Before the
Federal Communications Commission
Washington, DC 20554

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

Comments of the American Library Association

The American Library Association (ALA) is the oldest and largest library association in the world with some 64,000 members, primarily school, public, academic and some special librarians, but also trustees, publishers and friends of libraries. ALA's mission is to provide leadership for the development, promotion and improvement of library and information services and the profession of librarianship in order to enhance learning and ensure access to information for all.

The following comments are the result of a combined effort by ALA's Office for Information Technology Policy and the Association's E-rate Task Force. Together, these organizations serve the entire ALA membership by working with the E-rate program and understanding its impacts on the library community. Over the last six years, we have established our leadership in the area of E-rate for the library community, as we have taken several opportunities to advise the FCC and SLD on the library perspective. We appreciate this opportunity to continue that tradition.

Introduction

The original 1997 *Report & Order In the Matter of Federal-State Joint Board on Universal Service* states that the intention of Congress in the 1996 Telecommunications Act was to "ensure that eligible schools and libraries have affordable access to modern telecommunications and information services that will enable them to provide educational services to all parts of the

nation[1]." At the time that this legislation was drafted, this was a lofty goal indeed; in 1996, only 44.4% of public libraries had a connection to the Internet for staff or public use.[2]

The American Library Association applauds the FCC's tremendous success in helping to meet this goal for America's libraries. As of June, 2002, 98.7% of public library outlets in the United States had at least one Internet connection and 95.3% of public library outlets provide free public access to the Internet.[3] Clearly, the E-rate program is making great strides in closing the initial digital divide in America's libraries. But, there is more to be done to ensure that libraries can keep pace with the full range of advanced telecommunications services available today to best serve their local communities.

As with any large and complex federal program, E-rate is a work in progress that has undergone revisions and improvements over its lifetime. We applaud the Commission's efforts to improve the program through an iterative comment process, but we strongly feel that alterations made to the program should simplify the process and enable libraries – particularly the poorest, which often lack the time, knowledge and staff to complete the required application processes – to more easily participate and reap the benefits of this vital program.

We are sensitive to the fact that many of the questions raised in the *Second Further Notice of Proposed Rulemaking* are designed to simplify and streamline the program for applicants and participants; however, we would strongly encourage the Commission to also remain true to the intent and spirit of the original 1997 *Universal Service Order* when considering changes to the program. In our comments, we point to ways the Commission can maintain the vision of the original *Order* while simplifying the program.

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[1] *Universal Service Order* at para. 424

[2] Bertot, J.C., McClure, C.R., and Zweizig, D.L. (1996). *The 1996 national study of public libraries and the Internet: Progress and issues.* Washington, D.C.: National Commission on Libraries and Information Science.

[3] Bertot, J. C., & McClure, C. R. (2002). Public Libraries and the Internet 2002: Internet Connectivity and Networked Services. Tallahassee, FL: Information Use Management and Policy Institute. Available: http://www.ii.fsu.edu/publications/2002.plinternet.study.pdf.

Our response is targeted toward the following issues, which we have identified as being of vital interest to the library community:

- Calculating poverty level;
- General program improvements;
- Technology plans;
- Discount matrix;
- Competitive bidding process;
- Definition of Internet access;
- Recovery of funds;
- Definition of rural area; and
- Waste, fraud and abuse issues.

1. Calculating Poverty Level

Libraries have benefited greatly from E-rate over the course of the program's life. Between 1999-2003, public libraries applying as such have made 68,320 E-rate applications, with funding committed at $254,210,334.37.[4] However, libraries receive E-rate discounts at a much lower rate than schools. Anecdotal evidence points to lower application rates for the 2004 funding year, as libraries compute the cost of filtering software required under CIPA compared to financial benefit from E-rate discounts.

It is the opinion of ALA that this situation – in which libraries are not seeing value in applying for and receiving E-rate discounts – benefits neither the E-rate program nor America's libraries. This is a key time for libraries vis-à-vis E-rate, and the Commission should listen to librarians in the field and their opinions on how to add value to this important program.

The Commission's method for calculating poverty level is a key issue for librarians, and the current method has led to inequality in the program, as documented in an Ex Parte filing by

[4] Bertot, J.C., McClure, C.R., Thompson, K.M., & Jaeger, P.T. (2003). Analysis of E-rate data: 1999-2002. Tallahassee, FL: Information Use Management and Policy Institute. Available: http://www.ii.fsu.edu/projects/2003/ala/Erate.Aug08.final.03.pdf.

the American Library Association on January 22, 2004. In this document, we describe an alternative way libraries could calculate their discount rates that would be more equitable and accurate. Our proposed method would allow a public library to calculate their discount based on the school lunch figures for their corresponding elementary school. We believe that this revised approach would provide a more accurate picture of a local library's true need, and the idea has received widespread support in the library community. We anticipate more discussion of our proposal with FCC in the coming months.

