staff person's use of wireless telecommunications service on a library's mobile library unit van, and the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event. *Id.* at n.28.

⁹¹ See *E-rate Broadband NPRM*, 25 FCC Rcd at 6895-96, para. 57.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See 47 C.F.R. § 54.505 (2009) (establishing different discounts levels for schools and libraries based on poverty and rural factors)

⁹⁵ See Request of the West Virginia Department of Education for a Waiver of Commission's Rule 54.506 and Clarification of the Definition of Educational Purpose, to Federal Communications Commission, CC Docket No. 02-6 (dated Apr. 29, 2010) (WVDE Request for Waiver and Clarification); Sentinel Technologies Comments at 5; WDPI Comments at 8; State of Alaska Comments at 8; UEN Comments at 9; Public Broadcasting Service (PBS) Comments at 4-5; NY State Education Department (NYSED) Comments at 9-10; NYC Department of Education (NY DOE) Comments at 5; Cisco Comments at 7-8; EMPA Comments at 15; SECA Comments at 36-37; NY OCFS Comments at 3; NC Department of Public Instruction (NC DPI) Comments at 3. We note that no comments in the record opposed this proposal

⁹⁶ See 47 C.F.R. § 54.500(b) (stating that activities that occur on school property "are presumed to be integral, immediate, and proximate to the education of students"). See also NY State Education Department Comments at 9-10. ("The education of students in these schools is truly a 24/7 undertaking with instruction taking place in both regular classrooms and in the residences."); Request of the WVDE Request for Waiver and Clarification at 1 ("The students that attend this school are either deaf or blind and reside away from their parents to receive special education schooling from this state-run school. They are unable to go home or to a public library to access the Internet. There are several adult resident advisors on each floor of the dormitories. Organized study hours are (continued...)

Second Report and Order, the technology needs of participants in the E-rate program are often complex and unique to each participant.⁹⁷ Based on the record before us, we find that these schools serve students whose educational needs may not be otherwise met without attending such a residential school. We therefore find it to be reasonable and consistent with the public interest to provide support for E-rate services provided to the residential areas of those schools, including Internet access, telecommunications, telecommunications services, and internal connections. Additionally, E-rate support will facilitate ongoing access to educational and learning materials beyond the normal school day and increase the ability of those students to complete homework assignments, such as those that require broadband access for research projects, after school hours.⁹⁸ Accordingly, we find that such use meets the definition of educational purposes. Additionally, we amend section 54.502 to permit discounts for internal connections in non-instructional buildings of a school or school district where the Commission has found that the use of those services meets the definition of educational purpose.⁹⁹

32. We decline, at this time, to adopt SECA's suggestion to expand this proposal to *any* school that has a dormitory or residential facility on its grounds.¹⁰⁰ While we recognize that there are other residential schools that do not fall within the categories outlined above, we want to proceed in a conservative fashion to focus on schools serving students with the most unique needs as provided above,¹⁰¹ rather than providing funding more broadly to all residential schools. Thus, we believe it is preferable to limit the potential impact of this revision on the E-rate program as we consider additional upgrades to the program.¹⁰² We agree with SECA, however, that we should not limit support to residential campuses that are state- or federal-sponsored institutions.¹⁰³ For instance, there may be private schools that serve students with physical, cognitive, or behavioral disabilities, and their students face the same need to have ongoing access to technology-based learning outside of the classroom.¹⁰⁴ Therefore, we decline to limit support for services to residential areas only to schools partly or fully sponsored by state or federal funds.

33. *West Virginia Request for Waiver and Clarification.* The West Virginia Department of Education (WVDE) filed a request for waiver and clarification of the Commission's rules to allow the West Virginia Schools for the Deaf and the Blind to receive funding for services for their students who reside on the school campus.¹⁰⁵ Because we address the issues raised by WVDE in this order, we dismiss WVDE's request as moot.

(Continued from previous page) _____
scheduled each evening and a computer lab/study center will be added as part of the addition of Internet access within the dormitories.”).

⁹⁷ See *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

⁹⁸ We note that, as in the classroom, in residential areas E-rate supported facilities and services must be primarily used for educational purposes.

