Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Advancing Broadband Availability Through Digital Literacy Training	)	WC Docket No. 12-23

Advancing Broadband Availability for Low-Income Americans through Digital Literacy Training

The American Library Association (ALA), the oldest and largest professional library association with over 60,000 members, is pleased to submit comments on the Federal Communications Commission's Further Notice of Proposed Rulemaking (FNPRM) and, in particular, on the proposal to establish a digital literacy training program to accelerate broadband adoption among the nation's low-income population.

Summary

ALA strongly supports the Commission's proposal to use savings from the Lifeline program to increase digital literacy training in our nation's libraries and schools. Leveraging existing technical infrastructure, expertise, and community relationships will speed the entry of the low-income population into the digital age.

We appreciate the Commission's acknowledgement of the important role U.S. public libraries already play in supporting and advancing digital literacy. We welcome the opportunity to build library capacity to better meet the needs of broadband non-adapters, particularly those who cite digital literacy and relevancy as the leading barriers to broadband adoption. Twenty-first century digital skills are essential to full participation in civic life and our nation's economy, a trend that will only intensify in the future. ALA believes investing in library and school capacity to meet

these challenges is efficient and ultimately the most effective means to reach that part of the population furthest behind in broadband adoption.

To best achieve the goals of increasing digital literacy and building library capacity in this area, ALA opposes limiting funds only to libraries and schools that do *not* currently offer formal training programs. While we fully support seeding new training programs and offer suggestions for how to best enable this to occur, we also know that many public libraries that currently offer training are unable to meet community demand. ALA believes that a community's level of poverty should be the first determinant for prioritizing library applicants.

In designing a digital literacy initiative, the Commission should allocate funding sufficient to enable libraries to establish robust, scalable, and sustainable programs. ALA recommends that the Commission invest a minimum of $25,000 per entity per year and consider a two-year application cycle. Moreover, the Commission should allow for consortium applications such that the consortium would receive $25,000 per member, but the consortium would determine how to allocate funds to individual consortium members to meet program goals.

ALA remains strongly opposed to funding digital literacy training or other related activities through the E-rate program. ALA believes that the Commission's suggestion to channel funds made available from Lifeline reform through the E-rate program unlawfully comingles the purposes of the digital literacy initiative with the standing structure of the E-rate program. Furthermore, ALA believes that each of the four funding mechanisms within the Universal Service Fund provides critical and unique support and is, therefore, best administered separately to meet the unique challenges of each constituency served by these programs. The Commission should structure this new initiative intended to support digital literacy and home broadband adoption as a separate program under the umbrella of the Lifeline program.

The Commission should develop the digital literacy program and application process in consultation with other federal agencies like the Institute for Museum and Library Services (IMLS) and the National Telecommunications and Information Administration (NTIA), as well as the Chief Officers of State Library Agencies (COSLA), all of which have extensive experience in administering content programs to the library community. ALA also looks forward to future opportunities to work with the Commission throughout the process of developing and implementing a digital literacy program.

Introduction

In order to provide digital literacy training programs in public libraries through savings from Lifeline reform, ALA makes the following points:

1. Digital literacy is vital to ensuring equal opportunity in a knowledge economy;

2. Public libraries are ideally positioned to support digital literacy training;

3. Public libraries need additional resources to meet demand for digital literacy training;
4. Any program design to address digital literacy must have the flexibility to meet community needs and build library capacity;
5. It is appropriate to use savings from Lifeline reform to support digital literacy training and broadband adoption for low-income people; and
6. Funding for digital literacy training through libraries should be separate and distinct from the E-rate program and should be administered thusly.

ALA defines digital literacy as "the ability to use information and communication technologies to find, evaluate, create, and communicate information, requiring both cognitive and technical skills."[1] Libraries of all kinds – in K-12 schools, colleges and universities, as well as public libraries – have a long history of providing programs and services that help people seeking information, whether in print or increasingly online, develop the competencies that allow an individual to find and effectively use information. Public libraries also have deep knowledge and community linkages to support the basic literacy that must be present before digital literacy can be developed.

Public libraries in communities across the country provide a "triple play" of resources: 1) facilities and physical access to technology infrastructure; 2) a wealth of electronic content; and 3) staffing by information professionals trained to help people find and use the information most relevant to their needs. Libraries already engaged in digital literacy and technology training report that the most successful programs combine formal and informal training and allow for opportunities for learners to practice their newly acquired skills.[2] Additionally, many classes do not teach these skills in isolation but link them to specific outcomes, such as those for employment or financial literacy. Libraries report a growing demand for technology services, including computer classes, one-on-one training and open lab time at the same time many libraries are suffering budget cuts that constrain their capacity to provide this critical support.

Libraries are especially adept at not only teaching patrons the skills they need to solve immediate problems, but they also help individuals develop the ability to transfer skills and build on them so they are better prepared for future changes in technology. Having such skills is a prerequisite to be able to perform such essential tasks as finding and applying for jobs, securing healthcare information, accessing government services, advancing education, and participating in civic processes. The lack of such abilities puts a segment of the population at risk to becoming further left out of today's information society.

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[1] See http://www.districtdispatch.org/2012/04/defining-digital-literacy/.

[2] ALA also notes that the Social Sciences Research Council report, *Broadband Adoption in Low-income Communities*, commissioned for the National Broadband Plan, discusses the benefits of formal and informal skill-building in third spaces – including in libraries. See http://webarchive.ssrc.org/pdfs/Broadband_Adoption_v1.1.pdf, p. 42.

There are 16,698 public library outlets, of which the vast majority offer formal *or* informal digital literacy training to patrons.[3] These outlets are found in virtually every community across the country, and all members of a community are eligible for service. The public library plays a key role in bridging the communities' digital literacy skills and broadband adoption gaps.

ALA is on record with the Commission in supporting the idea that access to the network infrastructure – affordable and available high-capacity broadband – is but one component to broadband adoption.[4] The infrastructure itself cannot be the desired outcome underlying the national purposes as stated in the National Broadband Plan. ALA commends the Commission for recent steps taken to increase the availability of affordable broadband to our schools and libraries via the E-rate program, to businesses and residential households via the Connect America Fund, and with the most recent Lifeline Order, as well as the public-private partnership efforts underway by Connect to Compete.[5] The lack of digital literacy as a barrier to broadband adoption is a critical issue that must be addressed in a timely and thoughtful manner if the Commission's goal of enabling the last one-third of the population to subscribe to broadband is to be realized.