2. General Program Improvements

The following suggested improvements to the E-rate program fall outside the scope of the questions addressed in the NPRM, but directly address issues of program efficiency, application ease, and waste, fraud and abuse. These comments are informed by ALA members' years of experience as applicants to and observers of the E-rate program.

Improving application quality

The success of the E-rate program depends largely on the quality of the applications it receives, and there are several changes that the Commission should make to improve application quality. These steps include increased training for applicants, simplifying the applicant's search for necessary information through vital channels such as the USAC Web site, and ensuring a consistent and knowledgeable message throughout the application and award period. We would particularly like to underscore the need for SLD to ensure that every employee who interacts with applicants be providing a consistent, accurate message in response to applicant questions.

It is our experience that many of the problems with the E-rate program experienced by libraries are not tied to malicious abuse and fraud on the part of applicants, but rather sincere misunderstanding, lack of information, and inconsistent information provided through official sources. Much of this misunderstanding arises from the fact that applicants are not getting the information they need during the application process; this results in poor-quality applications on the part of those who cannot afford the time it takes to wade through the myriad sources of complex and sometimes contradictory information. As an example, in

its Third Order, the FCC establishes new rules with regard to "basic" maintenance for internal connections. However, maintenance costs in the Telecommunications Service and/or Internet Access category are not addressed. Often times, applicants are improperly applying for maintenance in the Internal Connections category (because that's where the item can be found in the eligible services list) but the maintenance is related not to Internal Connections, but rather to Telecommunications or Internet Access. This type of confusion causes applicants to guess about how to handle these types of situations and likely also causes funding to be awarded—or denied—in the wrong Priority, thereby also impacting which entities receive or are denied funding due to the discount levels funded under Priority Two.

The inability of applicants to keep apace of the constantly changing interpretations of program rules frequently leads to applications that are not properly submitted. Changes to the program should be substantive in nature; we encourage the FCC/SLD to avoid the temptation of making constant minor changes to the program, as this leads to frustration and the perception that applicants must hire additional staff and/or consultants who can keep on top of the many nuances of the program. Additionally, we have observed that applicants who have been successful in previous funding years often fear that correcting a small misstep made in a previous year's application may result in a denial of funding for the same services in the current application cycle. Further, those applicants are reluctant to make changes in their request for fear of being COMADed for previous years' successful applications; this contributes to waste in funding.

The amount of time applicants can afford to spend untangling confusing and often-contradictory information related to the E-rate program dictates the quality of applications and indeed, whether they can apply at all. This situation penalizes smaller, more rural libraries with fewer staff and rewards larger applicants who may have a more sophisticated understanding of the application processes and/or the ability to hire individuals to help them navigate the current interpretations of program rules.

As SLD employees represent an essential source of information for applicants, it is vital that the Commission ensure that the information SLD provides be accurate, timely, appropriate,

and agree with the information being given out by other employees. Although this may seem like an obvious suggestion, it is a common applicant complaint. Related to the topic of SLD staff is the need for SLD auditors, when auditing, to apply program rules only from the year in question rather than rules currently in effect.

ALA is sensitive to the fact that the E-rate program is large and complex, and that it requires the support of a large staff at SLD. We applaud the Commission for improvements already made and encourage FCC/SLD to continue in that direction.

Eliminate the need for duplicative information on Forms 471

Requiring that the same information be submitted and reviewed annually for multi-year contract applications creates significant inefficiency within the E-rate program. One way that the SLD could focus more attention on issues related to waste, fraud and abuse is to eliminate the duplicative review process that takes place year after year on applications for the same service under a multi-year contract. Such an approach would:

- Streamline the application process;
- Eliminate the annual duplicative review for the very same services;
- Eliminate duplicative requests for information year after year by PIA;
- Speed funding commitment decisions;
- Speed issuance of funding commitment decision letters thereby informing applicants about their approvals or denials <u>before</u> the funding year begins; and
- Allow PIA to focus their review of applications on those that have not been previously reviewed and funded.

