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In the Matter of )  
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Schools and Libraries Universal Service )  
Support Mechanism )  
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CC Docket No. 02-6

REPLY COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION

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## SUMMARY

ALA and its members are encouraged by the number and breadth of the many proposals for improving the E-Rate that were introduced in the initial round of comments. ALA seeks to reply to these comments, and urges the Commission to remember that the fundamental purpose of the E-Rate program is to provide much-needed services to as many schools and libraries as possible. In order to achieve that purpose, ALA urges the Commission to take the following steps:

- The Commission should affirm that unused funds will be rolled over to the next funding year and distributed to applicants as a supplement to that year's annual cap. ALA asks the Commission to reject arguments that these funds are not needed by schools and libraries. Such comments are misguided, and ignore the goals of the program.
- ALA also asks the Commission to reject any consideration of block grants as a means of distributing E-Rate funding. This approach was discussed and rejected when the program was formed, and the proposal is contrary to the requirements of 47 U.S.C. § 254(h)(2).
- ALA repeats its call for the Commission to recognize and support the important role that States and their coordinators fulfill, by educating and advising applicants. By contributing this service, State coordinators provide substantial savings to the program. ALA therefore supports providing travel stipends and outreach support to these coordinators.
- Ensuring the goal of providing services to as many schools and libraries as possible requires that the Commission reject any notion of requiring participant-

funded audits. Such audits will discourage participation, most notably by small and under-funded libraries that do not have the discretionary budgets required to fund such audits. In fact, most applicants would probably find it impossible to comply with a participant-funded audit requirement.

- The goal of maximizing the E-Rate's reach also argues in favor of applicant choice regarding payment methods and encouraging broader development of consortia.
- Modifying the basis for calculating library discounts is also critical: the current reliance on the national school lunch program alone is unfair to libraries.
- The Commission should review the effectiveness of Form 470.
- Finally, the Commission should modify the current priority system. We suggest the three-category process-based system described in our initial comments, but we encourage the Commission to consider other options that will help to ensure the efficiency and continued effectiveness of the E-Rate. As part of that modification, the Commission should adopt a carefully-structured eligible services list. Such a list should not be applied rigidly, but should be designed and applied logically and consistently and in a way that encourages rather than restricts participation.

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## INTRODUCTION

The American Library Association (“ALA”) respectfully submits these reply comments in response to the Commission’s Notice of Proposed Rulemaking and Order in CC Docket No. 02-6<sup>1</sup> (the “NPRM”). ALA and its members are encouraged by the number and breadth of the proposals for improving the E-Rate that were introduced in the initial round of comments: the comments illustrate the importance of the E-Rate, and thus give further weight to our arguments for strengthening the E-Rate and avoiding actions that might make it less effective.

### **I. ANY CHANGES TO THE PROGRAM SHOULD ENSURE THAT AS MANY SCHOOLS AND LIBRARIES AS POSSIBLE RECEIVE PROGRAM FUNDS.**

The initial round of comments provided many insightful ideas for the Commission to consider. Other suggestions, however, would harm the E-Rate, and direct funds away from schools and libraries in need for unsubstantiated or improper reasons. We wish to emphasize that the fundamental purpose of the E-Rate program is to provide and sustain badly-needed services to as many schools and libraries as possible. The Commission must not lose sight of that goal, or adopt rules that hinder its accomplishment.

#### **A. FUNDS THAT ARE NOT USED IN A GIVEN FUNDING YEAR WERE CONTRIBUTED TO SUPPORT SCHOOLS AND LIBRARIES, AND SHOULD BE ROLLED OVER FOR THAT PURPOSE.**

Despite the claims of some commenters, Commissioner Copps was correct when he stated that there is no ambiguity regarding this issue: the rules clearly indicate that unused funds should be rolled over to the next funding year and distributed to applicants as a supplement to that year’s annual cap.

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<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism*, Notice of Proposed Rule Making and Order, CC Docket No. 02-6 (rel. Jan. 25, 2002).

ALA strongly rejects the assertion by WorldCom that this money should be credited back to providers because unused funds are in excess of need.<sup>2</sup> First of all, as ALA pointed out in its initial filing, the E-Rate program is not currently meeting the actual level of need. In Funding Year 5 alone, applicants have requested funding of \$5.736 billion. This is a far cry from the current \$2.25 billion cap.<sup>3</sup> Further, as discussed by many commenters, there are numerous reasons why committed funds are not used. The state of Alaska attributes this to the “disjoined cycle of the E-Rate process and the school district and state budgeting process,”<sup>4</sup> the amount of charges that must be estimated, and other reasons, based on the large time delay between application and funding.<sup>5</sup> As further discussed in the initial round by ALA,<sup>6</sup> CCSSO,<sup>7</sup> and others, unused funds result largely from administrative inefficiencies, not a lack of need.

WorldCom also states that the Funding Year 5 request amount does not reflect “true, unmet need” as all Priority One requests are funded, and it is only internal connections that are not fully funded.<sup>8</sup> Yet, WorldCom’s comments do not account for potential additions to the eligible services list, and also assume that funding for internal connections is not necessary, as most classrooms now receive Internet access. ALA and its members reject this proposition, because the demand estimate and actual applications demonstrate that the need for internal

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<sup>2</sup> WorldCom Comments at 14-15.

