



**National
Urban League**

*Empowering Communities
Changing Lives.
For An Equitable Future.*

May 16, 2022

Jessica Rosenworcel
Chair
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Prevention and Elimination of Digital Discrimination, GN Docket No. 22-69

Dear Chair Rosenworcel and Commissioners:

The National Urban League (NUL), a historic civil rights organization with a 111-year history of advocating for civil rights and policies that promote economic empowerment in Black communities and other historically underserved communities, submits these comments in response to the Federal Communications Commission’s *Notice of Inquiry* on Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination.¹

The Covid-19 pandemic demonstrated that our country has reached a critical juncture and the need for broadband to connect households and individuals to jobs, education, health care, civic duties, essential services, and community is more necessary than ever. Barriers such as lack of access to broadband infrastructure, the cost of a broadband connection, or the need for skills to safely navigate and utilize the internet to its full potential have historically and continue to stall or prevent marginalized communities from experiencing the benefits of broadband.

In response to these barriers to participation in the digital ecosystem, Congress passed, and President Biden signed the Infrastructure Investment and Jobs Act (“IIJA”) which includes a historic investment in broadband aimed at improving access in unserved and underserved geographic regions, closing the affordability and adoption gaps, and establishing increased transparency around broadband offerings for consumers. Additionally, the Federal Communications Commission (“FCC” or “Commission”) must fulfill the statutory obligations of Section 60506 in which the agency is charged with preventing and eliminating digital discrimination.²

As an organization that represents communities who have and continue to be marginalized by policies and practices that have stunted our economic, political, and social growth in this country, we offer up these comments as part of our continued efforts to center equity and inclusion in the implementation of the IIJA. As discussed in detail below, the National Urban League recommends the following:

- Expand data collection to better understand digital discrimination.

¹ Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, *Notice of Inquiry*, GN Docket No. 22-69 (rel. March 17, 2022) (*NOI*).

² 47 U.S.C. § 1754(b)(2).

- Develop a comprehensive definition of digital discrimination to capture technological and societal changes and ensure any definition of digital discrimination factors in disparate impact and not just intentional discrimination with business case defenses.
- Encourage federal, state, and local governments to affirmatively combat unequal access by conducting outreach to underserved communities and encourage companies that provide critical communications services to conduct outreach to underserved populations, hire from underrepresented communities, establish diversity hiring goals and increase supplier diversity.
- Target outreach to local leaders including mayors, city council members, workforce development boards, nonprofits representing directly impacted communities, and small business owners to develop the Commission’s record on digital discrimination.

Expand Data Collection to Better Understand Digital Discrimination

One way the FCC can understand digital discrimination is through expansive data collection that includes broadband availability, affordability, and adoption metrics. While accurate and granular coverage maps are crucial for understanding the scope of broadband access, as stated in *The Lewis Latimer Plan* published by the National Urban League in 2021, it is imperative that the federal government “expand the collection of data on broadband use by target populations, particularly underserved communities.”³ Listed below in Table 1 are key indicators the FCC should consider collecting itself or through interagency collaborations to develop a holistic understanding of barriers to participation in the digital ecosystem.⁴

Table 1. *The Lewis Latimer Plan*: Supplemental Data Collection for Coverage Maps

Goal	Key Question	Indicator (s)
Availability: Do households have access to broadband?	Does the area have broadband service?	-Number of broadband providers in the area
	Do the services meet minimum federal requirements?	-Upload speed -Download Speed -Latency
	Is the broadband service of good quality?	-Number of interruptions to service per day -Number of consumer complaints.
Affordability: Are households using broadband?	Is broadband affordable for the households in an area?	-Median net income of household -Size of household -Household members by gender, race, national origin, and immigration status -Median price of broadband plan
	How is broadband being made more affordable?	-Local or federal programs in the community that provide discounted or free broadband plans -Programs operated by providers to provide discounted/subsidized service

³ *The Lewis Latimer Plan*, National Urban League (March 30, 2021) at 176, https://nul.org/sites/default/files/202104/NUL%20LL%20DEIA%20041421%20Latimer%20Plan_vFINAL_1136A_M.pdf (“*The Lewis Latimer Plan*”).

⁴ *Id.* at 177.