⁹⁹ See Appendix A, 47 C.F.R. § 54.502(a)(4)(i) as amended herein.

¹⁰⁰ See SECA Comments at 37; see also Cisco Comments 7-8.

¹⁰¹ See *supra* para. 31.

¹⁰² Thus, while we may expand some support for services beyond school and library grounds on a trial basis, as elaborated below, we continue to be mindful of the potential impact of our reforms on the E-rate funding cap. Therefore, at this time, we limit funding to only those residential schools that serve unique populations.

¹⁰³ See SECA Comments at 37.

¹⁰⁴ *Id.*

¹⁰⁵ See WVDE Request for Waiver and Clarification.

4. Indexing the Annual Funding Cap to Inflation

34. *Background.* The E-rate program was implemented in 1997 with a \$2.25 billion funding cap on program disbursements.¹⁰⁶ Since that time, the demand for E-rate funding has exceeded the amount available in every year but one.¹⁰⁷ As a result, many requests for priority two services are denied, and over the years, the majority of requests for internal connections have gone unfunded.¹⁰⁸ Moreover, the demand for priority one services is growing.¹⁰⁹

35. *Discussion.* Many commenters encouraged the Commission to increase the E-rate program funding cap significantly from its current \$2.25 billion level before indexing the cap to inflation on a going-forward basis.¹¹⁰ Commenters contend that the Commission should increase the cap to reflect all inflationary adjustments since the program was initiated in 1997,¹¹¹ which would immediately add

¹⁰⁶ See *Universal Service First Report and Order*, 12 FCC Rcd at 9054-55, paras. 529-31 (1997) (estimating need from data provided by the McKinsey Report, Rothstein Thesis and NCLIS Report). While the program is capped at \$2.25 billion, the Commission's rules state that all funds that are unused from prior years shall be carried forward for use in the next E-rate funding year. 47 § 54.507(a)(2). *Carryover of Unused Funds for Funding Year 2004*, CC Docket No. 02-6, Public Notice, 19 FCC Rcd 20420 (Wireline Comp. Bur. 2004); *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2007*, CC Docket No. 02-6, Public Notice, 22 FCC Rcd 10795 (Wireline Comp. Bur. 2007); *Carryover of Unused Federal Universal Service Funds for Funding Year 2008*, CC Docket No. 02-6, Public Notice, 23 FCC Rcd 9960 (Wireline Comp. Bur. 2008); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 10164 (Wireline Comp. Bur. 2009); *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2010*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 8483 (Wireline Comp. Bur. Jul. 1, 2010). There are a variety of reasons why funds that are committed are ultimately not distributed. For example, they are able to find cost savings through efficient resource use, and thus ask for less in reimbursement than the amount originally anticipated and committed.

¹⁰⁷ See USAC website, Automated Search of Commitments, available at <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last visited Sept. 14, 2010).

¹⁰⁸ In 2008 and 2009, for instance, schools and libraries sought more than \$4 billion in E-rate program services even though only \$2.25 billion was available. See USAC Automated Search of Commitments, available at <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last visited Sept. 14, 2010) (demonstrating the lack of available internal connections funding for applicants in the 79 percent funding tier and below in every funding year since 2004).

¹⁰⁹ In funding year 2005, applicants requested \$1.2 billion in funding for priority one funding. By 2009, applicants requested more than \$1.6 billion. See USAC Automated Search of Commitments. See also United States Government Accountability Office Report to Congressional Requestors, "Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses," GAO 09-253 at 13 (March 2009) ("Although requests for priority one services – that is, telecommunications and Internet access – have remained roughly level since 2002, commitments have increased, at least in part, because applicants received a greater proportion of the funds they requested. The increasing amounts committed for priority one services has the effect of decreasing the amounts available for priority two services, which are funded only after all eligible priority one services requests are satisfied.").

¹¹⁰ NY OCFS Comments at 3; Blackboard Comments at 18-19; EdLiNC Comments at 4-6; Hartford Comments at 1; CWA Reply Comments at 2; eChalk Comments at 4; WDPI Comments at 10; UEN Comments at 13; American Association of School Administrators & Association of Educational Service Agencies (AASA & AESA) Comments at 2; NATOA Comments at 7; Miami-Dade County Public Schools Comments at 8-9; CloudED Comments at 8; American Library Association (ALA) Comments at 17; CSM, Inc. (CSM) Comments at 23; EMPA Comments at 20-21.

