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

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

COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION

Matthew C. Ames
Holly L. Saurer
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 785-0600

Attorneys for the American Library Association

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SUMMARY

The American Library Association ("ALA") respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking in CC Docket No 02-6 (the "NPRM"). ALA and its members are encouraged by the Commission's decision to address the issues outlined in the NPRM, because the discounts for schools and libraries established by the Commission pursuant to Section 254(h) of the Communications Act (the "E-Rate" or "E-Rate discounts") have proven to be an enormous benefit to America's libraries. After five years, however, it is important that the Commission re-examine its rules to ensure that the original purpose and the full promise of Section 254(h) are being met.

The ALA is a nonprofit educational organization of over 63,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, specialized libraries and the communities they serve. The ALA is dedicated to the improvement of all aspects of library services. The ALA also provides leadership for the development, promotion, and improvement of library services and the profession of librarianship in order to enhance learning and ensure access to information for all.

The universal service discounts for schools and libraries have proven an enormous success. Only a few examples are needed to illustrate the importance and the value of the E-Rate discounts:

- The need for eligible services for fiscal year 2003 is estimated at $5.7 billion, well over twice the $2.25 billion cap imposed by the Commission.

- In the last five years, the proportion of libraries offering public access terminals for Internet users has increased from only 23.3% to over 95%.

- As of 2000, over one-third of public libraries offer remote access to their online database services.

- Nearly two thirds of public library outlets offer Internet training services to the public.

In addition, many library systems are continuing to find new ways to make the best use of telecommunications technologies. For example:

- Several libraries in Florida are examining the possibility of developing or participating in "digital canopies," which permit wireless broadband access to the Internet and library resources over extensive areas in the vicinity of a specific library.

- In Maryland, the Sailor project gives libraries throughout the state access to the Internet, if the local library can gain access to the Sailor point of presence. Many Maryland counties – including regions only a couple of hours' drive from the nation's capital -- do not have high speed wireline access available to them and so they only have dial-up capability. Assured funding for wireless solutions would allow Sailor to extend broadband capacity into all parts of the state.

- Another recent trend in library technology is the development of collaborative virtual reference programs, in which a library user contacts a reference librarian over the Internet, and the librarian assists the user in conducting research over the Internet. This is an enormous benefit to residents of areas who libraries do not have the resources to hire a full-time reference librarian.

All of these new efforts would benefit from the availability of discounts, and all of them advance the goals of Congress as set forth in Section 254(h). Furthermore, these applications advance other policy goals as well. By extending the scope and breadth of the overall telecommunications network, they advance the goal of deploying broadband service and other

new telecommunications technologies. And by introducing the public to new services and technologies in the library context, they increase public acceptance of and demand for those and other new capabilities.

Therefore, the Commission should not just maintain the E-Rate discounts as they are constituted, but find equitable ways to strengthen and expand them.

The issues revised by the NPRM regarding eligible services cannot be considered in isolation. The NPRM seeks comment on whether the FCC should revise its rules regarding the E-Rate eligibility of Wide Area Networks, wireless services and voice mail. ALA supports including all of those services, but only if they are included in a way that does not harm the program as a whole. The current rules present several problems for libraries, and simply addressing whether the three listed services should be eligible for discounts would not only fail to solve those problems, but might exacerbate them. ALA has several concerns that the Commission should address in this context; these concerns, as well as the key issues raised by the NPRM, could be addressed by adopting the following changes to the Commission's rules:

- Allowing libraries to establish their discount levels by referring to an alternative to the school lunch program mechanism.
- Increasing the funding cap.
- Modifying the categories of eligible services to help streamline the application and review process.
- Revising the priority schedule for discount eligibility to accord with the modification of the eligible services categories.
- Eliminating disincentives for consortia.

The chief problem facing eligible entities and the SLD is that the $2.25 billion cap offers insufficient funding for all of the many things that need to be done to comply with Congressional intent. If the cap could be raised, many of the concerns underlying the NPRM, as well as the concerns of ALA, would simply disappear. Libraries in particular face a difficult situation

because they tend to be smaller than school districts and have fewer resources than schools generally do. Thus, under the current funding cap, it is possible that a relatively small number of large school districts or other school-related applicants could obtain large amounts of funding, leaving many small libraries with no options at all.

