

FACT SHEET: FCC Will Vote on Rules to Prevent and Eliminate Digital Discrimination

FCC To Consider Rules to Implement the First Bipartisan Broadband Access Anti-Discrimination Provision at its November 15 Open Meeting

"We recognize that the ultimate goal of this proceeding is to facilitate equal access to broadband just as the law says." - FCC Chairwoman Jessica Rosenworcel

Overview

Chairwoman Rosenworcel is proposing final rules to prevent discrimination in access to broadband services based on income level, race, ethnicity, color, religion, and national origin. Under the Bipartisan Infrastructure Act, the FCC is required to take steps to ensure that all Americans have equal access to broadband services and without discrimination based on the characteristics listed in the statute.

The Proposed New Rules

Chairwoman Rosenworcel announced the rules at the 41st Annual Everett C. Parker Ethics in Telecommunications Lecture at the First Congregational United Church of Christ this morning. The rules will be voted on by the full Commission at its November 15 Open Commission Meeting. If adopted, they would establish a balanced framework to facilitate equal access to broadband internet service by preventing digital discrimination. While recognizing and fully taking into account technical and economic challenges that may prevent full achievement of equal access, these rules target business practices and policies that impede equal access to broadband without adequate justification.

'Digital Discrimination of Access'

The rules to be considered by the Commission do not focus solely on the mindsets of industry participants when making decisions that affect access to broadband service. They also focus on the very real problem of outcome, such as when decisions untainted by discriminatory intent nevertheless cause different communities to receive different access to broadband services. The proposed rules would define "digital discrimination of access" as "Policies or practices, not justified by genuine issues of technical or economic feasibility, that (1) differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion or national origin, or (2) are intended to have such differential impact." As the law requires, the FCC will consider on a case-by-case arguments that legitimate business impediments preclude equal access to broadband service in particular communities.

How It Helps Consumers

Under these rules, the FCC could protect consumers by:

- Directly addressing companies' policies and practices if they differentially impact consumers' access to broadband internet access service or are intended to do so;
- Apply these protections to ensure communities see equitable broadband deployment, network upgrades, and maintenance;
- Investigate possible instances of discrimination of broadband access, work to solve and when necessary penalize companies for failing to meet the obligations defined in the rules;
- Review consumer complaints of digital discrimination through an improved consumer complaint portal;
- Help protect both current and prospective subscribers to a broadband internet service.

Process

In November 2021, Congress adopted and President Biden signed into law the Infrastructure Investment and Jobs Act. This law included the first broadband access anti-discrimination provisions of the digital age, requiring the FCC to adopt rules by November 15, 2023 to "prevent" and identify necessary steps to "eliminate" digital discrimination. In March 2022, the FCC formally <u>began</u> a rulemaking proceeding by issuing a *Notice of Inquiry* seeking comment on various aspects of the statutory language, and in December 2022, the Commission issued a *Notice of Proposed Rulemaking*. As part of this process, the Chairwoman asked the FCC's <u>Task Force to</u> <u>Prevent Digital Discrimination</u> to initiate a series of eight listening sessions to hear directly from impacted communities and formally include that input in the official docket. At its next Open Meeting, the Commission will vote on proposed final rules. A public draft of the final rules will be released tomorrow, October 25, 2023.

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).