¹¹¹ NY OCFS Comments at 3; Hartford Comments at 1; eChalk Comments at 4; Miami-Dade County Public Schools Comments at 8-9; NATOA Comments at 7; CloudED Comments at 8; UEN Comments.

about \$650 million to the E-rate program.¹¹² Others said that indexing the E-rate cap to inflation on a going-forward basis would not be sufficient to meaningfully fund the program.¹¹³ We note that when the E-rate program began in 1997, basic Internet connectivity required a phone line and dial-up Internet service, which might have cost a total of less than \$50 per month. Today, for basic Internet connectivity capable of supporting common applications and learning tools such as educational video content, a school or library needs broadband at speeds of at least several megabits per second, which might cost upwards of \$500 per month (e.g., for a T-1 line), plus the costs of necessary internal connections.

36. We find that indexing the current \$2.25 billion E-rate cap to inflation is a sensible approach to gradually aligning the support provided by E-rate with the needs of schools and libraries, which the E-rate program is designed to serve.¹¹⁴ Using the analysis described below, the cap for funding year 2010 will be increased to \$2,270,250,000. The Commission must balance its desire to ensure that schools and libraries have access to valuable communications opportunities with the need to ensure that consumer rates for communications services remain affordable. End users ultimately bear the cost of supporting universal service, through carrier charges.¹¹⁵ Thus, we amend section 54.507 of our rules to index the E-rate program funding cap to the rate of inflation on a going-forward basis, beginning in the current funding year.¹¹⁶ Indexing the cap to inflation will ensure that the program maintains its current purchasing power in today's dollars without significantly increasing the fund and raising the contribution factor.¹¹⁷

37. It could be argued that the existence of substantial rollover funds demonstrates that an increase in the cap is unwarranted.¹¹⁸ The rollover funding is not surplus funding left over after demand has been met, however. To the contrary, even with an additional \$600 million in rollover funding for funding year 2008, added to the \$2.25 billion cap, the program still did not come close to meeting demand for priority two services and was forced to deny millions of dollars in applications because existing funding had been exhausted.¹¹⁹ The Commission uses the full extent of funds available, including rollover funds, to meet demand each year. Nevertheless, demand still exceeds available funding.

38. We also note that additional universal service funds required to index the E-rate cap to inflation will be offset by the Commission's recent decision to use reclaimed funds surrendered from competitive eligible telecommunications carriers as a "fiscally responsible down payment on proposed

¹¹² See, e.g., NBP Public Notice #15 at 238.

¹¹³ CWA Reply Comments at 2 (seeking immediate increase in cap to \$4 billion); EdLiNC Comments at 4-6 (noting that Commission's solution would be a "drop in the bucket"); WDPI Comments at 10; AASA & AESA Comments at 2; ALA Comments at 17; CSM Comments at 23; EMPA Comments at 20-21.

¹¹⁴ *E-rate Broadband NPRM*, 25 FCC Rcd at 6907, para. 84.

¹¹⁵ See AT&T Reply Comments at 9.

¹¹⁶ See Appendix A, 47 C.F.R. § 54.507 as amended herein.

¹¹⁷ *E-rate Broadband NPRM*, 25 FCC Rcd at 6907, para. 84.

¹¹⁸ *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2010*, CC Docket No. 02-6, Public Notice, 25 FCC Rcd 8483 (Wireline Comp. Bur. Jul. 1, 2010).

