

The Honorable Jessica Rosenworcel
Federal Communications Commission
45 L Street N.E.
Washington, DC 20554

Dear Chairwoman Rosenworcel:

We write concerning the Federal Communications Commission (FCC) Notice of Proposed Rulemaking Implementing the Infrastructure Investment and Jobs Act (IIJA) “Prevention and Elimination of Digital Discrimination” (Docket/RM 22-69). We urge you to take swift action to adopt final rules to facilitate equal access to broadband internet.

Ending digital discrimination is an important part of closing the digital divide alongside other federal initiatives including support for deployment through NTIA and broadband adoption through the Affordable Connectivity Program (ACP). Digital discrimination is defined by historic inequities in access to essential internet service that result of social, economic, and technical decisions made by internet service providers. In final passage of IIJA, Congress acted on a bipartisan basis to end digital discrimination as intended by Section 60506. Under that provision, “the Commission shall adopt final rules to facilitate equal access to broadband internet access service... including—preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin.” The plain language of the statute makes clear that Congress intended the FCC to take proactive measures to rectify digital discrimination.

Digital discrimination is a pervasive harm to communities of color and underserved groups in the United States. Many households in low-income communities are eligible for ACP, but a recent investigation found that internet service providers charge these communities more for comparable service. The report states, “AT&T, Verizon, EarthLink, and CenturyLink disproportionately offered lower-income and least-White neighborhoods slow internet service for the same price as speedy connections they offered in other parts of town.”¹ This discrimination results in higher prices paid by low-income households and communities of color. In response to the investigation, one company claimed the report “ignored our participation in the federal Affordable Connectivity Program,” but Congress did not intend the ACP to subsidize digital discrimination. Other reports on deceptive marketing and sales tactics² related to Lifeline and the ACP reinforces the concern that some providers see these programs as an opportunity to maximize revenue through federal subsidies rather than a chance to address longstanding divisions in digital equity and access. The federal government should not foot the bill for the social, economic, and technical decisions made by internet service providers that contribute to digital discrimination.

¹ Yin, Leon and Aaron Sankin. “Dollars to Megabits, You May Be Paying 400 Times As Much As Your Neighbor for Internet Service.” *Associated Press and The Markup*, October 19, 2022. <https://themarkup.org/still-loading/2022/10/19/dollars-to-megabits-you-may-be-paying-400-times-as-much-as-your-neighbor-for-internet-service>

² Tony Romm. “U.S. aid program to keep people online was riddled with deception, fraud.” *The Washington Post*, October 25th, 2022. <https://www.washingtonpost.com/business/2022/10/25/broadband-subsidies-coronavirus-aid/>

Congress intended Section 60506 to require internet service providers to end discrimination resulting from programs and policies that perpetuate systemic barriers for people of color and other underserved groups. The Senate drafted, negotiated, and passed Section 60506 of H.R. 3684 with full awareness of Section 104 of the Telecommunications Act of 1996 (47 U.S.C. 151). Existing law already required the Commission “to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges”. Section 60506 does not reference 47 U.S.C. 151, nor does Section 60506 amend the Communications Act, as AT&T notes.³ As such, Congress recognized that the Telecommunications Act of 1996 previously addressed intentional discrimination. Therefore, Congress passed Section 60506 to go beyond discriminatory intent and target disparate impacts of digital discrimination. To find otherwise would be to conclude that Congress engaged in redundant lawmaking.

FCC’s rulemaking to prevent and eliminate digital discrimination is critical, and the current docket demonstrates that industry is attempting to avoid scrutiny. Commenters, particularly internet service providers and industry associations, erroneously construed the Congressional intent and public debate to not “saddle private enterprise with the burden of correcting any disparities in broadband availability” as stated by AT&T.⁴ Dark money groups such as Americans for Tax Reform take a more flippant stance arguing that that FCC should focus on “alleviating barriers” for businesses rather than “going on fishing expeditions to find discrimination.”⁵ These comments blatantly ignore the industry’s social, economic, and technical decisions that continue to contribute to systemic barriers for people of color and other underserved groups. In other words, the digital divide continues to persist precisely because of the disparate impact on certain communities resulting from supposedly neutral decisions made by broadband providers.

Congress structured Title I, Title II, Title III, and Title IV of the IIJA to support deployment and adoption. Title V’s focus on digital inclusion is complementary and distinct from deployment and adoption, encompassing affordability, consumer broadband labels, and elimination of digital discrimination. All three—deployment, adoption, and *inclusion*—are necessary to close the digital divide. Inclusion is only possible with elimination of past and present practices that *exclude* people of color and other historically underserved groups.

Congress has clearly identified the problem and undertook action to fix it. We commend the Commission for undertaking this Notice of Proposed Rulemaking and look forward to working with you to end digital discrimination.

Sincerely,

³ AT&T Services, Inc. “AT&T Reply Comments of AT&T with Accompanying Woroch Declaration”. June 30, 2022. <https://www.fcc.gov/ecfs/search/search-filings/filing/1063001686231>

⁴ *Id.*

⁵ Americans for Tax Reform and Digital Liberty, “Digital Discrimination Reply Comments”. April 20, 2023. <https://www.fcc.gov/ecfs/document/10420975500572/1>