<sup>3</sup> See FY5 Demand Estimate Letter to FCC from SLD, dated Feb. 28, 2002, available at <http://www.sl.universalservice.org/>.

<sup>4</sup> State of Alaska Comments at 14.

<sup>5</sup> *Id.*

<sup>6</sup> ALA Comments at 32-33.

<sup>7</sup> CCSSO Comments at 61-63.

<sup>8</sup> WorldCom Comments at 14-15.

connection funding continues. Accordingly, we ask the Commission to disregard the notion that the funding of internal connections is no longer necessary.

BellSouth and SBC assert that rolling over unused funds would be unfair, since most of the funds would go to internal connections, thereby benefiting internal connection providers, who are not contributors.<sup>9</sup> This rationale is based upon two false assumptions. First, it assumes that universal service funds should only be spent by providers that contribute to the fund. This is not the case. The purpose of the E-Rate is to further the goals of universal service, not the goals of providers, and the Commission's rules have always recognized that fact.

The second false assumption is that these unused funds are "owed" to the provider, because contributing to the fund has decreased its profit margin. Again, this is not the case. Providers pass the fees on to consumers, with no effect on their profits. Consumers contribute to the program and in turn ensure, among other things, that their schools and libraries have advanced communications. Providers have no inherent claim on these unused funds.

Some providers, like AT&T, WorldCom, and BellSouth and SBC, claim that rolling funds over will require an increased pass-through to consumers. Yet, with the potential for change in the contribution assessment, this claim is premature. *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, FNPRM, released February 26, 2002. If implemented, the universal service fund will be assessed on a per-line flat rate. As such, ALA asks the Commission not to base its decision regarding unused funds on the uncertain future of the contribution methodology or a possible increase in the amount of the pass-through to consumers. Instead, we ask the Commission to consider how rolling-over unused funds will help

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<sup>9</sup> BellSouth and SBC Comments at 39.

to fund the provision of needed services, and ensure that applicants will be willing to return unused funds, knowing that these funds will be used where they are most needed.

AT&T argues that “the Commission established a policy in the *Twelfth Order on Reconsideration* that unused funds from funding Year 1 should *not* be used to exceed the annual funding cap of \$2.25 billion in subsequent funding years.”<sup>10</sup>

The Commission did direct the Administrator to use one-fourth of the estimated unused balance to reduce the collection requirement for the first quarter of Year 2, finding it consistent with Commission rules and precedent.<sup>11</sup> As explained in this Public Notice, this precedent stemmed from a decision in 1998 when the rural health care program had a balance “because collections accrued faster than actual demand for program support.”<sup>12</sup> But that decision was based on specific circumstances at the time, pertaining to the rural health care fund. The precedent is inconsistent with respect to the E-Rate, because, as discussed above, demand exceeds funding by a substantial margin.

ALA therefore urges the Commission to disregard the rural health care precedent, as it does not reflect the current status of the E-Rate program. Instead, the Commission should act to meet the need of the E-Rate program, by allowing unused funds to be rolled over to the next funding year and distributed to applicants as a supplement to that year’s annual cap.

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<sup>10</sup> AT&T Comments at 3-4.

<sup>11</sup> *Proposed First Quarter 2000 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, 15 FCC Rcd. 3660 (1999).

<sup>12</sup> *Id.*

**B. ALA DOES NOT ADVOCATE SHIFTING PROGRAM ADMINISTRATION TO THE STATES AND FIRMLY OPPOSES BLOCK GRANTS.**

Some commenters, such as the Iowa Department of Education,<sup>13</sup> the Florida Department of Education,<sup>14</sup> and the Florida Public Service Commission<sup>15</sup> suggest that States should administer the E-Rate, essentially advocating the use of block grants to distribute E-Rate funds. ALA does not support block grants because they would harm the program and are contrary to law.

Block grants were considered when the E-Rate was first established. The Federal-State Joint Board considered block grants, and rejected the idea in its Recommended Decision. As the Board noted, many commenters opposed the program:

Parties opposing the block grant approach state that such an approach would create bureaucratic problems, would make it impossible to determine affordability, and would distort the competitive services market. The Senate Working Group, a bipartisan group of 16 Senators that includes the co-authors of section 254(h), states:

We are seriously concerned about the issue of block grants. Such grants would be incompatible with the statute's architecture of discounts based on affordability on flexible bona fide requests submitted by schools and libraries. Block grants are not based on individual needs and priorities of schools and libraries for education technology. Affordability cannot be determined under a block grant approach. It is imperative that the Commission and the Joint Board structure discounted rates for schools and libraries in such a way that all schools and libraries will have access to telecommunications services. We believe that a block grant approach cannot satisfy the objectives of [s]ection 254(h).

*In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, ¶ 515 (internal citations omitted).

The Joint Board agreed with this rationale:

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<sup>13</sup> Iowa Dept. of Education Comments at 3-5.

