Before the
Federal Communications Commission
Washington, DC 20054

In the Matter of:

Schools and Libraries Universal Service	)	
Support Mechanism	)	CC Docket No. 02-6
	)	
A National Broadband Plan	)	
For Our Future	)	GN Docket No. 09-51

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COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING (FCC 10-83)

I. SUMMARY AND INTRODUCTION

Summary

The American Library Association (ALA) recognizes that many of the proposed E-rate program changes are part of the Federal Communications Commission's (FCC) overall efforts to reform the universal service fund (USF). Over the last thirteen years, the E-rate program has brought fundamental change to schools and libraries across the nation by providing discounts on broadband and other advanced telecommunications and information services. As we have in previous comments, we ask that the fundamental hallmarks of the E-rate program not be lost in this process and that, as intended in 1996, we continue to consider evolving needs and evolving technologies within those same fundamental principles.

Now more than ever, schools and libraries are faced with significant challenges in meeting the ever-increasing demand for bandwidth – not only to access the Internet but also to provide the necessary infrastructure for distance learning, resource sharing, and yes, even to streamline and improve administrative functions within school districts and library systems. As the FCC considers ways in which to reform the universal service fund to strengthen support broadband services and as noted in the National Broadband Plan (NBP), schools and libraries will continue to play a critical role, as was originally intended, to extend the reach of services to all parts of the nation. Thus the timing of certain changes to the E-rate program must logically coincide with that overall reform plan. To prevent unnecessary applicant confusion, other improvements, however, can continue to be implemented at times and in ways that do not jeopardize the stability of the program or the predictability of funding. Specifically, we propose the following changes:

- Streamline the application and competitive bidding processes for telecommunications and internet access in an effort to further reduce the administrative burden on applicants, while at the same time maintaining appropriate safeguards to minimize potential waste, fraud, and abuse;

- Call on the FCC to remove itself from the technology planning process and point to the "basic" nature of all items in the proposed Telecommunications Services and Internet Access categories;

- Call on the FCC to further simplify the discount calculation process by moving all schools and libraries to the "rural" column on the discount matrix while at the same time saving significant costs by streamlining both the application and review process without disadvantaging rural schools and libraries;

- Support 24/7 online learning but not by using E-rate funds to extend wireless support to residences while there still are not adequate funds to meet the current on-premise needs of schools and libraries;

- Address the issues in Priority One services prior to focusing on concerns with expanding access for applicants to Priority Two services;

- Index the current $2.25 billion cap on E-rate disbursements to inflation to maintain the purchasing power of the current program and to develop a mechanism for addressing actual applicant demand and the lack of inflation adjustment since the original sizing of the fund; and

- Propose an alternate process that is less burdensome for the disposal of obsolete equipment.

ALA will be filing comments on "Expanded Access to Low-Cost Fiber" and possibly other topics during the reply comment period.

Introduction

The American Library Association (ALA), the world's oldest and largest professional library association with over 63,000 members, is pleased to provide comments on this Notice of Proposed Rulemaking (NPRM) which seeks comments on potential reforms and rule changes to the E-rate program.

With the release of the National Broadband Plan (NBP) the Federal Communications Commission (FCC) initiated an unprecedented opportunity to evaluate the state of broadband in the United States and has provided the public with numerous opportunities to help inform the direction of the FCC in how best to reach the goal of providing ubiquitous access to high capacity connectivity across the country. Evaluating the state of the E-rate program and providing opportunity for comment on the proposed changes is one of many FCC initiatives the ALA supports as the Commission translates the recommendations in the NBP into action.

It is important to give credit to the E-rate program for helping libraries get to the point they are today with regards to providing access to advanced telecommunication services. In 1996 only about forty percent of libraries had an internet connection. Today the library community can

boast that nearly one hundred percent of libraries are connected with an increasing number of libraries offering greater connectivity speeds as well as wireless access.[1] Beyond broadband access to the Internet the E-rate program allows libraries to access other important advanced telecommunications and information services that meet their continually evolving needs. Though libraries still face significant challenges, ALA is pleased to bring deserved attention to the merit and success of the E-rate program. The past thirteen years of the E-rate program have seen tremendous effort on the part of the Commission and the Universal Service Administrative Company (USAC) – as well as ALA on behalf of the library community – to address administrative and procedural problems with the program. The institutional knowledge represented by these three entities serves a key role and ALA is confident the expertise developed in the past thirteen years will carry forward as the Commission reviews the numerous comments made in response to this NPRM and subsequently develops any new rules in order to further improve the E-rate program. ALA is encouraged by the Commission's intent "to proceed thoughtfully in stages to allow participants – both recipients and service providers – time to adjust and give the Commission time to evaluate the impact of individual reforms before proceeding to the next step" (para. 4). It is equally important to consider any changes of the program as a whole in recognition that it is important to coordinate changes and evaluate their impact throughout all aspects of the program. It is under this wisdom that ALA provides comment on the changes proposed in the NPRM.