¹¹⁹ In funding year 2008, there were insufficient funds to grant discounts to any priority two funding requests seeking 86 percent discounts or less. See USAC website, Schools and Libraries, Schools and Libraries News Brief (Feb. 27, 2009), available at <http://www.universalservice.org/sl/tools/news-briefs/preview.aspx?id=213> (last visited Sept. 23, 2010).

broadband universal service reforms,” including indexing the E-rate funding cap to inflation.¹²⁰ Thus reclaimed universal service funds will be used to cover any increase that results from increases to the fund from inflation adjustments. Finally, no party flatly objected to an increase in the cap and many supported the proposal.¹²¹ They noted that this step will ensure that the program continues to serve a key role in bringing essential communications and information services to thousands of schools and libraries.¹²² One commenter noted that an increase in the E-rate funding cap should occur only after the completion of comprehensive reform of the contribution methodology.¹²³ We find, however, that the adoption of a fiscally responsible increase in the funding cap will not interfere with our broader efforts to reform the contribution methodology and acts only to give some relief to a capped support mechanism that is consistently oversubscribed.

39. As proposed, the Commission will use the gross domestic product chain-type price index (GDP-CPI) to inflation-adjust the amount of funds available annually to E-rate program participants.¹²⁴ This is the same index the Commission uses to inflation-adjust revenue thresholds used for classifying carrier categories for various accounting and reporting purposes and to calculate adjustments to the annual funding cap for the high-cost loop support mechanism.¹²⁵ There is no index that specifically examines the cost of the services funded under the E-rate program, and no record support for a more targeted measure of inflation than the GDP-CPI. Moreover, the Commission has used the GDP-CPI index in other contexts to estimate inflation of carrier costs, and we find it reasonable to use the GDP-CPI to approximate the impact of inflation on E-rate supported services.¹²⁶ During periods of deflation, we will maintain the prior-year cap to maintain predictability.¹²⁷ When the calculation of the yearly average GDP-CPI is determined, the Wireline Competition Bureau Commission will publish a Public Notice in the Federal Register within 60 days announcing any increase of the annual funding cap based on the rate of inflation.

¹²⁰ *Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155, para. 20 (rel. Sept. 3, 2010)

¹²¹ Anchorage School District Comments at 4; Blackboard Reply Comments at 11; Charter Comments at 4; Conterra Comments at 7; Cisco Comments at 14-15; CDE Comments at 17; ESPA Comments at 1; Dell at 4; Montgomery County Public Schools Comments at 2; Motorola Comments at 8; North Carolina Department of Public Instruction (NC DPI) Comments at 3; NW-Links Comments at 8; Sentinel Technologies Comments at 9; Qualcomm Comments at 21; PBS at 6; WVDE Comments at 6-7; SECA Comments at 51-52.

¹²² Blackboard Reply Comments at 11; Charter Comments at 4; Montgomery County Public Schools Comments at 2; NW-Links Comments at 8; SECA Comments at 51.

¹²³ AT&T Reply Comments at 9.

¹²⁴ *E-rate Broadband NPRM*, 25 FCC Rcd at 6907-08, para. 85; *see also* National Income and Product Accounts Table, Bureau of Economic Analysis, April 2010, Table 1.1.4, available at <http://www.bea.gov/National/nipaweb/TableView.asp?SelectedTable=4&Freq=Qtr&FirstYear=2007&LastYear=2009> (last visited Sept. 14, 2010).

¹²⁵ *See, e.g.*, 47 C.F.R. § 32.9000 (defining mid-sized incumbent local exchange carrier with annual revenue indexed for inflation as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDP-CPI)); 47 C.F.R. § 36.603(c).

¹²⁶ *See Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 96-193, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 11716, 11721-22, para. 10 (1996).

¹²⁷ *E-rate Broadband NPRM*, 25 FCC Rcd at 6907, para. 84.

40. Specifically, to compute the annual increase, the percentage increase in the GDP-CPI from the previous year will be used.¹²⁸ The increase shall be rounded to the nearest 0.1 percent. The increase in the inflation index will then be used to calculate the amount of funding for the next E-rate funding year (which runs from July 1 to June 30). Using this computation, we find that the GDP-CPI from 2008 to 2009 increased .9 percent.¹²⁹ Using the analysis described below, the cap for funding year 2010 will be increased to \$2,270,250,000.

