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In the Matter Of

Request For Information (RFI): Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government

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COMMENTS OF THE NATIONAL HISPANIC MEDIA COALITION

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I. INTRODUCTION

The National Hispanic Media Coalition (NHMC) is a 35 year-old non profit organization that advocates for civil rights, eliminating hate, ending racism, and discrimination against the Latino Community. To achieve these goals, NHMC utilizes education, policy work, and media advocacy. NHMC also works to end online hate, hold online platforms accountable, and to close the digital divide. NHMC gives a voice to those currently and historically underrepresented by the Federal government.

NHMC has assessed whether agency policies and actions equitably serve individuals and communities, in response to the Request for Information (RFI) put out by the Office of Management and Budget (OMB). As an organization, NHMC believes there are several recent and ongoing examples of agency action and policies which do not equitably serve all people in the United States. This RFI asked for coordination, communication, as well as engagement with both civil rights and community based organizations, and NHMC has historically and will continue to answer this call to action.

II. SINCE THE BIRTH OF THE INTERNET, THE U.S. GOVERNMENT HAS FAILED TO ADEQUATELY DEPLOY INFRASTRUCTURE AND ENSURE ADOPTION OF BROADBAND AS A UNIVERSAL SERVICE, WHICH HAS CREATED A DIGITAL DIVIDE DISPROPORTIONATELY AFFECTING LOW-INCOME AND BIPOC AND LATINX COMMUNITIES.

The digital divide is fueled by overlapping issues of affordability, availability, and adoption. These three factors, or said lack of, present enormous barriers that hinder the Latinx community, and other marginalized communities, from having access to the internet in a reliable and meaningful way. The National Hispanic Media Coalition views this disinvestment and neglect from ISPs (Internet Service Providers) and the federal government as a symptom of

systemic racism and colonization that has manifested itself in digital rights. From the birth of the internet to the present day, the Federal Communications Commission (FCC)—the agency with a congressional mandate¹ to ensure universal service of communications is available to all people—remains consistent in its shortcomings to alleviate internet access for the most vulnerable communities among us, including the Latinx community. Despite a growing demand for reliable and affordable internet throughout the pandemic, access to and the affordability of the internet at home continues to be a major concern facing families, particularly for Latinx and BIPOC families.

Affordability remains a top issue for consumers, despite access to the internet being as essential of a tool as ever for everyday life in this country. Forty-two million people do not currently have access to broadband in the U.S., with BIPOC representing 75 percent of those who are not connected.² Furthermore Latinx make up nearly 40 percent of those BIPOC who are not connected to broadband internet service at home.³ While there are steps being taken to provide emergency financial assistance to households struggling to pay for broadband subscriptions due to the coronavirus pandemic through the Emergency Broadband Benefit program (EBB),⁴ the temporary nature of this solution will leave families right back where they started once funding runs out: on the wrong side of the digital divide.

In addition to affordability, access to advanced broadband infrastructure continues to be a barrier for Latinx and BIPOC. At the genesis of this issue is the FCC's inaccurate broadband

¹ §47 U.S.C. 151.

² Anna Brown, Hugo Lopez, et al., *Internet Use among Hispanics*, Pew Research Center (rel. Dec. 30, 2019), www.pewresearch.org/hispanic/2016/07/20/1-internet-use-among-hispanics/.

³ *Id.*

⁴ Emergency Broadband Benefit Program, Universal Service Administrative Company (USAC), GetEmergencyBroadband.org (last visited July 1, 2021).

mapping process, which relies on ISPs to self-report Form 477 data, causing data gaps with little to no accountability.⁵ However, beyond maps, over the last two decades, the U.S. government has done very little to require ISPs to build out adequate broadband infrastructure where it does not exist or is outdated. Rural America systemically lacks proper infrastructure for reliable, meaningful access to the internet, and often faces a multitude of financial barriers.⁶ However, urban America also lacks proper infrastructure as ISPs have little incentive to build out to areas that are less likely to turn a high profit for their company.⁷ While NHMC appreciates the U.S. economic ecosystem, capitalism is fundamentally at odds with the notion of universal service. Closing the digital divide for the Latinx community has and will continue to require government accountability and regulation to ensure that our community is not left behind due to digital redlining and other institutionalized discrimination practices.