		-Programs operated by NGOs to provide discounted/subsidized service
Adoption: How are households using broadband?	What is broadband used for?	-How often do members of households use broadband for education, health care, and jobs? -Are you able to access telework/remote learning/social media/streaming with your household's broadband plan? -How many interruptions to any of the above services – especially telework and remote learning – do you generally experience in a day?
	Do broadband plans meet the needs of different customers?	-Number of available broadband plans that vary in speed and cost - Key locations where broadband is free -Are you aware of any low-cost/no-cost broadband services in your area? -If you are aware, do you subscribe to one of these services? -If you are aware and do not subscribe, what is the primary reason for not subscribing?

The above table offers guidance for the FCC to better evaluate differentiating outcomes that may be classified as discrimination. First, the Commission should leverage data collecting efforts from existing programs and pending proceedings including the Affordable Connectivity Program, Lifeline, and the Broadband Nutrition Label. Additionally, the Commission should leverage existing federal data collection infrastructure such as through the U.S. Census Bureau's American Community Survey ("ACS").⁵ ACS helps the public better understand demographic characteristics correlated with broadband adoption that is crucial for creating and sustaining inclusive policies that help to close the digital divide. It should also be noted that if additional data is gathered, equity must be centered in the collection, analysis, and interpretation stages because data impacts policy decisions, accountability, and redress.⁶

Develop a Comprehensive Definition of Digital Discrimination to Capture Technological and Societal Changes

Section 60506(b) of IJJA requires the Commission to adopt rules prohibiting digital discrimination and “to facilitate equal access to broadband internet access service” including “preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin.” First, the Commission should include disparate impact when promulgating rules on digital discrimination. As is the case with housing, employment, and credit, discrimination cannot solely be based on intent. The outcomes of companies’ profit driven decision-making may negatively impact communities of color and low-income communities. These outcomes should be carefully reviewed as the Commission develops its rules. The Commission should also look at existing frameworks of enforcement and regulation when developing its digital discrimination rules such

⁵ *Id.* at 178.

⁶ *Id.* at 175.

as the Community Reinvestment Act as discussed in the comments of this proceeding by The Leadership Conference on Civil and Human Rights.

As it relates to solutions the FCC can implement internally, the Commission should stand up an Office of Civil Rights with proper staffing and resources to be involved in investigating and combatting digital discrimination. This office should be consulted on all FCC proceedings that disproportionately impact marginalized communities including broadband access, broadband adoption, and media ownership and employment diversity. The Commission should also look into ways it could use its existing authorities to combat discriminatory practices alongside Section 60506.⁷

It is also important for the Commission to broadly define digital discrimination to keep up with both the pace of technology and the role it will continue to play in our daily lives. It is imperative that the FCC not only solve for present or past examples presented in the record concerning digital discrimination; the agency must also think ahead about the ways digital discrimination may present itself in the future.

The metrics that can be used to identify digital discrimination should be all encompassing and include availability, affordability, and adoption, as stated above, but they should also include the ways digital tools are not being utilized rapidly enough to connect the unemployed, enable workers to upgrade digital skills, and ensure small businesses owned by people of color are able to thrive. Digital discrimination should also be viewed through the lens of opportunity loss and income loss at the household and business level.

Because discrimination holds back communities and the country economically and socially, it is necessary to redefine the problem and expand the scope of impact. For example, the Commission should consider issues of privacy and security and specifically the failure of companies to protect consumer data as a form of digital discrimination. This could include the selling of sensitive real time location data to nefarious third parties and the combining of data across various product lines used to engage in discriminatory advertising practices.⁸

In addition, the Commission can consider how device security could be factored into the definition of digital discrimination. For example, phones and devices that are most accessible to low-income consumers, particularly those that are made available to participants of the Lifeline and Affordable Connectivity Program, should come with the same level of security as high-end devices available in the marketplace. All of these issues are part of a holistic approach in addressing digital discrimination.

Whole-of-Nation Approach to Affirmatively Combat Unequal Access and Lack of Economic Opportunities in Underserved Communities

Federal, state, and local governments should be encouraged to affirmatively combat unequal access by conducting outreach to underserved populations. To understand the effects of digital discrimination, it is important to hear from the people in impacted communities. Various federal,

⁷ See, e.g., 47 U.S.C. §§ 201, 202, 208, 222.

⁸ *Twelve Million Phones, One Dataset, Zero Privacy*, Stuart A. Thompson and Charlie Warzel, *The New York Times* (Dec. 19, 2019). <https://www.nytimes.com/interactive/2019/12/19/opinion/location-tracking-cell-phone.html>.

state, and local agencies that provide public assistance to members of these groups are delivering many of their services through digital tools. These agencies should create a feedback loop to better understand how the people they serve are effectively using their digital services and what barriers may persist. Additionally, when companies are identifying areas to deploy new technologies, they should seek input from underserved communities to help detect the potential for discrimination before they execute on their strategies.