5. Limited Trial to Investigate Offsite Access

41. Currently, our rules presume that services used on school or library premises are serving an educational purpose,¹³⁰ and the E-rate program supports wireless Internet access on school and library grounds.¹³¹ If a device that provides wireless Internet access service, such as a laptop or other mobile computing device, is taken off school or library premises, however, applicants are required to cost-allocate the dollar amount of support for wireless Internet access use for the time that the device is not at the school or library and remove that portion from its E-rate funding request.¹³² If that same device, however, is left on school or library grounds all of the time, the E-rate program would pay 100 percent of the applicant's non-discount share for wireless Internet access use. As such, our current rules may prevent full utilization of the learning opportunities that portable wireless devices, such as digital textbooks, can provide off campus and outside of regular school hours.¹³³

42. Advances in technology have enabled students to continue to learn well after the school bell rings, including from their homes or other locations, for example, youth centers.¹³⁴ As noted in the NBP, "[o]nline educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries."¹³⁵ In the *E-rate Broadband NPRM*, we sought comment on the NBP recommendation to provide full E-rate support for wireless Internet access service for portable learning devices that are used beyond school or library premises.¹³⁶ In response, commenters generally agreed that students need to learn "anytime/anywhere,"

¹²⁸ While the Commission refers to the Chain-type Price Index, it is referred to on the Bureau of Economic Analysis (BEA) web site as the Price Indexes for Gross Domestic Product. See GDP-CPI Table.

¹²⁹ See GDP-CPI Table (calculating the percentage difference of the gross domestic product of 108.598 in 2008 and 109.618 in 2009 and producing an increase of .94%).

¹³⁰ 47 C.F.R. § 54.500(b). *But see supra* n. 90 (identifying specific exceptions for offsite cost allocation).

¹³¹ See Funding Year 2010 ESL at 8.

¹³² See USAC website, Schools and Libraries, Cost Allocation Guidelines for Products and Services, available at <http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx> (last visited Sept. 14, 2010); see also Funding Year 2010 ESL at 17 (homes or other non-school or non-library sites are provided as examples of ineligible locations) and 25 (explanation of cost allocation).

¹³³ See Letter from U.S. Department of Education to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 at 2-3 (dated Sept. 21, 2010).

¹³⁴ See *E-rate Broadband NPRM*, 25 FCC Rcd at 6891-92, para. 47 (identifying some current data and initiatives); see also Rebecca Catalanello, *Florida high school ditches textbooks for e-readers*, Bismarck Tribune, Jun. 7, 2010, available at http://www.bismarcktribune.com/lifestyles/fashion-and-style/article_6d9ec60c-6ebd-11df-93a0-001cc4c002e0.html (last visited Sept. 14, 2010).

¹³⁵ NBP at 254.

¹³⁶ See *E-rate Broadband NPRM*, 25 FCC Rcd at 6891-93, paras. 45-51; see also NBP at 239 (NBP Recommendation 11.23).

which would require Internet access outside schools and libraries.¹³⁷ Some schools identified that they are already implementing innovative programs utilizing portable devices that can use data applications wirelessly, such as e-readers, tablet PCs, smartphones, and netbooks.¹³⁸ Some of these programs enable students to download all of their textbooks onto one portable device and access them both during school and at home.¹³⁹ Others use software applications to help students write essays or create presentations for their classmates.¹⁴⁰ Initial studies indicate that – with the correct support and training for teachers, students, and parents – targeted programs like these can demonstrably improve student achievement.¹⁴¹ Commenters noted that, in addition to the educational benefits, improvements and cost reductions in portable learning devices like e-readers, smartphones, and tablet computers make funding off-premises wireless connectivity for these devices a cost-efficient supported service.¹⁴²

43. We recognize the benefits of enabling innovation in learning outside the boundaries of the school building and the traditional school day, as well as of enabling libraries to innovate with new models of delivering service to library patrons. We note the potential for meaningful gains in student achievement that new devices and applications may deliver. We also see significant utility in devices that allow remote access to the Internet for library patrons. At the same time, however, we acknowledge the concerns of commenters who urged us to proceed cautiously in this area and emphasized the challenges that may accompany support for connectivity for portable learning devices used outside the physical grounds of schools and libraries. For example, some commenters identified possible challenges in administration and oversight, and in ensuring compliance with existing program rules, including requirements under CIPA and the program's definition of educational purposes.¹⁴³ Others raised concerns about the potential for waste, fraud, and abuse, as well as increased costs to the E-rate fund, noting that if support is expanded for wireless Internet access outside of school or library grounds, the availability of funding for other equally or more important services may be reduced.¹⁴⁴ Some