In addition to the benefits derived from eliminating the duplicative review process, we believe that there would be no loss of accountability with this approach, since information has already been reviewed at the time of the initial funding commitment.

Current program rules[5] state "Schools and libraries, and consortia of such eligible entities shall file new funding requests for each funding year." However, we offer that this requirement could be met differently for those services that are covered by a multi-year

[5] 47 C.F.R § 54.507(d)

contract and in which the request for services and the terms and conditions for the purchase of that service do not change. Since the service provider, the contract award date, contract expiration date, the contracted cost, the evaluation of the most-cost effective solution, and contract terms and conditions do not change during the contract period, it seems wasteful of both the applicant and SLD to complete duplicative information and conduct duplicative reviews for the same service for each year of a multi-year contract.

We recognize that funding commitments would likely still need to be issued on an annual basis due to the annual cap on the fund, the effect of rollover funds, and the effect of demand on Priority One and Two services. We offer that a streamlined Form 471 application process for **C**ontinuing services under a multi-year contract—a Form 471**C**, perhaps—could be used to request funds for those years after the first year of a multi-year contract situation.

Alternatively, we suggest that in those situations, the applicant would simply need to complete a simplified form. This form would include Block 1 applicant name and contact information and the "establishing" Form 471 application number, Block 4 discount information as NSLP data may change in those years following the filing of the initial Form 471 and the number of recipients of service may change (if allowed under the establishing Form 470), the Block 5 FRN number (to tie the current year's funding request to the relevant establishing Form 470 and the original contract information on the "establishing" Form 471), and an Item 23 funding request. Certification information could also likely be streamlined.

There are other possible extensions of this idea that could be used to streamline other areas of E-rate. For instance, such a solution may also be applicable to those services that are purchased under tariff during the period that the tariff is valid.

By reducing such wasteful and inefficient duplication of time on the part of the applicant, the service provider and PIA review personnel, more focus could be given to the review of new applications thereby enhancing efforts to reduce waste, fraud, or abuse rather than on

processing the same requests for the same services under the same contract terms while still maintaining performance schedules to issue FCDLs.

Centrex as Basic Telephone Service

Consistent with our comments below about technology planning (section 3) and the Form 470 competitive bidding process (section 5), we ask the FCC to simplify and streamline the program by designating Centrex as a basic telephone service. In the FCC's United Talmudical decision released on October 24, 2003 (FCC 03-260), the FCC states in paragraph 15 that:

> "There may be a reasonable argument that Centrex should be treated as a basic telephone service in future funding years, to streamline the application processing. In our view, such a change, if appropriate, should be implemented uniformly, upon the commencement of the application window for a future funding year, so that all applicants are subject to the same requirements."

While the FCC indicates that they will wait for the SLD to make this "reasonable argument," we are asking that the FCC take this step now. In this Order the FCC also discusses the fact that Centrex, if considered to be part of basic telephone service, would not need to be included in a technology plan. We heartily endorse such a change as an opportunity to streamline the application and review process.

3. Technology Plans

The successful implementation of technology in a library or school requires careful planning and foresight. At best, this vision is created through collaboration between librarians, technical staff, library management and patrons. The key to successful technology planning is knowledge of patron needs and staff capability.

It is the position of ALA that the Commission should require technology plans to be approved no sooner than the start of services, rather than at the time of the 470 filing as the rule currently states.

Additionally, we encourage the Commission to consider the many questions related to technology plans more carefully. We challenge the Commission to more carefully analyze the purpose of technology plans and the role of state and local decision makers in their creation, implementation, and approval. Simply stated, it is our position that the Commission should not be involved in shaping the process of technology planning on the local, regional or state level; this represents an inappropriate expansion of the FCC's influence.

Most technology planning experts would agree that the purpose of a technology plan is less about the technology and more about the desired outcomes that can best be accomplished through the use of technology. For this reason, the most effective technology plans often begin with needs assessments and/or user input – this puts the emphasis on the user and his/her needs.

Upon completion of a technology plan, requests for certain technological solutions — not equipment—are often bid, providing an opportunity for schools and libraries to learn how vendors propose to use different products and services to meet those needs. The bid responses are then evaluated to determine which solutions best meet user needs and which are most cost-effective. In fact, state and local procurement processes often require that bid responses be submitted in two separately sealed packages—one that describes the products and services proposed to meet the desired outcomes and one that contains pricing information. This approach allows the school or library to focus on the solution being proposed and consistent with their planning activities before being influenced by the price.