The Commission notes in its NPRM that "with more than a decade of experience with the current E-rate program and a national imperative to maximize the utilization of broadband, it is time to re-examine what is working well and what can be improved in the current program." We heartily agree. At the same time, however, we urge the Commission to consider the impact that program shifts will have on the entities that currently file over 42,000 applications each year. Even desired changes must be given careful consideration and must be carefully implemented. Since with all things E-rate "the devil is in the details," we ask that the Commission take adequate time to carefully consider the ramifications of any proposed changes all the way through the process from planning, procurement, contracting and application filing through application review, invoicing, documentation requirements and audits from the perspective of the applicant. The risk of unintended consequences and the ripple effect of changes throughout forms, instructions, review procedures, etc. must be taken into consideration as the Commission determines the value to the program – and the applicants – of each proposed change and improvement. ALA is confident that with a prudent approach, the Commission's attempt to improve the E-rate program will be successful.

[1] According to the 2010 Public Library Funding & Technology Access Study, 51.8 percent of libraries report offering speeds greater than 1.5 Mbps compared to 44.5 percent in 2009 and 82.2 percent offer wireless access compared to 76.4 percent in the previous year. Available at http://americanlibrariesmagazine.org/archives/digital-supplement/summer-2010-digital-supplement.

II. STREAMLINING THE APPLICATION PROCESS

1. Technology Plans

ALA appreciates the Commission's willingness to entertain changes to the current E-rate requirement for technology plans. We do support the concept of eliminating E-rate technology plan requirements for Priority One services. We also further support elimination of E-rate technology plans as a component of E-rate Program Requirements for Priority Two products and services as well as E-rate requirements for both Priority One and Two related to state and local technology plan requirements regardless of the size of funding requests.

We appreciate the Commission's willingness to entertain changes to the current E-rate requirement for technology plans. Technology plans are an important tool to ensure useful and cost-effective implementation of technology solutions as a part of any entity's strategic planning process. But, consistent with our 2005 comments in response to the *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195 Notice of Proposed Rulemaking, we believe that this is an exercise that is best monitored and managed at the state level. In general, State Libraries and State Departments of Education set timelines and standards for technology planning to meet the intended outcomes of their organizations and integrate those requirements into other functions of their agencies.

It is important to note that these technology planning timelines and requirements differ from state to state, reflecting local needs. This local context is lost in the technology planning requirement for E-rate – the cookie-cutter approach the program encourages allows applicants to get through the hoops of this program, but produces a technology plan that often has little value. In the end, the E-rate technology plan requirement does little practical good and can do much harm – it is one more way in which an applicant can typically be denied if plans aren't written at a certain time, don't include the most basic of telecommunications services (including such items as Centrex and voicemail services), aren't approved by a certain date, aren't updated in a certain way, et cetera.

We once again challenge the Commission to more carefully consider the purpose of technology plans and the role of state and local decision makers in their creation, implementation, and approval. **The Commission should not be involved in shaping the process of technology planning on the local, regional or state level**. Although libraries have many different methods for approaching technology planning, rarely are specific pieces of equipment identified in such a strategic document as a technology plan – that is the purpose of a request for proposal and bidding process. The intended purpose of technology plans is to determine how technology can impact certain desired outcomes. Today's E-rate technology plan requirements have little to do with this purpose; rather, it has become a way in which to check whether a particular E-rate eligible product or service is identified in the technology plan and then on the Form 470 and

subsequent Form 471. We believe that this must be rectified. Additionally, we strongly believe that the E-rate technology planning process has no effect on issues of waste, fraud and abuse.

We appreciate the recognition by the Commission that it is reasonable to eliminate E-rate technology plan requirements for Priority One applicants recognizing that "a technology plan for these services may represent an unnecessarily complex and burdensome program requirement." However, we don't believe the Commission can truly affect simplification by limiting these requirements only for those that are otherwise subject to state and local technology planning requirements. By adding that additional caveat, we are concerned that what was an attempt to simplify the program will simply result in new burden due to the likelihood that proof of who does and does not have official state and local technology plan requirements will be requested. While organizations may have planning practices or planning standards, the "requirements" may not necessarily be documented in some way that would pass an audit or other review. If this requirement remains, we have visions of entities all across the country, having to take their technology plan "requirements" to Boards or Commissions for official action just to be able to prove upon review or audit that some requirement exists.

We believe that most entities do, in fact, go through some type of technology planning process but that it is not worth complicating the USAC procedures for application review thereby slowing funding commitments or requiring that additional actions be taken locally just to be able to "prove" that some technology planning requirement exists. Even if there are state or local entities that do not require plans, we believe there are plenty of other safeguards required by the Commission to ensure that funding requests are for the most cost-effective solutions and provide reasonable technology approaches for the entity making the request. A strategic technology plan is helpful in guiding institutional priorities but it is unlikely to be the way in which the program will prevent waste, fraud, or abuse.