¹³⁷ See San Diego Unified School District (SDUSD) Reply Comments at 5; see also AT&T Comments at 9; Cisco Systems Comments, Inc. at 5-6; Clearwire Corp. Comments at 3-4; CTIA Comments at 14-19; eChalk Comments, Inc. at 3-4; Miami-Dade County Public Schools Comments at 6; Motorola Inc. Comments at 2; NY OCFS Comments at 2; Ohio E-Rate Consortium Comments at 15-16; PBS Comments at 2-4; Sprint Comments at 2-5; Sunesys, LLC Comments at 7; Blackboard, Inc. Comments at 9-14.

¹³⁸ See, e.g., SDUSD Reply Comments at 3-5; see also Computers for Youth (CFY) Reply Comments at 2-3; Pittsburgh Public Schools Comments at 4; Sprint Comments at 2-5; Cisco Reply Comments at 4-7 (outlining the impact of the 21S Initiative); Ohio E-rate Consortium Comments at 15-16.

¹³⁹ See Kathy A. Goolsby, *Schools Toss Aside Texts for e-Books*, Dallas Morning News, Nov. 4, 2006, available at <http://www.dallasnews.com/sharedcontent/dws/dn/education/stories/110406dnmetebooks.3255a88.html> (last visited Sept. 14, 2010).

¹⁴⁰ *Id.*

¹⁴¹ See, e.g., Letter from Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 (dated July 27, 2010) (outlining the impact of the K-nect program).

¹⁴² See, e.g., Qualcomm Reply Comments at 2-9; CTIA Reply Comments at 3, 7, 10 (arguing that support will spur competition and ultimately lower prices and costs to the fund over time).

¹⁴³ See, e.g., SECA Reply Comments at 8.

¹⁴⁴ See, e.g., NY DOE Reply Comments at 4; see also SECA Comments at 32-34 (suggesting that the low-income program may be a better vehicle for funding this proposal); SECA Reply Comments at 9-10; Intel Comments at 10-17 (opposing the use of E-rate funds and instead proposing the use of Lifeline funds to implement a three-year pilot program to provide home broadband Internet access to low-income students who qualify for Lifeline services); CGCS Comments at 6-7 (expressing concern about costs); EdLiNC Comments at 6-7, 10-13 (expressing concern about costs and legal issues); Conterra Ultra Broadband Comments at 6 (expressing concern about costs and (continued...))

commenters also were concerned about schools or students who may not be able to afford the equipment or devices necessary to connect to E-rate funded wireless Internet services.¹⁴⁵ Finally, some commenters argued that E-rate funding for wireless access off premises is not technology-neutral and improperly favors wireless services over wired services.¹⁴⁶ We believe these concerns warrant further inquiry and consideration before such services should be eligible for support on a program-wide basis.¹⁴⁷

44. *The E-rate Deployed Ubiquitously (EDU) 2011 Pilot Program.* To assist us in our inquiry and program development, we establish a trial program to investigate the merits and challenges of wireless off-premises connectivity services, and to help us determine whether they should ultimately be eligible for E-rate support. We plan to use this trial program to gather more information about the implementation challenges described above and to identify and disseminate best practices in existing projects. We ask schools and libraries that already are implementing or experimenting with wireless off-campus learning to provide us with information about their projects, as described below.

45. A number of commenters have indicated that they have already found solutions to the challenges to successfully implementing off-premises wireless Internet connectivity, including ensuring CIPA compliance and other protections against waste, fraud and abuse.¹⁴⁸ Additionally, some commenters suggested that corporate partnerships may help with equipment and application costs.¹⁴⁹ Through the EDU2011 Program, we expect to obtain more information about how wireless learning programs are operating today. For example, we hope to gain a better understanding of operational and administrative issues associated with off-premises use and connectivity, as well as the financial impact on the E-rate program overall. We also hope to learn what conditions, if any, should accompany off-premises access to prevent waste, fraud, and abuse; to ensure compliance with the statute and Commission rules, such as CIPA; and to enable such programs to maximize student achievement and utilization of library services. Additionally, we recognize that schools and libraries face different issues when considering off-premises use, and we would like to gain a greater understanding about how libraries are using remote access to serve their communities.¹⁵⁰ Finally, we hope to gain insight on evolving uses of mobile wireless devices that will assist us in crafting effective permanent rules in this area should we decide to support offsite wireless access.

