

**Before the
Federal Communications Commission
Washington, DC 20054**

In the Matter of:

Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21

Report And Order and Further Notice of Proposed Rulemaking

Comments of the American Library Association

The American Library Association (ALA) represents the nation's 123,000 libraries of all types. The ALA strongly supports the *Report and Order (Order)* on the E-rate eligibility of tribal libraries that the Federal Communications Commission adopted on July 20, 2023.¹ Furthermore, we appreciate the opportunity to offer comments on the *Further Notice of Proposed Rulemaking (FNPRM)* adopted at the same time.

Report and Order

¹ In the Matter of *Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Report and Order and Further Notice of Proposed Rulemaking (Tribal E-Rate Order; FNPRM).

The ALA has long supported the E-rate eligibility of tribal libraries and appreciates all the work and actions the Commission has taken over the past several years to make their eligibility a reality. For example, in comments the ALA filed in February 2021, we requested “That the Commission finally resolve the longstanding ineligibility of many tribal libraries that prevents them from participating in the E-rate program.”²

We think the decisions made in this *Order* will be of value not just to tribal libraries but to all public libraries and many schools, too. While there is no need to list all the beneficial decisions in this *Order*, we offer here just several examples:

- Making tribal college libraries E-rate eligible when they also serve as the public library in their community.
- Adopting a \$3,600 competitive bidding exemption for library applicants seeking E-rate support for category two (C2) equipment or services. (See our comments below on this.)
- Directing USAC to provide more outreach to all applicants to further assist them in the application process.
- Adopting a safe harbor presumption that if at least 90% of an applicant’s internet service is used for eligible purposes, the remaining 10% use does not require cost allocation.

Further Notice of Proposed Rulemaking

Our comments below focus on the *Further Notice of Proposed Rulemaking (FNPRM)* the Commission released as the second part of the tribal library *Order*. These comments primarily address the E-rate issues of interest to the public library community and follow the order in which they appear in the *FNPRM*.

² *Addressing the Homework Gap through the E-rate Program*. WC Docket No. 21-31. ALA comments filed February 16, 2021.

A. Updating Eligible Services

License/Software Distinction. We agree with the Commission’s own proposals in paragraphs 42-43. That is, multi-year software-based services purchased with C2 hardware should be treated the same way as C2 software-based services.³ The Commission’s own explanation documents issues with the need to amortize the cost of certain Basic Maintenance of Internal Connections (BMIC) contracts. This needless complexity confuses applicants and is a cause of denials. We also support the Commission’s proposal that applicants who fail to check the correct box on Form 470 related to C2 software services should not have their applications denied.

Transition of Services. As we noted in our comments filed on April 24, 2023, “currently, there is no straightforward way to request post-commitment changes to accommodate the transition of services taking longer than planned.”⁴ Not being able to make a service transition exactly on July 1 of the program year can be an issue for individual applicants, but it more often occurs with urban, larger regional, and state networks with multiple sites. We think the Commission’s proposal allowing applicants to request a full year of service from the higher priced provider and to then do a request to change providers when the service migration date(s) are known is a workable solution.⁵ While funding the higher cost service will probably result in a higher overall demand, applicants still only receive discounts on actual costs. In such circumstances, we think the BEAR reimbursement process—used by the great majority of applicants in these situations—provides the proper financial reconciliation to address this issue.

Other Simplification Opportunities. As suggested in the FNPRM, the terms used in the *Eligible Services List (ESL)* should be the same as in Forms 470 and 471.⁶ Doing this will help avoid applicant confusion.

³ FNPRM. ¶42.

⁴ ALA comments, p. 9. In the Matter of *Schools and Libraries Universal Service Support Mechanism*.... CC Docket No. 02-6, February 16, 2023. <https://www.fcc.gov/ecfs/document/10424105807214/1> (ALA Comments, April 2023.)

⁵ FNPRM. ¶45.

⁶ *Id.* ¶48.