Although libraries have many different methods for approaching technology planning, rarely will you find specific pieces of equipment identified in such a strategic document as a technology plan. Additionally, ALA strongly believes that adding additional requirements to the technology planning process will have no effect on issues of waste, fraud and abuse.

In the *Universal Service Order*, the FCC describes a required three-step process in making a bona fide request[6] for discounted services to be used for educational purposes. Noting their

[6] 47 U.S.C § 254 (h)(1)(b)

concurrence with the Joint Board's finding that Congress intended to require accountability on the part of schools and libraries, the FCC states[7] that they be required to:

1.) Conduct internal assessments of the components necessary to use effectively the discounted services they order;
2.) Submit a complete description of services they seek so that it may be posted for competing providers to evaluate; and
3.) Certify to certain criteria under penalty of perjury.

With regard to Item 1 above, the Commission has implemented a self-certification process in Item 15 of the Form 470 for the applicant to assure the Administrator that will be able to "make effective use" of the eligible services requested in the Form 470. In the Order, the Commission also calls for schools and libraries to prepare specific plans for using these technologies over the near term and into the future, including how they plan to integrate the use of these technologies into their curriculum.[8] Note that the Commission understands that the purpose of preparing technology plans is focused on "using these technologies" and not on the technologies themselves. Further, the *Order* states that "to ensure that these technology plans are based on the reasonable needs and resources of the applicant are consistent with the goals of the program, we will also require independent approval of an applicant's technology plan, ideally by a state agency that regulates schools or libraries."[9]

The *Order* further indicates that the Commission is cognizant that many states have already undertaken state technology initiatives, and that it is their expectation that more will do so and will therefore be able to certify the technology plans of schools and libraries in their states. Consistent with these state-level technology initiatives, the *Order* states that where plans have been approved for other purposes, those plans will be accepted without the need for further independent approval. Clearly, it was not the intention of the Commission that specific equipment lists tied to the E-rate program be the basis of technology plans. By accepting technology plans prepared for other purposes it seems clear that the Commission was promoting the intent of Congress to ensure that a bona fide request was being made—

[7] *Universal Service Order* at para. 570.
[8] *Universal Service Order* at para 573.
[9] *Universal Service Order* at para 574.

not that a specific equipment list be integrated into an otherwise strategic planning document.

Items 2 and 3 from the above list of applicant requirements are addressed by other steps in the E-rate application process. Item 2 above is accomplished by submitting a Form 470 application "in sufficient detail to enable potential providers to formulate bids," while Item 3 is accomplished by completing, where necessary, and signing certain certifications.

In the past, these three components established by the Commission in meeting Congress' intent for a "bona fide request" have been implemented with little concern. And, while these steps may be burdensome to local planning entities like library systems and library consortia (as well as to state agencies who may not otherwise have been required to review and approve technology plans), many applicants and states feel that the fact that more planning is being done is another benefit of the E-rate program.

Recently, however, it seems that SLD/FCC is moving away from this clear understanding of the purpose of high-level, outcome based technology planning. Beginning with Funding Year 2004, the SLD provided information at the Train-the-Trainer session and very limited guidance on their web site which seems to require that specific equipment be enumerated as a part of technology plans.

While we agree that technology plans can ensure that local, regional, and state needs are defined and that a plan for achieving those outcomes is met, requiring that such a planning document now include the identification of specific pieces or types of equipment and specific services (including, for example, Centrex telephone service and voicemail service) is contrary to the very purpose of such a document. This requirement for such specificity in a planning document seems contrary to the intent of the Commission and the Joint Board as evidenced by their willingness to accept technology plans that may have been developed for other purposes. Further, states have contributed to the Commission's goal to "ensure that these technology plans are based on reasonable needs and resources of the applicant and are consistent with the goals of the program," by hiring and/or assigning staff to approve such technology plans on a generally accepted three-year approval basis. Now, the additional

requirements to re-review and re-approve those plans based on the need to include specific linkages to equipment purchased through the E-rate competitive bidding process when technology equipment and services are constantly changing, is an additional burden that many states will no longer be able to perform in these economic times.

We strongly urge the Commission to let technology plans perform their function as planning tools and let competitive bidding processes continue as a way to identify specific technology solutions with specific prices for those solutions. We believe that requiring applicants to prematurely select products and services up to three years in advance as a requirement of the planning process—rather than as part of a competitive bidding process meant to take advantage of recent technological improvement and innovations—is unwise and will negatively impact the application process.

