

October 24, 2023

Marlene H. Dortch
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

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

The undersigned Hispanic leadership organizations file these supplemental comments in strong support of the October 5th letter filed by the National Urban League (“NUL”) in the above-referenced proceeding.¹

As a collective leadership for our constituents of over 50 million Americans of Hispanic descent, The Commission’s focus on preventing and eliminating digital discrimination is imperative to overcoming particular hurdles faced by our community. As is well documented, Latinos are overrepresented in the digital divide and the Act aims to close it by facilitating equal access to broadband and promoting digital equity, digital inclusion, and digital literacy.² The Pew Research Center found that 65% of Latino adults have a home broadband connection, compared with 80% of White respondents. Unsurprisingly, this disparity also correlates with a family’s household income. Those earning under \$50,000 report having troubles paying for a broadband connection at home. Congress finds that digital exclusion “carries a high societal and economic cost” and that it “materially harms the opportunity of an individual with respect to the economic success, educational achievement, positive health outcomes, social inclusion, and civic engagement of that individual” while “further exacerbating existing wealth and income gaps.” In addition to fear of government entities; language barriers; and accessibility and affordability of high-speed broadband internet; the disparate effects are compounded for the nearly 4 million Latinos estimated to be living in rural parts of the country, a burgeoning segment of our population. Addressing these kaleidoscopic issues must be top of mind: lack of wealth, access, and affordability of high-speed internet and adequate devices add another facet to these complex hurdles faced by Latinos. This is why it is paramount that the Commission continues to find ways that benefit those disproportionately represented in the digital divide, here, Latinos.

We believe NUL’s proposals will provide useful guidelines to serve our unserved Latino communities in rural and urban areas by addressing the issues at the heart of the proceeding. In particular:

- We strongly support NUL’s suggestion for an FCC Office of Civil Rights; annual certification of compliance by ISPs; an annual *State of Digital Discrimination* report; designated ISP Liaisons; and periodic field hearings, listening sessions, and comparable forums between ISPs, local governments, advocacy groups, and communities to promote “solutions oriented discussions” to prevent and eliminate digital discrimination.³

¹ See Ex Parte Letter of National Urban League, filed in WC Docket No. 22-69, October 5, 2023 (“NUL Filing”).

² Sara Atske & Andrew Perrin, Home Broadband Adoption, computer ownership varies by race, ethnicity in the U.S. Pew Research Center (2021), <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/> (last visited Mar 31, 2023).

³ *Id.* at 1-3.

- We agree that a balanced approach to constructing a complaint framework is critical to ensure that the Commission’s final order is legally sustainable and does not risk reversal by the courts, which could also jeopardize other existing civil rights laws.⁴– As NUL’s proposals make clear, it is important that the Commission’s rules do not simply erect a rigid complaint framework that in the end fails to benefit the protected classes that are the focus of the digital discrimination statute. Instead, the Commission should adopt NUL’s practical suggestions, which are designed to drive efficient and impactful solutions that benefit our constituent communities.
- We agree with NUL that “the Commission should pay particular attention to broadband deployment when creating rules to prevent and eliminate digital discrimination and make it clear that deployment covers not just initial broadband network builds, but also future technology upgrades,”⁵ because, as outlined in NUL’s filing, “communities and individuals protected by the statute have far too often experienced discrimination when broadband networks have not been deployed to their communities.”⁶
- We support NUL’s recommendation that the Commission should establish a framework under which parties may file complaints either alleging intentional discrimination, or against facially neutral policies or practices that “have a discriminatory impact on protected classes covered by the statute.”⁷
- As NUL’s filing acknowledges, some complaint solutions may include the use of the FCC’s authority to bring enforcement actions, but others “may be better equipped for an alternate dispute process like the processes available to complainants who file with the Equal Employment Opportunity Commission and the Department of Education, which allows parties to find a mutually acceptable resolution for complaints.”⁸ And we support NUL’s recommendation that the FCC must strike a balance between its obligation to take economic and feasibility measures into account with “universal service goals of ensuring that everyone across the country has access to high-speed internet.”⁹

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Finally, while we believe Section 60506 of the Infrastructure Investment and Jobs Act focuses on deployment, we continue to advocate for other governmental and private–solutions addressing affordability. That is why all the undersigned parties support the Affordable Connectivity Program

⁴ This risk of court reversal is an increasing concern not just as a result of recent the recent Supreme Court decision banning the consideration of race in college admissions, but also in light of other recent decisions upending disparate impact and similar frameworks. See, e.g., *Chamber of Commerce of the United States of America et al. v. Consumer Financial Protection Bureau et al.*, 6:22-cv-00381 (D. Ct. Eastern District of TX), rel. Sept. 8, 2023 (vacating the CFPD’s rule imposing disparate impact liability on regulated financial institutions and concluding that “Congress authorizes disparate-impact liability only in narrow circumstances, with limits that exist to avoid ‘serious constitutional questions,’” such that a “clear statement” of authority typically is required); *ULTIMA SERVS. CORP. v. U.S. DEPT OF AGRIC., et al.*, 2:20-CV-00041-DCLC-CRW (D. Ct. Eastern District of Tennessee), rel. July 19, 2023 (finding that a “rebuttable presumption” of social disadvantage for specific minority groups to qualify them for an 8(a) Business Development Program—which preferences minorities in government contracts awards—violated plaintiffs’ Fifth Amendment right to equal protection).

⁵ *Id.* at 2-3.

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.* at 3-4.

⁹ *Id.* at 4.

(ACP). Sixteen prominent Hispanic leadership and civil rights organizations sent a letter to congressional leadership in July 2023 urging for a sustainable solution for the continuation for ACP,¹⁰ and recently, 230 civil society organizations, municipal governments, and other interested groups sent a letter to Congress requesting robust additional funding for ACP,¹¹ and explaining that the ACP has proven vital in ameliorating the lack of high-speed internet access among communities of color, low-income people, and other underserved communities. Given that ACP has more than 21 million households enrolled, there clearly is a need for an affordable broadband option in our most economically vulnerable communities across the United States. We will continue to advocate for replenishment of ACP funding, and we strongly encourage the Commission and other interested parties to do so as well.

We value the opportunity to comment on this important proceeding, and we are prepared to assist the Commission as it finalizes its digital discrimination rules.

Sincerely,

United States Hispanic Chamber of Commerce
SER Jobs for Progress National, Inc.
The Latino Coalition
Hispanic Heritage Foundation
MANA, A National Latina Organization
Hispanic Federation
HTTP - Hispanic Technology and Telecommunications Partnership

¹⁰ HTTP, *HTTP Leads Latino Coalition Calling on Congress to Sustain ACP* (2023), <https://www.htppolicy.org/blog/latino-coalition-congress-sustain-acp>.

¹¹ The Leadership Conference on Civil and Human Rights, *The Leadership Conference & Over 230 Groups Urge Robust ACP Funding* (2023), <https://civilrights.org/resource/the-leadership-conference-over-230-groups-urge-robust-acp-funding/>.