

**REMARKS OF
FCC CHAIRWOMAN JESSICA ROSENWORCEL
THE 41ST ANNUAL EVERETT C. PARKER LECTURE AND AWARDS BREAKFAST
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Good morning! Thank you so much for welcoming me. And thank you to Reverend Palmer and everyone at UCC Media Justice for providing me with the honor of delivering the Parker Lecture.

I am the first woman to permanently lead the Federal Communications Commission. I am also the first Mom to serve in this role. And that means something here today. Because when you say lecture, my thoughts race immediately to trying to teach my children a lesson, trying to explain a wrong and make it right. This morning I want to talk about correcting some efforts from the past, so I am hoping this will translate.

When I sat down to think about these remarks, I actually did a search to see what the difference is between a lecture and a speech. The first thing that popped up said that lectures are meant to be educational, while speeches are meant to be persuasive. But I immediately thought when are those two things mutually exclusive? I guarantee you Reverend Palmer's and Reverend Hendler-Voss's congregants leave here each Sunday feeling both inspired and informed. I aim to do the same.

The Parker Lecture matters because Everett Parker matters. He stood for justice and stood up to the FCC when it approved the license of a Jackson, Mississippi television station that was suppressing Black voices. He petitioned the agency to change course and he had something I think is common to all changemakers—tenacity. Because he took that case all the way to the Supreme Court. And he prevailed in a milestone decision that opened the door for an African American to lead WLBT and for more minority voices to be broadcast over the airwaves. In one of his last interviews, at age 99, he said, "I want them to remember that I was a guy who fought like the devil for the rights of minorities." He can rest assured that we remember because none of us will ever forget Everett Parker.

Thank you to everyone at UCC Media Justice for carrying on his legacy. Thank you also for having the good judgment to honor Dr. Alisa Valentin and Senator Tammy Duckworth. Let's give them both one more round of applause. Later this week, I am joining Senator Duckworth at an event in Chicago to hear about the high cost of prison phone services. So let me add just a few words to Senator Duckworth's comments on this issue.

As you just heard from the Senator, many families of incarcerated people pay outrageous rates to stay connected with their loved ones. In fact, for a single call they can pay as much as you or I pay for a monthly unlimited plan. This harms the families and children of the incarcerated—and it harms all of us because regular contact with kin can reduce recidivism.

For years, the FCC has been working on this problem, but the tools we had were limited and did not allow us to address rates for calls made within a state or video calls. Thanks to Senator Duckworth's leadership—and tenacity—the FCC was finally given the goods to close this glaring loophole. Thanks to a law she championed, the Martha Wright-Reed Just and

Reasonable Communications Act, we now have the authority to address these calls and we are hard at work doing so.

On this issue, I also want to call out my friend and former colleague at the FCC—Mignon Clyburn. She has been relentless. On the policymaking side, nobody has done more to seek justice for families who have been harmed by the high cost of prison payphone bills.

When I was preparing this event, I was thinking that not only do I have to try to measure up to Senator Duckworth and Dr. Valentin this morning, I also need meet the high standard set by previous Parker Lecturers, like Mignon Clyburn. In fact, there are too many luminaries to mention on the list of former lecturers, including my former boss and mentor Michael Copps and my friend Maya Wiley.

Looking at this list of past speakers, I also noticed that the first FCC Chair to deliver this address was Reed Hundt back in 1994. That was a long time ago. It was the very beginning of the internet era. Back then, maybe you called the internet the “information superhighway.” I know I did.

I decided to take a look at the remarks of my predecessor. When I did, something quickly caught my eye.

He thanked UCC Media Justice, which was then known as the Office of Communication of the United Church of Christ. He said: “We can’t afford to deny anyone the opportunity to enjoy the communications revolution. In this regard, your organization has been particularly important.” He went on to say that you have “provided the Commission with valuable input . . . on critical issues ranging from cable television to equal employment opportunities and,” wait for it, “electronic redlining.”

Let’s pause for a moment on that—electronic redlining. Because if you know about a certain statutory deadline the FCC has on November 15, you know why this grabbed my attention. I will have more on that deadline in a second, but first let me unpack what Chairman Hundt was referencing.