<sup>14</sup> Florida Dept. of Education Comments at 8-12.

<sup>15</sup> Florida PSC Comments at 6-9.

We also do not endorse the disbursement of discounts in the form of block grants to states. As noted by the Senate Working Group:

Such grants would be incompatible with the statute's architecture of discounts based on affordability on flexible bona fide requests submitted by schools and libraries. Block grants are not based on individual needs and priorities of schools and libraries for education technology. Affordability cannot be determined under a block grant approach.

*Id.* at ¶ 548 (internal citations omitted).

The Commission supported this finding, saying “[w]e agree with the Joint Board's recommendation that we adopt rules that provide support to eligible schools and libraries through a percentage discount mechanism rather than providing a package of free services or block grants to states because we find that discounts would better assure efficiency and accountability.”<sup>16</sup>

Over the four years since the Commission issued its First Report and Order, the Administration of the E-Rate at the Federal level has proven its value. The intended purposes of the E-Rate are being met by the current system. ALA believes that the creation of block grants would provide little benefit to the program, and could provide serious harm. With each State administering the available funding, the potential for diversion of funding away from the intended purposes and eligible services increases.

Further, while some participants advocate a block grant system, not every State is willing to administer this program. Without support from all fifty States, making such a drastic change to the program is not only unwarranted but impractical.

And, finally, the Communications Act expressly calls for the use of a discounted rate approach. 47 U.S.C. § 254(h)(1)(B). A block grant system would not be compatible with the mechanism contemplated by the statute.

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<sup>16</sup> In the Matter of Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 at ¶ 493.

**C. WHILE ALA DOES NOT BELIEVE THE PROGRAM SHOULD BE ADMINISTERED AT THE STATE LEVEL, ALA SEEKS SUPPORT FOR STATE E-RATE COORDINATORS.**

In our initial comments, ALA proposed providing support for State E-Rate coordinators, who provide considerable assistance to program participants.<sup>17</sup> The Wisconsin Department of Public Instruction<sup>18</sup> and CCSSO<sup>19</sup> suggested similar support for state coordinators.

The States play an important role in the administration of the E-Rate program by supporting the state-level E-Rate coordinators. These coordinators help to ensure that their State's participants are doing what is necessary to receive needed discounts, and this role should be encouraged. If the Commission wishes to enhance the role of the states, this is the way to do it, and not by establishing a block grant program.

As described in the declaration of Nancy Bolt attached hereto as Exhibit A, the role of the E-Rate coordinator is extensive. E-Rate Coordinators promote the program, provide application support and advice, educate applicants about the program through workshops, and work as a liason between the applicant and the Administrator. These tasks result in substantial savings to the program's administrative costs. In return for these savings, ALA urges the Commission to find ways to support this important work.

ALA does not advocate underwriting salaries for coordinators, but does recommend providing stipends for travel to training seminars held by the SLD, and helping to defray the costs of conducting similar sessions sponsored by the States, and similar support activities. This support is directly related to program administration and development. The funds spent defraying the cost of coordinators to attend seminars and educational workshops would ensure

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<sup>17</sup> ALA Comments at 39-40.

<sup>18</sup> WDPI Comments at 3-4.

the outreach and education that E-Rate coordinators provide applicants in their State. This is an efficient way of educating applicants, and should be encouraged.

**D. PARTICIPANT-FUNDED AUDITS WILL DISCOURAGE PARTICIPATION, AND SIMPLY ARE NOT WARRANTED.**

BellSouth and SBC,<sup>20</sup> as well as the Universal Service Administrative Company (“USAC”)<sup>21</sup> suggest that program audits funded by participants will help prevent waste, fraud, and abuse in the program. While this comment may be true on its face, a closer evaluation of the proposed audit requirement shows that it would only harm the E-Rate program, while providing no actual benefit.

As discussed by ALA and others in the initial round of comments, including Verizon<sup>22</sup> and the Iowa Department of Education,<sup>23</sup> an audit funding requirement would deter libraries from applying for discounts, especially the smaller and poorer participants who most need the funding. As some commenters explained, many participants already believe the existing audit requirements are unnecessary. While heightened scrutiny was understandable in the initial years because of lack of familiarity with the program and the initial skepticism associated with E-Rate, the program has proven itself, as have its participants.

Despite the claims by some commenters that waste, fraud and abuse must be reduced in the program, there is very little evidence of actual waste, fraud or abuse. We note that none of these commenters produced any actual evidence to support their claims. Indeed, the GAO’s report regarding program integrity, *Schools and Libraries Program: Application and Invoice*

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<sup>19</sup> CCSSO Comments at 64-65.

<sup>20</sup> BellSouth and SBC Comment at 35-36.

<sup>21</sup> USAC Comments at 30-31.

<sup>22</sup> Verizon

*Review Procedures Need Strengthening*, GAO-01-105 (December 2000), shows that additional audits are not needed. The GAO noted in its report that the SLD had hired Arthur Andersen to conduct site visits to a number of applicants. These visits found little evidence of fraud or abuse:

In October 2000, SLD officials told us that over half of the auditor's reviews had been completed or virtually completed with *no* major reportable findings. However, the remaining reviews have disclosed some violations, including cases in which program funds were used to pay for ineligible services and services delivered outside the program year. At *one* location, there are preliminary indications that program funds could have been intentionally misused. USAC forwarded this information to FCC, and as a result, this case is under investigation by FCC's Office of Inspector General.