Digital Literacy Programs for Public Libraries

Eligibility

The Commission asks a series of important questions about eligibility criteria and how to prioritize distribution of funding to maximize the goals of expanding access to serve low-income consumers. One proposal to do so would be to limit funds to entities that do not already offer formal digital literacy training services. While ALA appreciates the Commission's concerns about displacing existing funding sources, and we fully support seeding new training programs where none currently exist, we believe limiting funds in this way runs counter to the overarching goal of expanding access to serve low-income people. ALA is concerned that in the Commission's attempt to increase the availability of *formal* digital literacy training to a wider portion of the population it does not take into account libraries that may have some digital literacy programs in place but are unable to meet demand for training. One example of this is a

[3] Hoffman, Judy, John Carlo Bertot, Denise M. Davis, and Larra Clark. Libraries Connect Communities: Public Library Funding & Technology Access Study 2010-2011. Digital supplement of American Libraries magazine, June 2011. Available at http://viewer.zmags.com/publication/857ea9fd. p. 32.

[4] ALA submission in the Matter of GN Docket No. 09-47, GN Docket No.09-51 and GN Docket NO. 09-137. Available http://apps.fcc.gov/ecfs/document/view?id=7021688452.

[5] ALA submission in the Matter of WC Docket No. 11-42, CC Docket No. 96-45 and WC Docket No. 03-109 Available http://apps.fcc.gov/ecfs/document/view?id=7021240329. See also ALA submission in the Matter of WC Docket No. 10-90, GN Docket No. 09-51, WC Docket 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109. Available at http://apps.fcc.gov/ecfs/document/view?id=7021239757.

public computing center in Cortez, Colorado, where "computer classes are so full that people are practically fighting to get into them."[6]

ALA asks that library outlets that currently offer some training be allowed to apply on an equal footing with new entrants if there is an identified community need for digital literacy training that exceeds current capacity. There are several reasons for not limiting this potential new program only to new entrants, including: 1) While urban libraries are the most likely to currently offer some sort of digital literacy training, they serve the greatest percent of the U.S. population and have reported the greatest increase in community demand over the past few years; and 2) There is a need to increase digital literacy training options in smaller and rural communities, but these libraries often face additional challenges this potential program will not address (such as limited facilities, equipment, and operating hours). As the Commission develops a digital literacy initiative, it should take into account the variation in the starting level of library capacity – including the physical infrastructure, broadband availability, and staffing – in relationship to the community needs as identified by the library.

Sixty percent of the U.S. population is served by a relatively small number of library systems (about 550 out of 9,225 library systems).[7] To reach the greatest number of people in need it is important to ensure that urban libraries, about 59 percent of which currently offer training, are able to expand capacity where there is need. Overall, patron technology use has climbed during the economic downturn, but urban libraries consistently report the greatest demands. For example, about 41 percent of urban libraries reported that use of patron technology classes increased between fall 2009 and fall 2010.[8] Also, because these libraries have created an infrastructure to provide training, they are well-positioned *now* to take advantage of a new digital literacy funding opportunity.

Secondly, rural libraries are the least likely (compared with their urban and suburban peers) to currently offer technology training. Only 25 percent currently offer formal training classes, due in part to limitations of facility size, available public computers, and available staffing and staff expertise. The FCC proposal to support staffing and staff training to support digital literacy through this initiative addresses the most common barriers cited by libraries,[9] but not all of them. Rural libraries, for instance, provide an average of 10 public access computers, compared to 20

[6]Colorado Board of Education Quarterly Performance Progress Report for Public Computer Centers, Fourth Quarter 2011. http://www2.ntia.doc.gov/files/grantees/08-42-b10596_ppr2011_q4.pdf

[7] Calculation based on FY2009 data from the Institute of Museum and Library Services, Tables 1A and 1B. Sixty percent of the U.S. population is served by libraries in legal service areas greater than 100,000 people. Six percent of all public library systems serve communities greater than 100,000 people. Six percent of 9,225 equals 553.

[8] John Carlo Bertot, et. al. Public Library Funding & Technology Access Survey: Survey Findings and Results. June 2011. http://www.plinternetsurvey.org/sites/default/files/publications/2011_plftas.pdf. Figure 19

[9] Colorado Board of Education Quarterly Performance Progress Report for Public Computer Centers, Fourth Quarter 2011. http://www2.ntia.doc.gov/files/grantees/08-42-b10596_ppr2011_q4.pdf

in suburban and 28 in urban libraries.[10] These barriers may impact the ability of smaller libraries to participate in this new program and should be mitigated as much as possible in the program design. For instance, the proposed investments in trainers, staff training, curriculum development, software, marketing, volunteer recruitment and administration may be the incentive many libraries need to overcome structural barriers by creating mobile labs or partnering with other community agencies to provide off-site training for community members. Making these allowances, as well as enabling consortium applications and developing streamlined requirements, will enable the most libraries to build capacity and create new programs to serve their communities – regardless of population size.

Finally, eligibility should be determined at the outlet (or branch) level, but administered at the system, regional or state level. For example, the Anacostia branch library in the District of Columbia could be targeted for new or expanded training, but the application would be made by the DC Public Library system on behalf of this branch (and/or others) that are most accessible to the target population(s) for training.

Integrating flexible program design

The Commission seeks comment on the effectiveness and benefits of formal digital literacy training classes compared to informal digital literacy guidance provided by librarians and others to consumers who have not adopted broadband.[11]

While 38 percent of libraries offer formal training, a much larger percent of libraries (79 percent) support "point of need" training for library patrons. Notably, there is little difference between urban (79 percent), suburban (81 percent) and rural library (77 percent) support of informal point-of-use training.[12] Often community members come to the library to solve a specific need at a specific moment – someone needs to fill out a job application and submit it online but does not have an email account nor knows how to attach a document to an email; or someone has been told to renew her immigration status but she does not know how to find the forms on the government website. This contextualized and highly relevant training support provides an entree for the person to be introduced to the idea of participating in a class on basic skills needed for employment, for example, that would reinforce the one-on-one help and tie formal training to a specific desired skill.

Not only does informal training often open a door to deeper training, it allows new users to practice and reinforce skills in a way that is personally relevant. Libraries consistently report

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[10] Hoffman, Judy, John Carlo Bertot, Denise M. Davis, and Larra Clark. Libraries Connect Communities: Public Library Funding & Technology Access Study 2010-2011. Digital supplement of American Libraries magazine, June 2011. Available at http://viewer.zmags.com/publication/857ea9fd. Figure C-1, p 26.

[11] http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf. Paragraph 426.

[12] Hoffman, Judy, John Carlo Bertot, Denise M. Davis, and Larra Clark. Libraries Connect Communities: Public Library Funding & Technology Access Study 2010-2011. Digital supplement of American Libraries magazine, June 2011. Available at http://viewer.zmags.com/publication/857ea9fd. Figure C-17, p 33.

that providing support for their patrons to be able to do a specific task online (e.g., apply for the federal Temporary Assistance for Needy Families program, monitor a child's progress in school, renew certifications for work) is a critical daily task for librarians and library staff.