In the past, basic telephone services in the telecommunications category of service have been exempt from technology plan requirements. **We applaud the Commission's own statements in footnote 9 that they have now expanded this exemption by stating that the "Commission currently does not require a technology plan if the applicant is seeking discounts only for basic telecommunications service" and by further recognizing that this specifically means the inclusion of "digital transmission services, paging services, telephone service, telephone service components, and other telecommunications services."** We ask that the Commission direct USAC to correct the Funding Year 2011 Eligible Services List recently released for comment to correspond accordingly with this direction from the Commission. Since the items spelled out by the Commission in footnote 9 **include all items in the Telecommunications Category of Service**, and are deemed "basic" for the purpose of not requiring technology plans, further discussions related to state and local requirements in the Telecommunications category of service are moot.

Likewise, we ask the Commission to consider that now, in the 14th year after the implementation of the program, that basic conduit access to the Internet and email—the only two items remaining in the Internet Access category of service with the Commission's proposal to remove webhosting, also be deemed "basic" for the purpose of not requiring technology plans. Since VoIP services listed in this category are comparable to telecommunications services which are exempt, then so should VoIP.

As stated previously, we believe the Commission should not be involved in the technology planning process for either Priority One or Priority Two services. However, should the Commission decide to require technology plans for Priority Two products and services, we implore the Commission to carry out their statements in footnote 9 by treating all items in the Telecommunications Category of Service as basic and therefore exempt from technology plan requirements, extend that same logic to basic conduit access to the Internet and email in the Internet Access Category of Service, and refrain from tying those two categories in any way, shape or form, i.e., entity size, dollar thresholds, etc. to state or local planning requirements for E-rate purposes including third-party approval processes.

2. Competitive Bidding Process

We applaud the consideration given by the Commission to eliminate FCC Form 470 requirements, at least for Priority One services. The elimination of the FCC Form 470 is consistent with our proposal in 2005 in response to the Comprehensive Review of Universal Service Fund Management, Administration and Oversight NPRM (WC Docket No. 05-195). As we noted then, while E-rate program requirements have always required that applicants must meet state and local procurement requirements, additional layers of complexity have been added to the procurement process by the use of the Form 470. Under today's E-rate program rules, applicants must post Forms 470 to the SLD web site for 28 days, and may not enter into a contract until the 29th day. As stated by the SLD on many occasions, one of the major reasons for funding denials is the failure to wait 28 days before entering into a contract. If the applicant signs a contract on the 28th day, they are denied funding. If an applicant indicates an incorrect contract award date on the Form 471, they are denied funding. If an applicant posts the Form 470 for 28 days but releases an RFP the day after the Form 470 is posted, then they may not enter into a contract until the 30th day after the posting of the Form 470.

State and local bidding requirements are often quite different from those laid out by E-rate. Purchasing thresholds are often set by state and local policymakers to ensure that bidding occurs where there is likely to be competitive responses, while at the same time allowing purchases without a competitive bidding process for lower ticket items. Some states require a three-bid minimum; some do not. Some states require RFPs at certain dollar thresholds; some do not. Some states require publication in the local newspaper; some do not. Some states allow for a "best and final offer" negotiation process after bids are submitted; some do not. State and local

governments have prescribed a system that works best for them, and compliance with those requirements should meet the competitive bidding needs of the E-rate program. We continue to believe that the confusion caused by these layers of bureaucracy must be eliminated.

So, while we appreciate the consideration by the Commission, we believe that the proposed solution will lead to the possibility of additional burden and confusion and therefore we ask the Commission to consider our full proposal from 2005 which called for state and local procurement requirements to be the **only** benchmark against which the program audits compliance. In other words, if state and/or local requirements do not exist, then neither should the Commission require additional measures. Additionally, we suggest that we return to the underlying principles of a self-certification program. In that regard, we understand that there may be occasional requests for documentation—primarily through the audit process—to validate that appropriate steps were taken to comply with state and/or local procurement requirements where they exist.

We would once again like to reiterate our comments from 2005 by saying that we understand that cost effectiveness is an important aspect of the E-rate program and we acknowledge that certain program audits may be necessary in this area to ensure that, where applicable, state and/or local procurement requirements are being met.

It is the implementation of the Commission's proposal that we now question. Again, we suggest that the "devil is in the details" and that it is the implementation of the multi-layer approach suggested by the Commission for implementing this proposal that may be problematic. We ask the Commission to carefully consider the additional burden that may be placed on state and local entities by using a multi-layered approach. It is likely that by using a different process for those entities that may not be subject to state and/or local procurement, a request for "proof" will need to be made in order to determine how to process the application. Without some knowledge as to which entities are subject to state and/or local procurement requirements, it is unlikely that the SLD will be able to determine which "stack" an application goes in for processing. To be specific, in order to know which entities' Form 471 request for funding can be processed, this Form 470 multi-layered approach will require that the SLD first knows whether there is a requirement for a corresponding establishing Form 470 to ensure whether or not it has been posted for 28 days. And, in order to do that, we suspect that there will be some requirement to know who is and who is not subject to state and local procurement requirements. Therein lies the complexity in implementing the approach proposed by the Commission. Who will be expected to provide that information? Will some requirement be imposed on the states to try to identify who is subject to which requirements in the same way that eligible juvenile justice or Head Start data is collected? Or, will applicants be required to submit their local procurement requirements? How would an application for funding be processed if the applicant chose to submit the FCC Form 470 even if they were not required to? The Commission is not clear about whether the Form 470 "may" be allowed. Would doing so slow the processing of the corresponding funding requests because they had ended up being reviewed under procedures that

were not required? This is another example of the need for revised system design, revised procedures, and revised training. It is unclear exactly how much advantage there may be if the Commission chose not to process all Priority One applications in the same way due to new potential burdens and associated complications.