*GAO Report* at 28, emphasis added.

While one instance of misuse is one too many, it is hard to justify extensive audits of countless innocent participants at their own expense based on one instance of intentional misuse. Without more evidence of misuse of the program, there is no reason to change the current audit rules in § 54.705(a)(1) of the Commission's rules. The GAO report shows that the current system is working. ALA could understand the call for a change if there were any sign of significant fraud and abuse. But there is none. Indeed, none of the commenters who support stricter audit requirements introduce any actual evidence that would justify the change. Any change will only serve to impose the threat of substantial expense on E-Rate applicants in exchange for no benefit.

Furthermore, giving the Administrator the discretion to audit participants at their expense lacks any balance whatsoever, and creates its own risk of abuse. If the Administrator does not bear the cost of the audit, there is no check upon the Administrator to limit the cost or number of audits. With unlimited discretion given to the Administrator to perform audits it will not pay for, there is no incentive for these audits to be limited to the most necessary and likely of incidents.

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<sup>23</sup> Iowa Dept. of Ed. Comments at 10-11.

The audit funding proposal effectively creates a presumption that all applications are fraudulent. This will discourage participation, which will in turn harm schools and libraries. If a library can be audited at any time at its own expense, many libraries will conclude that the risk of paying for an audit does not justify the benefits of applying for the E-Rate. We can think of no better way to reduce the efficiency of the E-Rate than to expose participants to large expenses entirely outside of their control. We can not even imagine what types of assurances would need to be extracted from applicants that they have sufficient funding to support an audit. The audit proposal may not be designed to kill the E-Rate, but that would be its effect.

**E. WITHOUT APPLICANT CHOICE REGARDING PAYMENT METHODS, SCHOOLS AND LIBRARIES ARE AT RISK OF LOSING THEIR DISCOUNTS.**

Not surprisingly, applicants support choice regarding payment methods.<sup>24</sup> The only commenters that did not support applicant choice were providers that would need to modify their current payment methods.<sup>25</sup> ALA is sympathetic to the costs such an undertaking would entail, but we must question whether the proposed changes would cost as much as the industry commenters claim. AT&T Wireless estimates that implementing changes related to applicant choice will cost in excess of \$1 million.<sup>26</sup> As the Commission is well aware, because of its long history of cost-based rate regulation and its many efforts to determine the actual costs incurred by providers, it can be very difficult to determine and verify such claims regarding costs. And in

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<sup>24</sup> See, e.g., CCSSO Comments at 34-35; Michigan Information Network Comments at 14-15; National Education Assoc. *et al.* Comments at 16-18.

<sup>25</sup> See Comments of AT&T Wireless at 1-2; BellSouth and SBC at 13-15; Verizon at 7-11; and WorldCom at 10-11.

<sup>26</sup> AT&T Wireless Comments at 6. Incidentally, a one-time cost of \$1 million for a company the size of AT&T Wireless does not strike us as terribly large.

this instance, where there is no specific documentation to support these cost projections, ALA asks the Commission to view such allegations with at least a little skepticism.

In addition, ALA would like to again remind the Commission that many schools and libraries are part of larger government entities with established accounting and payment procedures. While we understand that some providers will have to expend some funds in the immediate future in order to provide applicant choice, it must be remembered that without such a change, some schools and libraries will never be able to realize the discounts that this program provides. Further, some of the costs that providers would incur in implementing choice in payment procedures may in turn be offset by new customers that these providers will gain due to such changes.

Some commenters suggest supporting applicant choice by changing the Administrator's forms to reflect an applicant's preference or requirement regarding payment options. While this option seems to provide a solution, ALA reminds the Commission that many applicants do not have a choice of providers, and must either comply with the provider's preference, or forsake the discount. Such an option will not advance applicant choice for these schools and libraries.

**F. CONSORTIA PROVIDE GREAT EFFICIENCIES AND SAVINGS TO THE PROGRAM, BUT CONSORTIA ARE NOT AFFORDED THE SAME EFFICIENCIES AND SAVINGS IN RETURN.**

As noted by ALA and other commenters, consortia provide efficiencies and cost savings to the E-Rate program.<sup>27</sup> Yet, as noted in the comments of Three Rivers Library System, the current program rules do not encourage these efficiencies, but instead make it difficult to operate as a consortium. Some commenters propose suggestions to ease the obligations and difficulties placed on consortia, and ALA supports these changes.

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<sup>27</sup> See, e.g., Comments of Ill. State Bd. of Ed. at 15-17, CCSSO at 28-29; USAC at 19-20.