Successful formal classes often also are topical. For example, libraries might teach basic computer skills in a class where the participants learn to clip coupons and teach Internet search skills by planning for a trip. Libraries with BTOP projects have reported they are offering staffed lab time for people to practice newly acquired skills or time for those who need extra support learning a particular skill.[13] Nationally, about 28 percent of all libraries offer one-on-one training by appointment.[14] As the Commission notes, creating a personally relevant interaction with broadband is a significant motivator for a reluctant user to make the leap to broadband adoption. This variety of informal training allows libraries to offer well-rounded and effective digital literacy support no matter the size and capacity of the library.

Formal and informal support

To be most effective in supporting training and adoption, informal and formal online training options should be eligible to receive funding. ALA does appreciate, however, that there are limited funds available, and these funds should be targeted in the most efficient way. ALA encourages the Commission to allow libraries to design a *suite of training options* that would meet the needs of those patrons seeking digital literacy support. This may be accommodated, for example, by supporting a specific range of staffed open lab hours and/or one-on-one appointments, individual classes with an instructor on specified topics, or a series of formal classes covering relevant topics in more depth, as part of the total funded program.

For example, in St. Paul, Minnesota, the public library branches offer formal training including basic digital literacy, job search, and micro business development. Classes are supplemented with a variety of one-on-one support, including open computer lab sessions staffed by a librarian; walk-in computer help staffed by a technology education volunteer, computer classes for older adults in partnership with the Community Education Senior Program, adult learning labs for job skills, classes for teens run by a "teen tech crew," and computer basics practice groups for patrons needing extra time to practice.[15]

Libraries are well versed in designing programs that respond to a community need and are directly relevant to the demographics of a particular community, which are key to ensuring long-term adoption. For example, many libraries have developed workforce training programs, including resume writing, online job search techniques, and starting an online professional

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[13]Personal communication, March 15, 2012, Division of Library Development, New York State Education Department.

[14]Hoffman, Judy, John Carlo Bertot, Denise M. Davis, and Larra Clark. Libraries Connect Communities: Public Library Funding & Technology Access Study 2010-2011. Digital supplement of American Libraries magazine, June 2011. Available at http://viewer.zmags.com/publication/857ea9fd. Figure C-17, p 33.

[15] St. Paul Public Library, http://www.sppl.org/.

presence.[16] Of libraries that offer formal classes, for instance, the percentage that offer training in accessing online job-seeking and career-related information has grown to 48 percent overall, up from 27 percent only two years earlier.[17]

In other communities, the focus may be on getting older adults online with basic email introduction, Facebook 101, and Skype. The St. Paul library system hires native speakers in one of six languages – Hmong, Spanish, Karen, Somali, and two Ethiopian dialects – to provide computer training through a "mobile workplace." The trainers receive a small stipend and spend about ten hours per week bringing training to community centers where the different populations already are engaged in activities. The mobile workplace consists of a car with ten laptops. The library reports that these on-site sessions are fully subscribed and that with additional funds could easily be increased and filled.[18]

Kentucky BTOP project "PCC Workforce Opportunity Expansion" administrators confirm the importance of providing both informal and class learning opportunities. Participating local libraries consistently report that it is challenging to recruit participants for formal classes, but that there are many patron requests for one-on-one training. During a six-month period, just over 3,430 people participated in formal training, but library staff answered more than 24,350 technology-related questions. One reason for this is the wide range of skill levels among program participants. Even in small classes, one instructor reported that, "When we got down into the details of creating the resume, the skill level varied so widely among the group that one instructor wasn't nearly enough to help everyone who needed it. It was easy to lose their enthusiasm if you couldn't get to them right away."[19] Another factor may be long or unpredictable work or child care schedules, which make it difficult for family members to pre-plan attendance at a specific formal event.

ALA suggests that the digital literacy program guidelines should allow libraries to develop a digital literacy training package that would encompass formal classes, staffed lab time, one-on-one training by appointment, and training options held off-site when sponsored and managed by the library applicant. The library should be able to determine which program model best addresses community needs and to design a comprehensive program that can be adjusted to ensure the program remains relevant and reaches the target population.

Prioritizing and reaching target populations

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[16]Broadbandexpress@yourlibrary, http://www.nysl.nysed.gov/libdev/nybbexpress/index.html.

[17] Hoffman, Judy, John Carlo Bertot, Denise M. Davis, and Larra Clark. Libraries Connect Communities: Public Library Funding & Technology Access Study 2010-2011. Digital supplement of American Libraries magazine, June 2011. Available at http://viewer.zmags.com/publication/857ea9fd. Figure C-18, p 33.
American Library Association. Libraries Connect Communities3: Public Library Funding & Technology Access Study. ALA: 2009. Also available at: http://www.ala.org/research/initiatives/plftas/previousstudies/0809. Figure C-27, p. 48

[18] Personal communication, March 6, 2012, Director, St. Paul Public Library.

[19]Personal communication, March 16, 2012, E-rate Consultant, Kentucky Department for Libraries and Archives.

The Commission seeks comment on criteria for selection of recipients. As noted, there are several demographic populations that need more help with digital literacy and often also overlap with the low-income consumers the Lifeline program serves. Assuming funding results from savings in the Lifeline program, ALA believes a community's level of poverty should be the first determinant for prioritizing applicants. The library community has standards in place for evaluating level of poverty in proximate distance to public library outlets that may be applied to ranking program applicants or determining an appropriate cut-off point for eligibility based on community poverty as reported in the most recent American Community Survey. Proximate distance will vary depending on the metropolitan status (e.g., urban, suburban, town, rural) of the library building. IMLS has geolocated all 16,698 stationary outlets, allowing for this kind of analysis and targeting.[20]

ALA also proposes flexibility for applicants to make a case for training that is connected to level of unemployment or level of education or to specific target audiences, such as non-English speaking populations, elderly and people with disabilities. In each case, the library could use data from the 2010 American Community Survey to determine which additional population the library program would target. ALA believes the program design should allow the recipient of the funds to certify how funds will be targeted to specific populations as the local library is the best equipped to determine which populations or extenuating circumstances should be addressed through digital literacy support

Reaching the target populations

The Commission also seeks comment on how we may ensure non-adopters are aware of and can access digital literacy training established with new funds. Libraries have a long history and deep experience with outreach into diverse communities, often in partnership with other local community-based organizations. The ALA Office for Literacy and Outreach Services, for instance, shares effective practices and resources for serving specific populations, including older adults, people with disabilities, adult learners, non-English speakers and tribal communities.[21] Many libraries also have gained experience and resources geared specifically to community outreach as part of BTOP projects,[22] and many award recipients have documented their challenges and successes reaching target audiences.[23]

ALA also notes that the recent BTOP projects have yielded numerous examples of outreach techniques and reports reflect the targeted number of class participants in comparison with actual numbers. It would be possible to assess the various outreach methods and determine which are

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[20] Institute of Museum and Library Services. Public Libraries in the United States Survey. http://www.imls.gov/research/public_libraries_in_the_united_states_survey.aspx
[21] ALA Office for Literacy and Outreach Services, http://www.ala.org/offices/olos
[22] National Telecommunications and Information Administration. *Recipient Toolkit: Stakeholder Outreach and Sustainability*. http://www2.ntia.doc.gov/files/btop_tookit_2_122110_final.pdf.
[23] NTIA Broadband USA website: http://www2.ntia.doc.gov/.

effective. In using such a comparison, however, it will be critical to make allowances for community and demographic differences so that the applicant would be able to determine which outreach techniques would be most effective to reach the target population of that community.