As stated in the previous section, digital discrimination should also be defined through opportunity loss and participation gaps. It is imperative that we “close gaps that limit opportunities to participate meaningfully and create value in the industry as broadband and broadband-enabled enterprises continue to innovate, grow, and prosper.”⁹ The technological revolution has led to massive wealth accumulation that has yet to be equitably distributed to Black and Latinx communities.

Companies that provide critical communications services should be encouraged to hire from underrepresented communities beyond entry level positions, establish diversity hiring goals, and increase supplier diversity. The National Urban League has worked with other civil rights groups to advise companies on how to prioritize diversity, equity, and inclusion throughout their organizations.¹⁰ This has led to commitments to incorporate racial equity in corporate board membership, staffing, the C-suite, procurement, philanthropy, and community investment. NUL has taken up these efforts because we believe Black and Latinx workers deserve job opportunities at *every* level in the technology and technology-related industries alongside opportunities for entrepreneurs of color to have a place in the governance of these companies.¹¹

These efforts need to be mirrored in government as well. As stated in *The Lewis Latimer Plan*, the federal government should take the following steps to assist companies in achieving sustainable and meaningful equitable outcomes:¹²

- **Infrastructure:** Congress must include mandates in any future infrastructure legislation for companies that will directly benefit from increased federal investment to enhance their performance in providing access to economic opportunity and participation throughout the digital ecosystem.
- **Measure Diversity:** The Department of Commerce, the FCC, and the Small Business Administration should collect information that allows the government and the public to understand and evaluate how the private sector, and particularly the technology and related sectors, are improving diversity, equity, and inclusion.
- **Incentivize Diversity:** The Department of Commerce, the FCC, and the Small Business Administration should evaluate and report to Congress annually on measures to incentivize the participation of private enterprises in improving diversity, equity, and inclusion, throughout the digital ecosystem.
- **Highlight Sustainable Success:** The Department of Commerce, the FCC, and Small Business Administration should publish an annual report on best practices for enhancing

⁹ *The Lewis Latimer Plan* at 89.

¹⁰ Civil Rights Groups Sign Groundbreaking Diversity Agreement with T-Mobile US, National Urban League (Oct. 15, 2019), <https://nul.org/news/civil-rights-groups-sign-groundbreaking-diversity-agreement-t-mobile-us>.

¹¹ *The Lewis Latimer Plan* at 90.

¹² *Id.* at 92.

the performance of private enterprise in improving diversity, equity, and inclusion throughout the digital ecosystem.

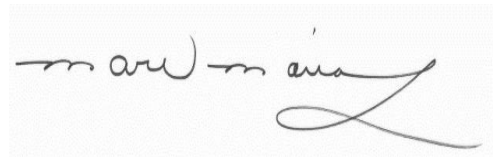
Target Outreach to Local Leaders to Develop Commission’s Record on Digital Discrimination

The National Urban League has 92 local affiliates that serve over 300 communities in 37 states and the District of Columbia. Our affiliates provide direct services to a diverse constituency in the core areas of workforce, housing, health, education, and social justice. Through our work, we are constantly reminded that a vision of digital equity matters just as much on the local level as it does on the federal level. Those working on the ground in local communities are able to identify problems early and alert their local and state officials about emerging disparities. It is important that local leaders including mayors, city council members, workforce development boards, nonprofit organizations representing directly impacted communities, and small business owners are invited to assist in developing the Commission’s record on digital discrimination.

Congress has asked the FCC to develop model policies and best practices that state and local governments could adopt to prevent digital discrimination. Indeed, the National Urban League co-leads the working group tasked with this effort. We have included local voices in that work, but we want to ensure local voices – including community organizations, workforce boards, and small business owners – are also encouraged to participate in public comment processes. The FCC can build the record by soliciting input from these local voices in a variety of ways, including by using national organizations with local networks and state government outreach offices.

The National Urban League has long recognized that access to broadband is a civil right and in order to safeguard this civil right, the FCC must be intentional in its work to prohibit digital discrimination. Please contact Alisa Valentin (avalentin@nul.org), Senior Director of Technology and Telecommunications Policy if there any questions regarding this proceeding. We look forward to working with you and the FCC staff to ensure that equity is centered in the agency’s rulemaking to prohibit digital discrimination.

Sincerely,



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