Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:

	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	

COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

The American Library Association (ALA) is pleased to provide comments on whether certain services should be designated as eligible for funding under the schools and libraries universal service support mechanism. We wish to thank the FCC for the opportunity to address the issues that it has raised.

With the exponential growth in need for access to broadband services and with the demand for the services currently provided under the existing E-rate program far exceeding the funds available, we ask that the Commission carefully consider **both** the long-term and short-term impact of making eligible additional services that do not support the fundamental purpose of the E-rate program. This stated purpose – to provide access to advanced telecommunications and information services – must be paramount in any considered changes. Given these difficult economic times, many respondents will likely support funding for the additional items identified in this NPRM. However, we encourage the Commission to take a hard look at their own question as to "whether support for these services will encourage access to advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries." We are concerned that many of the proposed changes do not appear to directly support this essential program purpose and will therefore negatively impact the ability of libraries and schools to receive the fundamental services that are so essential to their core functions.

Today more than ever, the local library is the community access point for the world of online information. The promise of E-rate—to provide access to resources regardless of geographic location—is threatened by a process that has become cumbersome, time consuming, and difficult to apply for. Many applicants – facing limited staff, negative experiences with unnecessary denials, lengthy appeal processes, and subsequent delays in funding commitments – are giving up and no longer applying. It is often the neediest communities who simply don't have the resources to wade through complex application and disbursement processes that are foregoing the opportunity to apply for funds. Further, by making additional changes to the program this late in the process without the benefit of training or adequate communication, additional confusion is likely.

This program is critical to libraries and schools across the country. Without support from the E-rate program, many libraries and schools would be unable to effectively serve their communities. Despite the success of the E-rate program, we underscore the fact that the job is not done. Without this program, people in many parts of the country will be left even further behind technologically and libraries will not be able to provide access to educational resources, employment opportunities, and E-government services for millions of patrons across the country. We urge the Commission to

use the funds available to ensure that access to advanced telecommunications and information services remains the priority of the program.

Program Purpose

The Commission must consider whether the services it is considering adding to the Eligible Services List further the program's stated goal of increasing access to advanced telecommunications and information services. It is of particular importance that careful consideration be given to this issue as it relates to those services the Commission proposes making Priority One services. Adding more services such as those the Commission proposes in this NPRM raises the very real possibility that, for the first time, the program will reach the funding cap solely from Priority One services. The FCC has not yet been forced to address how funds will be allocated when the cap is met on Priority One services. Today's fund is not large enough to cover *existing* Priority One and Priority Two needs, let alone large enough to accommodate additional services.

While we recognize the Commission's authority to "designate services eligible for schools and libraries support as part of its authority to enhance…access to advanced telecommunications and information services," we are concerned that adding tangential services that do not **directly** impact access to advanced telecommunications and information services has the potential to undermine the purpose of the program. What we know today is that the need for access to broadband services is growing at an exponential rate. Without careful consideration given to both short-term and long-term fund impact, we are concerned that these changes could, in the very near future, mean that some schools and libraries would not even be eligible to receive Priority One funding.

Timing

While the FCC has historically waived the requirement to post the Eligible Services List 60 days prior to the opening of the application window—and the FCC could do so again this year in order to meet the requirements to open the application window in a timely fashion—proposing these changes at this late date for Funding Year 2009 does not take into account the fact that applicants are still required to meet other program requirements in order to take advantage of such eligible service changes.

While we appreciate the stability of the ESL published since 2003 for the upcoming funding year, making these kinds of significant changes that potentially impact categories of service also means making all of the related and necessary changes that might be required to technology plans, Letters of Agency, RFPs, contracts, etc. Publishing a list with substantial changes this late in the process preceding the Funding Year would make it extremely difficult for applicants to comply with all of the requirements of the program. This is not a matter of the FCC waiving the 60-day notification requirement in order to open the window on time, this is a matter of applicants needing sufficient notification in order to make all of the necessary changes required to be compliant with all aspects of the program. With multi-year contracts involved, this is not a simple process—especially where contract modifications and technology plan revisions may be required. This also does not take into account the post-application difficulties of trying to explain the type and timing of the necessary related changes to PIA and the auditors. Further, how would the FCC expect an applicant to address those situations where a newly eligible service is covered under an existing multi-year contract, but whose price was not considered when selecting the existing service provider due to the FCC's requirement that –service providers be selected with price being weighted most heavily based **only** on E-rate eligible products and services? Does that mean such contracts, or at least the part covering the newly eligible service, could no longer be used, e.g. Internet access contracts that