4. Discount Matrix

While we understand the Commission's need to strike a balance between serving needy libraries, equitably distributing limited resources, and minimizing waste, fraud and abuse in the program, we would caution that changing the discount matrix without significant study to determine the full impact of such a decision might be shortsighted. In order for applicants to be in a position to effectively comment on this issue, an understanding of the impact of such a decision is necessary. This situation was anticipated in the FCC's *Order on Reconsideration*, issued July 10, 1997, in which the Commission states:

> "We now clarify that the Commission shall consult the members of the 96-45 Federal-State Joint Board before adopting any changes to the discount matrix, including those changes that might occur prior to the date we reconvene the 96-45 Joint Board. We find that this approach will promote the joint federal-state cooperation we envisioned in the *Universal Service Order* and will provide us with the benefits of states' experience and knowledge."[10]

We agree that further consultations and fact gathering are absolutely necessary "before adopting any changes to the discount matrix." Without an understanding of how such a

[10] *Order on Reconsideration*, para. (C)(16), Rel. July 10, 1997.

change will impact local institutions, any comment at this time in support of such a change would lack merit. At a minimum, the following issues need further exploration:

1.) What impact would increasing the non-discounted portion of funding requests have on the neediest schools and libraries located in economically disadvantaged and high cost areas; and
2.) What will be the need to prorate funding commitments based on the fact that the highest discount level—whether that be 70% or 80%—will include all the funding requests from applicants whose poverty levels fall into the highest discount level and above, e.g. 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90 percentiles?
3.) What effect would changing the discount matrix have on the requirement for states to adopt a compliant intrastate discount matrix?

These questions are explored below in greater detail.

Increasing the non-discounted portion of funding requests may unfairly penalize the neediest schools and libraries.

The intent of the 1997 *Universal Service Order* was clearly to assist poor and rural libraries and schools in particular in the provision of telecommunications services. This priority was re-emphasized in the recent Ysleta Order, in which the Commission rightfully suggests that to date the program "has successfully provided discounts enabling millions of school children and library patrons, including those in many of the nation's poorest and most isolated communities, to obtain access to modern telecommunications and information services for educational purposes, consistent with the statute."[11] Reducing the discount matrix for Priority One services is likely to have a measurable negative impact on needy applicants.

We also challenge the assertion that lowering the discount matrix will somehow impact those vendors who "prey" on the 90% discount level entities. Vendors will focus their attention on the applicants most likely to receive funding, whether the highest discount level is set at 90% or 80% or 70%.

[11] *Ysleta Order* at para. 4.

Lowering the discount matrix will impact the services that some libraries can afford to provide their patrons. Under a discount matrix lowered to 80% from 90%, even if such a change is only applied to Priority Two services, a library in this discount range would be required to increase their contribution to the program for those services by 100%--not by 10%. This will present a significant financial burden for many libraries, particularly those who serve America's neediest communities. Undoubtedly, this will impact the number of libraries who apply for assistance under the E-rate program, and consequently those who offer access to digital resources. We do not believe this serves the intent of the FCC and the Joint Board as established in the May 8 *Universal Service Order*, which states, "economically disadvantaged schools and libraries, as well as schools and libraries located in high cost areas, shall receive greater discounts to ensure that they have affordable access to supported services."[12]

Specifically, the Commission acknowledged the need to support high levels of discounts for economically disadvantaged libraries in the following discussion:

> 497. Discounts for Economically Disadvantaged Schools and Libraries. We adopt the Joint Board's recommendation that we establish substantially greater discounts for the most economically disadvantaged schools and libraries. We recognize that such discounts are essential if we are to make advanced technologies equally accessible to all schools and libraries. We agree, however, with the Joint Board and several commenters that not even the most disadvantaged schools or libraries should receive a 100 percent discount. **We recognize that even a 90 percent discount -- and thus a 10 percent co-payment requirement -- might create an impossible hurdle for disadvantaged schools and libraries that are unable to allocate any of their own funds toward the purchase of eligible discounted services, and thus could increase the resource disparity among schools** [Emphasis added]. We conclude, however, that even if we were to exempt the poorest schools from any co-payment requirement for telecommunications services, a 100 percent discount would not have a dramatically greater impact on access than would a 90 percent discount, because we are not providing discounts on the costs of the additional resources, including computers, software, training, and maintenance, which

[12] *Universal Service Order* at para. 425.

> constitute more than 80 percent of the cost of connecting schools to the information superhighway. We share the Joint Board's belief that the discount program must be structured to maximize the opportunity for its cost-effective operation, and that, for the reasons noted above, requiring a minimal co-payment by all schools and libraries will help realize that goal.

