

October 21, 2011

Chairman Julius Genochowski
Commissioner Michael Copps
Commissioner Mignon Clyburn
Commissioner Robert McDowell
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Letter, WC Docket Nos. 10-90, 05-337

Dear Chairman Genochowski and Commissioners,

The Center for Social Inclusion (“CSI”) commends the Federal Communication Commission’s (“FCC or Commission”) goal of establishing universal access to broadband. However, we write to express our concern regarding the plans for reform of the Universal Service Fund’s High Cost Program outlined in the Chairman’s October 6, 2011 comments. While we appreciate the assurances that funding will be conditioned on compliance with “rigorous obligations to serve the public and meet the goals of universal service,”¹ we are concerned that in the absence of strong measures to ensure that universal service is truly universal—reaching the communities of color, rural areas and low-income communities that are currently least able to reap the benefits of broadband—new investments will only replicate persistent patterns of exclusion.

Specifically, we recommend that the FCC 1) establish performance goals for the reformed High Cost Program that promote equity; 2) take steps to ensure that the granting of waivers does not result in the reduction of access for communities of color 3) make resources available to support community-owned broadband networks through these or future proceedings and 4) require states to collect and make available data allowing the public to assess whether investments are closing gaps in access by race and income. If implemented, these recommendations will guarantee that broadband networks deploying modern technologies are built in the communities that currently have the least access and that states make the investments necessary to jumpstart economic development and catalyze improved educational and health outcomes where most needed. Taken together, these steps will ensure that historically excluded communities are positioned to participate in our 21st century economy and our increasingly digital democracy.

I. FCC Measures to Promote Equity

¹ See “Connecting America: A Plan to Reform and Modernize the Universal Service Fund and Inter-carrier Compensation System” at 8 (Hereinafter, “remarks”).

We recommend that the Commission, in reforming the High Cost program, take the following steps to ensure truly universal service.

A. Establish Performance Goals for the Reformed High Cost Programs that Promote Equity. The FCC must incorporate explicit goals and progress measures related to the expansion of broadband to communities of color and low-income communities in its final plan for the reformed High Cost program. To hold itself accountable for achieving universal broadband access, the Commission must include measures capturing the degree to which investments increase deployment of modern networks to zip codes where people of color predominate as well as deployment of such networks to communities in which residents are living at or below the federal poverty line. We also urge the Commission to implement data collection, transparency and accountability policies and practices necessary to assess whether federal dollars are in fact closing such gaps

We recommend that the Commission include the following among outcome measures for the reformed High Cost program.

- Expanding Inclusion (Race): A measure of the degree to which investments increase deployment of modern networks to communities of color
- Expanding Inclusion (Income): A measure of the degree to which investments increase deployment of modern networks to poor communities

Based on baseline data collected and reported by the states (see Section II below) and reports submitted annually thereafter, the FCC should track its progress in closing gaps in access with USF dollars.

We also urge the Commission to implementing data collection, transparency and accountability requirements necessary to assess whether federal dollars are closing these gaps. At a minimum, this data must be collected and made public in readily analyzable formats such as xml and csv on an annual basis.

B. Guarantee that Waivers Do Not Result in Further Exclusion. According to the October 6, 2011, remarks, a reformed program will include a “clear and meaningful waiver process...to enable companies to obtain relief from any reforms they can demonstrate put consumers at risk of losing service.”² We urge the FCC to ensure that efforts to streamline processes under special circumstances do not result in disregard for the needs of people of color and low-income Americans who have been consistently underserved.

² See Remarks at 9.

The Commission must recognize that granting waivers—particularly those excusing operators from meeting performance goals related to equity and inclusion—could result in further denial of access for communities that are already persistently excluded. Before any waiver is granted, the Commission must require the provider and any state officials involved in the determination to demonstrate whether the waiver will result in an increase or decrease in service options for people of color and low-income individuals or whether service will remain unchanged. In addition, where a particular geographic community is implicated, residents must have an opportunity to weigh in on potential waivers, and these responses must be factored into agency decisionmaking.