The Commission also asks if “there [are] terms in the eligible services list that should be updated or streamlined?”⁷ We note that the “Data transmission and/or internet access” section of the ESL mixes physical transport mediums (e.g., fiber) with communication protocols (e.g., Ethernet) and can cause some confusion. However, we do not think there is a need to provide two lists showing separate transport and protocol options. Rather, we propose the best way to address this inconsistency, and to simplify this section of the ESL, is for the Commission to eliminate these examples. Our proposal then is to just say: “Data transmission and/or internet access services are eligible in Category One using any transport medium or any communication protocols.” We do think the glossary of terms linked on the ESL and on USAC’s Eligible Services List website is useful,⁸ but we suggest the link to both the glossary and the related FAQ be highlighted in some manner to make them both more visible.

The ALA made several suggestions in our April 2023 comments on how to simplify the program. Rather than just repeating these suggestions here, we encourage the Commission to review this section (pp. 8-9) in our April comments.

Another critical issue the Commission seeks comment on is whether it should initiate a rolling C2 application deadline. Because applicants have their own 5-year C2 fund allocation, we think having no C2 application deadline⁹ is both feasible and helpful for applicants. For example, if network equipment fails in the middle of the E-rate funding year, it will be helpful to immediately apply for C2 funds to help off-set replacement costs. New building construction or major remodeling is another situation that could benefit from a rolling C2 application process. Another advantage is that a rolling application process will reduce the number of applications filed by the usual late March deadline. This will reduce pressure on the Program Integrity Assurance (PIA) unit to immediately review over 50,000 funding

⁷ *Id.* ¶48.

⁸ The Eligible Services List website is at: <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-list/>.

⁹ By “rolling C2 application deadline” we mean applicants should be able to apply for C2 funds as many times as they need and at any point in the five-year funding cycle until all its C2 funds are committed.

requests. PIA will have a much easier task to approve C2 applications that are filed throughout the program year.

B. Changing or Clarifying the E-Rate Competitive Bidding Requirements

Competitive Bidding Exemptions. The ALA supports the Commission’s decision in the *Order* to exempt tribal and other libraries from the need to bid on C2 purchases that are \$3,600 or less, pre-discount.

This decision parallels the 2014 *Modernization Order* to exempt certain C1 purchases of \$3,600 or less.¹⁰

Furthermore, the Commission seeks comments on ALA’s proposal in its April comments to raise this exemption to \$10,000.¹¹ To update our April comments, 69.6% of 2023 library funding requests were for less than \$10,000.¹²

As shown in the above percentage, with a \$10,000 exemption over two-thirds of the libraries now applying for E-rate would be exempt from Commission bidding regulations. In our April 2023 comments we recommended that libraries requesting less than \$10,000 in E-rate funding be subject to their own competitive bidding requirements and procedures.¹³ We again advocate for this in these comments. To help ensure that such purchases properly follow local procedures, it is important to note that public libraries (and public schools) are taxpayer funded public institutions and thus are audited on an annual basis following the Government Accounting Standards Board (GASB) procedures. It is important to note that the library’s procurement policies and procedures are also reviewed as part of this audit. In addition, libraries are subject to the Federal Single Audit if they receive more than \$750,000 in federal funds during a fiscal year. As a further safeguard for the program—and to take advantage of the \$10,000

¹⁰ *Modernizing the E-rate Program for Schools and Libraries*. Report and Order and Further Notice of Proposed Rulemaking. WC Docket 13-184. July 11, 2014. ¶199.

¹¹ ALA wants to clarify that the figures in our April comments were based on amounts *after* the E-rate discount was applied.

¹² This percentage is based on 5,218 total library and library system funded or pending requests for the July 1, 2023, funding year. Of this total, 3,633 (69.6%) were for less than \$10,000. Data are from the USAC E-Rate FRN Status Tool, accessed September 22, 2023.

¹³ ALA Comments, p. 7. April 2023.

bidding exemption—we suggest a certification be added to Form 471 that libraries (and schools) must check to affirm they successfully passed a GASB certified audit in the previous fiscal year. Finally, whatever exemption amount the Commission ultimately decides on, we have two additional requests: (1) The C2 exemption should also apply to school purchases, and (2) the current C1 exemption, which applies only to services that are “commercially available,” should be removed.¹⁴

And as we further noted in our April 2023 comments, “Libraries routinely procure goods and services costing far more than they receive in E-rate funds.”¹⁵ As can be seen by the examples in this footnote, the E-rate funds received by the three libraries shown were less than 1% of their total budgets. Or another perspective on this is to say that 99% of these libraries’ purchases of goods and services follow their local procurement rules and regulations.

