



February 21, 2023

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

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, GN Docket No. 22-69*

Dear Chair Rosenworcel and Commissioners:

The National Urban League (“NUL”), National Coalition on Black Civic Participation (“NCBCP”), Black Women’s Roundtable (“BWR”), and National Action Network (“NAN”) submit these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) on *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*.

The National Urban League is a historic civil rights organization with a 111-year history of advocating for civil rights and the economic empowerment of Black communities and other historically under-resourced communities through its 92 affiliates. NUL recently published *The Lewis Latimer Plan for Digital Equity and Inclusion*, which is a comprehensive framework for addressing the digital divide by focusing on the key areas of availability, affordability, and access to economic opportunities.¹ The National Coalition on Black Civic Participation is dedicated to empowering Black communities and advancing the overall goals of equity and justice. Then NCBCP’s mission is to promote Black civic engagement and racial, economic, and social justice through values-driven coalitions centered on women and youth empowerment, leadership development, health & wellness, education and global empowerment. The Black Women’s Roundtable is the women’s empowerment arm of the NCBCP. The BWR is an intergenerational civic engagement network that advocates for just and equitable public policy that promotes the health and wellness, economic security, education, and global empowerment of Black women. The National Action Network works to promote a modern civil rights agenda that

¹ The Lewis Latimer Plan for Digital Equity and Inclusion, National Urban League (March 30, 2021), https://nul.org/sites/default/files/202104/NUL%20LL%20DEIA%20041421%20Latimer%20Plan_vFINAL_1136A_M.pdf (“Lewis Latimer Plan”).



includes the fight for one standard of justice, decency, and equal opportunities for all people regardless of race, religion, nationality, or gender.

Our civil rights organizations represent economically and racially diverse geographic regions throughout the United States including rural communities, mid-sized cities, and our country's most populated metropolitan centers all of which have varied industries that support their respective economies. We have long recognized that central to the success of both rural and urban communities, broader state economies, and our national economy is access to affordable, reliable broadband that allows individuals, households, and businesses to thrive in the 21st century. We simultaneously recognize that the digital divide disproportionately impacts people of color and low-income consumers. Pew Research Center data states that 29% of Black adults and 35% of Latino adults do not have a home broadband connection.² Additionally, 43% of households with an annual income of less than \$30,000 do not have a home broadband connection.³ It is clear closing of the digital divide must be solved collaboratively with continued cooperation from the nation's government, industry, and the nonprofit sector in order to bring affordable, resilient, and robust connectivity to all communities across the United States without discrimination on the basis of income-level, race, color, religion, national origin, sex, or disability. In the sections below, the National Urban League, National Coalition on Black Civic Participation, Black Women's Roundtable, and National Action Network provide additional comment on the rules the Commission should adopt to fulfill its congressional obligation to prevent and eliminate digital discrimination by addressing the following topics:

- Adoption of a comprehensive definition of digital discrimination and public interest standard for broadband deployment and adoption;
- Interagency coordination with NTIA to ensure equitable and non-discriminatory practices are followed by states and territories receiving federal broadband funding;
- Modification of the complaint process and establishment of robust, transparent data collection and reporting; and
- A framework for the establishment of an FCC Office of Civil Rights to address digital discrimination and broader communications equity issues.

² Sara Atske & Andrew Perrin, *Home broadband adoption, computer ownership vary by race, ethnicity in the U.S.*, Pew Research Center (July 16, 2021), <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadbandadoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>.

³ Emily A. Vogels, *Digital divide persists even as Americans with lower incomes make gains in tech adoption* (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.



National
Urban League



I. Comprehensive Definition of Digital Discrimination

The goal of this proceeding is to establish rules that ultimately facilitate the equitable deployment and adoption of affordable, reliable broadband that reaches every person across the United States regardless of income-level, race, color, religion, national origin, sex, or disability. This requires a comprehensive definition of digital discrimination. The closing of the digital divide at its core must be grounded in the objective of providing all people with an opportunity to fully participate in our 21st century society economically, socially, and politically. The presence of high-speed internet connections is central to where businesses ultimately choose to operate, which then impacts what jobs are available, how well funded schools are, and what other opportunities are established in those communities. Broadband truly is the backbone of modern society and without it, there are negative rippling effects.