It may be easier to manage the separation between certain requirements for Priority One and Priority Two services since the differentiation there may be able to be more easily determined by the type of service being requested. However, if it is also likely that there could be additional issues associated with determining that some product or service requested in Priority One belongs in Priority Two. At that point, it seems as though there would be little opportunity for the applicant to recover if they had not posted a Form 470. Further, multi-year contracts would need to be carefully reviewed to ensure that those previously filed in earlier years through the use of a Form 470 would not be subjected to some additional review to test for compliance with state and local procurement requirements.

Again, we sincerely appreciate the Commission's willingness to look at the elimination of the FCC Form 470 but when additional caveats are placed on applicants beyond self-certification regarding compliance with state and local procurement requirements, we are concerned about additional burden on applicants and also on USAC in the processing of those applications. We need to take steps to speed up processing, not to slow it down. When funding commitments are unable to be made prior to July 1 of the Funding Year, additional complications occur. We are fearful that the additional steps that may likely be required to determine how each application is to be reviewed or processed, will slow and not speed the process. Further, we are concerned about the confusion that will be caused for applicants in trying to understand just exactly what is or is not required of them—especially given that the need for filing FCC Forms 470 for FY 2011 has already begun. How will those forms be processed as we wait for further decisions by the Commission?

If it is the decision of the Commission to try to implement the multi-layered approach to the FCC Form 470, we ask that they first consider an alternative proposal: **Revise the FCC Form 470 by simplifying the form to collect only the data and certifications which are relevant.** We recognize that there is benefit – both for applicants and for USAC – in standardizing the way in which forms are submitted and processed. We also recognize that for service providers – especially near the end of the application window – the work required to track procurement requests through the normal processes of schools and libraries might mean less ability to respond in a timely fashion. The ease with which providers can currently download the FCC Form 470 information may, in fact, play a factor in more easily being able to identify and compete for services. The downside, of course, as we pointed out in 2005, is applicants often being bombarded with marketing information as opposed to receiving specific responses to their requests for service.

We support the Commission's continued requirement that the most cost effective solution be chosen. In doing so, it would appear that reasonable safeguards remain for the Commission to guard against waste, fraud, and abuse and unreasonable requests for funding support.

We understand that cost effectiveness is an important aspect of the E-rate program and we acknowledge that certain program audits will be necessary in this area to ensure that state and local procurement requirements are being met. We suggest that **state and local procurement requirements be the benchmark against which the program audits compliance.**

3. Application Process Streamlining

With the proposed improvements to the competitive bidding process and the suggestion that the Commission not be involved with the development of technology plans, ALA is confident that at this point these changes will significantly improve the application process and that at that time further streamlining may not be necessary.

4. Discount Matrix Streamlining

The Commission proposes to revise the way in which discounts are calculated for the purpose of streamlining the application process. The Commission also proposes changes to the urban/rural definitions.

Currently, the program uses a two-prong approach for determining E-rate discounts for schools and libraries. That approach requires a combination of National School Lunch Program (NSLP) or federally approved discount mechanism data and a determination as to whether an eligible school or library is physically located in a rural or urban area. Those two pieces of information are then used to look up the corresponding discount in the discount matrix. The FCC's proposed change to the discount matrix focuses on revising the process by which school and school district discounts are achieved and concludes that the revised methodology for schools and school districts would mean that "[A]ll schools and libraries within that school district would then receive the same discount rate."

We don't believe that is the case. The conclusion that "all schools and libraries within that school district would then receive the same discount" assumes that the library would also be using the urban/rural designation associated with the school district and not with the physical location of the library as required by both the existing and the proposed new rules. The newly proposed rules at 54.504(b)(3)(i) and 54.504(b)(3)(ii) maintain the requirement to identify an urban or rural designation based on the physical location of the library as is currently the case.

The statement bolded above also assumes that all library outlet/branches within a library system are located within the same school district which is also not the case. Therefore, the Commission's statement that it "propose[s] to revise section 54.505(b)(4) of [the] rules to require applicants to: (1) calculate a single discount percentage rate for the entire school district by

dividing the total number of students eligible for the National School Lunch Program by the total number of students in the district; and (2) then compare that single figure against the discount matrix to determine the school district's discount for priority one and priority two services" concluding that "all schools and libraries within that school district would then receive the same discount" is inaccurate.