III. THE ONE SAFEGUARD OF BROADBAND INTERNET SERVICES WAS NET NEUTRALITY, WHICH WAS ROLLED BACK BY THE FCC.

In 2015, the Federal Communications Commission passed the Open Internet Order, which classified the internet as a Title II service under the Communications Act,⁸ and protected consumers from harmful discrimination practices by ISPs. The 2015 Open Internet Order received broad support among consumers, and was one of the most widely recognized tech

⁵ Broadband Data and Mapping: Background and Issues for the 117 th Congress, Congressional Research Service (rel. May 19, 2021), <https://fas.org/sgp/crs/misc/R45962.pdf>.

⁶ Monica Anderson, *About a quarter of rural Americans say access to high-speed internet is a major problem*, Pew Research Center (Sept. 10, 2018), <https://www.pewresearch.org/fact-tank/2018/09/10/about-a-quarter-of-rural-americans-say-access-to-high-speed-internet-is-a-major-problem/>.

⁷ John B. Horrigan, *Analysis: Digital Divide Isn't Just a Rural Problem*, Daily Yonder (Aug. 14, 2019), <https://dailyyonder.com/analysis-digital-divide-isnt-just-a-rural-problem/2019/08/14/>.

⁸ In the Matter of Protecting and Promoting the Open Internet, Report and Order, Federal Communications Commission, rel. Mar. 12, 2015, <https://www.fcc.gov/document/fcc-releases-open-internet-order>.

policy issues in the history of digital rights advocacy, and even making its debut in an episode of *Last Week Tonight with John Oliver*.⁹ In 2017, following the appointment of Ajit Pai as chairman of the FCC under the Trump Administration, the 2015 Open Internet Order was repealed.¹⁰

Without net neutrality regulations on the books, Latinx face heightened vulnerability to gatekeeper practices, like censorship, speed discrimination, and inaccessible paid prioritization policies. At present, the only net neutrality accountability measure in place for ISPs is an honor system requirement that each company list their net neutrality practices somewhere on their website.¹¹ Thus, ISPs have the unchecked power to block, throttle, or employ tiered pay-to-play internet subscriptions as they see fit. This puts underrepresented voices in a vulnerable position, making activists', whistleblowers', and cultural leaders' stories hard to tell, access, and action. Without strict rules to prevent harmful practices from ISPs, Latinx and other marginalized people have a harder time accessing necessary digital services, like virtual learning, telehealth, remote work, and more.

IV. FOR THE BETTER HALF OF A CENTURY, THE FCC'S METHOD OF GRANTING BROADCAST AND MEDIA LICENSES WAS ROOTED IN RACIST AND DISCRIMINATORY PRACTICES.

It was not until 1956 that the Federal Communication Commission first granted a broadcast license to a non-white male person.¹² After 1956, the Commission continued to grant licenses to segregationists and people who aligned with racist ideas.¹³ This sent a clear message

⁹ Net Neutrality, *Last Week Tonight with John Oliver*, TV Show (aired June 1, 2014), <https://www.youtube.com/watch?v=fpbOEoRrHyU>.

¹⁰ Restoring Internet Freedom, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, paras. 1-2 (2018).

¹¹ *Id.* at para. 3.

¹² A. Bush and M. Martin, in "The FCC's Minority Ownership Policies from Broadcasting to PCS," 48 *Federal Comm. Law Journal* 423, 439 (1996), <http://www.fclj.org/wp-content/uploads/1995/01/bush.pdf>.

¹³ Comments of the Civil Rights Organizations to the Federal Communications Commission, Docket No. 99-25 (filed Aug. 2, 1999), <https://www.fcc.gov/ecfs/filing/5004307764>.

that BIPOC voices weren't welcome in the media for decades.¹⁴ Granting broadcast licensing only to white men left no space to foster media ownership and representation for BIPOC, women, LGBTQ+, or other underrepresented people. These discriminatory and racist practices are the root cause of the little to no diversity we see in media ownership today.