In the early 1990’s, there was a new technology called “video dialtone.” For those who do not remember, which I am guessing is almost all of us (myself included), video dialtone allowed the transmission of video over phone lines. It was a possible new competitor to cable. UCC Media Justice and a number of other public interest advocates took note. They expressed concern that early deployment of video dialtone was bypassing minority and low-income communities in lots of markets.

So in 1994, the same year that Chairman Hundt gave this lecture, he had the FCC open a proceeding to seek feedback on these allegations. UCC Media Justice, along with the Center for Media Education, the Consumer Federation of America, the NAACP, and the National Council of La Raza submitted comments. Looking back now, many of the predictions and principles in their joint statement stood the test of time better than video dialtone technology did. This is a good thing because two of the people who helped develop that statement of principle are here in the room. Let me get a quick round of applause for two long-time champions of media justice: Angela Campbell and Andy Schwartzman.

They called it “electronic redlining” because UCC Media Justice and their allies saw patterns in the deployment of advanced communications that resembled old-school redlining. You raised a red flag and at a time when just 6 percent of people in this country had begun to use the internet, you made two predictions. First, interactive broadband communication was going to change everything. Second, if we did not get this right, we would end up with digital haves and have-nots.

Let me put that another way: You predicted the digital divide before the digital revolution was even underway. That is stunning. Your words from back then remind us that when new technologies come along, we should pay attention to how they are deployed and who gets access. We should be mindful that there are communities that are too often underserved and overlooked.

I like to think nearly 30 years from now there is a good chance people will say something similar about my own remarks. That is not entirely due to my words today. It’s because of what Congress and the FCC have been doing. In fact, if 1994 was when the digital divide first became apparent, there is good reason to believe people will look back on this moment as the time when after decades of talking about it, we committed to close that divide like never before.

This unprecedented effort has been powered by the Bipartisan Infrastructure Law. It is the biggest public investment in our economic capacity since the Interstate Highway System. And nothing in history comes close to the commitment it makes to address equitable access to the opportunities of the digital age.

Let’s talk about that commitment. From a budgetary perspective, the most significant part of the law is the \$42.5 billion it provides to build broadband all across this country where infrastructure is lacking. That is huge and my colleagues at the Department of Commerce are working with the states to support deployment with these funds. Again, this is extraordinary. But the case I want to make to you today is that you could strip out that \$42.5 billion and this would still be landmark legislation for digital equity. And it just so happens that the other provisions that make this law so significant have been entrusted to the FCC. That does not mean what I am about to say is biased. It means what I am about to say is just well-informed.

Thanks to the Bipartisan Infrastructure Law, we are attacking the digital divide from a new angle. Instead of focusing just on broadband deployment, we are paying attention to broadband affordability.

For the first time in Washington, we have acknowledged that closing the digital divide requires addressing affordability. If we needed an object lesson in why this is true, remember the pandemic. It wasn’t that long ago. We all saw kids outside of fast food restaurants trying to go to online class and adults sitting in parked cars to catch a free wireless signal just to keep up with life during an especially trying time. We learned that too many people in this country struggle to keep connected because they have difficulty paying for internet access.

That is why the FCC built the largest broadband affordability initiative in our Nation’s history. It is called the Affordable Connectivity Program—or ACP for short.

Here’s how it works.

Eligible households can get discounts of up to \$30 a month for broadband service, and up to \$75 a month if that household is on Tribal lands. Households can also receive up to \$100 to offset the cost of a computer or tablet.

You can find out how to sign up at getinternet.gov. Most major internet providers also have a link on their websites to make it easy to enroll. And many have high-speed, low-cost service packages that are right at \$30—at no cost to ACP subscribers.

We now have 21 million households enrolled nationwide. That means 21 million homes with the connections they need for work, school, and so much more.

That also adds up to 21 million reasons why we have come too far with this program to turn back now. We need to make sure that support for ACP continues. While the funding that Congress provided for ACP in the Bipartisan Infrastructure Law was powerful, it was not permanent. If ACP support is allowed to expire early next year, millions will get shut off from the internet service they have come to rely on.