As has already been demonstrated in the record, the presence of digital discrimination has long been debated and documented and that is what serves as the premise for Congress to correctly charge the Commission with promulgating rules to prevent and eliminate digital discrimination. It is important that the Commission’s definition of digital discrimination is informed by the history of how market-based approaches and state and local public policies and laws related to broadband deployment and broadband adoption have created disparities in connectivity — it is our laws and policies that set standards and create paths for course correction. First, addressing and eliminating digital discrimination is in furtherance of the Commission’s pre-existing authority and mission “to make available, so far as possible,” a “rapid, efficient, Nation-wide” wire and radio communication service with adequate facilities “to all of the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.”⁴ We agree with other commenters who state that Section 60506 aligns with the Commission’s longstanding goal of prohibiting discrimination under Section 202(a); therefore, it falls squarely within the Commission’s already existing obligations.⁵

Additionally, the Cable Communications Policy Act of 1984 authorizes franchising authorities to “assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.”⁶ Therefore, again, there is already a foundation in communications policy that should guide the Commission’s work in creating rules to prevent and eliminate digital discrimination.

⁴ 47 U.S.C. § 151.

⁵ Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 3 (filed December 5, 2022).

⁶ 47 U.S.C. § 541(a)(3).



Moreover, the present circumstances demonstrate that Congress clearly recognizes that the exclusion of certain communities in our technology ecosystem impacts the ability of not only those individuals but also for our broader nation to compete economically. This is why Congress, through the Infrastructure Investment and Jobs Act (“IIJA”), made a historic investment in broadband through the \$42.45 billion Broadband Equity, Access, and Deployment program (“BEAD”), \$14.2 billion Affordable Connectivity Program (“ACP”), and the \$2.75 billion Digital Equity Act programs. The Commission should take into account that both history and the present moment call for it to drive policies that are an investment in all consumers and are rooted in equity.

The Commission seeks comment on the adoption of a definition of digital discrimination focused on actions and omissions by a provider that “differentially impact consumers’ access to broadband internet access service” and/or actions and omissions by providers “intended to differentially impact consumers’ access to broadband internet access service” based on protected characteristics.⁷ It is the position of the National Urban League, National Coalition on Black Civic Participation, Black Women’s Roundtable, and the National Action Network that the Commission should adopt a definition based on *both* disparate impact (i.e. discriminatory effect) and disparate treatment (i.e. discriminatory intent). There is broad support from the civil rights and public interest communities that there are policies and practices that have the potential to be adopted by ISPs that may appear to be neutral, such as profit-driven deployment or customer acquisition decisions; however, those seemingly “neutral” decisions could negatively impact historically marginalized communities’ ability to connect to vital communications services.⁸

We also agree with other commenters who argue that the statutory language of section 60506 is results-oriented and refers to consequences of actions taken by providers because Congress instructs the Commission to ensure that individuals “benefit from equal access to broadband internet service” and identify steps to “eliminate discrimination.”⁹ Additionally, under the *Inclusive Communities* standard, the Supreme Court has provided clear guidelines for plaintiffs to bring disparate impact claims and we believe that precedent applies to this statute.¹⁰ Further, our civil rights organizations believe a rule that is based on intent only would be hollow, unworkable, unnecessarily burdensome, and meaningless for consumers most likely to

⁷ Notice of Proposed Rulemaking, *In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, FCC-CIRC2212-01, WC Docket No. 22-69.

⁸ Comments of National Urban League, *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Notice of Inquiry, GN Docket No. 22-69 (filed May 16, 2022); Comments of the Black Women’s Roundtable, *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Notice of Inquiry, GN Docket No. 22-69 (filed May 16, 2022).

⁹ Comments of Lawyers’ Committee for Civil Rights Under Law, *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Notice of Inquiry, GN Docket No. 22-69 (filed May 16, 2022).

¹⁰ *Texas Department of Housing. & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).



experience digital discrimination. We believe that a rule that focuses on intent only would be a rule in name only and would render no path for true enforcement.

As it relates to what policies and practices should be covered by the Commission’s definition of digital discrimination, it is our position that it should include both deployment practices and affordability. It is first important to recognize that supply side and demand side barriers to closing the digital divide are interconnected. As the National Urban League has previously explained, BEAD program funding made available through NTIA will lead to providers completing a “detailed analysis of what revenues they expect to receive in order to provide a return on the capital they will invest.”¹¹ The key to an ISP projecting its return on investment is the understanding of who will sign up for broadband services once the infrastructure is available or upgraded in unserved and underserved communities. Because the statute defines “equal access” to mean “equal opportunity to subscribe” “for comparable terms and conditions,” we believe this allows the Commission to reasonably include the availability of affordable broadband offerings as a metric for determining equal access because that is what gives households, particularly low-income households, the “opportunity” to adopt broadband.