contained costs for the mandatory filtering but for which those costs were not previously eligible? Or, conversely, that new procurements and new contracts would be required since such changes would likely not meet the Commission's "minor contract modification" requirements under state procurement laws or the cardinal change doctrine? What would be the cost to applicants for penalties on terminating multi-year contracts in order to seek support for such changes? Navigating all of these issues without the benefit of sufficient training, guidance, and time to make required changes in advance of the application window could once again put applicants at risk not only for receiving funding but for retaining funding upon an audit.

While we agree that addressing such items in the general docket provides more opportunity to comment and is therefore preferable to responding to the Public Notice accompanying the ESL for the respective funding year, doing so at this late date puts applicants at risk of being able to fully comply with all of program requirements leading up to the actual request for funding of eligible service on the Form 471.

Furthermore, taking such action this late in the E-rate cycle will also push application preparation to the end of the funding window, which will also likely delay application review and the issuance of funding commitments.

Category of Service Addition, Required Rule Changes, and Interconnected VoIP

The FCC seeks comments on which rules, if any, would need to be amended to effectuate changes made as a result of this NPRM. The Commission specifically cites 54.502 and 54.503, both of which describe services that can be provided by telecommunications carriers and section 54.517 which describes services that can be provided by non-telecommunications carriers. The Commission asks whether they should reorganize or restructure the rules relating to the eligible services and the ESL to better inform applicants of which services are supported.

The impact of making rule changes to address category of service changes and who can provide certain services are not small ones—especially given the requirements for the use of technology protection measures when applicants receive E-rate funding for Internet Access and Internal Connections. While we recognize that the convergence of services is blurring these category of service lines, and that the FCC raises questions in this NPRM about this impact, we wish to clearly point out that confusion related to category of service changes is one that will further complicate the application process and will cause more applicants to be denied funding if the current application review processes related to category of service designations between the Form 470 and 471 remain. Not only would rule changes likely be required, but also adding services to a miscellaneous category could have CIPA impact given that such a category was not anticipated in the CIPA law and the subsequent Orders and resulting rules. While adding a miscellaneous category to the rules may appear to be the only logical way to classify those services for which the FCC has not yet designated categories, given the impact to CIPA and the added confusion that such a new category of service will cause, we ask the FCC to refrain from adding a Miscellaneous category of service as a means of solving these issues. The issues associated with making a category of service change or clarification when such an additional category was not anticipated by the Children's Internet Protection Act could have significant impact. In addition, given the fact that category of service checks are done during program review between the category indicated on the Form 470 and the Form 471, we believe that adding a new category of service would likely lead to a significant number of funding denials given that many establishing Forms 470 for multi-year contracts already exist. Making such a dramatic change as adding a new category of service would likely have both far-reaching and unintended consequences.

Given that the Commission has not yet determined if interconnected VoIP services are telecommunications services or information services and given that the SLD's training for funding year 2009 indicates that VoIP services must be provided by an eligible telecommunications service provider or an ISP with eligible telecommunications provider status—regardless of the category of service in which funds are requested—and given the confusion related to adding a Miscellaneous category, we recommend that the Commission simply put VoIP and any other IP based telecommunications services in the Telecommunications category of service. This will eliminate the confusion for applicants, reviewers, and auditors and will ensure that creation of a Miscellaneous category does not require CIPA law clarifications. We do not support removal of interconnected VoIP service from the ESL.

Filtering

Libraries remain concerned about the requirement to filter in order to receive E-rate funding for Internet access and internal connections. Libraries are also concerned about the unfunded mandate to filter without being able to receive funds to pay for such services. We therefore appreciate the Commission's willingness to take another look at their previous interpretation regarding whether or not filtering software should be funded under the E-rate program. However, we are more concerned about the financial impact of adding filtering software as an eligible item to the Eligible Services List. As we stated at the outset, we are concerned that continuing to add services to the Eligible Services List will, at some point, mean that the purpose of the program—to provide access to advanced telecommunications and information services—will be jeopardized. We therefore do not support adding filtering software to the Eligible Service List at this time although we agree that doing so would likely help to streamline future application review process. However, should the Commission decide to add filtering software as an eligible item, we once again point out the difficulties that would need to be addressed in those situations where service providers selected for existing multi-year contracts for Internet access and filtering services would not have included the cost of filtering in the selection of the current service provider. This is due to the requirement that vendor selection be made with the highest number of points assigned only to eligible products and services which would not have included the costs for filtering. Asking applicants to re-bid these services in these situations would further complicate the receipt of funds for these services and compliance proof in any subsequent audits.