We need Congress to continue the good this program has done and build on it. To do that, we are going to need people at the grass-roots level (and you know something about that) to speak up and tell Washington their stories. We are going to need people to talk about what a difference ACP is making in their communities. Again, we have come so far, we can't stop now.

Alright, let's review.

The Bipartisan Infrastructure Law created the largest broadband affordability effort in history—the ACP.

The Bipartisan Infrastructure Law created the largest broadband deployment effort ever with the \$42.5 billion distributed by the Department of Commerce for high-speed infrastructure.

Now let me tell you another way this law is making history that also involves the FCC. To get this discussion started, I want to first focus on the findings in the law. In fact, I want to read them to you word-for-word.

“Congress finds the following:”

“(1) Access to affordable, reliable, high-speed broadband is essential to full participation in modern life in the United States.”

“(2) The persistent “digital divide” in the United States is a barrier to the economic competitiveness of the United States and equitable distribution of essential public services, including health care and education.”

“(3) The digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all.”

“(4) In many communities across the country, increased competition among broadband providers has the potential to offer consumers more affordable, high-quality options for broadband service.”

“(5) The 2019 novel coronavirus pandemic has underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely while supporting social distancing.”

If these findings feel familiar, I want you to remember how remarkable and important this language is because it represents the consensus of a bipartisan majority of Congress. In other words, folks from across the ideological spectrum put into law that broadband is essential; that the digital divide disproportionately harms people of color, low-income communities, and rural areas; and that this divide is hurting the competitiveness of the United States. Amen.

This is the most definitive statement we have in the law that our work is not done until everyone, everywhere has access to high-speed internet. So on top of support for affordability and deployment, Congress gave the FCC a new mandate to address digital discrimination.

To describe it, again I want to start with the law: “It is the policy of the United States that, insofar as technically and economically feasible, subscribers should benefit from equal access to broadband.”

To ensure this happens, Congress directs the FCC to “adopt rules to facilitate equal access to broadband internet access service.” What should these rules involve? According to Congress, “preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and identifying necessary steps for the Commission to take to eliminate discrimination.”

That is a lot of text. But this statutory language is powerful. And there is one other instruction from Congress that accompanies these words. We were told to adopt these rules within two years. That makes the deadline for adoption November 15, or three weeks from tomorrow.

Now I want to tell you about what we have been doing at the FCC to prepare for this day.

We created the Task Force to Prevent Digital Discrimination. The Task Force conducted eight listening sessions in places far and wide, including Baltimore, Maryland; Los Angeles, California; and Topeka, Kansas. At each, we were able to hear from the community, listen to people fighting digital discrimination on the ground, and learn about experiences with industry. This was important. Because the only way to create rules that prevent and eliminate digital discrimination is by hearing from everyone with a role to play, including state, local, and Tribal governments, community leaders and advocates, and providers.

These gatherings drove home something critical. They made clear that the first question we needed to answer in crafting our rules is how to define digital discrimination. In other words, what is it that we are trying to prevent and eliminate to facilitate equal access to broadband service?

At the listening sessions around the country and in the written record before the FCC, there was just about universal agreement that digital discrimination includes business practices motivated by discriminatory *intent*. But there was less agreement regarding whether the definition should also include business practices and policies that have discriminatory *effects*. Some commenters who weighed in argued that the definition should be limited to intentional discrimination and disparate treatment. Other commenters countered that to be meaningful, the definition must also include claims of disparate impact.

We took it all in. We read the record from front to back. We reviewed the listening sessions. We studied the statute and specifically the fact that the explicit goal of these rules is to “facilitate equal access to broadband.” And we realized that the definition of digital discrimination has to include disparate impact.

Here’s why.

There is little or no evidence in the legislative history or in the record of this proceeding that intentional discrimination by broadband providers is a meaningful contributor to disparities in internet access. This is worth emphasizing. When a lot of people hear the word “discrimination” they get their backs up and think they are being tarred for bigotry. That is not what this is about.