We concur with the Joint Board's statement that "even a 90% discount -- and thus a 10 percent co-payment requirement -- might create an impossible hurdle for disadvantaged schools and libraries that are unable to allocate any of their own funds toward the purchase of eligible discounted services, and thus could increase the resource disparity among schools [and libraries]." Doubling or trebling that hurdle may only further serve to penalize those entities most in need of E-rate support.

Increasing the non-discounted portion of funding requests raises significant and complex problems related to proration.

Changing the discount matrix will increase the administrative burden for SLD/FCC and applicants, and, based on historical demand, may require funding commitments, even at the highest discount level, to be prorated. Under a model in which the top discount is reduced from 90% to 80%, many percentiles worth of funding requests will be lumped together into the 80% discount level. The current FCC rule, which provides for allocating discounts when an entire discount percentile cannot be funded, calls for pro-rating the remaining amount of dollars to all applicants in that percentile. It appears as though the impact of that rule on changes to the discount matrix may create a situation in which no applicants receive a full funding commitment.

Under a reduced discount matrix, applicants would not only face an increased non-discounted portion, they would have to identify funds to make up the shortfall caused by the pro-rating as well. It is certain that some applicants will have to reject funding commitments after going all the way through the application process when they are informed that they will not receive the full discount for which they budgeted. The realistic impact of such a situation is that projects will not be able to be undertaken, the funding commitment process will slow down as PIA interacts with applicants to determine what components of a funding

request can be cut from their projects (so it's clear what services the funding commitments will be supporting), and projects will be abandoned for lack of additional local funds. This means money will be left unused, Forms 500 will have to be filed, and returned money will likely go unused for the remainder of the funding year.

Changing the Discount Matrix will also create significant administrative burden for the States.

The Commission does not operate in a vacuum, and changing the discount matrix would have a significant administrative impact on participating states. On September 27, 1997, the Commission issued Public Notice DA 97-1892, which requires that each state adopt an intrastate discount matrix with entries at least equal to those of the interstate discount matrix as a condition of eligibility for federal universal service support for its schools and libraries.[13] States were required to notify the Commission that a compliant intrastate discount matrix for schools and libraries had been adopted by December 31, 1997 to be eligible for funding beginning January 1, 1998.

A flurry of activity ensued. States across the country enacted laws or took other necessary steps to comply with this requirement to ensure their eligibility for E-rate funding, including calling emergency sessions of state legislatures. When considering a change in the interstate discount matrix, it is essential that the Commission consider the impact such an action would have on the states. Would each state be required to enact new laws? Would Public Utility Commissions be required to pass new regulations? This is an issue that also merits further exploration.

Final thoughts on the discount matrix

We strongly encourage the Commission to leave the matrix as it stands -- at least until such time that further study can be accomplished and additional input gathered -- and instead take steps to help applicants craft higher-quality applications that reflect true need and an understanding of the program and take steps to ensure the proper review of applications consistent with program intent. As the program has evolved, we are seeing more and more

[13] 47 U.S.C. § 254(h)(1)(B)

dollars awarded for WAN equipment, which was never the intent of the program.[14] This is occurring due to WAN equipment being funded as a Priority One service (under the Tennessee Order) and in those cases where applicants seek equipment listed in the internal connections (LAN) category on the eligible services list but are using that equipment for WAN purposes. Very often these high-ticket items are putting a further drain on the fund and are causing applicants further down the discount matrix not to receive funding.

Additionally, we encourage the Commission to allow program changes it has already made – such as the recent decision to support internal connections upgrades and replacements no more than twice every 5 years – to have an impact on the program before moving forward with other changes. These combined efforts should have the desired effect of finally getting funding to those libraries and schools who also have great need but may be in the 50-80% discount level.

5. Competitive Bidding Process

The competitive process has been a key mechanism in the development of the E-rate program. By encouraging competition among carriers and service providers, the program has encouraged technical development in many areas of the country, including rural areas and inner cities, hastened innovation, and allowed libraries and schools to obtain the highest-quality services. FCC Form 470 is the tool applicants use to initiate the competitive bidding process and ensure that they are receiving services for the best price available in their area.