We wish to acknowledge, however, that we appreciate the efforts by the Commission to finally examine ways in which to achieve some parity in the program between the discounts received by schools and those received by libraries. As the Commission knows from our many comments on this topic, it seems completely unreasonable that a library cannot achieve the same discount as the school in the same community. The current rules require that the library use the average school district NSLP data for the school district in which the library is located but the school in that same community uses the discount attributed only to the school. This is especially harmful to libraries for Priority Two services since school district averages rarely produce a 90% discount level for either the schools or the libraries and Priority Two discounts of 80% or below rarely get funded. ALA proposes that to reach some parity for schools and libraries that the Commission strongly considers the proposal offered below to remove the urban/rural distinction.

Urban/Rural Component of Discount Determination

There has been a great deal of discussion about the impact of the proposed change to determine the urban or rural location of an eligible school or library. The proposed use of the U.S. Department of Education's National Center for Education Statistics' (NCES) urban-centric locale codes appears to raise many issues for schools – especially for those who would be moved from rural to urban designations. We defer to the analysis of this issue by schools for further discussion as to how the use of these locale codes may impact them.

However, as the Commission knows, libraries do not have urban-centric locale codes. The thought of determining those codes for all libraries raises significant questions about the value of doing so. Who will perform that work? Will states be required to take on the additional burden of providing the physical location information of each library and be responsible for determining the exact distance from the urban center from which they fall? Will the FCC or SLD create that information? Where will that information be published? Who will answer the many questions of libraries as to whether they are considered urban or rural? How will libraries be required to document "proof" of their urban or rural designations during the SLD's Program Integrity Assurance review or during audit or other review processes?

The Commission states in paragraph 37 that it is not their intent to reduce discounts to certain rural schools as a result of using the newly proposed methodology. We assume that it is not the intent of the Commission to reduce discounts to rural libraries either. Proposing a solution that would apply to libraries knowing that NCES' urban-centric locale codes do not exist for libraries greatly concerns us. The additional burden that will be placed on libraries to determine these codes when they do not readily exist does not seem like an equitable solution.

With regard to the overarching issue of urban/rural designations as part of determining the applicable discount for schools and libraries using the discount matrix, we therefore offer the following solution in the interest of simplicity and burden reduction:

Based on the existing discount matrix pasted below, we take this opportunity to point out that the impact caused by differences in urban and rural locations (see bold rows) only occurs when the percentage of eligibility in the National School Lunch Program is less than 49%. For those situations where eligibility is at 50% or above, there is no impact.

DISCOUNT MATRIX INCOME Measured by % of students eligible for the National School Lunch Program	**URBAN LOCATION Discount**	**RURAL LOCATION Discount**
If the percentage of students in your school that qualifies for the National School Lunch Program is…	…and you are in an URBAN area, your discount will be…	…and you are in a RURAL area, your discount will be…
Less than 1%	**20%**	**25%**
1% to 19%	**40%**	**50%**
20% to 34%	**50%**	**60%**
35% to 49%	**60%**	**70%**
50% to 74%	80%	80%
75% to 100%	90%	90%

We agree that it is unreasonable to expect those schools and libraries currently receiving discounts in the rural category to accept lesser discounts. The cost associated with bringing service to rural locations is, in fact, likely to be higher than that of urban areas. There will be a saving to the program by simplifying the discount matrix through the reduction of administrative and other oversight costs as well as applicant costs (e.g., hours and hours that are currently spent by applicants determining urban or rural status, the time required to enter additional data in Block 4 of the Form 471, the additional time for USAC to validate urban or rural status and the time it takes to seek "proof" of such status from schools and libraries during the PIA process, the additional time it takes applicants to provide proof to PIA when requested, and the time it takes to go through the same proof process all over again in case of an audit or other review process).

Therefore, ALA's proposed solution is to move all schools and libraries to the current rural discount rate for each respective NSLP range. Rural schools and libraries would not be disadvantaged, cost savings would be realized by the Administrator during the application review process, and the burden associated with providing "proof" is eliminated for applicants. In addition, the cost savings created by the Commission's proposal to have all schools in a school district use the same district-wide discount will help offset the cost of shifting to a single discount percentage that would simply apply to all schools and libraries for all Priority One and Priority Two services regardless of their physical location.

The proposed revised matrix would look like this:

DISCOUNT MATRIX INCOME **Measured by % of students eligible for (or participating in) the National School Lunch Program for the entire school district determined by dividing xxxx by xxxx**	
If the percentage of students in the school district that are eligible or participating in the National School Lunch Program is…	Then your discount is:
Less than 1%	**25%**
1% to 19%	**50%**
20% to 34%	**60%**
35% to 49%	**70%**
50% to 74%	80%
75% to 100%	90%

To further simplify the discount calculation process, we propose that the program cease making a distinction between site specific and shared service discounts. Operating budgets are generally maintained by school districts or by library systems rather than at individual schools or library outlet/branches in those situations where school districts or library systems exist. The required certification that schools and libraries are receiving a proportionate share of the discount is without practical purpose.