Mid-Year Bandwidth Increases. When completing Form 470, libraries and schools can request a wide range of bandwidths. To some extent, the failure of applicants to do this—and thus possibly need a mid-funding-year bandwidth increase—is an issue of better messaging. However, the ALA acknowledges there are certainly circumstances when there is a legitimate need for unforeseen mid-year bandwidth increases. For example, a local benefactor may give a library a sum of money that it then spends on a mid-year upgrade to its Wi-Fi access. This then results in a dramatic increase in patron

¹⁴ Paragraph 199 in the July 2014 *Modernization Order* allows the C1 \$3,600 exemption only for services that are “commercially available”. The *Order* has no explanation for this restriction which violates the Commission’s general policy to maintain neutrality in purchasing E-rate eligible services. This restriction prevents enterprise service-based pricing that commercial providers may offer to applicants and it also prevents applicants from taking advantage of services offered by state Research and Education networks. Therefore, we request this restriction be removed thus allowing *any C1 services* to be eligible for whatever exemption amount the Commission sets.

¹⁵ ALA Comments, p. 7. April 2023. We offer these three examples: **(1)** Altoona Public Library, Altoona, PA, population 57,314 (BEN: 132489) had a budget of \$973,132 and E-rate funding of \$9,600. The E-rate funds are 0.98% of the library’s budget. **(2)** Elgin Public Library, Elgin, IA, population 1,290 (BEN 132489) had a budget of \$44,021 and E-rate funding of \$420.00. The E-rate funds are 0.95% of the library’s budget. **(3)** Nashville-Davidson County Library, Nashville, TN, population 694,176 (BEN 128257) had a budget of \$34,235,863, and E-rate funding of \$234,684. The E-rate funds are 0.68% of the library’s budget. The library budgets and E-rate funding data from the three libraries are from 2021. The budgets are based on data from the [Institute of Museum and Library Service](#) (IMLS). (2021 is the latest year that library data are available.) The E-rate funds are from USAC’s [Data Retrieval Tool](#) (DRT).

usage and the need for more bandwidth. In such cases we suggest allowing applicants to increase their bandwidth by at least 50% without running afoul of E-rate bidding regulations.

Providing Guidance to Applicants on When Competitive Bidding Must be Restarted. This has been a vague and frustrating issue for applicants for many years and resulting in denials when USAC determined applicants should have restarted the bidding process. Thus, we appreciate the Commission addressing this issue. We think real-world examples from applicants will be helpful in further defining this issue and assume such examples will be filed as part of the comment process. We will carefully review these examples and likely submit Reply Comment.

Spam Bids and Bids Received After 28 Day Waiting Period. Spam bids have been an issue for many years and applicants find such bids annoying and frustrating. Most such bids are readily recognized because they often lack specific language addressing the applicant's needs as stated in Form 470 and/or RFP. For example, these bids often lack specific costs, or they request the applicant to contact the provider to get more information. We agree with the Joint Commenters that the Commission must confirm that applicants are not required to include spam bids as part of their bid evaluation process, and are not required to retain any spam bids they receive.¹⁶

In relation to bids received after the 28-day waiting period, there should be no requirement to review any bids received after 28 days, unless the applicant says it will. The Commission suggests that applicants proactively indicate this via a checkbox on the 470.¹⁷ However, this just creates another reason for denial if the applicant forgets to do this. A better way to address this is to have a statement on Form 470 that there is no requirement for applicants to review any bids received after 28 days and include such language in the E-rate regulations too.

¹⁶ Joint Commenters, comments, p. 28. April 2023. The Joint Commenters include the State E-rate Coordinators' Alliance (SECA), Schools, Health & Libraries Broadband Coalition (SHLB), Consortium for School Networking (CoSN), and State Educational Technology Directors Association (SETDA).