In an effort to simplify the application process and reduce areas of possible waste, the Commission has proposed revising the FCC Form 470 process and perhaps eliminating the form altogether. In some situations, the Form 470 process causes great frustration for applicants, as they are bombarded with marketing information as opposed to receiving specific responses to their requests for service. Additionally, there are many areas of the country where competition does not yet exist for particular services, making a truly competitive bidding process impossible. However, we acknowledge that in some situations,

[14] *Fourth Order on Reconsideration* at para.193.

the benefits of the Form 470 far outweigh the inconveniences it presents where it fosters competition and spurs technical development in underserved areas.

We believe that a hybrid approach to this question may meet the need to continue to foster competition where competition is likely to exist, while eliminating a bureaucratic process that has little or no impact. In the case of eligible basic local and long distance wireline or wireless telephone services, we recommend that some dollar threshold be set under which applicants would not be required to participate in the Form 470 competitive bidding process. 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. In the case of other eligible services, where competition is more likely to exist, we recommend that the Form 470 process remain. A reasonable dollar threshold could be fairly easily determined by looking at a sampling of applications for the smaller size applicants who are less likely to be in geographic areas where competition exists. Such a change would further streamline the application process.

In reference to the Commission's question regarding the best way to ensure that applicants make cost effective decisions in situations where there is little or no competition for a given service, we strongly urge the Commission to avoid the adoption of bright line rules. As the Commission points out in the *Universal Service Order* in consideration of how the discount matrix should be fashioned to deal with high cost areas, they cite an example provided by EdLiNC in which one school in the state of Washington faces undiscounted monthly T-1 charges of $125 per month, while a similar school elsewhere in the state faces undiscounted monthly T-1 charges of $2,100.[15] While this data is now several years old, the same situation still persists in many locations across the country. A recent survey of bandwidth costs for Michigan libraries in 2003 shows that costs for T-1 services range from $612 per month to $1,648 per month, depending on their geographic location.

It is far too difficult for a federal entity to determine what acceptable pricing would be in a given geographic area, particularly in under-served areas. Limiting the discount amount in

[15] *Universal Service Order* at para. 495.

this type of situation would further penalize the neediest applicants. It is our belief that the Commission should continue to rely on the Form 470 and allow the competitive process to work.

Another issue closely related to competitive bidding is that of the interaction between E-rate rules and local procurement laws. While we recognize that the FCC has competitive bidding requirements and has authority with regard to the program to make funding commitments based on those requirements, we do not believe the Commission has the authority to deny funding for those situations where state and local procurement rules/guidelines are not followed. We believe that any penalties arising from violation of state and local procurement rules are the domain of the local governing body. The role of the Commission and SLD may need to be the reporting of such infractions to the appropriate enforcement agency or agencies and to allow those agencies to act as they see fit.

There is a great deal of applicant confusion regarding the competitive bidding process. What is needed is clear, published guidance to ensure that applicants are properly completing applications or keeping the proper documentation for such situations as the following:

1. What is required of the applicant when they receive no response from the incumbent provider from whom they currently receive service and there are no other responses from other providers?
2. What is required of applicants when no response is received?
3. What is required of applicants when the only response received is from the only provider of service in the area?
4. What information needs to be kept, e.g. generic marketing responses vs. legitimate bid responses for requested services?

Again, we point to the fact that clear, concise, complete and consistent information about how to properly interact with the program would reduce waste in the program.

While we don't believe eliminating the Form 470 is appropriate in the context raised in the NPRM, there are, perhaps, other strategies that might further reduce program complexities for the most basic of services such as Plain Old Telephone Service (POTS). One suggestion is to consider a strategy that would provide for automatic discounts on bills to eligible

libraries without the need for today's application processes in much the same way the High Cost Mechanism provides discounted services to rural residential telephone customers.

The Commission has suggested that a requirement that each service provider certify their prices could ensure fair and open pricing practices. While we commend the Commission's proactive thinking on this issue, this suggestion does raise some questions related to administration. First, what evidence exists that this same practice has worked in the case of federal acquisitions? Second, where would the certification take place? Requiring it as part of the joint 470 filing would create unnecessary burden for the applicant. This is an issue that requires additional study and discussion.

6. Definition of Internet Access

At this time, it is unclear how the expanded definition of Internet access included in the Rural Health Care Order will impact that program. ALA feels that adopting a similar definition of Internet access without allowing enough time to observe the impact of such a change on another program would be unwise. Expansion of definition means expansion of demand, and increasing demand on a program like E-rate – which is already under stress – could have a negative impact on this important program. This is of particular concern as we understand the original intent of the program to provide infrastructure for Internet access, not Internet content.