The Council of Chief State School Officers proposes eliminating the practice of automatically rejecting applicants that fail to submit Letters of Agency; allowing consortia to customize their Letters of Agency and Consortia Participation Agreements; and allowing current Letters of Agency to remain in effect, to be updated when there is a change in circumstance, instead of annually.<sup>28</sup> ALA supports these changes, and any other suggestions that will decrease the administrative burdens placed upon consortia. CCSSO also recommends allowing consortia to use a weighted average option for discount calculations.<sup>29</sup> ALA also supports this suggestion, believing it to be administratively more efficient and fair to consortia applicants.

Tel/Logic suggests simplifying the filing procedures for consortia by allowing consortia to file one Form 470, 471 and 486 on behalf of all members, while allowing individual members to be billed individually.<sup>30</sup> ALA supports this suggestion, which decreases administrative burdens while encouraging consortia participation by allowing for billing differences between individual members.

The Michigan Information Network suggests adding a five or ten percent “bonus” to a consortium’s discount rate along with a set-aside funding level for consortia applications, particularly for Priority 2 applications.<sup>31</sup> ALA supports such a recommendation, as it also encourages the efficiencies of consortia participation.

Some commenters suggest changes that will provide greater flexibility to form consortia with non-eligible entities.<sup>32</sup> Other commenters believe such changes would increase the

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<sup>28</sup> CCSSO Comments at 31-34.

<sup>29</sup> *Id.* at 33.

<sup>30</sup> Tel/Logic Comments at 9-10.

<sup>31</sup> Michigan Information Network Comments at 24-25.

<sup>32</sup> See, e.g., Comments of Michigan Information Network at 9; Information Renaissance at 4-5.

potential for fraud and abuse, as it “conflicts with the natural purpose of joining a consortium, which is for all members to benefit equally from the combined buying power.”<sup>33</sup> ALA does not understand this suggestion by BellSouth and SBC. While it is true that members do join consortia in order to benefit from such consolidated demand, it is not true that such consolidation inherently leads to fraud and abuse. Rather, consortia help create efficiencies in the program, and therefore provide more funds for other applicants.<sup>34</sup> As USAC mentions, this proposed change will translate into lower rates for eligible entities.<sup>35</sup> As such, allowing greater flexibility to form consortia is beneficial to the E-Rate program, and should be encouraged.

Finally, USAC notes that the proposed consortia rule change could present administrative burdens, as USAC would have to identify ineligible members.<sup>36</sup> USAC does not weigh this administrative burden against the administrative efficiency of creating more consortium members, so it is difficult to project the burden this would place upon USAC. In addition, as this is a self-certifying program, ALA questions the severity of this burden. Considering the advantages that consortia provide the program generally, ALA urges the Commission to do what it can to create efficiencies and benefits for consortia.

**G. MODIFYING THE BASIS FOR CALCULATING LIBRARY DISCOUNTS WOULD HELP TO ENSURE THAT FUNDING ACCURATELY REFLECTS NEED.**

As ALA discussed in its initial comments, participation in the National School Lunch Program, the current basis for calculating library discounts, does not accurately reflect the level

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<sup>33</sup> Comments of BellSouth and SBC at 13.

<sup>34</sup> For instance, the Illinois State Board of Education conservatively estimates that the Illinois Century Network has saved the Program \$20 Million a year by pooling Internet access to over 3500 E-Rate eligible entities across the State into seven high-capacity lines.

<sup>35</sup> USAC Comments at 20.

<sup>36</sup> Id.

of applicant need.<sup>37</sup> Although the NPRM did not solicit comments on this issue, other participants in this proceeding also expressed concern regarding this inequity.

For instance, the Wisconsin Department of Public Instruction is fully aware of the inequity of the school lunch program, relating an example from Milwaukee, involving an elementary school and a library branch situated across the street from one another. The school is eligible for a 90% discount and qualified in Year 4 for Priority Two funding.<sup>38</sup> The library, on the other hand, must average this discount with the NSLP discounts of other schools in the district. This district-wide average was 83%, not enough to reach the 90% discount level cut-off for Priority Two funding in Year 4. To address the imbalance of this situation and others, the WDPI proposes that libraries have the option to use the lunch discount figure of the nearest public elementary school.<sup>39</sup>

Michigan Information Network also recognizes this problem, noting that schools may choose to use alternative discount methods, whereas libraries and consortia cannot. It suggests alternatives such as the nearest elementary school, using 2000 census data, or some other system. The Network also suggests using a single discount rate, based on total student NSLP eligibility, for multi-site entities, rather than an aggregate average of individual site discounts or weighted discounts for consortia.<sup>40</sup>

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<sup>37</sup> ALA Comments at 34-37.

<sup>38</sup> Wisconsin Dept. of Public Instruction Comments at 2. In the aggregate, WDPI notes that “in Year 4 no libraries in Wisconsin received Priority Two discounts, while a total of \$6,305,509 in Priority Two discounts were awarded to schools. We do not think such a flagrant discrepancy meets anyone’s understanding of the phrase ‘ensure fair and equitable distribution of funds.’” *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Michigan Information Network Comments at 24-25.