Second, relying on the school lunch program to set a library's discount level is unfair to libraries. The rules currently require a library to apply based on the average school lunch data for the school district in which it is located, even though the specific area served by the library may be in a low income area. This means that libraries that most need funding can receive much smaller discounts than they would if they could rely on a more individualized standard. In addition, because they are often not affiliated with the local school district, libraries often do not have ready access to the school lunch data. Under the FCC's self-certification program, this can make it literally impossible for a library to establish that it is entitled to discounts. Consequently, ALA urges the Commission to reexamine the question, and to adopt an alternative discount mechanism, just as schools are allowed to do. We propose that libraries be permitted to base their discount level either on the school lunch data for the nearest elementary school, on census data from the most recent census (2000 data will be available later this year) or some other system. Attached to these comments is a White Paper commissioned by ALA addressing ALA's concerns regarding the use of school lunch data and proposing alternatives.

Third, altering the services that are eligible for discounts could, if not carefully managed, create distortions in the program. ALA is very concerned that increasing the scope of eligible services without re-examining the current priority rules would eliminate or vastly decrease discounts for many libraries and other smaller entities. At the same time, ALA supports the proposal for establishing a pre-approved list of services, so long as the application process still allows room for innovative and efficient uses of the limited funding. ALA therefore

recommends adopting categories of eligible services and organizing the funding priorities based on these categories, in a manner consistent with the legal basis underlying the FCC's rules, but that emphasizes more efficient processing of applications. This restructuring would not affect or alter in any way either the classification of services as telecommunications, Internet access or internal connections, or any of the consequences of these classifications under other FCC rules. ALA thus proposes that the FCC establish three process categories, as follows:

- Category 1 -- *Approved Transmission and Connectivity Services*: These services would appear on a pre-approved list of services, published by the SLD and regularly updated, as suggested by the NPRM. In essence, this category combines the current telecommunications services and Internet access classifications in the Commission's rules, except that new services that would otherwise come under those classifications would need to be added to the list or approved on a case-by-case basis under new Category 2 (discussed below). Wide Area Networks provided under leases or that otherwise do not involve construction or installation of facilities to be owned by a school or library would also be included. ALA also recommends a pre-approval process, under which a library could propose that a particular service be made eligible for discounts before it submitted an application. If approved, the service would be added to the list and thereafter be deemed eligible for discounts.

- Category 2 -- *Innovative and Cost-Effective Services*: The FCC's rules and the SLD's procedures should reward innovative and cost-effective applications. Tying all eligibility to a list would stifle innovation and punish libraries that try new approaches. Therefore, there should be a category for services that may be eligible, but that require fuller explanation by the applicant than the streamlined process envisioned for Category 1 would allow. These would include, among others, requests for Wide Area Networks that involve construction of facilities or installation of equipment as part of a network that is not owned by a third party service provider, applications for innovative uses by consortia, and many new wireless applications. In addition, there may be other services that should be eligible for discounts because they have a telecommunications component, but do not advance the principal goals of the universal service regulations, as envisioned by Congress. We believe that extending the reach of the network and increasing transmission capacity available to schools and libraries are the most important goals of the E-Rate discounts. Consequently, services that do not directly advance those goals should only be eligible for discounts if an applicant can show that its proposal would improve the efficiency of the program. Applications for Category 2 services would be funded after applications for Category 1 services.

- *Category 3* -- *Internal connections*: These services would include internal connections as they are currently defined, and would be processed under the existing procedures for internal connections. Category 3 services would be funded only after all Category 1 and 2 services are fully funded.

By funding requests in order of the new priority, from Category 1 through Category 3, the SLD would be able to ensure that the key goals of the universal service program are advanced: first, essential connectivity and transmission capability provided by third parties, including unbundled Internet access; second, new services that promote innovation and efficiency; and third, service directly to classrooms and within libraries, as required by 47 U.S.C. § 254(h)(2).

