

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

In the Matter of)
)
Implementing the Infrastructure Investment)
and Jobs Act: Prevention and Elimination)
of Digital Discrimination)

RM Docket No. 22-69

**Written Reply Comments of the Connecticut Office of State Broadband
within the Connecticut Office of Consumer Counsel**

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The Connecticut Office of State Broadband (“CT OSB”) is established by statute within the Connecticut Office of Consumer Counsel,¹ which is an independent agency that serves as the advocate for consumer interests in all matters involving traditional utilities, electric suppliers, cable television companies and telecommunications providers and by statute is authorized to appear and participate in any federal or state regulatory or judicial proceedings in which the interests of Connecticut consumers may be involved or in matters involving the services rendered by these entities may be involved. Conn. Gen. Stat. § 16-2a(a). The CT OSB is statutorily charged with “work[ing] to facilitate the availability of broadband access to every state citizen and to increase access to and the adoption of ultra-high-speed gigabit capable broadband networks.”

CT OSB hereby respectfully submits these Reply Comments in response to the Commission’s Notice of Inquiry (“Notice”) and to various entities who responded to the Commission’s Notice with initial comments. *See* FCC, GN Docket No. 22-69, *supra*, Notice of Inquiry (Mar. 17, 2022). CT OSB concurs with certain recommendations as stated in the filings of the NDIA,² Public Knowledge,³ Lawyers Committee for Civil Rights Under Law (“LCFCRUL”),⁴ Next Century Cities,⁵ National Urban League,⁶ National Broadband Mapping Coalition⁷ (“NBMC”), and the Communication Workers of America⁸ (“CWA”) and as such, supports advocacy aimed at the prevention and elimination of digital discrimination through increased tracking and data collection, robust analysis and process requirements for any

¹ Conn. Gen. Stat. § 16-2a(c).

² [Comments of the National Digital Inclusion Alliance \(May 16, 2022\)](#)

³ [Comments of Public Knowledge \(May 16, 2022\)](#)

⁴ [Comments of Lawyers Committee for Civil Rights Under Law \(May 16, 2022\)](#)

⁵ [Comments of Next Century Cities \(May 16, 2022\)](#)

⁶ [Comments of National Urban League \(May 16, 2022\)](#)

⁷ [Comments of National Broadband Mapping Coalition \(May 16, 2022\)](#)

⁸ [Comments of Communications Workers of America \(May 16, 2022\)](#)

providers claiming exemptions from establishing equitable broadband deployment, and clear and concrete complaint processes and enforcement provisions. In contrast, the CT OSB urges the Commission to closely scrutinize certain comments put forth by providers such as AT&T Services, Inc. (“AT&T”),⁹ USTelecom—The Broadband Association (“USTelecom”),¹⁰ and ACA Connects – America’s Communications Association (“ACA Connects”),¹¹ as addressed below.

1. CT OSB Supports Sweeping Elimination Of Digital Discrimination Supported By Data-Driven Analysis And A Dynamic Complaint And Enforcement System

CT OSB agrees it is essential to collect additional data and consider multiple layers of metrics when the Commission is assessing what constitutes “comparable service,” as outlined in the comments of the NDIA, LCFERUL, National Urban League, and Public Knowledge. There are many service metrics that are being addressed through the Broadband “nutrition label” docket (*See* FCC Docket No. CG 22-2, *In the Matter of Empowering Broadband Consumers Through Transparency*) that can and should serve as areas of evaluation, such as degraded service, latency, slow speeds, data caps, as outlined by NDIA, Public Knowledge and NBMC. Additional areas that would be fruitful to analyze when considering whether product offerings are comparable can include the caliber of customer service a customer may experience, such as longer wait times in certain neighborhoods for repairs, and the timing and implementation of upgrades, as suggested by LCFERUL.

The National Urban League, NDIA, and NBMC advocate for increased data collection not only to analyze deployment but also to analyze affordability, as equal access to unaffordable internet fully negates the intent of the Commission’s mandate to eliminate digital discrimination.

⁹ [Comments of AT&T \(May 16, 2022\)](#)

¹⁰ [Comments of US Telecom - The Broadband Association \(May 22, 2022\)](#)

¹¹ [Comments of ACA Connects \(May 16, 2022\)](#)

As stated by Next Century Cities: “Utilizing an equitable access standard instead gives the Commission greater latitude to investigate areas where consumers may have access to broadband subscriptions, but are unable to take advantage of them.”¹² CT OSB supports the use of an equitable access standard.