Some commenters believe that the National School Lunch Program is not a reliable indicator of poverty, and suggest that other factors should be included, like the ADM budget or revenue.<sup>41</sup> Others discuss the difficulties in obtaining school lunch data.<sup>42</sup> Three Rivers Library System provides a good example of the trials that library consortia must go through in order to establish their discount levels based on the National School Lunch Program. This consortium has to obtain NSLP data from 339 schools in order to compute the discount percentage of its library members.<sup>43</sup> All this, to find a discount percentage that will likely change before the application is even reviewed. Inequities aside, the NSLP discount mechanism creates massive administrative difficulties for library consortia. ALA urges the Commission to address these concerns.

## **II. ALA SUPPORTS ADDITIONAL STEPS THAT WOULD IMPROVE THE EFFICIENCY OF THE E-RATE PROGRAM.**

Many parties proposed changes that would improve the efficiency of the E-Rate. ALA asks the Commission to consider such changes, and amend its rules in ways that will promote forward-thinking, flexible solutions for the future of the E-Rate.

### **A. ALA SUPPORTS THE USE OF A LIST OF ELIGIBLE SERVICES, PROVIDED THAT IT IS NOT SO DETAILED, SPECIFIC, AND CRYPTIC AS TO BECOME IMPRACTICAL.**

Many commenters reject the idea of an eligible services list as unworkable. *See, e.g.*, Comments of Verizon, Tel/Logic, and CCSSO. ALA agrees that a list, as contemplated by many of the commenters, that is so mired in detail as to provide applicants with thousands of specific

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<sup>41</sup> Comments of James Gregory at 2.

<sup>42</sup> Three Rivers Library System Comments at 2; Michigan Information Network Comments at 24.

<sup>43</sup> Three Rivers Library System Comments at 2.

options, would indeed be unworkable. On the other hand, a properly-structured list would be a great improvement.

As noted by the Coalition for E-Rate Reform and BellSouth and SBC, an on-line drop down list of specific products and marketed offerings would be impractical because of its size.<sup>44</sup> A list of that length, including every conceivable product, would either require substantial additional server and transmission capacity, or would be prone to causing frequent crashing of the USAC's website. Such a list also would need to be updated frequently, and still could not ensure that all options were included or able to be found by applicants. Further, such a list would not address the eligibility of conditional services, as recognized by Verizon and WorldCom in their comments.<sup>45</sup>

ALA urges the Commission to consider a broader, less specific option. As discussed in our initial comments at 18-22, ALA advocates a simpler database where eligible equipment and services are broadly defined and can be easily understood by applicants. Such a list would consist of pre-approved, non-conditional Category 1 services. This list would be updated periodically, and contain a mechanism for adding new services before applications were due.

ALA is also concerned that a list would be created and updated much like the list currently available on the SLD's website that provides guidance on eligibility.<sup>46</sup> Many commenters criticized the use of this list, as it does not provide guidance as to eligibility.<sup>47</sup> In addition, applicants do not understand and cannot participate in the process of deciding how the eligibility decisions for this list are determined. ALA strongly believes that this decision process

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<sup>44</sup> Coalition for E-Rate Reform Comments at 2; BellSouth and SBC Comments at 6-8.

<sup>45</sup> Verizon Comments at 12; WorldCom Comments at 4-6.

<sup>46</sup> This list is available at <http://www.sl.universalservice.org/reference/eligible.asp>.

<sup>47</sup> See, e.g., Coalition for E-Rate Reform Comments at 2; CCSSO Comments at 19.

should be an open and deliberative process. In our initial comments, we suggested that qualified FCC staff, such as the Office of Engineering and Technology, should periodically review the types of services available in the marketplace and update the basic service list accordingly. We would also like to recommend that applicants and providers be involved in this process, in a manner similar to the Year 3 Task Force. This Task Force, composed of representatives from schools, libraries, and providers, reviewed eligible services for Year 3. A group similar to this Year 3 Task Force, in addition to FCC technical representatives, would help to bring creativity, understanding, openness, and diversity of thought to the eligibility decision-making process.

This board of informed and interested entities could convene regularly to review applications, and also to review nominations for eligible services submitted prior to the application process. As discussed in our initial Comments, such a mechanism for adding new services to the pre-approved eligibility list before applications are due would benefit all the other entities who have been considering applying for such a service.

ALA believes that an eligible services list is possible, provided it is structured carefully. Much of the concern expressed regarding the utility of a list is probably based on a particular conception of what the use of a list would entail. For example, a list that addresses only the names and specific circumstances of individual past applications will not serve the purpose because only rarely would applicants be able to show that their applications meet the exact criteria laid down by a previous application. ALA believes that (1) the process for creating such a list must be transparent, to ensure that all applicants understand the funding decisions; (2) the list must be consistently and logically applied, so that applicants can have confidence in individual funding decisions, (3) the list must be flexible enough to allow for new technologies; and (4) the list must be general enough to allow applicants to demonstrate how their requests fit the

parameters of the list. If described in broader, more open terms, as we propose, we believe that most commentors would find using a list much more attractive.

**B. THE COMMISSION SHOULD REVIEW THE EFFECTIVENESS OF FORM 470.**

In the initial round of comments, many participants expressed concerns over Form 470, some even asking the Commission to eliminate this Form from the program. ALA does not support any particular proposed change, but does believe that the Commission should examine the effectiveness of Form 470. The original purpose of this Form was to engender the competition that was expected from the 1996 Act. It is unclear to ALA that this Form is fulfilling its purpose. We therefore ask the Commission to review the role of this Form.