Finally, ALA does not believe that it is necessary to modify the current consortia rule as proposed by the NPRM, because we believe it is already clear that only ineligible private sector consortium members are prohibited from obtaining below-tariffed rates. We do believe, however, that the Commission could make consortia more efficient by taking four steps: providing data on the number of libraries who are members of consortia; keeping records that distinguish between library consortia, as originally contemplated by the rules, and other types of consortia; increasing the amount of the discount for consortium members by an additional 5 or 10 percent, to reflect the benefit to the SLD of reduced administrative costs resulting from the group application; and finally, revising the method for determining the discount rate for consortia. The current method involves taking an average of another average, which results in an artificially low figure.

Unused funds should be rolled over to the next funding year. ALA strongly agrees with Commissioner Copps's statement that unused funds should be rolled over to the next funding year. Not only has this always been the general understanding of what the rule was intended to accomplish, but there is no real ambiguity in the rule, and in any event it makes no sense to reduce the funding commitment when demand for discounts is more than double the

Commission's cap. Rolling over unused funds to the next year could actually be used to help fund successful appeals, thus addressing another of the Commission's concerns.

ALA strongly supports streamlining the application process and improving the efficiency of the program. As discussed above, ALA strongly supports streamlining the application process and improving efficiency, because the lower the costs associated with application and administration, the more funding will be available for discounts. The new categories and priority rules discussed earlier would address this general topic, as would changing the basis for calculating the amount of library discounts. In addition, ALA believes that the Commission could take three additional steps to improve the overall process:

- First, ALA supports the proposal to extend the time period for filing appeals and setting the appeal deadline based on the date of postmarking.

- Second, applicants should have the choice of paying the full cost of the service to the provider and being reimbursed by the Administrator, and paying only the discount price, leaving it to the provider to obtain the balance from the Administrator. Providers should not be allowed to dictate this decision.

- Third, the FCC should recognize that the involvement of the State Coordinators has reduced the administrative costs of the SLD by providing training and advice on applications that would otherwise lead to rejected applications, more appeals, delayed proceedings, and other time-consuming problems and increased administrative costs for the SLD. Thus, subsidizing the training efforts of the state coordinators through modest support for travel and seminar costs would help the efficiency of the program as a whole.

Not just libraries and other eligible entities, but all parties concerned, should be accountable for their actions. The NPRM contains a number of proposals designed to increase program accountability. ALA certainly supports accountability, and in general ALA supports the proposals in the NPRM. But libraries and schools are not the only participants in the program: providers must also be held accountable. And the SLD and the Administrator have their own responsibilities in that regard. One area in which ALA hopes further steps can be taken concerns the availability of aggregate data regarding the program.

In response to the specific issues raised by the NPRM, ALA believes that:

- Any audit rule should be carefully drafted to ensure that it does not actually harm participants. An audit rule is not really necessary, since all libraries are audited regularly, and in any event requiring the audited entities to bear the expense of an audit is entirely unreasonable. Many small libraries could find themselves paying more in audit fees than they received in discounts under such a rule. If an audit rule is adopted, it should be applied only in the most stringent and well-defined circumstances, and contain clear guidance regarding what information and documents libraries must retain and for how long.

- ALA supports restrictions on transferability of equipment. A two- or three-year moratorium on transferring equipment or a bar on funding applicants for the same equipment in the same location for two successive years might address this concern.

- A bar or suspension for willful or repeated noncompliance would also increase accountability. Such a restriction should apply to providers as well as to applicants, and should be carefully crafted to apply only in the case of repeated and willful failure to comply with material provisions of the FCC's rules. Minor or inadvertent errors should not be used as excuses to cut off participation.

- ALA also supports the proposed enforcement measures for remittal of payments by providers. Any fines or forfeitures imposed on providers under such a rule should be used to fund audits or other enforcement measures.

- ALA strongly supports the Americans with Disabilities Act, but does not believe that additional enforcement measures outside the scope of that Act or rules adopted under the Act's authority are necessary or appropriate.