Basic Service and Technology Plans

We wish to take this opportunity to once again point out that we do not believe the Commission should set the criteria for either the timing of technology plan preparation or the content of such plans. We believe that while technology plans can be an essential planning tool, the specific requirements for technology plans and what is or is not required is an issue for the States. However, until such time that the FCC addresses the need to simplify the requirements surrounding the E-rate program, we believe that the Commission should make all digital transmission services part of "basic" services. Trying to define T1 equivalents (DSL services, etc.) or whether multiple T1s rather than one T1, for example, require a technology plan will add more confusion to an already complex program. This additional confusion and potential lack of clarity could leave applicants vulnerable to further funding denials. At this point in our digital age, requiring applicants to produce technology plans for the most essential of services—transport—is like asking someone attempting to eat a meal to justify in writing their request for a fork. Transport is an essential part of the process of receiving access to the Internet and other services. Likewise, requiring technology plans for such basic services such as a PBX, PRI lines, etc. seems unduly laborious at this point in our technological

history given the basic requirements for such services in the day-to-day functions of applicants. We take this opportunity to once again remind the Commission of their recognition in the 1997 Universal Service Order that technology plans are strategic planning tools. They are not meant to be procurement documents.

Dark Fiber

We believe the FCC got it right when they previously made clear that dark fiber is not eligible for E-rate funding. While we know that there is still a great deal of progress to be made in building out services to the more remote areas of our country, until those services actually become available for "educational purposes" that is, that the fiber is lit and ready for use, depleting the Universal Service Support Mechanism for Schools and Libraries for something that is not available for immediate use is not good stewardship of the fund. While we understand that an argument could be made that this is a preliminary step to providing access to advanced telecommunications and information services, that "access" cannot actually take place until the service is made available. We cannot imagine the drain on the fund if dark fiber were to be made available. Doing so rather than using funds to make useable services available to schools and libraries does not seem prudent. For us, this is not a matter of statutory definitions of dark fiber or whether or not such a service could be made eligible as an "additional" service rather than a "telecommunications" service, for us this is a matter of getting funding for useable services to needy libraries and schools in an already over-burdened fund that currently denies needed services to those entities due to lack of funds.

The FCC's Brooklyn Order addresses the need to pay for installation costs when services are requested. We believe that Order adequately addressed the need for telecommunications providers to build additional infrastructure where necessary. Furthermore, we believe that the current requirement to lease functional wide area network telecommunications services meets the needs of applicants.

Other Services

Text Messaging: Given the programmatic difficulties in separating out text messaging as part of a typically bundled telecommunications service, we support the inclusion of this service.

Firewalls, anti-virus/anti-spam software and telephone broadcast messaging: For the same reasons that we outlined above related to the addition of filtering software, and based on the fact that, due to the increasing needs for bandwidth, we believe it is essential that the Commission remain committed to the fundamental and core purpose of this program—access to advanced telecommunications and information services. By including additional software and messaging services, the impact to the fund will leave otherwise eligible libraries and schools unable to receive funds for the intended purpose of the Schools and Libraries Universal Service Support Mechanism.

Conclusion

We applaud the Commission for exploring ways to further help libraries and schools in these tough economic times. However, we strongly urge the commission to cleave to its stated goal of providing access to advanced telecommunications and information services. We offer our continuing support and assistance to help simplify and streamline the program so that all libraries and schools can benefit from the opportunities that access to advanced telecommunications and information services can bring to local communities. Adding further program complexities and unfeasible timelines

between now and the opening of the Funding Year 2009 application window and at the risk of reducing funding for essential purposes does not serve applicants well.

Thank you for considering our comments.

Sincerely,

Emily Sheketoff
Executive Director
ALA Washington Office