46. As part of this first phase, we may decide to fund off-campus wireless telecommunications and Internet access for some small number of select programs for funding year 2011,

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unauthorized use); SETDA Comments at 2 (expressing concern about costs and suggesting a pilot program or use of low-income program); Hartford Comments at 2-3.

¹⁴⁵ See South Dakota Department of Education (SD DOE) Reply Comments at 2; Cisco Reply Comments at 7-8.

¹⁴⁶ See NCTA Comments at 5-7; see also Cisco Comments at 5-6; CenturyLink Reply Comments at 14.

¹⁴⁷ See Benton Reply Comments at 2; SECA Reply Comments at 8, 11-13; Verizon Comments at 6-8; AT&T Comments at 9-10, CPUC Comments at 4-7; CSM Comments at 13-14 (suggesting implementing this proposal on a short-term trial or pilot basis).

¹⁴⁸ See, e.g., AT&T Reply Comment at 7; see also Letter from Ohio E-rate Consortium, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 (dated Aug. 24, 2010); Sprint Comments at 4; SECA Comments at 34.

¹⁴⁹ See Blackboard Reply Comments at 1-5; see also CFY Reply Comments at 6; HITN Reply Comments at 2-3; CTIA Reply Comments at 9.

¹⁵⁰ See Nevesem Reply Comments at 12; see also, e.g., Russell Nichols, *Amazon Kindles Connect Rural Libraries to Digital World*, Government Technology, Aug. 31, 2010, available at <http://www.govtech.com/e-government/102484334.html> (last visited Sept. 14, 2010); Joann Merrigan, *Increase In Free Audio Downloads at Public Libraries*, WSAV-TV, Sept. 1, 2010, available at <http://www2.wsav.com/news/2010/sep/01/increase-free-audio-downloads-public-libraries-ar-777866/> (last visited Sept. 14, 2010).

if we find proposals that we believe adequately meet the factors we discuss below. We expect that most of these proposals will not provide broad access to the Internet, but instead will provide connectivity for limited purposes, for example downloading digital textbooks. We authorize up to \$10 million for funding year 2011 to support innovative and interactive off-premise wireless device connectivity for schools and libraries. Given the Commission's planning and competitive bidding requirements, we recognize there is limited time for applicants to develop a proposal from scratch for this round of funding. Therefore, considering those practical barriers, we anticipate that any first phase EDU2011 Program funding will primarily, if not exclusively, be provided to already-existing portable wireless device programs.

47. *How To Apply.* We delegate implementation of this pilot program to the Wireline Competition Bureau (Bureau). To be considered for first phase EDU2011 Program funding, applicants must complete a two-step application process. After publication of this Order in the Federal Register, the Bureau will release a public notice with the due date for applications. First, applicants must submit the information detailed in the following paragraph to the Bureau.¹⁵¹ Second, applicants must apply for E-rate funding by following the regular E-rate program rules. Because potential applicants will most likely already be using portable wireless devices in their school or library, we understand that the applicants may have an established relationship with a service provider. Therefore, to the extent necessary, we waive the applicable sections of our E-rate competitive bidding rules for those first phase EDU2011 Program applicants that have already entered into legally binding agreements with a service provider for portable wireless device connectivity off-premises.¹⁵² We also delegate to the Bureau the authority to waive any other E-rate rules, to the extent necessary, to effectuate this program. Applicants for first phase EDU2011 Program funding must submit FCC Form 471 to USAC during the regular application window. We encourage applicants to submit FCC Form 471 specifically for the wireless Internet access services to be used off premises, and file a separate FCC Form 471 for any services to be used on premises. We note that support under this program will not be provided for the portable devices or equipment, but for the connectivity services.

