



September 16, 2010

Ms. Marlene H. Dortch  
Federal Communications Commission  
The Portals, TW-A325  
445 12th Street SW  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation  
Schools and Libraries Universal Support Mechanism – CC Docket No. 02-6;  
A National Broadband Plan for Our Future – GN Docket No. 09-51.**

Dear Ms. Dortch:

On Wednesday, September 15, 2010, Alan Fishel of Arent, Fox (on behalf of the Internet2 K20 Initiative), and the undersigned (on behalf of the SHLB Coalition) met with Austin Schlick, Julie Veach, Diane Griffin Holland, Sonja Rifken and Gina Spade to discuss the E-rate reform proceeding. We made the following points:

The comments filed by the SHLB Coalition in July and our *ex parte* on August 27 argued that "lit" fiber services provided by research and education (R&E) networks and other non-profits should also be eligible for E-rate support, in addition to "dark" fiber. R&E networks provide both "lit" and "dark" fiber. Both services are valuable for schools and libraries (providing "lit" services is in some ways easier than dark fiber), and R&E networks can often offer lower prices for both services. Under the current rules, however, commercial carriers can offer "lit" fiber under E-rate today, but R&E networks (and municipalities) cannot. We believe this is unfair, discriminatory and harms schools and libraries that would like to have the additional option of purchasing "lit" services from non-profit providers.

Some people have raised legal issues that they argue would prevent R&E networks from providing "lit" fiber. We do not believe this is true -- in fact, we believe the language in section 254(h)(2) encourages allowing R&E networks to provide lit fiber (that provision requires the FCC to adopt "competitively neutral" rules).

In particular,

1. In the NPRM (paragraph 52), the Commission sought comment on whether it should permit recipients to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers. Therefore, the Commission has clearly sought comment on whether it should permit recipients to receive support for the lease of lit fiber as well (i.e., the



provision of list services) from third parties, including R&E Networks that are not telecommunications carriers. The Commission should allow recipients to receive such support for all of the same reasons as it should permit recipients to receive such support for the lease of dark fiber. And, as described below, it is clear the Commission has the authority to do so.

2. In fact, even if you have to be a telecommunications carrier to provide "telecommunications services," R&E networks should still be allowed to provide "telecommunications" to schools and libraries under the E-rate program.

3. Section 254(c)(3) gives the authority to the FCC to provide "special" or "additional" services in the definition of universal service for schools and libraries.

4. Also, section 254(h)(2) also directs the FCC to adopt "competitively neutral" rules to promote "access to" telecommunications and information services. Thus, this provision also gives the Commission the authority to allow R&E networks to provide "lit" fiber.

5. The FCC itself created the categories of "Internal Connections" and "Internet Access" in the 1997 Order establishing the E-rate program, and these categories were upheld by the court. This shows that the Commission also has the authority to create an additional category called "telecommunications," which is also completely consistent with the Commission's request for comment in paragraph 52 referenced earlier.

Sincerely,

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