Discounts for Schools and School Districts

Simply put, we propose that all schools within a school district – regardless of whether the discount is for a site specific or shared service – use the school district average discount determined by dividing the total number of students eligible for (or participating in) the National School Lunch Program by the total number of students in the district and then comparing that percentage against the discount matrix to determine the school district's or an individual school's discount for both Priority One and Priority Two services for either the school or for the school district. In the case of single-school, school districts the same calculation methodology would be used based on the relevant numbers for the individual school. In our proposed solution for a single discount calculation for each range of NSLP eligibility, the need to further average discounts to account for urban or rural locations is removed.

The school district average discount becomes the discount for any school in the school district or for the school district itself. This would also eliminate the need to do separate calculations for new school construction or for non-instructional facilities. One discount would be determined and would apply to any school in the district or to the district itself.

Discounts for Libraries

Similarly, library outlet/branches would continue to use the average discount for the school district in which they are located just as they do today using the same methodology identified

above by dividing the total number of students eligible for (or participating in) the National School Lunch Program by the total number of students for the school district and then comparing that percentage against the discount matrix to determine the discount for the library. New library construction or discounts for library administrative entities would be calculated in the same way.

Discounts for Library Systems

Because there are often multiple school districts represented throughout the geographic area covered by library systems, retaining the requirement to average discounts for the libraries within the geographic area of the library system is required.

Discounts for consortia

Consortia discounts should be calculated by adding together the discounts for the participating school or library entities as calculated above and then dividing by the number of entities in the consortium. The option should remain to either calculate the average based on individual entities or on roll-ups from preparatory worksheets.

III. PROVIDING GREATER FLEXIBILITY TO SELECT BROADBAND SERVICES

1. Wireless Services Outside of School

We agree that learning does not stop at the classroom door. We recognize and support the opportunities that technology brings to the learning process for both K-12 students and adults outside the classroom. In the same way that schools have begun to make mobile devices available for use beyond school property, libraries have also begun to make mobile devices available beyond library property. Library patrons also have a need to access library resources beyond the physical property of the library. However, as we indicated in the introduction, we recognize that the E-rate program cannot be all things to all people and that without substantial funding to increase the size of the fund to add new services or new entities to the program, some service or some entity type must be given up. Consistent with our comments in response to the Commission's National Broadband Plan Public Notice # 15, we do not support the expansion of eligible services or any changes that would expand the classes of entities eligible to receive services until such time that the needs of schools and libraries under the current program design can be met. This includes expansion of services to residences.

Program funds – even if adjusted for inflation – do not begin to be sufficient to meet the existing and evolving needs of those entities currently eligible to receive services at their on-site locations. (See further discussion on this matter in the section on Increasing the Cap.) The current focus should be on increasing the size of the fund – unchanged since 1997 – to support the cost of those services currently eligible and to identify other ways in which necessary capital investments associated with insufficient infrastructure can be addressed. Without question,

extending services to the home would be beneficial to both K-12 students and library patrons but, at this time, we could not support the use of the fund for this purpose.

Although the NPRM is not explicit in this regard, we assume that the proposed solution with regard to providing support for wireless solutions outside of school was not meant to generally support residential service that may be used by students but rather to provide support to school-owned mobile devices. The issues raised, beyond that of support for wireless services to residences, are many. The applicability of the Children's Internet Protection Act would be in question. And, it is doubtful that any school or library would agree to sign the CIPA certifications which have legal implications for off-campus use. How, for example, would any school or library provide for the disabling of a protection measure for use by an adult even if, as the Commission suggests, that adult in the home may also be allowed to use the mobile device for other educational reasons. And, as it relates to broadband adoption, why would any residence pay Internet service provider fees for access when they could use their child's device? Wouldn't such an approach be a disincentive for infrastructure expansion given that providers would have fewer customers if the home had free access due to services to the home provided by the school or library?

And as we said at the outset, in these constrained budget times, it is hard to conceive willingness to give up existing services at schools and libraries in order to provide services to the home. For those commenters who support using E-rate funds for this purpose, we ask the Commission to identify what the cost of this extension of service would be and to be clear about what other service would be eliminated or changed in order to free up funds for this purpose.

Perhaps there are other funds that can be used to support this objective but unless and until the on-site needs of schools and libraries are met, we oppose using the universal service fund to support off-site services.

Perhaps the proposed Connect America Fund and/or the Mobility Fund will provide cost effective services such that students and patrons will be able to afford residential access where needed.

2. Expanded Access to Low-Cost Fiber

ALA is currently evaluating the complex issues surrounding the Commission's proposal to add leased dark fiber to the eligible services list. ALA supports allowing more flexibility to purchase the most cost-effective broadband solution. For some libraries leasing dark fiber from a telecommunications carrier or non-telecommunications service provider could be the optimal solution. ALA expects to address this issue in-depth in its reply comments.

3. Expanding Access for Residential Schools that Serve Unique Populations

ALA leaves comment on this proposal to the expertise of the school community.