¹⁷ FNPRM. ¶156.

The Commission asks if its proposed application portal would be helpful in addressing the spam bid issue.¹⁸ We do not think the portal will in any way discourage spam bid proposers or place any meaningful roadblocks in the way of their annoying responses to an applicant’s Form 470.

Evidence of a Legally Binding Agreement. The Commission should give applicants some degree of latitude on this subject which has been a cause for funding denials. For example, as we stated in our April 2023 comments¹⁹, a price quotation should be considered as legally bidding if such a quotation has been approved by the library’s board or governing body. Having the board review and approve such quotes should address concerns the Commission has on any program waste or abuse.

C. Streamlining the E-Rate Program Forms

From a high-level perspective, we encourage USAC to review all program forms and their instructions to ensure that the same language is used throughout to help avoid applicant confusion.

Modifying or Eliminating FCC Form 486. We support removing Form 486 from the E-rate process. As the Commission acknowledges, applicants used this form to certify they had a technology plan in-place but this requirement no longer exists.²⁰ And, the current need to use the Form 486 to certify compliance with the Children’s Internet Protection Act Certification (CIPA) can be transferred to Form 471.

Eliminating this form will be another step toward program simplification.

D. Validating Discount Rates

The issue of determining student eligibility for free or reduced-price lunch via the National School Lunch Program (NSLP) is primarily a school issue. However, the Commission also seeks comments on how it can “Streamline the discount rate validation process...”²¹ We agree with the Commission’s position that it is often not necessary to validate an applicant’s discount rate annually.²² This being noted, we suggest

¹⁸ *Id.* ¶156.

¹⁹ ALA Comments, p. 8. April 2023.

²⁰ *FNPRM.* ¶166.

²¹ *Id.* ¶169.

²² *Id.* ¶169.

the validation process be done just once every five years. This will benefit libraries that sometimes have problems getting timely lunch and enrollment data from their local school district. It will also be beneficial to consortium applicants who often need to collect data from scores or even hundreds of school districts. Having to do this every year within a limited time frame can be challenging.

E. Seeking Information on Other College Libraries Acting as Public Libraries

We do not think there are many instances where non-tribal college libraries function as their community's public library. However, in such cases we recommend the Commission adopt the same basic eligibility framework as it has done in this *Order* for Tribal college and university (TCU) libraries which serve as public libraries.²³ This framework—explaining various safeguards and restrictions—is explained in paragraphs 14 - 16 in the *Order*.

F. Modifying E-Rate Invoice and Disbursement Standards

Modifying the Invoice Filing Deadline Rule. We believe there is a need to give applicants and services providers more latitude in this area. Under the Commission's current rules, only under "extraordinary circumstances" will it grant a waiver of the invoice deadline beyond the current 120-day extension.²⁴ As it readily acknowledges, this has resulted in the denial of many waiver requests. We are pleased that even before the publication of the *FNPRM*, the Commission has already initiated a review of this issue.²⁵ In general, we think more time should be given for applicants and providers to reconcile any billing or other issues. Doing this will benefit applicants by reducing the number of denials.

Definition of Consortium. We agree with the Commission's finding that requiring "tariffed rates" for interstate services is outdated and thus should no longer be required for any private sector participation in a consortium of E-rate eligible entities.²⁶ The Commission further asks if it should continue allowing

²³ *Order*. ¶¶12-17.

²⁴ *FNPRM*. ¶72.

²⁵ *Id.* ¶72.

²⁶ *Id.* ¶80.

private sector entities to participate in E-rate consortia. We believe that allowing private sector participation in a consortium should continue to be permitted. Allowing such participation can be beneficial in helping ensure the best bids and lowest prices for the services being requested.

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In conclusion, the American Library Association very much appreciates the *Order* on tribal library E-rate eligibility and the Commission's outreach efforts to encourage tribal libraries to apply. ALA also hopes the Commission finds our above comments and suggestions related to the *FNPRM* to be helpful. We look forward to the resulting *Order* and hope it will result in further simplification of the E-rate program for our libraries, schools, and providers.

Respectfully submitted,

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