In recent years, less than three percent of TV Stations and only 5 percent of radio stations were owned by people of color.¹⁵ Furthermore, Latinx only own 39 out of 1,348 full power commercial television stations, a mere 2.9 percent.¹⁶ Further, Latinx own only 2.7 percent of FM radio outlets. Latinx don't fare much better in AM radio—once thought to be a key entry point for BIPOC—owning only 172 AM radio stations out of 3,830, or 4.5 percent.¹⁷ These catastrophic disparities can still be fixed today by promoting diverse and inclusive ownership rules.

Despite an evident need for diversity and inclusivity in media ownership, the FCC has historically repealed these measures designed to safeguard BIPOC voices in the media. One example of this is the success and subsequent repeal of the Minority Tax Certificate (MTC). The MTC was designed to provide economic incentives to station owners to sell to minority owned businesses, as opposed to others.¹⁸ Congress eventually eliminated the Minority Tax Certificate

¹⁴ Gutierrez, Felix F. "American Latino Theme Study: Media (U.S. National Park Service)." *National Parks Service*, U.S. Department of the Interior, www.nps.gov/articles/latinothemestudymedia.htm.

¹⁵ National Hispanic Media Coalition, "FCC Report Shows That Latino Media Ownership Remains Extremely Low" (Nov. 16, 2012), <https://www.nhmc.org/sites/default/files/FCC%20Report%20Shows%20That%20Latino%20Media%20Ownership%20Remains%20Extremely%20Low.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Krasnow, Erin G. and Fowlkes, Lisa M., The FCC's Minority Tax Certificate Program: A Proposal for Life After Death, 51 Fed. Comm. L.J. 666, 668 (1999), <http://www.repository.law.indiana.edu/fclj/vol51/iss3/8>.

which had encouraged the ownership of broadcast or cable property by people of color and women, monumental in promoting diversity.

Before its repeal in 1995, the MTC had made a significant difference in media ownership: minority purchasers acquired 288 radio stations, 43 television stations, and 31 cable systems.¹⁹ By leveling the playing fields of licensing access which has historically excluded BIPOC from media ownership, the MTC doubled minority broadcast ownership while operating for just under 20 years. This lost aspect of diversity safeguards in media needs to be reintegrated to better operate in our society today.

While the reinstatement of a program like the MTC would require significant modification to ensure Constitutionality and modern applicability, Members of Congress, like Representative Butterfield, have emphasized the need for bold action by the Federal Communications Commission to increase diversity in media ownership.²⁰ NHMC agrees with this notion, and encourages the federal government to explore additional ways to incentivize and lower barriers to both the licenses and capital necessary for BIPOC, Latinx, women, LGBTQ+, people with disabilities, and other marginalized groups to become diverse media owners.

V. THE FCC AND USAC’S OUT-OF-DATE BACK-END TECHNOLOGY USED FOR LIFELINE AND THE EMERGENCY BROADBAND BENEFIT PROGRAM IS COMPLICATING ACCESS TO SUBSIDIES FOR PEOPLE WHO NEED IT MOST.

Out-dated technologies, such as back-end digital subsidy program enrollment systems, are creating disparities and unnecessary barriers for classes of people at federal agencies, like the

¹⁹ *Id* at 670.

²⁰ Press Release, Office of Congressman G.K Butterfield, *Congressman Butterfield Introduces Bill to Support Investment in Minority Broadcast Station Ownership*, July 25, 2019, <https://butterfield.house.gov/media-center/press-releases/congressman-butterfield-introduces-bill-to-support-investment-in>.

Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC). In particular, NHMC is frustrated with the technologies used to support the Lifeline program, and now the Emergency Broadband Benefit program. While certainly not intentional, the limitations of the back-end technologies used to verify the identity of consumers applying for either program favors people who hold a Social Security Number (SSN) and creates significant extra processes for those who are differently documented, if any alternative forms of identification are accepted at all.