Building Capacity of Libraries

The Commission seeks comment on which services and activities should be supported to allow for formal digital literacy training to take place in libraries and schools. ALA commends the Commission for noting the most critical resources libraries need to support digital literacy training in the FNPRM – including labor costs, staff training, curriculum development and outreach.[24]

Libraries consistently identify three challenges in helping patrons seek and apply for employment: limited staff, lack of staff training, and insufficient public computer terminals. These barriers also are true for helping patrons with e-government needs, and ALA believes they also inhibit libraries' ability to provide formal digital literacy training classes. Staffing concerns include staff for the formal classes, but also staffing to manage volunteer recruitment efforts.[25] Funds should be dedicated for staff costs that may include, but not be limited to: curriculum development and other preparation time; professional development for library staff; and training for volunteers and part-time staff hired specifically to provide training to the public, whether this training is conducted by library staff or by outside trainers identified by the library. Additional labor costs incurred for programming such as outreach and administration should likewise be eligible for funding.

ALA opposes a match requirement

ALA feels strongly that requiring a match of any amount will disadvantage many libraries, especially those most likely to benefit from an infusion of funding for digital literacy support. ALA notes that many libraries, particularly smaller libraries, did not apply for BTOP funding because of the match requirement and preference given to applicants with a cash match. Libraries also report that they are not always able to apply for all of the E-rate eligible services they would like to because they cannot afford the non-discounted portion – effectively a match requirement – of the eligible services. Lastly, the administrative overhead required for overseeing a match places a burden, again, especially on smaller libraries with five or fewer total FTEs (56.5 percent of public libraries), that is not commensurate with the award amount the Commission is proposing. ALA believes that a similar issue would arise in this instance; many libraries will be unable to apply if there is a match requirement.

[24] http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf, Paragraph 436.
[25] Personal communication, March 29, 2012, Project Coordinator, Colorado State Library.

An appropriate amount of funding

The Commission asks whether $15,000 per entity per year is adequate for an entity to provide eight-ten hours of formal training per week. ALA believes that the Commission's goal of increasing the number of facilities that provide training is laudable but is concerned that the funding amount proposed will not be sufficient for enabling the quality of program that would actually increase the number of individuals who are proficient in digital skills. This concern is exacerbated by the fact that, with a match requirement, new funding will actually amount to $10,500 per local library.

ALA commends the Commission for using information from BTOP projects that include a digital literacy training component, but ALA respectfully disagrees that $15,000 accurately reflects the costs incurred by library BTOP projects. ALA has queried a number of state library agency staff who manage BTOP projects and notes that training costs vary depending on urban/rural location, as well as library size and other factors. Libraries have reported that formal classes and staffed open labs average between $60 and $70 per hour of class in one area of the country, but in another the average amount requested for training support was $40.[26] Expenditures required for a complete digital literacy program include, but are not limited to: costs for course materials whether purchased, assembled from online resources or collected from other existing library resources; staff time and materials for outreach; staff time for volunteer recruitment and management; staff time for assessment; and administrative oversight costs. There also are costs associated with maintaining equipment and facilities used for providing training. These could include heating and lighting, computer maintenance and software updates, as well as janitorial and security services.

ALA believes that the proposed $15,000 per entity would cover *less than half* of the required staff time of a trainer for formal classes and program management, and some combination of volunteers, work-study students, or other paraprofessional staff that could be responsible for the informal training components such as staffed labs, or one-on-one appointments. In consultation with library staff from several different states, ALA believes that the real costs of a complete, rigorous, and sustainable digital literacy program are approximately $45,000 per year, with some variation depending on rural or urban location. This amount would cover the total costs incurred for administering and implementing a digital literacy program.[27]

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[26] Personal communication, March 12, 2012, E-rate Consultant, Kentucky Department for Libraries and Archives. See also http://www2.ntia.doc.gov/grantees/NY_StateEdDepartment.

[27] In consultation with library staff involved with digital literacy programs, ALA assumes that a formal class is one to two hours per class. Class size is ten participants per trainer. Some libraries elect to have stand-alone classes while others hold short class series usually no more than four classes per series. Some libraries design a combination of the two so that participants may elect to take a class on a specific topic or enroll in a series in which the subsequent classes build on previously learned concepts. Admittedly the total cost depends on budget components and local economic conditions that can vary considerably; however, we find that $15,000 would seldom be adequate for the kind of digital literacy program envisioned in the FNPRM.

While $45,000 more accurately reflects the complete cost of a program, ALA appreciates that there are differences in what a large urban library may need compared to a more rural counterpart. Some libraries are only open 20 hours a week and would understandably not require as much to build a digital literacy program. Libraries that already offer some form of digital literacy training would also likely not require a full $45,000 to upgrade their offerings, given that there are start-up costs that would only be incurred over a short period of time. ALA also notes that some cost savings would be likely in a consortium application as some resources could be shared across the consortium (e.g., curriculum and outreach materials, technology support staff, and class trainers). Taking these variations into consideration, in addition to the fact that this is a new program and the Commission cannot predict the number of applicants nor the impact of the program in its initial year, ALA proposes that a reasonable amount per entity could be $25,000. While many libraries would still incur costs in excess of this figure, such an amount would motivate more libraries to undertake the application process seeing that the benefit would be such that they could design a robust program where the benefits to their patrons would be clear.

Additionally, because ALA believes that consortium applications are the most effective means to reaching the largest number of libraries, the entity applying on behalf of individual libraries should be able to determine which of that set should receive what percentage of the total funds available to the consortium. Consortium applicants should be able to apply for an amount larger than the proposed $15,000 (or the $25,000 ALA proposes) per applicant and then determine the percentage of the applied for amount for each member library depending on individual library need and current capacity for providing digital literacy support. Criteria for such determination should reflect the program goals of reaching low-income users, as well as additional target populations and specific community needs determined by the applicant (e.g., workforce development or ESL programs). The consortium applicant is best positioned to determine which of the member libraries are equipped to design and implement digital literacy programs that most effectively meet the needs of their service area.