In conclusion, the E-Rate discounts have undeniably provided much-needed assistance to libraries around the country. ALA applauds the Commission for its dedication to the careful implementation of Section 254(h) and its willingness to make further improvements. ALA supports the Commission's efforts to ensure that the program is made more accessible, accountable, and efficient, so long as the focus of the Commission's rules remains on helping libraries rather than subjecting them to unnecessary, ineffective, or duplicative regulation. Finally, ALA respectfully requests that the Commission consider additional changes needed to ensure the equitable and efficient allocation of funds.

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INTRODUCTION

The American Library Association ("ALA") respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking and Order in CC Docket No. 02-6[1] (the "NPRM"). ALA and its members are encouraged by the Commission's decision to address the issues outlined in the NPRM, because the discounts for schools and libraries established by the Commission pursuant to Section 224(h) of the Communications Act (the "E-Rate" or "E-Rate discounts") have proven to be an enormous benefit to America's libraries. After five years, however, it is important that the Commission re-examine its rules to ensure that the original purpose and the full promise of Section 224(h) are being met.

The ALA is a nonprofit educational organization of over 63,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, specialized libraries, and the communities they serve. The ALA is dedicated to the improvement of all aspects of library services. The ALA also provides leadership for the development, promotion, and improvement of library services and the profession of librarianship in order to enhance learning and ensure access to information for all.

These comments address the issues raised in the NPRM. In addition, ALA has some further suggestions to improve the Schools and Libraries Program. We believe these suggestions will help advance universal service by allowing libraries to receive continued access to the full benefit of advanced telecommunications services at more affordable rates.

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[1] *Schools and Libraries Universal Service Support Mechanism*, Notice of Proposed Rule Making and Order, CC Docket No. 02-6 (rel. Jan. 25, 2002).

I.   THE E-RATE DISCOUNTS HAVE PROVEN THEIR VALUE TO AMERICA'S
      LIBRARIES.

   A.   IN THE COURSE OF THIS PROCEEDING, THE COMMISSION MUST NOT LOSE
         SIGHT OF THE PURPOSE AND HISTORY OF THE E-RATE DISCOUNTS.

In adopting the universal service provisions of the 1996 Telecommunications Act,

Congress acknowledged the importance of providing the nation's libraries with modern

telecommunications technology. The Conference Report on S. 652 stated, clearly and directly,

the intent of Congress regarding universal service for schools and libraries:

> The ability of K-12 classrooms, libraries and rural health care providers to
> obtain access to advanced telecommunications services is critical to
> ensuring that these services are available on a universal basis. The
> provisions of subsection (h) will help open new worlds of knowledge,
> learning and education to all Americans – rich and poor, rural and urban.
> They are intended, for example, to provide the ability to browse library
> collections, review the collections of museums, or find new information
> on the treatment of an illness, to Americans everywhere via schools and
> libraries. This universal access will ensure that no one is barred from
> benefiting from the power of the Information Age . . . .

H.R. Conf. Rep. 458, 104th Cong., 2d Sess. ("Conf. Rep.") at 132-133 (1996).

In the First Report and Order, *In re Federal-State Joint Board on Universal Service,*

Report and Order, 12 FCC Rcd 8776, ¶¶ 44-45 (1997) (*"First Order"*), established the general

principles of the Universal Service program, including competitive and technological neutrality.

The *First Order* also established the groundwork for the schools and libraries program, outlining

the program's eligible services, discount methodology, funding mechanisms, and access to

advanced communications. *See generally First Order*, Section X. In doing so, the FCC relied

on several basic principles that underlie the entire structure of the E-Rate. These include, among

others, the concept that libraries and schools should have maximum flexibility in deciding what

services they need themselves, *First Order* at ¶¶ 431-432, and the concept that where possible

libraries and schools should be allowed to rely on existing local requirements, *First Order* at ¶¶ 574-575.

