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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	CC Docket No. 02-33
Universal Service Obligations of Broadband Providers	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards	CC Docket Nos. 95-20, 98-10

REPLY COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION

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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 released in the above-referenced dockets on February 15, 2002[1] (the "NPRM"). The ALA is a nonprofit educational organization of over 63,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, specialized libraries, and the communities they serve. The ALA is dedicated to the improvement of all aspects of library services. The ALA also provides leadership for the development, promotion, and improvement of library services and the profession of librarianship in order to enhance learning and ensure access to information for all.

ALA submits these reply comments to stress the importance of the discounts for schools and libraries provided by the FCC's universal service rules (the "E-Rate"). ALA urges the Commission to ensure that changes in technology do not defeat the purpose of the E-Rate. As new types of providers arise and develop new types of services, both the "evolving level of service" and the funding mechanism established by Congress must take those changes into account.

I. ALA AGREES WITH COMMENTERS WHO ARGUE THAT ALL BROADBAND PROVIDERS SHOULD CONTRIBUTE TO UNIVERSAL SERVICE.

The majority of comments in this proceeding argued in support of requiring broadband Internet access providers to contribute to the universal service fund. *See, e.g.,* Comments of the Pennsylvania Office of Consumer Advocate et al at 57-66; Comments of the National Rural Telecom Association (NRTA) at 19-25; Comments of the Organization for the Promotion and

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[1] *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rule Making, CC Docket No. 02-33 (rel. Feb. 15, 2002).

Advancement of Small Telecommunications Companies (OPASTCO) at 11-19; Comments of SBC Communications at 41-46.

ALA agrees with these and other commenters that the Commission can, and should, include facilities-based broadband Internet access providers among the entities who contribute to the universal service fund pursuant to 254(d). As discussed below, ALA believes including broadband providers is in the public interest, and necessary to the continued success of the E-Rate.

II. BECAUSE BROADBAND IS NOW AN ESTABLISHED INDUSTRY, ALA BELIEVES IT IS TIME FOR BROADBAND PROVIDERS TO CONTRIBUTE.

Broadband is no longer the emerging technology it once was. Recent studies show that it is quickly becoming a ubiquitous technology. According to a study released last month by Nielsen/NetRatings, sixty percent of the 20 largest cities in the U.S. show that the number of Americans who use broadband services at home grew more than 50 percent over the past year.[2] In April of 2002, 25.2 million people used cable modem, DSL, ISDN, or LAN to access the Internet at home, up from 15.9 million in April of 2001.[3] This rapid growth shows the important role this technology will play in the future of Internet access. This role, in addition to the increasingly important role that broadband is playing in the E-Rate program, argues in favor of including broadband providers among the entities that support universal service.

Aside from these statistics, ALA is personally aware of the importance of broadband. As noted by ALA in its comments filed in the *Schools and Libraries Universal Service Support*

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[2] Dick Kelsey, "Big-City Broadband Growing at High Speed," Newsbytes, May 20, 2002, available at http://www.newsbytes.com/news/02/176676.html.

[3] *Id.*

Mechanism proceeding,[4] broadband Internet access is becoming increasingly necessary for the provision of advanced services to libraries. Without the capacity of broadband, some library resources, like virtual reference librarians, would not be possible.[5] In order to effectively fulfill their educational roles, libraries need to offer their patrons broadband Internet access.

This need for broadband Internet service is not unique to libraries. Broadband is fast becoming a ubiquitous service, which will affect the revenues of interstate telecommunications carriers who do contribute to the universal service fund. As noted by some of these carriers, who commented in this proceeding,[6] this transfer of revenue streams is already happening. Such a transfer of revenues ultimately will strain the universal service fund. Therefore, in order to ensure the continued health of universal service, the Commission must include broadband providers among those required to contribute to the universal service fund.

Section 254(c)(1) clearly states that Congress intended that the concept of universal service should change as technology changes. "Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, *taking into account advances in telecommunications and information technologies and services*." 47 U.S.C. § 254(c)(1) (emphasis added). The landscape of telecommunications and information technologies is changing with the growth and development of broadband services. Just as the type of service is changing, so is the type of provider. Consequently, the long-term health of the universal service fund depends on taking these changes into account.

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[4] ALA Comments, *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, filed April 5, 2002, at 4-13.

[5] *See* ALA Comments at Exhibit B, Declaration of Mark Flynn, State Library of Florida.

[6] *See* BellSouth Comments at 30-31; Allegiance Telecomm Comments at 71; NRTA Comments at 21-23; and OPASTCO Comments at 14-16.