Appropriate length of the program

The Commission rightly asks for input on the length of the proposed program and whether applicants would apply yearly for funding or receive funding for the full life of the program through an initial application. ALA appreciates the conundrum of whether supporting a long-term investment in a smaller number of applicants would result in greater positive impact than allowing a larger pool of applicants to receive a lesser amount of funding. In information gathered from BTOP projects, ALA understands that for new entrants there is a significant amount of start-up time required before a program is fully ready to launch. Additionally, some of the projects report that they spend significant time preparing for sustaining the project activities once the funding ceases.

ALA suggests that the Commission consider offering a two-year cycle for applications. Applicants would receive funding for two years, and those that receive funding in the first two

years also would be able to apply for funding in the subsequent years. While this necessarily lowers the total number of applicants, ALA feels strongly that the effort and commitment required to successfully design and implement a program – including the administrative oversight – requires more than a one-year program to have significant positive impact on the targeted population that would be receiving digital literacy training. ALA commends the Commission for introducing the program as a pilot such that it may learn from the proposed four years what impact digital literacy support has on broadband adoption.

In order to ascertain the true impact that supporting digital literacy training has on broadband adoption, as well as economic growth and other social benefits brought by broadband, ALA suggests that the Commission establish program review periods. After the initial startup year, the Commission should assess the progress of the program and continue the research into year three so that at the end of the fourth year, the Commission would be able to report on the total impact of the program. Such research would inform any future direction the Commission or another federal agency might take to sustain and/or spur investments in digital literacy. Additionally, these case studies and other research from these assessments can be made generally available to stimulate digital literacy efforts throughout the library community and beyond.

Special considerations for tribal libraries

ALA submitted comments to the Commission's Notice of Inquiry *Improving Communications Services for Native Nations* (NOI), noting that tribal libraries face similar obstacles to providing services to their patrons that libraries on non-tribal lands have, but these obstacles are exacerbated by extreme lack of physical infrastructure.[28] ALA urges the Commission to continue to be vigilant in addressing the needs of tribal communities but that as they do so, they include support for tribal libraries and other tribal organizations as identified by the appropriate tribal leaders so that they have the capacity to provide digital literacy training to their communities. In preparing the comments, ALA consulted with the American Indian Library Association (AILA), an affiliate of ALA that serves native communities from Alaska to Hawaii and across the United States. ALA suggests the Commission consult with AILA, as well as IMLS. in determining the most effective approach to addressing the needs of tribal libraries.

Digital Literacy Program Administration

Ease of program administration and fund distribution are essential to a successful program that will build library capacity where it is most needed and will reach the target audiences as quickly as possible. A process that allows for funds to be received at the local, regional and/or statewide level is critical to optimizing a distribution mechanism that allows for support to be quickly distributed to needy communities.

[28] ALA submission in the Matter of CG Docket No. 11-41. Available http://apps.fcc.gov/ecfs/document/view?id=7021688452.

ALA proposes that the Commission develop the digital literacy application process in consultation with advocates like ALA and COSLA, as well as federal agencies like IMLS and NTIA. Both agencies have direct experience with technology training programs and libraries that will help the Commission ensure the application process is efficient and that new funding will not duplicate or supplant work already in place in many libraries.

IMLS is the lead federal agency supporting our nation's libraries and museums. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; to enhance learning and innovation; and to support professional development. Particularly relevant to this effort, one of IMLS's strategic goals is to promote the use of technology to facilitate discovery of knowledge and cultural heritage. IMLS also was tasked in the National Broadband Plan with developing guidelines for public access technology that would help libraries and other community organizations support digital inclusion. Finally, the organization has significant experience administering programs that support libraries and has a Planning, Research and Evaluation Office with the expertise to identify library outlet catchment areas in relationship to community levels of poverty.

NTIA, through its Broadband Technology Opportunities Program, has worked with hundreds of libraries in implementing Public Computing Center and Sustainable Broadband Adoption programs over the past two years. The agency also has collaborated with ALA, IMLS and other federal agencies to develop and promote DigitalLiteracy.gov, a web portal of resources to support digital literacy practitioners.[29]

Additionally, the Chief Officers of State Library Agencies (COSLA) is an independent organization consisting of state and territorial agencies designated as the state library agency and responsible for statewide library development. COSLA should be included as an expert in designing effective digital literacy programs in their respective states or territories.[30]

Both IMLS and NTIA also have specific programs that work with tribal lands, as well as a tribal affinity group, so they are well equipped to address the unique challenges faced by tribal libraries related to broadband adoption in their communities.

The Commission should structure a digital literacy program such that eligibility criteria clearly allow for consortium applications including state-wide applications by state library agencies. Such applications would ensure that the smallest libraries that might not have the staff or expertise to apply on their own would still be able to receive funding as part of a consortium.

Finally, ALA urges the Commission to be clear that the proposed $50 million per year is the total amount that will be available for applicants. ALA asks the Commission to further identify additional funds to cover any administrative costs incurred by the Commission or the federal

[29] See http://www.digitalliteracy.gov/.
[30] See http://www.cosla.org/aboutcosla.cfm.

administrator of the proposed program. Because of the limited funding proposed for the program, ALA is concerned that further reducing the amount available to applicants by allowing the Commission's administrative costs to come from the fund would unintentionally reduce the number of applicants that could be supported by the proposed program.

Appropriate Funding for Digital Literacy

ALA appreciates the desire of the Commission to provide a solid legal foundation for supporting digital literacy in the statutory language. ALA supports the Commission's effort to move judiciously forward in upholding the direction of Congress to ensure "that [c]onsumers in all regions of the nation, including low-income consumers . . . should have access to telecommunications and information services, including . . . advanced telecommunications and information services" while evaluating the intent of the 1996 Act as it should be applied to the telecommunications and information services requirements of today's society.[31]

Digital Literacy within the Lifeline program

ALA strongly believes that each of the four funding mechanisms within the Universal Service Fund provides critical and unique support and is, therefore, best administered separately to meet the unique challenges of each constituency served by these programs. For example, there are specific and significant differences in managing the needs of schools and libraries through the purposes of the E-rate program; of managing the needs of the rural healthcare community through the Rural Healthcare Program; and meeting the needs of the residential community through either the High Cost or Low Income programs. The needs of each program are different, the purpose is different, and the distribution mechanism is different. The Commission should structure this new initiative intended to support digital literacy training and home broadband adoption as a separate program under the umbrella of the Lifeline program.[32]

The FCC chairman has frequently said that the lack of digital literacy skills is a significant barrier to broadband adoption by Lifeline customers. Several studies point out that low-income consumers must receive digital literacy training in conjunction with access to low-cost broadband services and equipment in order to subscribe.[33] Furthermore, improving the digital literacy skills of low-income consumers is certainly in the public interest. As the Commission itself has stated – with increased use of broadband enabled services and resources, consumers can avail themselves of new employment opportunities and healthcare information, and be

[31] 47 U.S.C. § 254(b) (1) – (3) and http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/FCC-12-11A1.pdf, para 422.