Of particular importance to the schools and libraries program was the Fourth Order, *In re Federal-State Joint Board on Universal Service,* Fourth Order in Reconsideration, 13 FCC Rcd. 5318 (1997) (*"Fourth Order"*). This Order looked at many issues, including concerns regarding the administrative burden of the reporting requirements, the ineligibility of state telecommunication networks and wide area networks, the restrictions on eligibility for internal connections, competitive bid requirements, and reimbursements. *See generally Fourth Order* at Section VI.

The result of the Commission's various proceedings is a process under which libraries and schools can apply for discounts on negotiated rates for three classes of services: commercially available telecommunications services, Internet access, and installation and maintenance of internal connections. Eligible entities may request the discounts after seeking competitive bids. This process involves posting requests for service on the Web site operated by the Schools and Library Division ("SLD"). These requests call for extensive information regarding the requested services and the requesting entity, and require the library or other eligible entity to certify to a number of conditions regarding the use of any services received subject to discounts. The discount mechanism takes into account the poverty level of the area in which the eligible entity is located. The primary method for determining the discount level relies on the percentage of school enrollment eligible for a free or reduced price lunch; schools, but not libraries, may rely on an alternative method for determining their poverty level. Eligible entities in rural areas receive an additional discount.

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Because the FCC decided to cap the size of the schools and libraries fund at $2.25 billion per year, the FCC also established a priority system for awarding discounts. There are two priority categories for distribution of the discounts: Priority 1 services include all telecommunications services and all Internet access services, and Priority 2 services include internal connections. Priority 1 services are funded before Priority 2 services, except that when only $250 million remain in any give year, that amount is reserved for the most disadvantaged schools and libraries. The Commission has also determined that a library or school that receives discounts for Internet access or internal connections must comply with certain provisions adopted pursuant to the Children's Internet Protection Act ("CIPA"). These requirements do not apply to telecommunications services.

The NPRM revisits many of the issues considered by the Commission in earlier decisions, while also addressing new concerns. In attempting to improve the program, the Commission must remember the fundamental purpose of the E-Rate discounts and ensure that other considerations do not inadvertently undermine the intent of Congress.

B.   THE E-RATE DISCOUNTS HAVE ASSISTED LIBRARIES IN BRINGING ABOUT A TECHNOLOGICAL REVOLUTION.

As technology has evolved in the five years since the Commission adopted the *First Order*, so have libraries. With the help of the E-Rate, libraries are now fully immersed in technology, and their operations and capabilities are changing dramatically.

For example, a 1996 survey showed that 44.6% of libraries had Internet access available to staff, but only 27.8% provided public access terminals.[2]   The public, however, expects much

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[2] Bertot, John Carlo and McClure, Charles R., *The 1996 National Survey of Public Libraries and the Internet: Progress and Issues,* National Comm'n on Libraries and Information Science, p. 6 - 7, available at http://www.nclis.gov/statsurv/statsurv.html (*"1996 Report"*).

more of their libraries – as new technology provides new ways of storing and disseminating information, the public expects libraries to continue to meet that traditional responsibility using the new methods. Libraries have responded to this demand: a related study conducted in 2000 found that 95.7% of public libraries have an Internet connection, and 94.5% of libraries provided their patrons public Internet access terminals.[3] Along with availability, speed of connectivity and accessibility have also increased. As of 2000, 36.2% of these libraries have T1 lines as their maximum speed of connectivity, and 53.6% have greater than 56 kbps service,[4] compared to 1996, where only 18.2% of libraries had T1 lines, and 72.8% libraries accessed the Internet through a 56 kbps line.[5] In addition, more and more people are able to access the Internet in their public libraries. In 2000, public libraries provided an average of 8.3 workstations per outlet, nearly doubling the outlets available in 1998.[6]

These improvements are having a significant effect on poor and underserved communities. According to a recent study by the NITA and the Economics and Statistics Administration, *A Nation Online: How Americans Are Expanding Their Use Of The Internet* (Feb. 2002):

> Internet access at public libraries is more often used by those with lower incomes than those with higher incomes. Just over 20 percent of Internet users with household family incomes of less than $15,000 a year use public libraries, and 6.1 percent of Internet users in this income category do not use the Internet at home, work, or school. As household income rises, not only does the proportion of public library Internet users decline, but also the percentage of Internet users without alternative access points also declines.