In December of 2020, Congress created the Emergency Broadband Benefit program to provide financial assistance to people who are struggling to pay their internet bills during and in the aftermath of the COVID-19 pandemic.²¹ As the agency charged with administering the program, the FCC moved quickly to prepare for the launch and rollout of the EBB program throughout Spring 2020. Because the program was designed to connect as many people as possible with essential broadband services, an individual does not need to have a SSN to qualify for the EBB monthly internet discount as long as they are eligible through the program's criterion.

However, as the enrollment and logistical processes were built out by the FCC in partnership with USAC, one major barrier arose for differently documented people. The first step in an application to the EBB program is a process of identity verification to protect the government against duplicates or other forms of waste, fraud, or abuse. The current back-end technology used by the FCC and USAC for the EBB program (which also supports the Lifeline program) has the ability to automatically verify the identity of any applicant who chooses their

²¹ Emergency Broadband Benefit Program, Federal Communications Commission, <https://www.fcc.gov/emergency-broadband-benefit-program> (last visited July 1, 2021).

SSN as their preferred form of identification documents.²² If someone simply does not want to provide their SSN or if they do not have a SSN, they are kicked into a *manual verification process*. This process requires a physical person at USAC to review non-SSN documentation, like a driver's license, passport, or state ID card, in order to verify the applicant's identity. While the agencies are working hard to minimize wait and processing times for these applicants, data shows a significant drop off rate where applicants do not return to finish their application for one reason or another.²³

This technical issue seems insignificant on the surface, but is a reflection of a need for a deeper look into how our government's systems can be updated and upgraded to be more inclusive and accessible for the people it seeks to help. Private companies with low-cost internet programs, like Comcast's Internet Essentials,²⁴ have developed sophisticated methods of identity verification to prevent waste, fraud, and abuse that do not create significant barriers to enrollment for vulnerable populations like those who are differently documented, experiencing homelessness, or have a deep-seeded mistrust of the government. NHMC urges OMB to consider what digital and technological overhauls can be made to ensure that government resources are accessible for all who need them—including the millions of frontline and essential workers who are differently documented.²⁵

²² National Lifeline Verifier, Emergency Broadband Benefit Program Application, https://www.checklifeline.org/lifeline/?id=nv_flow&ebbp=true (last visited July 1, 2021).

²³ High Cost & Low Income Briefing Book, Universal Service Administrative Company (USAC), at 66 (rel. Jan. 25, 2021), <https://www.usac.org/wp-content/uploads/about/documents/leadership/materials/hcli/2021/2021-01-HCLI-Briefing-Book.pdf>.

²⁴ 10 Years Internet Essentials, Comcast (rel. 2021), https://update.comcast.com/wp-content/uploads/sites/33/dlm_uploads/2021/03/IE-ProgressReport_FINAL.pdf

²⁵ Immigrant Essential Workers are Crucial to America's COVID-19 Recovery, FWD.us, <https://www.fwd.us/news/immigrant-essential-workers/> (last visited July 1, 2021).

VI. THE FCC HAS NOT HAD LATINX REPRESENTATION AMONG THEIR COMMISSIONERS IN OVER TWO DECADES.

Latinx representation in leadership, government, and in media is a key focus of NHMC's work. It is important that we have leaders within government and at the decision table that are trusted to advocate on behalf of the Latinx community. Now more than ever it is critical that we appoint a Latinx commissioner to the FCC, as the fifth FCC Commissioner seat remains vacant awaiting President Biden's nomination. Throughout the Commission's entire existence Latinx have been represented only a handful of times, and the last Latinx commissioner served over two decades ago.

Within those two decades, technologies have advanced immensely, including the construction of broadband infrastructure throughout the country. However Latinx have not seen the gains of this development, and Latinx and BIPOC communities have only fallen behind as non-BIPOC communities continue to reap the rewards of modernization. With a growing number of digital issues quickly piling up, a Latinx commissioner would provide the insight and knowledge necessary to combat the number of Latinx communities that are currently impacted by the digital divide.

VII. CONCLUSION

In conclusion, the National Hispanic Media Coalition asks OMB to acknowledge and address these ways in which government institutions, practices, and policies have and continue to discriminate against and otherwise disadvantage BIPOC, Latinx, and other marginalized people.