[32] While the ALA believes that funding for digital literacy training most appropriately fits under the Lifeline umbrella, ALA does not believe that funding should be restricted to Eligible Telecommunications Carriers. The Commission has the flexibility under statutory provisions that pre-date the enactment of section 254 to allow non-ETCs, such as libraries and their representatives, to receive this funding directly.

[33] For example see, Dailey, et al., *Broadband Adoption in Low-Income Communities* (Social Science Research Council, 2010), available http://www.ssrc.org/publications/view/1EB76F62-C720-DF11-9D32-001CC477EC70/.

civically engaged. By establishing the digital literacy program and training within the Lifeline program, the Commission will be supporting the needs of some of the most vulnerable segments of the population. While it is not only the low-income population that is lacking digital literacy skills, this community often faces numerous challenges that exacerbate the challenges specific to gaining digital literacy skills and that may require more targeted intervention – which is the heart of the Lifeline program.

ALA remains highly doubtful that the E-rate program can be used as the vehicle for digital literacy.

In December 2011, ALA submitted an ex parte letter (attached at the end of these comments) explaining that the Commission does not have legal authority to use the E-rate program for digital literacy training. The main points are here summarized:

- The statutory language in section 254(h) that serves as the controlling legal authority for the E-rate program is focused on funding telecommunications services and access to advanced services.
- The E-rate program is limited to services provided *for* school, libraries, and healthcare providers rather than *by* schools and libraries for residential end users. Additionally, the E-rate program is limited to access to such services that bring capacity to libraries and schools.
- The 1997 Order found that the E-rate program was created to support services that provide a conduit to the Internet rather than for content over that conduit.[34] This narrow interpretation of the E-rate program's legal authority was confirmed by the 5th Circuit Court of Appeals.[35]

ALA has long promoted the E-rate program as critical for libraries to build connectivity capacity and maintain their ability to provide public access to advanced telecommunications services. The elegance of the E-rate program is such that as long as a library demonstrates need and can afford the non-discounted portion of the requested services, the library can plan for, meet, and sustain its connectivity needs. Without the support of the E-rate discounts libraries receive for telecommunications and information services, they would not be able to provide many of the now critical services to their patrons. ALA remains convinced that comingling the E-rate program with funds designated for other purposes would jeopardize an extremely successful

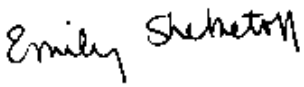
[34] ALA ex parte memo available, http://fjallfoss.fcc.gov/ecfs/document/view?id=7021748889 and attached in full.
[35] "The best reading of the relevant statutory language nonetheless indicates that the FCC exceeded its authority by mandating discounts for internet access and internal connections. . . Even though GTE has offered a persuasive reading of the statute, its plain language does not make Congress's intent sufficiently "unambiguous" for *Chevron* step-one review. Therefore, we defer to the FCC's interpretation under *Chevron* step-two and affirm those aspects of the Order providing internet services and internal connections to schools and libraries." [footnotes omitted] Texas Office of Public Utility Counsel, et. al. v. FCC, 183 F.3d 393 (5th Cir. 1999).

program. We therefore reiterate the importance of developing a program for digital literacy that is housed under the umbrella of the Lifeline program rather than the E-rate program.

Conclusion

ALA strongly supports the Commission's proposal to use savings from the Lifeline program to increase digital literacy training through our nation's public libraries and schools. As trusted, community-based, noncommercial intermediaries with a long history of supporting literacy and learning, libraries are well-positioned to support this vital effort to help ensure digital inclusion and opportunity. We look forward to working with Commission staff throughout the process of developing and implementing a digital literacy program.

Respectfully submitted



Emily Sheketoff
Executive Director
ALA Washington Office

Attached: ALA Lifeline-Link Up Authority Memo submitted ex parte December 1, 2012

ALAAmericanLibraryAssociation

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

RE: WC Docket No. 03-109
WC Docket No. 96-45
WC Docket No. 11-42

Dear Secretary Dortch:

The purpose of this letter is to set forth The American Library Association's (ALA) view of the legal issues involved as the Federal Communications Commission (FCC or Commission) considers whether to use funds from the Universal Service Fund (USF) to support digital literacy training. The letter is a follow-up to a November 21, 2011, meeting with FCC staff and counsel to seek clarity on the FCC's legal authority regarding digital literacy training and the USF. ALA suggests that there is no legal authority that allows the FCC to use funds from the E-rate program to support digital literacy, but there may be other options for supporting digital literacy through the Lifeline and Link Up programs.

ALA strongly supports efforts to promote digital literacy to address a skills gap, promote digital opportunity, and enhance broadband subscribership. In fact, many libraries actively provide digital literacy training to seniors, immigrants, low-income, and other residential consumers around the country, through initiatives funded through the Broadband Technology Opportunities Program (BTOP)[36] and other sources. Providing digital literacy training is one of the critically important services that libraries provide to their communities to help people succeed in the 21st century information age. For this reason, we applaud the efforts by the FCC to promote digital literacy.

We are dismayed, however, by the suggestion that funds from the underfunded E-rate program could be used to support digital literacy training.[37] The E-rate program was created by Congress to

[36] See, NTIA, Broadband Technology Opportunities Program, Expanding Broadband Access and Adoption in Communities Across America, Overview of Grant Awards (2010) (*available at* http://www.ntia.doc.gov/reports/2010/NTIA_Report_on_BTOP_12142010.pdf). ALA has worked closely with NTIA and its digital literacy portal providing feedback on the user interface, promoting its use among librarians, as well as providing content from libraries across the country (see: http://www.digitalliteracy.gov/). See also ALA's comments on broadband adoption and the National Broadband Plan (*available at* http://www.districtdispatch.org/wp-content/uploads/2009/12/ALA-NBP-Public-Notice-16-12_2_09_final.pdf.

[37] See, Remarks of FCC Chairman Julius Genachowski on Broadband Adoption, Oct. 12, 2011, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310350A1.pdf.

support telecommunications services and access to information services for schools and libraries. The program has allowed countless schools and libraries to obtain high-speed access to the Internet and other telecommunications services that they could not otherwise afford. Expanding the E-rate program to cover "training" would go beyond the statutory purposes and authority established by Congress and likely would prevent many libraries (and schools) from being able to provide their patrons with the high-speed Internet connections on which they depend.