Additionally, because of providers’ work to make broadband more affordable for low-income consumers through various discount internet programs, of which many were strengthened during the Covid-19 pandemic, and because of the existence of the FCC’s Affordable Connectivity Program, it is not our view that the requirement of an affordable option is unduly burdensome.¹² As previously stated, affordable broadband offerings allow providers to better project the return on their investment when deploying broadband in unserved and underserved communities. As of February 2023, the Affordable Connectivity Program has more than 16 million households enrolled, which shows there is a need for an affordable broadband option in our most economically vulnerable communities across the United States. Additionally, a recent study reviewed the impact of ACP and concluded that the program reduces the subsidy needed to incentivize providers to build in rural areas by 25% per household.¹³ The study further states that

¹¹ Letter from Marc H. Morial, President and CEO, National Urban League, to the Honorable John Thune (January 13, 2023).

¹² Comcast, “Comcast Expands Affordable Connectivity Program Offers with Faster Internet Essentials Service and Xfinity Mobile,” March 1, 2022, <https://corporate.comcast.com/press/releases/comcast-affordable-connectivity-program-internet-essentials-servicexfinity-mobile>; Charter Communications, “Charter is Advancing Access to Affordable, Reliable High-Speed Internet Service,” April 28, 2022, <https://policy.charter.com/advancing-access-to-affordable-reliable-internet>; Verizon, “Verizon Program Helps Bridge Digital Divide,” March 15, 2022, <https://www.verizon.com/about/news/verizon-program-helps-bridge-digital-divide>; T-Mobile, “T-Mobile Brings the Federal Affordable Connectivity Program to More Customers,” January 26, 2022, <https://www.t-mobile.com/news/offers/t-mobile-brings-the-federal-affordable-connectivity-program-to-morecustomers-with-free-wireless-service-at-metro-by-t-mobile>.

¹³ Clark, K., Fazlullah, A., Garner, D., Golnabi, S., Hill, H., Kalmus, M., McQuiggan, M., and Salmirs, E. *Closing the Digital Divide Benefits Everyone, Not Just the Disconnected: An Analysis of How Universal Connectivity Benefits education, Health care, Government Services, and Employment* (December 7, 2022), https://www.commonsemmedia.org/sites/default/files/research/report/2022-cs-bcg-closing-digital-divide_final-release-3-for-web.pdf.



“ACP, which subsidizes subscriber service fees up to \$360 per year, reduces the per-household subsidy required to incentivize ISP investment by \$500, generating benefit for the government and increasing the market attractiveness for new entrants and incumbent providers.”¹⁴ It is our view that the absence of an affordable option is what will create a greater burden on providers when trying to determine their return on investment, which subsequently will create inefficiencies in the BEAD program.

Additionally, it is important to recognize that as time progresses, our online and offline worlds will continue to merge and our dependency on a reliable broadband connection will dramatically increase as it has over the last decade. As our organizations are working to aggressively combat rising income inequality that disproportionately impacts Black communities, the consequences of not being connected will have devastating effects on one’s ability to access economic opportunities, education, healthcare, and critical government services. Overall, we believe that the inclusion of affordability within the policies and practices to be covered in the definition of digital discrimination is further augmented by Congress’ understanding of the current broadband landscape that includes discount internet programs that have been strengthened by industry and government collaboration. Additionally, the goal of ensuring all communities can afford to adopt broadband directly correlates with the broader mission of the IIJA and the ongoing efforts to address all aspects of the digital divide.

Lastly, the digital discrimination rules should be included within broader broadband policymaking as part of a public interest framework. One example we envision the public interest framework being used is for decision-making within the agency’s programmatic work such as in the event that internet service providers are seeking to merge. Past violations of the established digital discrimination rules must be part of that analysis. This framework could also be part of the decision-making process in how providers are able to participate in future spectrum auctions or in the calculation of the amount of universal service funds a provider is eligible to receive.

II. Interagency Coordination

Acts of discrimination do not happen within a vacuum. Discrimination is systemic and is entrenched in the institutions of the United States, of which states have historically been and presently are perpetrators of such acts. As previously documented, the National Urban League has urged continued interagency coordination between the FCC and NTIA.¹⁵ NTIA’s *Notice of Funding Opportunity* for the BEAD program lays the groundwork for ensuring that eligible entities including states and territories participate in diverse stakeholder engagement so that

¹⁴ *Id* at 30.