ALA urges the Commission to find that facilities-based broadband providers do fit within the scope of "other providers of interstate telecommunications" which the Commission can require to contribute to universal service "if the public interest so requires." § 47 U.S.C. § 254(d). The Commission has already concluded that it has the authority to denominate such broadband providers as providers of interstate telecommunications. As stated in the 1998 Report to Congress, "facilities-based ISPs that provide no stand alone telecommunications services could be required to contribute to universal service under [the Commission's] permissive authority."[7] The Report also stated that a facilities-based ISP "is furnishing raw transmission capacity to itself. To the extent this means the ISP is providing telecommunications as a non-common carrier, it would not generally be subject to Title II, but it may be required to contribute to the preservation and advancement of universal service if the public interest so requires."[8]

All facilities-based broadband Internet access providers provide telecommunications to themselves. As recently noted in the Cable Modem Declaratory Ruling, cable modem service is provisioned via telecommunications.[9] As such, cable modem providers, and other facilities-based broadband providers fall within the Commission's permissive authority under 254(d). Due to the growth of broadband services, it is in the public interest to now require broadband to contribute to the universal service fund.

Simple equity also demands that broadband providers be included among the contributors to universal service. The growing need for broadband Internet service means that these

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[7] *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report to Congress, 13 FCC Rcd ¶ 69.

[8] *Id.*

[9] *Inquiry Concerning High-speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket 02-52, Declaratory Ruling and NPRM (rel. Mar. 15, 2002) at ¶ 39.

providers are receiving a growing share of E-Rate funds. In addition, the E-Rate program is helping to roll out broadband services by providing a substantial customer base for such services, and exposing potential customers to the range of new services that broadband technology can provide. It is simply inequitable to allow broadband providers to continue to reap the benefits of the E-Rate program without contributing into the universal service fund.

III. DESPITE ARGUMENTS TO THE CONTRARY, IT IS TIME TO INCLUDE BROADBAND INTERNET ACCESS PROVIDERS AMONG THE ENTITIES THAT CONTRIBUTE TO THE UNIVERSAL SERVICE FUND.

The overwhelming majority of commenters agree that broadband Internet access providers should contribute to the universal service fund. There are few commenters that oppose requiring broadband providers to contribute to the universal service fund. Those that do oppose extending the contribution obligation make several arguments, but none is so compelling that it should dissuade the Commission from finding that broadband providers should contribute.

Some commenters argue that broadband providers do not fit within the definition of providers who must contribute to the universal service fund under 254(d).[10] As discussed above, ALA believes that broadband providers do fit within the permissive definition of 254(d), and that it is in the public interest to include these providers at this time. These commenters are also concerned that the Commission will not be able to determine whether including broadband providers among the contributors to universal service fund is in the public interest in this proceeding. These commenters discuss other pending proceedings regarding universal service,[11] noting the "uncertainty stemming from these multiple proceedings."[12]

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[10] See Hughes Network Systems Comments at 2-3; Information Technology Assoc. of America Comments at 40.

[11] *See, e.g., In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, NPRM (rel. Jan. 25, 2002); *Federal-State Board on Universal Service,* CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, FNPRM and Report and Order, (rel.

The Commission should reject this concern. If anything, this "uncertainty" argues in favor of requiring as many providers as possible to contribute to universal service. Whether these issues are addressed in one proceeding or several is irrelevant. The issues that need to be addressed will be no different in one proceeding than they are now, and there is no indication that the Commission will be faced with an incomplete record. With more than 800 comments submitted in this proceeding, the Commission has received many differing points of view, and is in a very strong position to determine what constitutes the public interest in this matter. Indeed, one of the striking points about this docket is the high level of agreement regarding the need to require broadband providers to contribute to universal service.

NCTA is concerned about the competitive effects of requiring broadband providers to contribute to universal service, stating that broadband Internet access is "a still developing service that competes directly with narrowband Internet access services. There is a risk that imposing USF charges only on facilities-based broadband Internet access services could slow the current rate of deployment of broadband facilities and services."[13] As noted above, the growth of broadband is indisputable. To argue that broadband providers should not have to support universal service because it will not be able to compete with what may be quickly becoming an outmoded technology is not compelling.

In his separate statement, Commissioner Martin expressed concern about the additional financial burden that requiring contribution could have on broadband providers, possibly creating

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Feb. 26, 2002); *In the Matter of Rural Health Care Support Mechanism,* WC Docket No. 02-60, NPRM (rel. Apr.19, 2002).

[12] NCTA Comments at 4. *See also* Comcast Comments at 14-20.

[13] NCTA Comments at 5.

a barrier to deployment.[14] Yet, there is no indication that a universal service contribution requirement would constitute such a barrier. As noted by Charter Communications in its Comments at 24, ILECs have never claimed that universal service obligations have hampered DSL deployment. ALA believes that the growth of broadband should diminish any concern that requiring contribution would create such a barrier or burden. In addition, for newly emergent providers, ALA believes the *de minimis* exception of 254(d) will suffice to address that concern.