1. **The FCC does not have authority to use E-rate to support digital literacy training.**

The statutory language in section 254 that serves as the controlling legal authority for the E-rate program is very limited and does not allow funding for any kind of "training." The statutory language is focused on funding advanced telecommunications services and access to information services, such as the Internet. For instance,

- Section 254(b)(6) says "Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h)."

- Section 254(h)(1)(B) says that telecommunications carriers must offer discounted rates for "services that are within the definition of universal service under subsection (c)(3)".

- Section 254(h)(2) states "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;"

Some may argue that one provision of the E-rate statutory language – section 254(c)(3) – is more open-ended. Even this provision, however, is itself limited by the goals set forth in section 254 and the provisions of subsection (h) quoted above. Thus, section 254(c)(3) cannot justify expanding the E-rate program to include digital literacy training. Section 254(c)(3) states:

> (3) SPECIAL SERVICES. – In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

While this provision allows the FCC to support services that are broader than "telecommunications services," it is nonetheless limited to "services . . . for schools, libraries and health care providers." The services supported by the E-rate program must be related to improving the schools' and libraries' telecommunications services and access to the Internet. Stated another way, the E-rate program is intended to support services provided for libraries, not services (such as digital literacy

training) provided by the libraries to others. Furthermore, section 254(c)(3) is tied to "the purposes of subsection (h)." There is no language in subsection (h) that refers to any form of "training."

To understand the legal boundaries of the E-rate provisions, it is useful to review the Commission's initial steps to implement this language in 1997 and the court action that followed. When the FCC first established the E-rate program, it found that the statutory language limited the E-rate program to supporting telecommunications services, Internet access, and internal connections. The inclusion of "internal connections" was justified as necessary to provide "access to information services" (in section 254(h)(1)(B)) and was supported by the statutory language that encouraged connections to "classrooms."[38] The legislative history surrounding section 254 also supported the inclusion of Internet access and internal connections.

Furthermore, the 1997 Order also generally found that the E-rate program was created to support services that provide a form of "conduit" to the Internet, but generally not to support "content" provided over the Internet connection. The Commission's recognition of the difference between "conduit" and "content" again reflects that the term "special services" in section 254(c)(3) is not unlimited but relates back to the provision of section 254(h)(1)(B) supporting "access to" information services.[39] Thus, section 254(c)(3) cannot be used to justify support for digital literacy training, because such training is not supported by the legislative history and is not necessary to support the libraries' "access to advanced telecommunications and information services."

A subsequent court decision also demonstrates the narrow scope of the FCC's E-rate authority. Some telecommunications carriers (notably GTE) challenged the FCC's 1997 decision to include E-rate support for Internet access and internal connections, arguing that the statutory language was limited to supporting "telecommunications services" alone. The FCC's decision to include Internet access and internal connections was upheld by the 5th Circuit Court of Appeals, but barely. The court agreed with GTE that the "best reading" of the statute did not authorize support for non-telecommunications services. The court nonetheless upheld the FCC's 1997 Order, finding the statutory language and the legislative history sufficiently ambiguous that the FCC deserved deference in its interpretation of the language.[40] Given this court's skepticism of the FCC's

[38] "Given the directive of section 254(h)(2)(A) that the Commission enhance the access that schools and libraries have to 'information services,' as described in the legislative history, i.e., actual educational content, we conclude that there should be discounts for access to these services provided by telecommunications carriers under the broad provisions of sections 254(c)(3) and 254(h)(1)(B)." In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, May 8, 1997 ("1997 USF Order"), para. 440.

[39] See, 1997 USF Order, para. 441 ("We do not grant schools and libraries discounts on the cost of purchasing information content. We conclude, however, that we are authorized to provide discounts on the data links and associated services necessary to provide classrooms with access to those educational materials, even though these functions meet the statutory definition of "information services" because of their inclusion of protocol conversion and information storage.").

[40] "The best reading of the relevant statutory language nonetheless indicates that the FCC exceeded its authority by mandating discounts for internet access and internal connections. . . Even though GTE has offered a persuasive reading of the statute, its plain language does not make Congress's intent sufficiently "unambiguous" for *Chevron* step-one review. Therefore, we defer to the FCC's interpretation under *Chevron* step-two and affirm those aspects of

inclusion of non-telecommunications services, it is extremely doubtful that any reviewing court would uphold an FCC decision to expand the E-rate program to cover digital literacy training when there is no statutory provision or legislative history to support such an expansion.

Perhaps because of this court decision, the FCC has not (to our knowledge) permitted the E-rate program to be used for services other than those that help schools and libraries obtain "telecommunications services" or "access to advanced telecommunications and information services." In fact, the Eligible Services List specifically excludes (rather than simply omitting) "training" from the list of services that can be supported by the E-rate program because the statutory language forbids training from being funded by the E-rate program.[41]

The 2010 E-rate Reform Order seemed to affirm that the E-rate program could not and should not be expanded. In that Order, the FCC described its decision as modernizing the E-rate program while ensuring that the E-rate program would continue to be used for its intended purposes.[42] That Order did not discuss using E-rate funds for digital literacy. In fact, the Order encouraged private sector contributions to schools and libraries to support digital literacy outside the E-rate process.[43]

In summary, there is no legal support for using the Congressionally-mandated E-rate program to fund digital literacy training, and it is highly unlikely that a reviewing court would permit such an expansion. There is a great risk that opening the E-rate program to new purposes such as training will drain resources from the E-rate fund and move away from its Congressionally-mandated purpose of supporting telecommunications and advanced communications services and access to the Internet.[44]

2. **<u>The Lifeline and Link Up programs could be used to support digital literacy training.</u>**

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the Order providing internet services and internal connections to schools and libraries." [footnotes omitted] Texas Office of Public Utility Counsel, et. al. v. FCC, 183 F.3d 393 (5th Cir. 1999).

[41] See, Schools and Libraries Universal Service Support Mechanisms, Eligible Services List for Funding Year 2012, Sept. 28, 2011, p. 11, available at http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf.

[42] "Through this order, and future upgrades, the Commission is taking a measured approach to modernizing the E-rate program, while maintaining protections to ensure that E-rate support is being used only for its intended purposes." Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan for Our Future, GN Docket No. 09-51 ("2010 E-rate Order"), para. 3.

[43] "The rule we articulate today does not discourage companies from making charitable donations to E-rate eligible entities in the support of schools – including, for example, literacy programs, scholarships, and capital improvements – as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions." 2010 E-rate Order, para. 90. The statements of Chairman Genachowski and Commissioner Clyburn noted that enhancing schools and libraries' broadband connections can enhance digital literacy, but neither statement suggests using E-rate funds for this purpose.