¹⁵ Letter from Alisa Valentin, Senior Director of Technology and Telecommunications Policy, National Urban League, to Marlene H. Dortch, FCC, GN Docket No. 22-69, (filed December 14, 2022).



broadband funds are deployed equitably, which was also advocated for by a broad coalition of civil rights organizations.¹⁶

However, states and territories now have significant power in how a historic amount of funding for broadband is ultimately spent. For example, if a provider bids to build out broadband in four counties within a state and that state only approves funding deployment in two counties that are higher income and predominately white over counties that are predominately Black, that state is the entity presumably engaging in digital discrimination. This is a particular concern in the Black rural south where a significant population of Black people in America are continuously marginalized as the result of policy decisions. In the broadband context specifically, recent research by the Joint Center on Political and Economic Studies explains that 38% of Black residents report that they lack home internet access as compared to 23% of white residents in that region.¹⁷ If the federal government fails to play a role in holding bad actors, including states, accountable, these communities will bear the burden and suffer significant harm.

An anecdotal example of these actions also occurred on the local level recently when a Black Women's Roundtable state partner contacted county officials in a southern state about engaging as a community stakeholder to represent the Black unserved and underserved county residents in the planning process for the deployment of NTIA's BEAD and Digital Equity Act funding. The response this state partner received from a county official was that the county had no intentions of applying to receive NTIA's broadband grant funding despite the county's need for broadband access and digital equity due to the disparities in connectivity. This demonstrates a need for the Commission and NTIA to provide additional guidance to counties and localities on best practices for adopting policies that do not lead to intentional or unintentional digital discrimination. This guidance should also include encouraging states to sign memoranda of understanding with their county and local governments to adopt policies that promote digital equity and prevent digital discrimination. Additionally, the Commission should strongly urge states, counties, and local municipalities to adopt the recommendations to promote digital equity and prevent digital

¹⁶ National Telecommunications and Information Administration. Broadband Equity, Access, and Deployment Program Notice of Funding Opportunity, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>; Comments of Leadership Conference *et al.*, Infrastructure Investment and Jobs Act Implementation, Docket No. 220105-0002, NTIA, (filed February 4, 2022). <https://civilrights.org/resource/infrastructure-investment-and-jobs-act-implementation-docket-no-220105-0002/>; Alisa Valentin, *The US Has a Historic Opportunity to Bridge the Digital Divide* (July 10, 2022), <https://www.wired.com/story/digital-divide-broadband-fcc/>.

¹⁷ Joint Center for Political and Economic Studies, *Affordability & Availability: Expanding Broadband in the Black Rural South* (October 6, 2021), <https://jointcenter.org/affordability-availability-expanding-broadband-in-the-black-rural-south/>.



discrimination that were submitted to the Commission by its own Communications Equity and Diversity Council.¹⁸

Further, the Broadband Interagency Coordination Act of 2020 (BICA) required that the FCC enter into an interagency agreement, requiring coordination with USDA and NTIA “for the distribution of funds for broadband deployment.”¹⁹ In February 2023, the Wireline Competition Bureau submitted the “Report on the Effectiveness of the Broadband Interagency Coordination Agreement” to the Senate Committee on Commerce, Science and Transportation and the House of Representatives Committee on Energy and Commerce.²⁰ Although we saw no direct mention of the ongoing digital discrimination proceeding, we believe that the BICA also allows for the coordination of the distribution of BEAD funds that is consistent with the rules that are established in this proceeding to prevent and eliminate digital discrimination and we urge the Commission to take action.

III. Modification of complaint process and establishment of robust, transparent data collection and reporting

The Commission must ensure that broader data collection efforts and an updated complaint process are both rooted in equity. We support the Commission developing a dedicated complaint process for digital discrimination because it is a new statute that requires careful consideration and dedicated resources. We further support the voluntary collection of demographic data. Consumers are very accustomed to sharing their demographic data in instances that are both required and voluntary, particularly with government entities, and are generally aware that this data is often used as an analytical tool. Therefore, it is not our position that the collection would deter people from filing complaints.

In addition, our organizations recommend that the Commission builds on its ACP Outreach Grant Program by engaging third-party intermediaries in awareness efforts involving consumer complaint processes related to digital discrimination.²¹ It is the work of trusted third-party intermediaries that grounds these sorts of efforts, particularly because people do not regularly engage with the Federal Communications Commission. We also recommend that the

¹⁸ Communications Equity and Diversity Council, *Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity*, (submitted November 7, 2022).