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[3] Bertot, John Carlo and McClure, Charles R., *Public Libraries and the Internet 2000: Summary of Findings and Data Table,* National Comm'n on Libraries and Information Science, p. 3, available at http://www.nclis.gov/statsurv/statsurv.html (*"2000 Report"*)

[4] *Id.* at 4.

[5] *1996 Report* at 9.

[6] *2000 Report* at 3-4.

Id. at 42.

Perhaps the most dramatic example of the value of the E-Rate to libraries is that reported

in the most recent and comprehensive study of the E-Rate, which states that "[s]everal library

managers in rural areas in different states commented that E-Rate funds have made it possible for

some libraries to have a phone for the first time, let alone an Internet connection!"[7]

C. THE STATUTE REQUIRES UNIVERSAL SERVICE TO EVOLVE AS TECHNOLOGY EVOLVES.

Congress did not intend Universal Service to be a static concept, reflecting only the state

of affairs in 1996. Congress recognized that technology would advance, and the role of

technology would correspondingly change. The statutory structure and the FCC's interpretation

of that structure, which both the Commission and ALA defended against attack by the

telecommunications industry, expressly calls for a forward-looking and dynamic interpretation of

universal service.

First of all, Section 254(b) of the Communications Act sets out the principles of universal

service; these include access to advanced services, and access to advanced telecommunications

services for schools, health care, and libraries. As technology advances, new "advanced"

services will develop, and previously "advanced" services will become standard or even

obsolete.

Second, subsection (c)(1) clearly states that Congress intended that our concept of

universal service should change as technology changes. "Universal service is an evolving level

of telecommunications services that the Commission *shall establish periodically under this*

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[7] Charles R. McClure, Joe Ryan & John Carlo Bertot, *Public Library Services and the Digital Divide: The Role and Impacts from Selected External Funding Sources,* Information Use Management and Policy Institute (Jan. 2002) (*"Public Library Internet Services"*), attached hereto as Exhibit A, at 48.

section, taking into account advances in telecommunications and information technologies and services. " 47 U.S.C. § 254(c)(1) (emphasis added). Further, subsection (c)(3) adds "In addition to the services included in the definition of universal service under [47 U.S.C. § 254(c)(1)], the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h) of this section."

Finally, subsection (h)(2) discusses the provision of "advanced services" to schools, libraries, and rural health care providers specifically, stating that:

The Commission shall establish competitively neutral rules –

(A)   to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and

(B)   to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

46 U.S.C. § 254(h)(2).

Thus, there is no question that when Congress enacted section 254, it intended that schools and libraries would have access to the most advanced technology possible. The FCC elected to provide that access in the form of discounts for commercially available services, which itself means that as new services become available, they should be eligible for universal service treatment.

Libraries exist to store information and make it available to those who need it. Librarians – like all professionals – are driven to perform their mission, and they are consequently extremely knowledgeable in the uses of technology to perform their functions. Libraries are not merely collections of old books, but repositories for and disseminators of all kinds of recorded

information. As new and innovative telecommunications and information services have arisen, libraries have adapted them to their own purposes and needs, and they continue to do so.

In fact, libraries today are engaged in some of the most extensive, innovative and potentially far-reaching uses of telecommunications and information technologies. For example, in Tallahassee, Florida, the library system has found a way to literally provide its service out-of-doors. The City of Tallahassee, in conjunction with local broadband providers, has recently started a pilot project using Wi-Fi technology, called "Digital Canopy." This network consists of a grid of wireless antennas that allows people throughout a fourteen-block area wireless access to the Internet. The Leon County Public Library would like to incorporate this system into its information systems. Alachua County Public Libraries have also expressed an interest in developing such a "Digital Canopy." The network is fast, up to 6 mb per second (high speed home access networks have between .5 and 1.5 mbps), and allows users to do anything they would normally be able to do when connected to the Internet. They can use laptops or PDAs equipped with wireless cards to connect to the network. With additional Wi-Fi transmitters, a library system could establish a coverage area with a one or two mile radius around a library service outlet. Having the ability to extend wireless LAN capabilities using the concept of a Digital Canopy is a logical next step in providing service, and would provide an innovative tool in serving communities affected by poverty. If this capability were eligible for E-Rate support, more public libraries in Florida would be seeking to use innovative technology to better serve low income communities.[8]