48. To be considered for first phase EDU2011 Program funding, E-rate eligible applicants must have implemented or already be in the process of implementing a program to provide off-premise connectivity to students or library patrons through the use of portable wireless devices. The application must contain the following information:

- (1) a description of the current or planned program, how long it has been in operation, and a description of any improvements or other changes that would be made if E-rate funding were received for funding year 2011;
- (2) identification of the costs associated with implementing the program including, for example, costs for equipment such as e-readers or laptops, access and connection charges, teacher training, librarian training, or student/parent training;
- (3) relevant technology plans;
- (4) a description of how the program complies with CIPA and adequately protects against waste, fraud, and abuse;
- (5) a copy of internal policies and enforcement procedures governing acceptable use of the wireless device off the school's or library's premises;
- (6) for schools, a description of the program's curriculum objectives, the grade levels included, and the number of students and teachers involved in the program; and

¹⁵¹ Further application details, such as how to submit the applications, will be announced in the public notice to be released by the Bureau.

¹⁵² 47 C.F.R. § 54.504.

(7) for schools, any data collected on program outcomes.

49. *Selection.* After applications are received, for schools, the Bureau should consider the extent to which applicants are providing innovative and interactive learning programs using portable wireless devices for students. For libraries, the Bureau should consider how the library's portable wireless device program facilitates access in the community to needed services, such as job applications, governmental services, job training, and online learning opportunities. Factors the Bureau should consider in selecting programs that may be eligible for additional funding include: the magnitude of the impact E-rate support for off-premise connectivity is likely to have; the number of students or library patrons served; the cost of the program; the poverty level and current discount rate of the school or library; the financial need of the school or library; the location and topography of the school or library, so that we can analyze the availability of wireless access; the committed school or library resources available to implement the entire proposal, including funding for necessary equipment, as well as teacher, librarian, and student training and data collection; and the extent of CIPA protections and other protections to guard against waste, fraud, and abuse.

50. The Bureau will notify USAC of selected applicants. We expect that, if the Bureau decides to award funding for these programs, there will be only a handful of selected applicants. Selected applicants will receive the identified connectivity support and will not be required to cost-allocate the dollar amount of support for the time that portable devices are not at the school or library.¹⁵³ Applicants will receive funds sufficient to cover the connectivity amount eligible for E-rate funding based on their discount; they will still be required to pay their non-discount share. After the trial period, applicants will be required to submit a report to the Bureau detailing any data collected as a result of the program and a narrative describing lessons learned from the program that would assist other schools and libraries desiring to adopt similar programs in the future.

B. Streamlining and Simplifying Administrative Requirements

51. We next adopt proposals to streamline and simplify the E-rate programs. First, we amend section 54.508 of our rules to eliminate the E-rate technology plan requirements for all priority one applications. We retain the technology plan requirements for applicants requesting priority two funding. Second, we find that applicants are not required to have a technology plan in place before a third-party master contract's FCC Form 470 is posted. Third, we also amend section 54.508 to eliminate the requirement that applicants demonstrate they have a budget sufficient to acquire and support the non-discounted elements of the plan. Fourth, we permit the disposal of E-rate equipment for payment or other consideration, but no sooner than five years after the equipment is installed.

1. Background

52. Under the E-rate program, eligible schools and libraries may receive discounts for eligible services used for educational purposes.¹⁵⁴ To request funding, schools and libraries must follow an application process that includes developing a technology plan, seeking competitive bids, and filing application forms.

53. An applicant applying for services other than basic telecommunications services must first develop a technology plan.¹⁵⁵ The technology plan must include five elements, including a strategy

¹⁵³ This funding only relates to support for Internet access monthly service, and not the purchase of devices or equipment, such as mobile broadband cards, smartphones, or digital textbooks.

¹⁵⁴ 47 C.F.R. §§ 54.502, 54.503.

¹⁵⁵ See 47 C.F.R. § 54.504; *Universal Service First Report and Order*, 12 FCC Rcd at 9077-78, para. 573. The Commission currently does not require a technology plan if the applicant is seeking discounts only for basic telecommunications services. See *Request for Review by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket (continued...)