<https://www.fcc.gov/sites/default/files/cedc-digital-discrimination-report-110722.pdf>.

¹⁹ 47 U.S.C. § 1308.

²⁰ Wireline Competition Bureau, *Report on the Effectiveness of the Broadband Interagency Coordination Agreement Pursuant to §1308 of the Broadband Interagency Coordination Act*, (February 2023).

<https://www.fcc.gov/document/fcc-reports-success-broadband-interagency-coordination-act>.

²¹ Letter from Alisa Valentin, Senior Director of Technology and Telecommunications Policy, National Urban League, to Marlene H. Dortch, FCC, GN Docket No. 22-69 (filed Dec. 14, 2022).



Commission create outreach materials similar to what was created with the Affordable Connectivity Program to help educate consumers about the established rules and complaint process.

Further, we believe that part of the Commission’s data collection process should also include field hearings that build upon the ongoing digital discrimination listening sessions. All the data collection processes and analyses should ultimately yield a “State of Digital Discrimination” public report that is issued by the Commission annually. We believe a routine report is important for the Commission to maintain both transparency and accountability. It also will allow the Commission to outline practices that are in violation of the digital discrimination rule, which will give providers updated guidance.

IV. A framework for the establishment of an FCC Office of Civil Rights to address digital discrimination and broader communications equity issues

As our organizations have previously stated, it remains imperative that an Office of Civil Rights is established at the FCC to address both the prevention and elimination of digital discrimination as well as broader communications equity issues.²² The Commission should consult with other agencies, such as the Department of Education and Department of Labor, for guidance on establishing such an office. We propose the following guiding mission for the FCC Office of Civil Rights: “The mission of the FCC Office of Civil Rights is to ensure equitable access to communications services and to promote vigorous enforcement of non-discrimination statutes at the intersection of communications and civil rights law.”

As the National Urban League and the Black Women’s Roundtable have previously stated, an Office of Civil Rights can assist the FCC in thoughtfully working through critical proceedings that impact the communications needs of historically underserved communities in the Commission’s work on digital discrimination, broadband deployment, broadband affordability, prison phone justice, media ownership, and more.²³ While civil rights expertise is absolutely welcome throughout the entirety of the agency, there should also be a dedicated office with leadership that reports directly to the Chair. An independent office provides the civil rights arm

²² Comments of National Urban League, *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Notice of Inquiry, GN Docket No. 22-69 (filed May 16, 2022); Comments of The Leadership Conference on Civil and Human Rights and its Media/Telecommunications Task Force, *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Notice of Inquiry, GN Docket No. 22-69 (filed May 16, 2022); Comments of the Black Women’s Roundtable, *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Notice of Inquiry, GN Docket No. 22-69 (filed May 16, 2022).

²³ *Id.*



with a direct line of communication with the Chair and is less likely to be diminished or overlooked than if this expertise is solely within the existing bureaus. Again, we do not disagree with the idea of the need for civil rights expertise or personnel focused on these issues throughout the agency; however, we also believe that a separate office is needed to reach the guiding principle of adopting policies that promote equitable, inclusive, and accessible access to communications services for everyone throughout this country.

V. Conclusion

As organizations that have long fought for the civil rights of Black communities in particular, we know that history has taught us that where there is no investment, there are no jobs and where there are no jobs, there is no opportunity and where there is no opportunity, there is no innovation. The deployment of affordable, reliable access to broadband is one of the many investments the federal government prioritized in the Infrastructure Investment and Jobs Act because it is a critical resource that fuels our economy, civic engagement, education, and access to government services. The Commission must continue its mandate of providing universal access to broadband urgently and in an unwavering posture — this is one of the many proceedings that provides that opportunity.

Thank you for considering the recommendations of the National Urban League, National Coalition on Black Civic Participation, Black Women’s Roundtable, and the National Action Network. We look forward to continued collaboration with you and the FCC staff to ensure that equity is centered in the agency’s rulemaking to prevent and eliminate digital discrimination. If you have any further questions, please contact Alisa Valentin, Senior Director of Technology and Telecommunications Policy at the National Urban League, at avalentin@nul.org.

Sincerely,

National Urban League

National Coalition on Black Civic Participation

Black Women’s Roundtable

National Action Network