As recommended by NDIA, Public Knowledge, CWA, and the Joint Advocates,¹³ CT OSB supports a detailed and exacting evaluation process to any defense of economic or technical infeasibility that may be proffered by a provider. NDIA, Public Knowledge, and CWA submit that the evaluation of economic feasibility must be done with long-term return on investment in mind: economic feasibility should be evaluated when looking at the useful life of an asset, not the immediate, near-term expected return. Additionally, the Commission should be strict to construe that “infeasible” does not extend to “not as profitable.” Also, as suggested by Public Knowledge, any evaluation of “profitability” should include a provider’s entire service territory, so as to reduce evaluation of feasibility based on specific neighborhoods. CT OSB also fully supports the Commission requiring providers to document each and every instance of “infeasibility” for the Commission to issue a waiver,¹⁴ as suggested by the NDIA. Finally, any feasibility analysis should also include the availability of federal funding opportunities to defray or offset investment costs, as recommended by NDIA and Public Knowledge.

¹² [Comments of Next Century Cities \(May 16, 2022\), p. 5.](#)

¹³ [See Comments of Comments By Electronic Frontier Foundation, Center For Accessible Technology, Nten, Communities In Schools Of La, Mohuman, Unite-La, Media Alliance, The People’s Resource Center, Indivisible Sacramento, The Greenlining Institute, California Center For Rural Policy, Access Humboldt, Common Sense, Open Mic, Active San Gabriel Valley, Speak Up, California Community Foundation Digital Equity Initiative, Monterey Bay Economic Partnership, New America’s Open Technology Institute, Great Public Schools Now, Shared Harvest Foundation, Innercity Struggle, Para Los Ninos, La-Tech.Org, X-Lab, Media Justice, Innovate Public Schools, San Francisco Tech Council, Alliance For Better Community, Community Coalition Of The Antelope Valley, Center For Powerful Public Schools, Nextgen California, Insure The Uninsured Project, Destination Crenshaw, La Voice, Latino Coalition For A Healthy California, Michelson Center For Public Policy, Benton Institute For Broadband And Society, And #Oaklandundivided Coalition \("Joint Advocates" May 16, 2022\)](#)

¹⁴ CT OSB also supports that any waivers for infeasibility that may be granted should be done only in exceptional circumstances.

Finally, complaint and enforcement mechanisms will be key to any successful campaign against digital discrimination. As advocated for by multiple parties including but not limited to Public Knowledge and NDIA, the Commission should establish a highly visible and user-friendly complaint system, with multiple avenues available for lodging complaints, and include a “FAQ” section with tangible examples of potential digital discrimination so a consumer (as well as a provider) will know what sort of conduct is actionable. As noted by Public Knowledge, consumer complaints are vital to unearthing digital discrimination, however, the Commission’s current complaint process does not specifically address digital discrimination or have an active response mechanism. Public Knowledge encourages and CT OSB supports the expansion of the Commission’s current complaint process to include a digital discrimination category. Further, enforcement on all fronts is crucial to successful prevention and elimination of digital discrimination. As set forth by Public Knowledge and also recommended by the CT OSB,¹⁵ the Commission should establish processes for reporting and enforcement at all levels of government.

2. The Commission Should Be Cognizant of Legacy State Laws that Could Facilitate Discriminatory Network Practices

Upon review of comments submitted in this proceeding by AT&T, USTelecom, and ACA Connects, CT OSB counters that some of the existing inequities in the broadband ecosystem are a direct byproduct of lobbying by these groups over the past twenty years. Given that Verizon and AT&T in their wireline served areas, along with the cable industry, are among the dominant national players in the broadband industry, CT OSB respectfully recommends that the Commission evaluate the transformation in state laws in the mid-2000’s for their potential

¹⁵ [Comments of the Connecticut Office of State Broadband within the Office of Consumer Counsel \(May 16, 2022\)](#)

impact on the digital discrimination that occurs today. To ease the entry into the wireline video service business, approximately 38 states enacted laws that allowed Verizon and AT&T to enter the video business without obtaining traditional cable franchises.¹⁶