[44] See Statement of Commissioner McDowell regarding the wireless project initiated in the 2010 E-rate Order ("It would be unfortunate if the demands of new expenditure streams were to drain the reservoir of funds needed to accomplish the primary objective of the fund: connecting schools and libraries to the Internet.")

ALA respectfully suggests that incorporating digital literacy training into the Lifeline and Link Up programs is more legally sustainable than attempting to use the E-rate program.[45] The Commission has legal authority pre-dating the Telecommunications Act of 1996 to amend the Lifeline and Link Up programs to support broadband services and to include digital literacy training. Furthermore, the Lifeline/Link Up programs and the digital literacy initiative have similar purposes, as both are intended to promote adoption by residential consumers.

Admittedly, the Lifeline/Link Up programs currently do not support broadband services.[46] But Congress has encouraged the FCC to take action to promote broadband adoption,[47] and the National Broadband Plan calls upon the FCC to expand Lifeline/Link Up to support broadband services.[48] The pending Lifeline/Link Up modernization proceeding provides an appropriate opportunity to provide funding for digital literacy training through those programs.[49]

The FCC adopted the Lifeline/Link Up programs in 1985 under authority granted by the Communications Act of 1934, well before passage of the Telecommunications Act of 1996.[50] The FCC adopted the Lifeline/Link Up programs pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Communications Act. Section 1 directs the Commission to make "available to all people of the United States . . . a rapid, efficient . . . wire and radio communication service." This language is broad enough to include broadband as a form of "communication service." In fact, the Commission has already recognized in its "Net Neutrality" decision[51] that it

[45] The Commission's Lifeline program reduces qualifying consumers' monthly charges, and Link Up provides federal support to reduce eligible consumers' initial connection charges by up to one half.

[46] If the FCC chooses not to modify the Lifeline/Link Up programs to accommodate broadband services and digital literacy, another option would be to establish a separate (fifth) program under the USF umbrella. The Commission appears to have the flexibility to establish a fifth program for broadband and digital literacy if it chooses to do so, as nothing in section 254 dictates the existence of four and only four separate funds within the USF. The FCC could, for instance base its authority to create a fifth program for broadband and digital literacy on the same authority it used to create the Lifeline/Link Up programs. The Commission may also be able to create such a program under section 706, which directs the FCC to take immediate action to spur broadband deployment.

[47] Congress required the Commission to report annually on the state of broadband availability, and to develop the National Broadband Plan, "to ensure that all people of the United States have access to broadband capability." American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 516, § 6001(k)(2)(D), ("Recovery Act").

[48] See, Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010), ("National Broadband Plan") at 172.

[49] *Lifeline and Link Up Reform and Modernization NPRM*, 26 FCC Rcd at 2872-3; *Further Inquiry Into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding*, WC Docket Nos. 03-109, 11-42, CC Docket No. 96-45, Public Notice, 26 FCC Rcd 11,098, 11,100-03 (Wireline Comp. Bureau 2011)

[50] Thus, the Commission's authority to amend the Lifeline/Link Up programs to incorporate broadband and digital literacy does not depend upon the provisions of section 254, the universal service provisions added by the Telecommunications Act of 1996.

[51] *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905.

has authority under Title I of the Communications Act to oversee broadband services, and its broad authority under Title I has been recognized by the Supreme Court.[52]

Section 706 may provide independent legal authority to include digital literacy training in the Lifeline/Link Up programs.[53] Section 706 directs the Commission to "take immediate action to accelerate deployment of [advanced telecommunications] capability" if it finds that broadband services are not being deployed in a reasonable and timely manner. The FCC has already made this finding, which triggers the duty to take action. The Commission recently determined that section 706 provides legal authority for the FCC to provide financial support to broadband networks.[54] Following the same logic, it could be argued that the Commission has a duty to provide support for digital literacy training and broadband through the Lifeline/Link Up programs, as encouraging broadband adoption also will encourage greater broadband deployment.

Section 254(j) does not pose a barrier to the Commission expanding the Lifeline/Link Up programs to incorporate broadband and digital literacy. Section 254(j) states

> (j) LIFELINE ASSISTANCE. – Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

In the 1997 USF Order, the Commission rejected the notion that section 254(j) prevented the Commission from making changes to the Lifeline/Link Up programs:

> We agree with the Joint Board that section 254(j) allows us to adopt certain changes to the Lifeline program in order to make it consistent with the goals of the 1996 Act. We thus concur with the Joint Board's finding that Congress did not intend for section 254(j) to codify every detail of the existing Lifeline program, but that it intended to give the Joint Board and the Commission permission to leave the Lifeline program in place

[52]. NATIONAL CABLE & TELECOMMUNICATIONS ASSN. V.BRAND X INTERNET SERVICES (04-277) 545 U.S. 967 (2005). (". . . the Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction.")

[53] Some may point out that the Lifeline/Link Up programs are intended to address the needs of low-income persons, whereas digital literacy training is intended for any person regardless of income. In reality, low-income persons are likely to make up a significant percentage of the consumers who would benefit from digital literacy training, so a digital literacy training program is likely to be consistent with the goals of the Lifeline/Link Up program.

[54]In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, FCC 11-161, November 18, 2011.

> without modification, despite Lifeline's inconsistency with other portions of the 1996 Act.[55]

The Commission also found that

> section 254(j) applies only to changes made pursuant to section 254 itself. Our authority to restrict, expand, or otherwise modify the Lifeline program through provisions other than section 254 has been well established over the past decade.[56]

Thus, it appears that the Commission has legal authority to incorporate broadband and digital literacy training into the Lifeline/Link Up programs under some of the same statutory provisions that it used to initiate the program in 1985. Furthermore, section 706 appears to provide independent legal authority to do so, and section 254 does not bar the Commission from expanding the program to include digital literacy. The pending Lifeline/Link Up proceeding provides the best opportunity to provide funding for this important initiative.

1. Conclusion

Digital literacy training is an extremely important service that can help people across the country obtain broadband connections and take advantage of the critical health, education, e-government and information services that are increasingly available online. Libraries nationwide are making great efforts to educate people about digital technologies and services and how their use can improve the economic vitality and quality of life in every community.

While ALA supports federal efforts to promote digital literacy training, we believe there are several legal obstacles that prohibit use of E-rate funds for digital literacy training. Nonetheless, the FCC may have other avenues to pursue to support digital literacy. While the Commission may have legal authority to create a fifth program under the USF umbrella to support broadband and digital literacy, the best approach may be to amend the Lifeline/Link Up programs to support broadband adoption and digital literacy training. The Commission appears to have the legal authority under Title I and section 706 to expand these programs to provide funding for digital literacy training. We look forward to working with the Commission in its efforts to promote greater digital literacy and broadband adoption.

Respectfully submitted,

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[55] 1997 USF Order, para. 332.
[56] Id., para. 337.