What this is about and what the record shows is that there are gaps in access for low-income, rural, Tribal, and minority communities. It shows that the digital divide significantly tracks the housing redlining that came into existence under the National Housing Act of 1934. It shows that many of the communities that lack adequate access to broadband today are the same areas that suffer from longstanding patterns of residential segregation and economic disadvantage. It shows that minority status and income correlate with broadband access and that UCC Media Justice was on to something when it identified the problem with “electronic redlining” nearly three decades ago. And it shows that these gaps in broadband access stem from policies and practices that may be neutral on their face, rather than the result of intentionally discriminatory conduct.

Now step back for a minute and remember Congress tasked the FCC with developing rules to facilitate equal access to broadband. As part of this goal, we were told to prevent and eliminate digital discrimination of access. If we were to adopt rules that only cover discriminatory intent, we would fall short of fully meeting our obligation to “facilitate equal access” to broadband. So, if the agency is going to adopt rules that fulfill our statutory mandate, our definition of digital discrimination needs to include both disparate treatment and disparate impact.

The decision to cover disparate impact is also consistent with over half a century of civil rights law that embraces disparate impact analysis. Remember it was back in 1971 that the Supreme Court blessed the use of disparate impact analysis to determine whether unlawful discrimination had taken place in the employment context. In the ensuing years, it has reaffirmed that decision in other civil rights contexts, including as recently as 2015 in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* Moreover, other federal agencies have consistently interpreted anti-discrimination statutes they administer—like Title VI, VII, and IX of the Civil Rights Act; the Fair Housing Act; and the Americans with Disabilities Act—to reach discriminatory effects as well as discriminatory intent.

I think you can tell we have had a busy two years working on these matters. So today I am sharing with my FCC colleagues draft rules to prohibit digital discrimination. They address intentionally discriminatory conduct as well as conduct that produces discriminatory effects.

The draft rules also create a new, dedicated pathway for digital discrimination complaints. With the guidance of so many in the civil rights community, including Dr. Valentin, who is being honored here today, along with Marc Morial and the National Urban League, we

have a thoughtful approach to the complaint process. We will create a process aimed at finding solutions that work for all parties. But if that is not feasible, our Enforcement Bureau will step in with the entire enforcement toolkit at its disposal to seek remedies.

These rules are strong. When you consider Congress explicitly directed us to “prevent” and “eliminate” digital discrimination of access, they had better be. But I would also argue that they are fair and reasonable.

Let me explain why. As the law requires, we accept genuine reasons of technical and economic feasibility as valid reasons why a broadband provider may not offer equal access to their networks. We will review those defenses on a case-by-case basis.

Our draft rules also say that differential impact alone is not enough to establish liability. They will require robust causality between the identified differential impacts and the respondent’s policies and practices.

But that is not all. The draft rules also offer guidance to help solve these problems before they even get to the FCC. This is because the law directed the FCC to develop model policies and best practices for preventing digital discrimination that can be adopted by States and localities. So we had our Communications Equity and Diversity Council take the lead developing these best practices and they are included in the draft rules.

Finally, we recognize that the ultimate goal of this proceeding is to facilitate equal access to broadband just as the law says. So we are floating a new proposal. We are seeking comment on new reporting requirements that could give a clearer picture of recently completed deployment, upgrade, and maintenance projects. The hope is that this process could help remove impediments to equal broadband access before they even develop.

That is a lot of detail and a lot of explaining. I think this turned into a lecture after all. So now let me take it up a level.

The reason we have been able to do so much so fast to address equitable access to the digital age is because a lot of people have put in the work. People in Congress. People in this room. People in the public interest community. People at companies that have engaged with us and worked through the hard questions.

Looming in the background of this effort is another figure—and that is Everett Parker. Because he did more than just tear down barriers of discrimination in the broadcasting industry. He changed the way our policies are made. For a long time, the only people who could participate in the FCC’s proceedings were those we regulated. They had a clear economic stake in what we were considering and that was the end of the story. But he rewrote it. Because a court embraced his argument that citizens have a right to be heard before federal agencies like the FCC. That might seem obvious now, but it was revolutionary back then. And it changed the FCC for the better.

What an extraordinary legacy. I believe we honor it best with not words, but deeds. And we have work to do to close the digital divide. So let’s be tenacious—together—and get it done.

Thank you.