Another innovation possible using wireless broadband technology is the development of a virtual online reference service available to rural residents from remote locations seven days a

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[8] *See* Declaration of Mark Flynn, State Library of Florida, at 2-3, attached hereto as Exhibit B.

week. Currently, there are 19 rural counties in Florida that cannot afford to offer access to a reference librarian throughout the day. With the use of broadband technologies, these rural libraries can access a "virtual reference service" hosted by the State Library in collaboration with other public libraries throughout the state, providing service to rural patrons comparable to the services available in urban areas. Virtual reference service employs "real-time" chat relay to allow a librarian to assist help library patrons navigate through an array of Web-based research source material. The reference librarian can show a patron how to use a particular database, how to judge the relevance of information available on the Web, and how to evaluate information provided by a Web site. Librarians can browse the Web with the users, showing them where to click, what to type and how to evaluate the resources once they are found. Once the user has found the information needed, the librarian can send a transcript of the live virtual reference session to the user's e-mail address so that the user has a copy of the relevant points that were discussed. In addition, this resource pool provides extended hours of access for its users.[9]

A bicoastal virtual reference program is already in existence. 24/7 Reference was originally developed by a consortium of libraries in Southern California. It now includes libraries from Hawaii to Boston. With libraries participating across time zones, patrons can access the services of a librarian no matter what time it is.[10] Each librarian is licensed and receives training on finding web sites with reliable information. Patrons have found the service

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[9] *See id.* at 3-4.

[10] "Libraries Can Supply Answers Any Time," *The Press Enterprise*, Feb. 9, 2002, attached at Exhibit E.

to be accurate and reliable, saving hours in research sessions.[11] The Library of Congress, inspired by the program's success, is implementing a world-wide on-line research center.[12]

Another example from Florida is the use of wireless technology to create local area networks within a library service outlet. For example, a library branch in Nassau County is using such a LAN that can support up to 253 laptops. This allows the library to use laptop computers, which require less space and can be readily adapted to the computing needs and style of library patrons within the building. This also provides the public library with a way to address the extensive space requirements of using traditional PC workstations connected by a wire to serve the public. The typical PC workstation connected with a wire requires an average of 35 square feet of space to create a public computing workspace for a single workstation. Many libraries in Florida are unable to afford the capital investment in brick and mortar to meet the demand for publicly accessible Internet workstations. Using wireless networking capability and laptops is an innovative way of extending access. Also, there is a trend for Florida public libraries to allow users to bring their own laptops into the building and connect into the wireless network. Florida libraries are also using wireless capability to create mobile computer labs that can be quickly setup in a community center to provide on demand computer training classes at community centers serving low income households.[13]

In Maryland, the Enoch Pratt Free Library in Baltimore functions as the state library for Maryland. One of the Pratt Library's functions is to operate "Sailor," which is an Internet-based network serving all 23 Maryland counties and the City of Baltimore. Tracing its beginnings to

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[11] "New Online Service May Change the Way America Surfs; Professional Librarians to be Available Online," *U.S. Newswire*, Aug. 21, 2001, attached here to at Exhibit E.

[12] "The Library that Never Closes," *Forbes ASAP*, Feb. 19, 2001, attached at Exhibit E.

[13] *Id.* at 2.

