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ALA American Library Association

September 20, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: CC Docket No. 02-6

Dear Secretary Dortch:

On September 11, 2012, Marijke Visser, Assistant Director, Office for Information Technology Policy, American Library Association (ALA) and Linda Schatz, consultant to ALA and President, EdTech Strategies, LLC, met with Lisa Hone, Regina Brown, James Bachtell, and Cara Voth (by phone) to discuss comments filed on the proposed Funding Year 2013 E-rate Eligible Services List.

Meeting participants discussed the comments submitted by SECA (and supported by other commenters) that proposed that the Categories of Service in Priority One be eliminated. In particular, the following observations were made:

- ALA agrees with SECA's comments that the FCC's proposed changes to the Eligible Services List are "less than optimal."
- ALA agrees with SECA's comments that introducing new "section titles [Communications Connectivity and Voice Services] may also be confusing." ALA shared with the FCC that when they posed the question to Library State E-rate Coordinators as to whether they felt the reorganization of the Eligible Services List would be helpful, not one Library State Coordinator felt that the changes would be. In fact, the Library State Coordinators expressed concern about the number of calls that would be generated to them seeking clarifications and the need for re-training applicants when there is limited or no staff to do so. ALA also expressed that these new titles would be particularly confusing given that the titles appear to be categories of service given that the Eligible Services List is visually organized as it has been in the past. ALA also pointed out that, as a practical matter, changing the ESL without substantive value to those filing over 47,000 applications could easily cause more harm than good.
- ALA also agrees with SECA that the "distinction between two of the existing groupings, "Telecommunications Services" and "Telecommunications" is a fine

regulatory point, understandably confusing to most E-rate applicants" and that "a far larger problem…under which a product or service must be listed in the proper service category and, in some cases, provided by the proper type of service provider" is problematic. We believe and agree that the failure of applicants to file in both the Telecommunications Services and Internet Access may result in funding denials.

However, ALA indicated that they disagree with the solution proposed by SECA to eliminate the Categories of Service within Priority One and change the program to have "only two Categories of Service on the Form 470 and Form 471" (and therefore on the Eligible Services List) for the following reasons:

- There are CIPA regulatory requirements that impact only the Internet Access and Internal Connections Categories of Service—not the Telecommunications Category of Service. The need to layer on additional PIA review to check every application for the applicability of this exemption beyond a category of service check will likely lead to more burden on both PIA and applicants during the PIA review process thereby slowing the release of Funding Commitments.
- There are regulatory requirements as to which Service Providers may provide Telecommunications Services.
- Combining the Telecommunications Services and Internet Access Categories of Service will likely limit or complicate options available to the FCC, should they be required, to revise the Rules of Priority to apply to Priority One services. Without additional funding, new Rules of Priority will likely be necessary in the near future to address the fact that demand will exceed the dollars available for Priority One services.

ALA also pointed out that given the nuanced program changes brought about by the Sixth Report and Order which requires applicants to file for "Telecommunications" in the Internet Access Category of Service, and because of the new interpretations as to which Service Providers can provide which services, we do agree with SECA that applicants are being denied services just because they chose the "wrong" category of service or because they didn't understand how to ask for services in both the Internet Access and Telecommunications Categories of Service.

In order to reduce those denials, we propose an alternate solution that does not violate the program's regulatory requirements but which we believe will achieve the same outcome—elimination of the denials brought about by category of service mis-matches between the Form 470 and Form 471 and the need to try to visually change the Eligible Services List—a format that has been used since the beginning of the program and to which applicants have become accustomed.

ALA proposed the following alternative solution:

A. Remove the online system "check" or "test" for the same category of service between items 8, 9, 10 and/or 11 on the Form 470 and Item 11 on the Form 471 from the PIA review and subsequent funding commitment decision processes.

B. Require the categories of service to be correctly chosen only at the time of the Form 471 filing when the information is known.