A review of a sampling of those state laws reveals that the legislative enactments of that era removed any state or municipal authority to impose facility build-out requirements or provide video service to any customer using any specific technology. In states like Connecticut, cable companies were exempted from post-2007 franchise renewal proceedings by surrendering their cable franchise franchises in exchange for state certificates of unlimited duration, e.g., licenses to operate in perpetuity without any review or renewal opportunities to ensure that those companies were meeting the needs of the communities they served. Accordingly, the franchising authority in Connecticut, which is the state utility commission,¹⁷ has been deprived of any opportunity to ensure that the State's twenty-five distressed municipalities¹⁸ are being served with comparable network technologies than the more affluent Connecticut communities.¹⁹

Accordingly, state statutory schemes like those in Connecticut — enacted in 2007 to allow AT&T into the wireline video business — created statutory licenses, called certificates, which for a meager one-time requirement, allowed any entity into the business to operate a wireline video service²⁰ without a hearing or even limited administrative review. These certificate holders had: a) no specific requirements to meet the cable related needs of a

¹⁶ See Congressional Research Service Report, *Potential Effect of FCC Rules on State and Local Video Franchising Authorities* (updated Jan. 9, 2020) at 9-10, available [here](#).

¹⁷ Formerly known as the Department of Public Utility Control, as an independent agency, but since reorganized into the Public Utilities Regulatory Authority under the Department of Energy and Environmental Protection.

¹⁸ See https://portal.ct.gov/DECD/Content/About_DECD/Research-and-Publications/02_Review_Publications/Distressed-Municipalities

¹⁹ See <https://moneyinc.com/richest-cities-connecticut/>

²⁰ Conn. Gen. Stat. § 16-331p (for incumbent cable operators) and Conn. Gen. Stat. § 16-331e (for non-cable companies, i.e., AT&T).

community, b) an exemption from build-out requirements,²¹ and c) no performance review. For the communities they served, there was no opportunity for public scrutiny or input into assessing the community-related needs, nor any opportunity to ensure that the technologies being deployed by the certificate holders were consistent regardless of the income levels, racial or ethnic compositions of the neighborhoods. True, the 2007 statutes in Connecticut prohibited discrimination against “any group of potential residential subscribers based solely upon the income of the residents in the local area in which such group resides,”²² but those statutory provisions have proven to be merely window dressing given the lack of oversight that the state regulatory authority has been provided over these certificate holders, so there are no provable factual bases for any claims.

Notably, by entering into the video business, the Cable Communications Policy Act of 1984 requires that a provider bears the burden of demonstrating the “financial, legal, and technical ability to provide the services, facilities, and equipment” as set forth in the operator's proposal for renewal. 47 U.S.C. § 546(c)(1). Yet, comments filed in this docket by companies such as AT&T, which was the main beneficiary of the 2007 Connecticut legislation allowing it into the cable business, now assert that the “technological and economic feasibility” language of Section 60506(a)(1) provides a virtual bullet-proof defense to any claims of discrimination.²³

To summarize, CT OSB respectfully urges the Commission to evaluate the discriminatory impact that these state statutory schemes have had on distressed communities,

²¹ Conn. Gen. Stat. § 16-331f and Conn. Gen. Stat. § 16-331q. AT&T Comments (at 12) assert that the Commission’s review of discriminatory practices is limited to actual “service areas” which may have in fact been defined by providers themselves, due to potentially discriminatory practices in deciding where to invest network expansion.

²² Conn. Gen. Stat. § 16-331g and Conn. Gen. Stat. § 16-331r

²³ AT&T sold its Connecticut wireline business in 2014 after obtaining legislative changes that upended cable regulation in the state and eliminated a host of consumer protections.

which potentially caused them to be underserved or at least not provided with the same levels of service as provided in communities that are more affluent.

3. Conclusion

The Connecticut Office of Consumer Counsel and Office of State Broadband appreciates this opportunity afforded by the Commission to provide a response to the comments of other participants, CT OSB is encouraged by the thoughtful advocacy of others joining together to rectify longstanding historical inequities of digital access, adoption, and deployment. This docket presents complex and multifaceted issues and opportunities that the Commission is tasked with to address digital discrimination; CT OSB looks forward to continued involvement and engagement with in the Commission and participants as this process moves forward.