Cable modem providers claim that the requirement of competitive neutrality and regulatory parity should exempt cable modem providers from any obligation to contribute to universal service funding.[15] In fact the opposite is true. As the leading provider of broadband services and a provisioner of telecommunications as discussed above, cable modem providers should contribute to the universal service fund, as well as being eligible for E-Rate discounts.

Comcast also asserts that there is an intention not to ensnare ISPs in Title II regulations,[16] and that other providers, such as direct broadband satellite and open video system providers, do not contribute.[17] But these arguments ignore the fact that broadband providers already receive support from E-Rate funding. Broadband *is* "ensnared" in the program and is benefiting from providing its services in libraries every day. And there is no indication that simply requiring facilities-based broadband providers to contribute will cause all ISPs to become ensnared in Title II regulation. As noted above, the Commission made clear in the 1998 Report to Congress that

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[14] See Separate Statement of Commission Kevin J. Martin, approving in part and dissenting in part. See also Hughes Network System Comments at 4, Wireless Communications Assoc. Int'l Comments at 5-6.

[15] See Charter Communications Comments at 18-22 (discussing the differences between telecom and cable regulation).

[16] Comcast Comments at 22-23.

[17] *Id.* at 24. In addition, we see no reason that some such providers – particularly OVS providers should not be considered broadband providers.

its permissive authority to include facilities-based broadband providers would not bring them within the realm of Title II regulation.[18]

In addition, the Commission has already exercised its permissive authority to require providers to contribute to the universal service fund under 254(d), including pay phone aggregators, private networks who offer interstate telecommunications for a fee, and satellite providers.[19] The rationale for including these providers is equally persuasive here. The Commission sought not only to reduce the possibility that carriers with universal service obligations would compete with carriers without such obligations, but also to broaden the funding base.[20] Including broadband providers would meet the same goals. In addition, the Commission found that reliance on the public switched telephone network ("PSTN") required inclusion:

> Without the benefit of access to the PSTN, which is supported by universal service mechanisms, these providers would be unable to sell their services to others for a fee. Accordingly, these providers, like telecommunications or common carriers, have built their businesses or a part of their businesses on access to the PSTN, provide telecommunications in competition with common carriers, and their non-common carrier status results solely from the manner in which they have chosen to structure their operations. Even if a private network operator is not connected to the PSTN, if it provides telecommunications, it competes with common carriers, and the principle of competitive neutrality dictates that we should secure contributions from it as well as its competitors. Thus, pursuant to our permissive authority, we find that the public interest requires private service providers that offer services to others for a fee on a non-common carrier basis to contribute to the support mechanisms.

Id. at 796.

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[18] Report to Congress at ¶ 69.

[19] *See Universal Service First Report and Order*, 12 FCC Rcd at ¶¶ 783, 794, *Fourth Report and Order on Recon.*, 13 FCC Rcd at ¶¶ 288-90.

[20] First Report and Order at ¶ 795.

While facilities-based broadband providers may not use the PSTN directly, they are the functional equivalent of telecommunication providers, providing direct competition to those who use the PSTN. As noted by some commenters, consumers are increasingly turning to broadband as a substitute for interstate telecommunications services. In addition, with the advent of IP telephony, broadband providers are becoming direct competitors with providers who must contribute to the universal service fund. Furthermore, broadband providers are in fact interconnected with the PSTN for at least some purposes. As such, it is time to include broadband providers within the scope of contributors.

The Florida PSC opposes inclusion of broadband providers, arguing that the broadband industry would then seek universal service support for broadband deployment.[21] This would increase the total demand on the universal service fund. While ALA appreciates this concern, the fact is that the E-Rate already has a mandate to provide advanced telecommunications to schools and libraries, which necessarily includes broadband services. Accordingly, ALA believes that if broadband providers do not contribute to the overall universal service fund, at the very least broadband providers should contribute to the E-Rate program, as suggested by Verizon at 43-45.[22]

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[21] Florida PUC Comments at 11-12.

[22] In addition, the Texas PUC notes that if broadband providers are required to contribute to the universal service fund, the Texas Legislature and PUC may have to make changes in its regulations to ensure consistency with federal law. Texas PUC Comments at 9. Texas PUC also notes that its current regulations do not allow broadband providers to receive universal service funding either. *Id.* These are administrative concerns that can be dealt with, and should be dealt with to support larger policy goals. Such concerns are not sufficient to override the need for the Commission to act in the public interest and require broadband providers to contribute to the universal service fund.

CONCLUSION

ALA urges the Commission to find that it is in the public interest to require facilities-based broadband Internet access providers to contribute to the universal service fund. The recent growth of the industry is only the smallest indication of its future importance. There can be no doubt that broadband providers will play a central role in the provision of telecommunications and related services for many years to come. Consequently, it is strongly in the public interest for broadband providers to be included.

Respectfully submitted,

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