C. Make Resources Available for Community-Owned Broadband Networks

Whether in these proceedings or through future actions, the Commission must make investments in locally-owned and operated broadband networks. Such networks have the potential to bring high-speed Internet via cutting-edge technologies to communities where large telecommunications companies have been unwilling to build.³ In the future, the FCC must set aside resources to finance such networks, whether they are operated by municipalities or owned community members in non-profit, cooperative structures.

II. State Accountability

As noted in the Chairman's October 6, 2011 comments, under the new plan states will continue to make critical decisions about eligibility for funds, carrier accountability for build-out and consumer protections. There is evidence that where large telecommunications firms are not held accountable for building infrastructure to rural, low-income communities of color, they will fail to invest in such areas, leaving them with limited access to high-speed Internet and the economic benefits such access can provide.⁴ In order to guarantee that communities of color and low-income communities of all colors across the nation benefit from these much-needed investments, the FCC must set minimum requirements for states. As a result, we urge the FCC to require that each state receiving USF funds:

- Allow any locally-owned and operated non-profit broadband networks meeting the requirements of the Telecommunications Act of 1996 to qualify as eligible communications carriers ("ETCs") so that they may access universal service dollars. As

³ See generally INSTITUTE FOR LOCAL SELF RELIANCE, PUBLICLY OWNED BROADBAND NETWORKS: AVERTING THE LOOMING BROADBAND MONOPOLY. (2011) available at <http://www.newrules.org/information/publications/publicly-owned-broadband-networks-averting-looming-broadband-monopoly>.

⁴ See e.g. CENTER FOR SOCIAL INCLUSION AND MS STATE CONFERENCE NAACP, BROADBAND IN THE MISSISSIPPI DELTA: A 21ST CENTURY RACIAL JUSTICE ISSUE (2010) available at <http://www.centerforsocialinclusion.org/publications/?url=broadband-in-the-mississippi-delta-a-21st-century-racial-justice-issue&pag=0>.

numerous examples from across the nation demonstrate, locally-owned and operated networks have been able to bring high-speed service via cutting-edge technologies to communities overlooked by large operators.⁵ States should be encouraged to take any possible steps to support such networks.

- Conduct a baseline assessment of broadband availability by race, analyzing the number of broadband providers and the technology utilized in zip codes where the percentage of people of color is equal to or greater than the state average. This baseline assessment should also include analysis of availability in zip codes where the percentage of residents at or below the federal poverty level is greater than or equal to the state average. States must be required to consider this data when identifying priority areas for investment, and the FCC should verify whether state decisions concerning where build-out should occur are consistent with increasing access in these high-priority areas. This data must be collected and made available to the public annually in readily analyzable formats such as xml and csv.
- Track the actual prices of broadband Internet service provided by universal service supported carriers and annually compare these figures to race and income data collected as part of the baseline assessment. This will enable states to identify where affordability challenges may arise for the most vulnerable consumers and what steps will be necessary to keep costs within control.
- Create opportunities for consumers—and those who would like to be consumers of broadband—to shape state policy related to broadband expansion. This should include the creation of Citizen Advisory Boards required to sign off on all plans for use of universal service dollars, regular consultation of consumers as the state develops plans and eligibility requirements and verification of carrier claims about availability, speed and pricing through periodic consultation with consumers.

As we move toward a day when the majority of Americans will be people of color, we must seize opportunities to close persistent gaps in order to position our nation as a whole to thrive. By taking these steps, the Commission can ensure that its much-needed investments help to catalyze improved economic, health and educational outcomes in communities of color and low-income and rural areas of all colors. We welcome the opportunity to work with the

⁵ See *generally* INSTITUTE FOR LOCAL SELF RELIANCE, PUBLICLY OWNED BROADBAND NETWORKS: AVERTING THE LOOMING BROADBAND MONOPOLY. (2011) available at <http://www.newrules.org/information/publications/publicly-owned-broadband-networks-averting-looming-broadband-monopoly>.

Commission on these incredibly important questions. Please feel free to contact Brittany Saunders, Senior Advocate, with any questions or comments.

Respectfully Submitted,

Brittney Saunders
Senior Advocate
Center for Social Inclusion
212.248.2785 ext. 1459
bsaunders@thecsi.org