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Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Federal Highway Administration, Docket No. FHW-2021-0022

To the Department of Transportation:

Thank you for the opportunity to provide input on the new National Electric Vehicle Formula Program (EV Charging Program) and Charging and Fueling Infrastructure Program that the U.S. Department of Transportation (USDOT) will be administering pursuant to the recently passed Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58). We offer these comments in response to the Federal Highway Administration (FHWA) announcement on November 29, 2021, seeking Comments to inform the development of the EV Charging Program guidance. We were pleased to see that the FHWA “. . . is especially interested in comments suggesting ways that the guidance could promote equity in the deployment of EV charging infrastructure . . .”

Our comments address the following areas listed in the RFI:

1. The distance between publicly available EV charging infrastructure;
4. The need for publicly available EV charging infrastructure in rural corridors and underserved or disadvantaged communities;
5. The long-term operation and maintenance of publicly available EV charging infrastructure to avoid stranded assets and protect the investment of public funds in that infrastructure;

7. Fostering enhanced, coordinated, public-private or private investment in EV charging infrastructure;
8. Meeting current and anticipated market demands for EV charging infrastructure, including with regard to power levels and charging speed, and minimizing the time to charge current and anticipated vehicles;
9. Any other factors, as determined by the Secretary.
10. Please provide examples of best practices relating to project development of EV charging infrastructure and hydrogen, propane, and natural gas fueling infrastructure at the State, Tribal, and local levels.

The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, including energy affordability. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law and energy justice matters affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics. In addition, NCLC attorneys regularly provide comprehensive comments to federal agencies on the regulations under consumer laws that affect low-income consumers. These comments were written by NCLC attorneys Jenifer Bosco, John Van Alst, Olivia Wein, and senior policy analyst John Howat, and are submitted on behalf of our low-income clients.

As an overall recommendation we urge the Federal Highway Administration (FHA) to continue to prioritize the needs of low-income households and residents of environmental justice communities by basing program design on stakeholder input from members of the affected communities, taking measures to hold low-income households harmless from financial impacts of EV charging programs, ensuring that low-income households can access the financial and other benefits of electric vehicles,¹ adopting measures to address racial disparities, and dedicating an equitable share of resources to low-income, environmental justice and vulnerable households and communities. At a minimum, investments should meet the Administration's Justice40 goals.² We note that these comments apply only to charging infrastructure for electric vehicles, and we are not addressing hydrogen, propane, or natural gas fueling.

Locations of EV Chargers

The deployment of EV charging infrastructure in low-income and environmental justice communities must be planned in partnership with those communities with the intention to serve the needs that members of the communities identify.³ As in other program areas, this requires a commitment to working with low-income and moderate income stakeholders to identify needs, develop programs and monitor implementation. The communities that will be impacted the most should guide the development of programs designed to mitigate impacts and address the existing needs of these communities. Some low-income communities may be interested in expanding access to EV charging within their communities. For instance, there may be considerable multifamily housing with little access to individual home charging, which may warrant nearby public charging. Other communities may be concerned that the installation of EV chargers signals gentrification. In low-income, rural, and environmental justice communities, EV chargers should be located where community members see a need, in areas frequented by low-income consumers.

Additionally, there may be logistical issues that apply to low-income drivers of used EVs, and their charging needs. In rural areas, some EV drivers may need to charge more frequently since the distances traveled are often greater, therefore low-income consumers who drive used EVs or other EVs with smaller battery capacity and range may need to use public chargers more often. These drivers may need more public chargers at closer intervals.

Affordability

Use of public EV chargers by community members may require additional support. The USDOT should work with these communities, as well as utilities and companies that install charging stations, to determine what support and options would benefit residents.

The USDOT should consider solutions to keep charging at public stations affordable for low-income drivers. Possibilities may include:

- Limits on prices at chargers located in low-income and environmental justice communities
- Free or discounted charging for low-income drivers
- Subsidies or monthly credits for low-income drivers, such as pre-loaded debit cards sent to low-income drivers when they purchase used EVs
- Restrictions on by the minute fees for charging rather than charging based upon the amount of electricity used, as older and less expensive EVs more likely to be used by lower-income drivers often have slower charging rates. While idle time charges make sense, by the minute fees harm lower-income drivers.
- Restrictions on parking fees which otherwise might be added to charging fees

- Limits on “surge” prices or excessive price increases during periods of high demand
- Reasonable notice prior to fee changes at charging stations

Other Comments

The USDOT should consider the collection and public reporting about the use of charging stations deployed under this program. Data collection would need to shield the identity of drivers, but should be designed to verify whether these publicly supported chargers are actually serving the intended equity goals. Possible areas for data collection and reporting include how frequently the charger is used, when the charger is most likely to be used, any de-identified information about the location where the car is registered, information about the types of EVs driven, and other factors. Analysis of this data could help identify whether the EV chargers are serving low-income drivers, whether communities of color are being equitably served,⁴ or whether further program changes should be made.

While more individual drivers are now purchasing EVs, there are simultaneous efforts to expand transportation electrification in public transit, school buses, government fleets, non-profit fleets and for-profit fleets. These uses often have particular benefits for low-income communities. Where possible, EV charging investments should align or coordinate with efforts to electrify these shared uses.

EV charging stations deployed through this program should include equipment and software to ensure access for people with disabilities and instructions that are accessible to all.⁵

Drivers with limited English proficiency will need additional considerations as well. Charging stations should include instructions in different languages, or at a minimum, access to such translations with a QR code. Multiple languages could be made available with on-screen instructions. The USDOT should also consider the need for adequate signs to direct drivers to chargers; signs in English, Spanish and other languages as needed; and directions on charging stations themselves in multiple languages (e.g., the ability to select the appropriate language from a list on the home screen).

Thank you for the opportunity to offer these comments on the development of the EV Charging Program. Please contact us if you have questions or would like additional information. We can be reached at jbosco@nclc.org, jhowat@nclc.org, jvanalst@nclc.org, and owein@nclc.org.

¹ See, National Consumer Law Center, Principles for Fair and Equitable Investment in Electric Vehicles and Transportation Electrification, October 2018. Also, many analyses of the potential for transportation cost savings of

EVs have been published. *See, e.g.*, MJ Bradley and Associates series, Electric Vehicle Cost-Benefit Analysis Plug-in Electric Vehicle Cost-Benefit Analysis, examining financial impacts in many states including Connecticut, Michigan, Nevada, Pennsylvania, and other regions.

² Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” January 27, 2021.

³ *See, e.g.*, Advancing Transportation Electrification In Diverse Communities: A Public Policy Toolkit for Policymakers by Richard Ezike, Ph.D., Henry L. Greenidge, Esq., and Kyersten Siebenaler, EV Hybrid Noire, 2021; The Future of Transportation Electrification: Utility, Industry and Consumer Perspectives, August 2018 by Philip B Jones (Alliance for Transportation Electrification), Jonathan Levy (EVgo/Vision Ridge), Jenifer Bosco (NCLC), John Howat (NCLC), John W Van Alst (NCLC), and Lisa C Schwartz, editor, Lawrence Berkeley National Laboratory, August 2018.

⁴ Public electric vehicle charger access disparities across race and income in California, Transport Policy Volume 100, by Chih-Wei Hsu and Kevin Fingerman, January 2021.

⁵ *E.g.*, ADA Requirements for Workplace Charging Installation: Guidance in Complying with Americans with Disabilities Act Requirements, U.S. Department of Energy, November 2014.