ALA offered the following observations related to this proposed solution:

1. Fair and Open Competition:

As a practical matter, asking applicants to choose a category of service (or more accurately, to "guess" a category of service) at the time of the Form 470 submission is contrary to the requirements for a fair and open competition given the new interpretations and program changes brought about by the Sixth Report and Order. If applicants are truly conducting a "fair and open competition," it is impossible to know at the time of the Form 470 filing which category of service should be checked on the Form 470. Given the new and nuanced interpretations of the law which now allow for non-telecommunications carriers to provide certain services and the resulting requirement to ask for "Telecommunications" funding in the Internet Access Category of Service, the reality is that until proposals are submitted, the requested services are evaluated, and a provider of services has been chosen in that service provider selection process, **it is now impossible to know at the time of the Form 470 filing which category of service should be checked.**

2. Elimination or Reduction of Category of Service Denials:

If the online system "check" or "test" between the Form 470 and 471 is removed, and if the requirement for the "correct" category of service was thereby limited to the Form 471, we believe the denial problems for mismatched services between the Form 470 and 471 would be solved. Given that program rules require that agreements for Tariffed and Month-to-Month services and contracts for contracted services must exist prior to the filing of the Form 471, applicants must know who the provider of services will be at the time of the Form 471 and could therefore correctly check the correct category of service at that time thereby eliminating the mismatch between the Form 470 and the Form 471 which currently can lead to denial.

3. No need to change FCC Forms 470 or 471 or the Categories of Service organization on the Eligible Services List:

Every time the Forms and instructions are changed and new terminology is introduced, the confusion related to the program and compliance seems to become more problematic, not less. The fact of the matter is that many of the people who apply for funding on behalf of their schools and libraries cannot, on a practical basis, stay on top of the nuances.

The simple removal of this online system "check" or "test," during the application review process allows the Forms 470 and Form 471 to remain as they are now; the operational change is not seen by the applicant but the damage done by the disconnect between the Form 470 and 471 is removed.

While the FCC/SLD could choose to communicate the fact that there is no longer a penalty if the category of service is not the same on the 470 and 471, the reality is there is no harm if it is not and thus the Forms familiar to the applicant would not need to change. Applicants simply would not be denied if there is a mis-match. Form 471 program guidance could be strengthened to indicate which categories of service should be checked depending on the provider chosen during the procurement process.

Conversely, trying to explain to 47,000 applicants (not just 100 school and library State E-rate Coordinators or those who are able to attend SLD training workshops) that there have been different names given to sections that they currently understand to be categories of services on the ESL and then explaining how to cross connect those new terms as "groups" that are not categories of service to the "real" categories of service, all the while explaining that the labels on the ESL do not correspond to the "real" categories of service on the Forms 470 and 471 and that the categories of service on the Forms 470 and 471 have been collapsed into Priority One will undoubtedly cause an additional onslaught of confusion that could be avoided.

4. <u>Burden on Service Providers—Search Posted Form 470:</u>

To the extent that applicants correctly guess at the right category of service on the Form 470, such information may be helpful to Service Providers in determining to which procurements they may want to respond. However, given that Service Providers can filter the categories of service, the states, and the period of time since they've last searched, one would not believe it would be too much effort for Service Providers to continue to search both the Telecommunications Services and Internet Access Categories of Service should they be concerned about applicants getting the category "wrong" on the Form 470.

A further benefit of eliminating the online system "check" or "test" is that applicants would not have to try to figure out how to describe services differently to fit both the Telecommunications Services and Internet Access Categories of Service on the existing Form 470 as they have been instructed to do in the past.

We acknowledged that in most situations it does not make sense to ask for information that is not needed or required—in this case the Priority One category of service on the Form 470. However, if we assume that the categories of service are still necessary to be indicated on the Form 471 (due, at a minimum, to regulatory requirements as to which Service Providers can provide Telecommunications Services and the compliance requirements of CIPA), then we would argue that giving a "good faith guess" as to the category of service on the Form 470 <u>might</u> be helpful to some service providers in terms of which procurements they choose to provide—<u>as long as there are no penalties for guessing incorrectly on the Form 470.</u>

In addition, applicants benefit from having consistency in the Forms they are required to submit – which is of significant value for those whose full-time responsibilities are other than E-rate and for

whom program nuances or changes are difficult to successfully navigate. Finally and—most importantly—if there is no harm to applicants for getting it "wrong" on the Form 470—meaning no denials for category of service mismatches between the Form 470 and Form 471— there is little advantage in changing the Form 470.

In summary, we proposed that:

1. <u>The online operational "check" or "test" that takes place between Items 8-11 of the Form 470 and Item 11 of the Form 471 be eliminated; and that</u>

<u>2. The requirement that the category of service be correctly chosen is limited to the Form 471 filing when the information is known.</u>

We believe this solution addresses the problems identified by SECA but without eroding the regulatory framework of the program which is based on categories of service.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

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