7. Recovery of Funds

The E-rate program, just like any large and complex program, is subject to human error at every step. Rectifying errors creates tremendous administrative and financial burden for applicants, the Commission, and the SLD. For this reason, it is essential that the Commission place the highest priority on improving the quality of applications it receives by increasing the training available to applicants, and improving the information it makes available to applicants through the SLD web site, written materials and especially employees charged with assisting applicants. The Commission should place an equally high priority on the accurate processing of applications to resolve problems before funds are disbursed.

To address the issue of the recovery of funds, it is first necessary to identify some of the ways that program error can happen. First, the SLD may recognize its own disbursement error, and subsequently investigate whether they made the same error several years in a row. Second, an applicant may discover a problem with an application, and perhaps that the same error occurred in previous years' applications. Finally, a very small minority of applicants may intentionally commit fraud against the program. Each of these situations is addressed below.

In the case of SLD realizing its own error, steps must be taken to reduce the impact of the error on the applicant. The adjustment should be limited to the application year in which it is discovered; it is unfair to the applicant to COMAD previous years' disbursements as a result of SLD's own processing error. Such an action creates an enormous financial burden for applicants and in some cases could close down schools and libraries – particularly the small and rural entities with some of the greatest need for assistance.

One substantive way that the Commission can reduce program waste is by encouraging applicants to improve the quality of their applications. Anecdotal evidence indicates that applicants are often afraid to address problems they may discover with their own application for fear of triggering an audit and possible COMADs of previous years' applications. Again, in this situation, recovery of funds should be limited to the year the problem is identified. This will eliminate the fears of applicants in this regard and encourage them to submit better applications thereby reducing waste in subsequent applications.

In some situations, applicants and/or service providers may be committing fraud against the program to obtain additional funding. We strongly feel that applicants or service providers fraudulently representing themselves should be penalized, and that the penalty should not be limited to the year it is discovered. This practice will also help improve the quality of applications received.

Finally, the Commission asks whether funding should be denied for applicants with outstanding commitment adjustment issues. In most cases, we feel that this would be unfair

and create a significant burden for applicants. In the case of an appeal on a COMAD, the current review cycle takes roughly 16 months. If funding is withheld for that period -- plus the applicant has not received the funding under appeal – the library may be operating without E-rate support for several years. This can create budget problems for even the most well-funded institution, but particularly those who are underfunded. We strongly feel that funding should be kept in place when FCC/SLD error is at issue; however, when there is evidence of fraud, we are not opposed to funding being denied while an investigation is taking place.

8. Definition of Rural Area

We understand that other commenters, including the Pennsylvania Department of Education, have undertaken significant work to identify the advantages and limitations of the various "rural area" definitions upon which the Commission is seeking comment. We look forward to reviewing that information and will further comment on this issue during the reply period.

9. Waste, Fraud and Abuse Issues

ALA is fully aware of the Commission's goal to reduce perceived waste, fraud and abuse in the system. It is our opinion that much of the problem with the E-rate program is tied not to malicious abuse and fraud on the part of applicants, but rather sincere misunderstanding, lack of information, and inconsistent information. Our suggested changes for dealing with these problems can be found in Section 2, above. And while we again applaud the FCC's efforts to provide for program improvements, we would also like to point out that constant change in the program and confusing information can lead to further waste and abuse.

In the NPRM the Commission suggests several changes, including lowering the discount matrix. Clearly, protecting such a large program from waste, fraud and abuse is an enormous challenge. By the same token, we suggest that managing the entire program to the least common denominator — those few who actually seek to defraud the program —would be a disservice to the program and its intent, and would unfairly burden the neediest institutions

(see Section 3 above). Rather, we suggest that those who commit fraud against the program be aggressively prosecuted and punished without penalizing those who can least afford to provide 21st Century services to their communities.

Conclusion

In conclusion, ALA urges the Commission to keep three central themes in mind as it moves the E-rate program forward. First, we must maintain the goals and vision of the original 1997 *Universal Service Order* and ensure that any changes made to E-rate do not inhibit its ability to meet those goals. Second, many of the tools already put in place – such as the Form 470 – are designed to meet the program's original goals. It is essential that we allow the tools already put in place time to work. Third, we strongly feel that much of the perceived waste, fraud and abuse in the program is a result of misinformation or the lack of information. The Commission could and should eliminate many of the problems associated with E-rate by improving training for applicants, ensuring that applicants can find essential information quickly, consistently and easily through all its communication channels, and keeping all messages and rules consistent throughout the application and award period.