4. Targeting Supported Services for Broadband

We continue to support those services in both the telecommunications and Internet access categories of service as those that should receive the highest priority in the program with those products and services in Priority Two given lower priority. Without transport and without access to the Internet, what would Priority Two services be used for? Yes, it is somewhat of a "chicken and egg" scenario in that it doesn't do much good to have capacity to the door if that signal cannot be further distributed throughout a school or library building but, if the capacity is not delivered to the building, there is no hope at all for distributing resources throughout the school or library. For that reason, we believe that transport services and basic conduit access to the Internet must continue to receive the highest degree of priority.

The Commission suggests that perhaps the fund should no longer be used to support voice telephone services stating that "schools and libraries across the country were paying for [these services] in full before the inception of the E-rate program. Voice telephone service for application type "libraries" only equates dollar-wise to about .6% of the entire fund and therefore would have minimal impact if deferred to the provision of additional broadband services. Yet, to the smallest of libraries, the additional lines that they have been able to obtain through the E-rate program are essential to their operations. ALA proposes that the Commission develop a specific timeline for phasing out support of voice by the E-rate program. Such a timeline should be modeled on a sliding scale such that applicants can best budget for the resulting impact. As the Commission is aware, many libraries depend on support for basic phone services and given the current difficult state of the economy, ALA suggests that the Commission does not begin phasing out support for voice services until funding year 2013. For subsequent funding years, a timeline might look like this:

- Funding Year 2013- 80% support of the amount applicants would have received in FY2012 for identical services
- FY2014- 60% support
- FY2015- 40% support
- FY2016- 20% support
- FY2017 voice is no longer supported by E-rate

IV. EXPANDING THE REACH OF BROADBAND TO THE CLASSROOM

1. Predictable Internal Connections Funding for More Schools and Libraries

ALA agrees with the Commission that priority two services are an important component of providing advanced telecommunications services. Despite the fact that many libraries do not currently benefit from Priority Two funding, ALA suggests that the primary focus should remain

on improving applicant success at securing Priority One funding. The proposals to improve access to Priority Two services are all at the cost of funds applicants now depend on for priority one. With so many significant changes on the table, ALA respectfully suggests that the Commission considers waiting to address the Priority Two concerns until such time that it can properly assess the impact of Rules changes resulting from any adopted proposals in this NPRM. At that point, library applicants will also be able to assess how the changes to Priority One services will have impacted their access and utilization of advanced broadband and telecommunications services.

2. Indexing the Annual Funding Cap to Inflation

ALA thanks the Commission for the proposal for indexing the Cap for future inflation. IT is a necessary and appropriate action to help ensure that the real purchasing power of the E-rate program does not erode.

However, we believe the need for increasing the cap is greater than the rate of future inflation alone. When the fund was sized 12 years ago it was likely impossible to understand the future requirements that would exist and the rate at which additional services would be needed.

Increasing the fund size simply based on inflation does not take into account the increased needs of users over the last twelve years. The fund needs to be adjusted based on the **needs** of libraries and schools as well as being adjusted for inflation.

As noted previously in our comments, we believe that Priority One transport (the telecommunications category of service) and basic conduit access to the Internet remain the highest priority for funding. If any measurable impact is to be made with regard to Priority Two products and services, significant additional funds will be required. In addition to the fund support for ongoing costs, a source of support for capital investment sufficient to support necessary infrastructure development capable of providing needed services is also required – especially to achieve the gigbit goals articulated in the National Broadband Plan.

We remind the Commission that the demand estimate filed annually by USAC is based only on applications received. It is only loosely correlated with actual need. Five years into the program – around Funding Year 2003 – it became apparent to most applicants that it was a waste of time and energy to apply for Priority Two discounts due to insufficient funds. However, if you take a look at the rate of increase in Priority Two requests during the first five years of the program – which we believe to be a more accurate reflection of need as opposed to the annual demand estimate – and project that same rate of increase, absent the impact of the two-in-five rule, through Funding Year 2010 the total request for Priority One (based on actual requests) and Priority Two funding is more likely to be around **$10 billion**. Assuming the same rate of growth through Funding Year 2015, need is projected to be around **$13 billion**. These observations do not include administrative overhead costs necessary to operate the program. As you can see,

adjusting the fund for inflation alone would not begin to address the evolving needs of schools and libraries. The fund needs to be adjusted for inflation AND to meet actual need as was originally intended.

In addition to adjusting for inflation going forward as proposed in the NPRM, the Commission might consider retroactively adding a specific percentage of each year's inflation from the beginning of the program, the exact dollar amount to be determined by the Commission. Doing so would begin to address the gap between the fund size and applicant demand for funding.

V. CREATING A PROCESS FOR DISPOSAL OF OBSOLETE EQUIPMENT

We appreciate the efforts of the Commission to finally address the issue of obsolete equipment. Further, we support the Commission's proposal that, to the extent that a school or library chooses to dispose of equipment purchased using E-rate funds but does not receive monetary payment or other consideration in doing so, it may provide for the disposal of equipment without complying with the Commission's newly proposed rule at 54.513.