**C. ALA WOULD LIKE TO REEMPHASIZE THE NEED TO MODIFY THE CURRENT PRIORITY SYSTEM.**

Many commenters offer suggestions for changing the priority system, and even more discuss the problems that insufficient funds create, a problem that will only be exacerbated by the addition of new eligible services.<sup>48</sup> ALA would like to reemphasize the proposals in our opening comments that were intended to help alleviate the strain on the current funding priority mechanism.

As discussed in our initial comments at 23-36, ALA advocates a modification to the current priority system. Briefly, this modification would create three categories that emphasize more efficient processing of applications. This restructuring would not affect or alter in any way either the classification of services as telecommunications, Internet access or internal connections, or any of the consequences of these classifications under other FCC rules. ALA proposes that the FCC establish procedural or three process-based categories: Category 1,

Approved Transmission and Connectivity Services; Category 2, Innovative and Cost-Effective Services; and Category 3, Internal Connections.

Some commenters also proposed modifications to the current priority system. The Iowa Department of Education suggested combining telecommunications and Internet service into one Priority One category.<sup>49</sup> The Missouri Research and Education Network suggests changing the funding priority definitions to include transportation services versus internal operations, eliminating any distinctions between lease and purchase, and providing eligibility for some WANs as Priority One (MANs and WANs) and some as Priority Two (LANs and CANs).<sup>50</sup> The NYC Board of Education suggests a new system of three funding priorities, one that would continue to include telecommunications and ISP services, a second that would support maintenance costs, and a third that would include internal connections according to a modified priority distribution.<sup>51</sup>

ALA is encouraged by the range of suggestions. If the Commission decides not to implement ALA's Category system, it asks the Commission to consider a modification to the current priority system that is both forward-looking, facially clear to participants, and efficient to administer. In addition, any modification should consider the goals of the program; first, supporting essential connectivity and transmission capability provided by third parties, including unbundled Internet access; second, ensuring funding of new services that promote innovation

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<sup>48</sup> See, e.g., Michigan Information Network Comments at 7-8, CCSSO Comments at 47-48, and Iowa Department of Education at 3-4.

<sup>49</sup> Iowa Comments at 6-7.

<sup>50</sup> Missouri Comments at 3-6.

<sup>51</sup> NYC BOE Comments at 4-5.

and efficiency; and third, providing service directly to classrooms and within libraries, as required by 47 U.S.C. § 254(h)(2).

Other commenters offer suggestions regarding the inclusion of WANs. For instance, the Michigan Information Network suggests that WANs and wireless services be considered as Priority Two if the equipment is purchased, and Priority One if the equipment is leased.<sup>52</sup> New York Public Library suggests that leased WANs should continue to be Priority One, but equipment and infrastructure costs included in the lease price should be broken out and applied for under Priority Two.<sup>53</sup>

ALA supports discounts for the lease and purchase of WANs, provided that there is a clear service element to the WAN arrangement. ALA advocates a system in which leased WANs are given first priority, and WANs involving construction of facilities or installation of equipment as part of a network not owned by a third party service provider are given less priority. Yet, ALA also believes that the current priority system needs to be modified in consideration of future changes, and therefore promotes the new three-category system outlined above.

Finally, a few commenters propose changes to the funding of Priority Two. CCSSO proposes reducing the discount for Priority Two services by 20%, so that a 90% applicant would receive 90% for Priority One and 70% for Priority Two.<sup>54</sup> Indiana State Library and Department of Education suggest rotating Priority Two funding among the discount levels, giving half to the

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<sup>52</sup> Michigan Information Network Comments at 7-8

<sup>53</sup> NYPL Comments at 2-3.

<sup>54</sup> See CCSSO Comments at 47-48.

90% category, and the other half to the other top four bands.<sup>55</sup> ALA appreciates these ideas, and would like to see some type of change to the funding of Priority Two services if the Commission does not choose to adopt ALA's three-category system.<sup>56</sup>

**D. REVIEW OF REQUESTS CONTAINING INELIGIBLE SERVICES.**

In our initial comments at 44-45, ALA deferred comment until there is more information regarding the number of applications denied based on the 30/70 ratio that is currently used. In reviewing the comments of USAC, the significance of the issue as raised in the NPRM is still not clear. USAC states that some threshold is critical, due to increased costs of review, and states that the cost savings of decreasing the threshold to 20% could be estimated at \$50,000 to \$75,000 a year.

While ALA appreciates this projection, we again ask the Commission not to take any action regarding this issue without further information showing the significance of this problem. ALA supports administrative savings to the program, but is concerned about how many applicants will be rejected using a 20/80 ratio. Until more information is available regarding the amount of applicants who would be rejected under such a ratio, ALA is concerned that changing the ratio may harm applicants.