1990, the Sailor Project is the ongoing endeavor of the Maryland Public Library (MPL) community to facilitate access to information in electronic formats for the residents of the State of Maryland, without limitation of time of access, location of access point, or fee for access. Sailor's goal is to allow Maryland residents' access to electronic information and services from anywhere, at any time, at no charge. Sailor provides dial-up access to the Internet to any resident with a PC and a modem anywhere in Maryland. Related services include a networked interlibrary loan and virtual catalog application called Marina, and the Sailor Web Site, which provides rich content about Maryland. In addition, the program supplies Maryland libraries with consortium level purchases of commercial databases, and web site hosting for state and local government agencies and schools.[14]

Sailor strives to provide broadband services to every corner of the state. The State Library currently maintains the backbone and front-end network in the State. Libraries can receive broadband support by connecting to the Sailor point of presence. Nevertheless, there are pockets within the State to which the telecommunications industry has yet to extend advanced telecommunications capabilities. Libraries in these regions are limited to dial-up modem connections. Consequently, in the counties of Allegany and Garrett, Sailor has been unable to find wireline facilities to support advanced telecommunications. Due to the geography of the area and smaller populations, the wireline providers in these areas do not currently have business plans to provide advanced DSL services. Libraries in these regions have asked wireline providers to consider installing the necessary facilities to connect to the closest broadband connection. Unfortunately, such a connection can be so costly as to be prohibitive. Any provision of such wireline services is mileage-sensitive, and carries large intrastate fees, and

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[14] *See* Declaration of Patricia Wallace, Enoch Pratt Free Library/State Library Resource Center,

possibly interstate fees. Consequently, obtaining advanced telecommunications via wireline telecommunications is not an option to these communities. [15]

Sailor would like to ensure that all library constituents could use advanced telecommunication services. Currently, the best option for these underserved communities is wireless. By ensuring that wireless services are eligible for E-Rate funding, libraries in the mountainous western region of Maryland or the swampy southeastern region of Maryland would be able to receive broadband services. These areas of the state currently have wireless towers, but the antennas needed to bring broadband service to a library site are very costly. By adding wireless services as eligible for E-Rate funding, libraries will be able to take advantage of discounts that can make the necessary equipment affordable. [16]

These and many other innovations all across the country are transforming the way Americans use their local libraries. The E-Rate can and should be used to support this kind of effort, as part of the "evolving level" of service referred to in the statute, and as new truly "advanced" services appear. By lifting restrictions on the types of eligible services for which discounts are available, and ensuring that there is adequate funding for discounts for those services, the Commission can continue to meet the purpose of the statute. The technological explosion in libraries fuels the need for this program, and is evidenced by reviewing the requested funding for the program this year. The SLD estimates that it has received funding requests totaling $5.736 billion for Funding Year 5. [17] This figure is encouraging because it

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Baltimore, Maryland, attached hereto as Exhibit C, at 2.

[15] *See id.* at 2-3.

[16] *See id.* at 3.

[17] *See* FY5 Demand Estimate Letter to FCC from SLD, dated Feb. 28, 2002, available at http://www.sl.universalservice.org/

embodies the success of this program, yet it also highlights the serious need for advanced technology in our schools and libraries.

Even under the broadest and most generous discount regime, not all libraries would be able to fund all of the services they would like to provide. And of course, libraries depend on their own resources for the vast majority of the funds needed to implement the most advanced services. Libraries will continue to innovate, no matter what the Commission does. But the pace of this innovation depends to a great degree on the availability of E-Rate funding and the ways that funding can be used, particularly in the case of smaller libraries and libraries in less well-to-do-communities.

II.   THE ISSUES RAISED BY THE NPRM REGARDING THE DEFINITIONS OF SERVICES ELIGIBLE FOR DISCOUNTS CANNOT BE CONSIDERED IN ISOLATION.

In Section III.A.1, ¶¶ 15 – 22, the NPRM seeks comment regarding the definition of eligible services. Specifically, the NPRM asks whether the Commission should reassess the degree to which Wide Area Networks ("WANs"), wireless services, and voice mail should be eligible for discounts. These are important questions, but they cannot be addressed properly without considering a number of additional issues.

In principle, the three services identified in the NPRM should be fully eligible for discounts. The Commission has broad authority to determine the scope of eligible services. Section 254(h)(2) directs the Commission "to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries." The three services identified above are increasingly commonplace in today's