However, we find the proposal of the Commission to be unnecessarily burdensome when schools or libraries may dispose of E-rate equipment for payment or other consideration after the equipment has exhausted its useful life. We propose that the Commission allow applicants to self-certify on Priority Two funding request that they will only dispose of equipment that has met its useful life as defined in the rules and that they will document such disposal on their asset register or through other physical inventory record-keeping appropriate for their entity.

VI. ADDITIONAL CONSIDERATIONS

Special considerations moving forward

During the five-year period since the *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195 Notice of Proposed Rulemaking, several improvements have been made. While many of the proposals made in 2005 – including those made by the American Library Association – likely still have merit, the balance between good ideas under what was intended to be a self-certification program and the need by the FCC to address Congressional oversight concerns and the requirements for Improper Payments Improvement Act (IPIA) audits may mean that good ideas are realistically difficult to implement without unintentionally causing additional burden at both the state and local level. We observe that while some of the concepts that we proposed in 2005 are included in this NPRM, we are asking that the FCC take a fresh look at how these ideas should be implemented in the current context of oversight and audits.

The Commission also notes that "[T]his NPRM also seeks comment on several potential reforms that would cut red tape by eliminating rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse." We applaud the efforts of the FCC to "clean up" rules that are without purpose or that can be more clearly stated. However, introducing new terminology or adding terminology changes to some sections of the rules and not to others or inconsistencies between the NPRM text, the rules, and the eligible services list can be **extremely** confusing to applicants and, we suggest, will also create additional confusion during any audit process given the lack of auditor familiarity with the program. In the effort to propose new rules, rule revisions and rule deletions, we urge the Commission to ensure that any proposed change is consistently worded and applied throughout rules, paper forms, online forms, instructions, communications, and the like. Additionally we ask that the desire to quickly implement aspects of the National Broadband Plan does not negatively impact the otherwise positive effort to reform the E-rate program.

For example, we remind the Commission that the process of applying for funding does not begin with the window opening which typically takes place in early November. Often, a 12-18 month lead time is required prior to actually filing a funding request. Attempting to make changes for Funding Year 2011 when over 42,000 applicants are in various stages of developing Requests for Proposals, filing FY 2011 Forms 470, and entering into or carrying out long-term contracts is akin to simultaneously changing 42,000 tires on a bus while driving 65 mph down the road. While we appreciate the opportunity to "update" the program, we strongly urge that adequate consideration be given to how these updates are implemented and the ripple effect of those changes on schools and libraries throughout the entire application and payment process. By carefully and methodically developing and implementing a plan over the course of the next 6 months that could more effectively be implemented for Funding Year 2012, the needs of schools and libraries may ultimately be better served.

The Commission indicates in its National Broadband Plan that it intends to release another NPRM with regard to E-rate. We also understand it is the Commission's intent to seek comment on revised forms. It is extremely difficult to consider the impact of proposed changes to the program in this piecemeal fashion. We offer, therefore, that whatever additional changes are intended to be proposed should be put forth before reforms are made. Without having finality on the policies or rules, it is premature to consider changes to the forms. Substantive changes to the program can only be successfully achieved if carried out in a coordinated and comprehensive fashion.

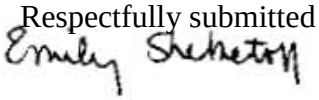
If the Commission anticipates forms changes in order to implement any of these proposals, it is also an opportune time to review certification requirements that may be difficult for other than administrative authorities to make. Applicants are often placed in a difficult situation; without signing certifications, they are unable to submit forms. However, some of the certifications that

applicants are asked to make, especially in the case of consortia, cannot reasonably be made unless the applicant also has the administrative authority to cause certain actions to be taken. This has a chilling effect as it may expose the applicant to legal and financial impacts that are beyond the entity's authority.

We applaud the Commission's efforts to streamline and/or improve certain aspects of the program. As was stated by several of the Commissioners in the open meeting on this matter, there are many good ideas/concepts laid out in this NPRM. But, we recognize that this fund and this program cannot be "all things to all people." The ultimate challenge, comes in measuring the value of adding something new while recognizing the need to remove something that already exists in order to pay for it given the capped nature of the fund – even if adjusted for inflation. Perhaps the most long-term positive impact on schools, libraries and their communities comes in taking the necessary steps to ensure that affordable broadband services are available in all communities across America. Once those facilities are made available – perhaps through the Universal Service High Cost and/or Low Income programs or by other funding means – the funds set aside to ensure affordable access to advanced services for schools and libraries can be utilized more effectively.

These funds are critical in meeting the ongoing and evolving needs of libraries as they serve the growing needs of their communities. To minimize confusion among applicants and prevent potentially lower participation in the program during the necessary period of adjustment due to the implementation of any changes, we ask that the Commission carefully consider not only the policy issues but also the detailed implementation issues as they work to adopt the National Broadband Plan, reform the universal service fund, and update the E-rate program.

Respectfully submitted by,



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