**CONCLUSION**

The E-Rate discounts have undeniably provided much-needed assistance to libraries around the country. ALA applauds the Commission for its dedication to the careful implementation of Section 224(h) and its willingness to make further improvements, and also applauds the commenters in this proceeding for their insightful suggestions and ideas. ALA

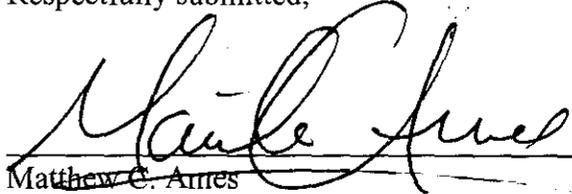
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<sup>55</sup> See Intelenet Commission Comments at 10-11.

<sup>56</sup> USAC Comments at 16-17.

supports the Commission's efforts to ensure that the program is made more accessible, accountable, and efficient, so long as the focus of the Commission's rules remains on helping libraries rather than subjecting them to unnecessary, ineffective, or duplicative regulation. Finally, ALA respectfully requests that the Commission consider additional changes needed to ensure the equitable and efficient allocation of funds.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew C. Ames", written over a horizontal line.

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Attorneys for the American Library Association

May 6, 2000

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# Exhibit A



Association Librarian of the Year. I have a Masters degree in Library Science from the University of Missouri.

3. In addition to my responsibilities as the State Librarian, I also currently serve as the Chair of ALA's E-Rate Task Force. The Task Force was created to work with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) and the Federal Communications Commission (FCC) to improve and streamline the current operation and future development of the E-Rate program of discounted telecommunication rates for schools and libraries. We interact with the library community and other interested library organizations about issues and concerns with the E-Rate program and convey those concerns to the SLD and to the FCC and work with ALA to help organize and facilitate state level E-Rate coordination.
4. The E-Rate Task Force would like to bring the Commission's attention to the role of the State E-Rate Coordinator. State E-Rate Coordinators serve an important role in the E-Rate program. The Task Force has outlined the responsibilities of the E-Rate Coordinator. They include the following:

### **Responsibilities of a State E-rate Coordinator**

The successful E-rate coordinator coordinates and manages a wide variety of activities related to the federal E-rate program. The goal of the coordinator is to help insure that applicants successfully receive the discounts available to them through the E-rate program. To achieve this goal the E-rate coordinator is involved in many E-rate related activities and functions. While these may differ from state to state, the most common ones are listed below.

*Goal 1: Provide information, assistance and program support to applicants. This can be achieved by:*

1. Getting a commitment from the state librarian or upper level management to provide program support at the state level.
2. Actively promoting the program to libraries throughout the state.
  - a. Educating applicants about the program and the purposes of the program.
  - b. Developing communication strategies and programs targeted specifically at getting non-participating libraries to apply.
3. Actively informing and promoting the role of the State E-rate coordinator to libraries throughout the state.
  - a. Issuing general news releases on the benefits of the program to libraries in the state.
4. Achieving a thorough knowledge about all aspects of the program, including what services are eligible for discounts, rule interpretation, and program timelines.
5. Communicating program information to applicants by developing and maintaining Websites, email lists, printed resource materials and other forms of communication.
  - a. Working specifically with regional E-rate coordinators (e.g., staff at the library consortia level).
6. Sponsoring workshops on various aspects of the program.
7. Providing direct assistance to applicants during the program application process and post-program processes, including help in completing the requisite forms and in filing appeals.
  - a. Serving as an applicant's advocate in communications with PIA or CSB staff.
  - b. Working specifically with E-rate consortia.
8. Providing assistance in developing library technology plans and approving such Plans.

*Goal 2: Work with the SLD to provide a better understanding and coordination of the program between the SLD the state and the applicants. This can be achieved by:*

1. Notifying the SLD Washington office of any changes in contact information or status.

2. Developing good rapport with regional PIA representative and CSB staff and communicating to them as needed any issues or problems being encountered by applicants.
  - a. Serving as an applicant's advocate in communications with PIA or CSB staff (also 7a above).
3. Attending SLD sponsored training sessions.
4. Working with the ALA E-rate Task Force in:
  - a. Fostering continued open communications with SLD management;
  - b. Advocating with the SLD/FCC for rule interpretations and program changes that will benefit applicants; and
  - c. Analyzing the program to seek ways in which to encourage more applicants to apply.
  
5. The efforts outlined above provide tremendous support for the E-Rate program. The E-Rate task force believes that these efforts should be recognized and supported. As such, we recommend that the Commission allow E-Rate funds to be used to provide stipends training seminars held by the SLD, including the costs of travel. Doing so will ensure that E-Rate Coordinators will attend such seminars, and be able to spread the information used to its state constituents. We also believe that the E-Rate fund should be used to help defray the costs of conducting similar training seminars and sessions sponsored by the States, and similar support for such educational and outreach activities.
  
6. Without the assistance of E-Rate Coordinators, this program would not be as successful as it is, and the SLD would have to expend more funds for program administration and development, including applicant outreach and education. ALA and the E-Rate task force ask the Commission to consider providing assistance to E-Rate Coordinators, in order to ensure the important work they contribute to the E-Rate program.

## VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on May 6, 2002, in Washington, D.C.

  
Nancy Bolt