

EQUAL ACCESS TO BROADBAND: BREAKING DOWN DIGITAL DISCRIMINATION RULES REQUIRED BY CONGRESS

FCC is Set to Implement the First Bipartisan Broadband Access Anti-Discrimination Law of the Digital Age

“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. A bipartisan majority in Congress gave the FCC a new mandate to address digital discrimination, and that’s what our rules will do.” – FCC Chairwoman Jessica Rosenworcel

Background

- As required by law, the FCC will be adopting rules in response to the Bipartisan Infrastructure Law passed by Congress in November 2021.
- This landmark legislation created the largest broadband affordability effort in history (the Affordable Connectivity Program), the largest broadband deployment effort ever, and—crucially—the first bipartisan broadband anti-discrimination provisions ever enshrined into law.
- The law gave the FCC a clear mandate: to adopt rules within two years to prevent and eliminate digital discrimination of access to broadband services based on income level, race, ethnicity, color, religion, and national origin.

Intent vs. Effect

- In comments submitted to the agency and listening sessions across the country, the FCC heard from stakeholders who agreed that the agency should curtail business conduct that carried discriminatory *intent*—meaning the conduct in question was motivated by discrimination.
- However, many others also highlighted the damage caused by business conduct that leads to discriminatory *effects* on vulnerable communities. The proposed rules include a focus on “disparate impact,” which cover policies and practices that lead to inequitable outcomes and are consistent with a standard in civil rights law over the past 50 years.
- If the FCC is to fulfill its duty under the law to “facilitate equal access” to broadband service by preventing and eliminating digital discrimination of access, the agency cannot ignore discriminatory effects and the way they directly contribute to the digital divide.

Balanced Approach

- While Congress explicitly directed the FCC to “prevent” and “eliminate” digital discrimination of access, the agency will ensure that process is fair and reasonable.
- As the law requires, the FCC stands ready to accept genuine reasons of technical and economic feasibility as valid reasons why a broadband provider may not offer equal access to their networks and will review those defenses on a case-by-case basis.

Next steps

- The proposed rules will be voted on by the full Commission at its November 15 Open Commission Meeting. To learn how these rules will help consumers, [click here](#).

Letter of the Law

Here’s what the law says – word for word:

SEC. 60506. DIGITAL DISCRIMINATION.

(a) STATEMENT OF POLICY.—It is the policy of the United States that, insofar as technically and economically feasible—

(1) subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service;

(2) the term “equal access”, for purposes of this section, means the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions;

(3) the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service.

(b) ADOPTION OF RULES.—Not later than 2 years after the date of enactment of this Act, the Commission shall adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including—

(1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and

(2) identifying necessary steps for the Commissions to take to eliminate discrimination described in paragraph (1).

(c) FEDERAL POLICIES.—The Commission and the Attorney General shall ensure that Federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination based on—

(1) the income level of an area;

(2) the predominant race or ethnicity composition of an area; or

(3) other factors the Commission determines to be relevant based on the findings in the record developed from the rulemaking under subsection (b).

(d) MODEL STATE AND LOCAL POLICIES.—The Commission shall develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination.

(e) COMPLAINTS.—The Commission shall revise its public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.

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Media Contact: MediaRelations@fcc.gov

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).