

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementing the Infrastructure Investment) GN Docket No. 22-69
and Jobs Act: Prevention and Elimination)
of Digital Discrimination)

REPLY COMMENTS OF NEXT CENTURY CITIES

Ryan Johnston
Senior Policy Counsel
Next Century Cities

June 30, 2022

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementing the Infrastructure Investment) GN Docket No. 22-69
and Jobs Act: Prevention and Elimination)
of Digital Discrimination)

REPLY COMMENTS OF NEXT CENTURY CITIES

I. Introduction

Next Century Cities (“NCC”)¹ submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Inquiry on the prevention and elimination of digital discrimination.² The existence of digital discrimination is a foregone conclusion. In enacting the Infrastructure Investment and Jobs Act (“IIJA”), Congress codified digital discrimination as a problem within the United States that *must* be addressed.³

Some commenters incorrectly argue that digital discrimination does not disparately impact low-income consumers. Further, some commenters take the misguided view that the Commission's addressing of digital discrimination should be couched among the other programs created by the IIJA.

The Commission has a duty to address digital discrimination independently of other broadband programs. Viewing digital discrimination independently ensures that the Commission’s findings are not skewed by other equity programs. Failing to do so could leave gaps where other

¹ Next Century Cities is a nonprofit nonpartisan 501(c)(3) coalition of over 200 member municipalities that work collaboratively with local leaders to ensure reliable and affordable broadband access for every community.

² See *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Inquiry (2022) (Digital Discrimination NoI).

³ 47 U.S.C. § 1754.

programs are addressing the digital divide, but do not have robust consumer protections built in. Additionally, the Commission’s need to undertake a digital discrimination proceeding is in no way reduced by any other digital inclusion provision in the Communications Act.

Municipal and state filers have pointed to significant resources and strategies the Commission could adopt to inform how it addresses digital discrimination. In these cases, state and municipal commenters urge the Commission to take a broad view of equal access and to study deployment outcomes just as seriously as they look at discriminatory intent.

II. Digital Discrimination Exists, and It Is the Commission’s Responsibility to Identify and Eradicate it.

Section 60506 of the IIA tasks the Commission with promulgating rules that facilitate equal access to broadband and prevent digital discrimination.⁴ However, commenters have argued that because a firm cannot be expected to recoup its costs, those who are low-income should be, rightfully in their mind, left disconnected.⁵ This thought process cuts directly against the intent, purpose, and findings of the IIA by prioritizing corporate profit over the promise of universal broadband for millions of Americans.

Commenters also wrongly argue that access to broadband means only the availability of a connection for purchase.⁶ However, as Next Century Cities and others have raised, access to broadband is determined by a variety of factors, including affordability, digital literacy, and access to a device.⁷ Without addressing these critical components, residents may have “access” to a

⁴ *Id.*

⁵ See Comments of the International Center for Law and Economics at 11; Comments of the Information Technology and Innovation Foundation at 3; Comments of AT&T at 11-12; Comments of TechFreedom at 12; Comments of USTelecom at 11; Comments of ACA Connects at 10.

⁶ See Comments of USTelecom at 8; Comments of ITIF at 2-3; Comments of ICLE at 7-8.

⁷ Comments of Next Century Cities at 5; Comments of the National Broadband Mapping Coalition at 3; Comments of the National Digital Inclusion Alliance at 3-5.

broadband subscription but cannot utilize the physical connection. In essence, it is as if a resident does not have access at all. If the Commission fails to act and incorporate these usability factors into the definition of equal access, it cannot meet congressional intent.⁸

Finally,⁹ while the Commission must address digital discrimination in conjunction with other programs created by Congress, other programs included in the Communications Act in no way circumscribe the task. Some commenters have suggested that rules surrounding digital discrimination should be limited by other programs born of the IIJA or through other emergency relief measures.⁹ However, the FCC should address digital discrimination independently of other programs that have been, or will be, launched in the coming months. Data collection efforts that help illuminate how digital discrimination affects cities and rural communities should not be reduced in light of arguments that new funding will fix the problem.

Congress has required the Commission to act on digital discrimination. The question is no longer whether digital discrimination exists, but how we can eradicate it. This requires both an expansive definition of digital discrimination as well as a holistic view of how to address it wherever it exists in communities.

III. The Commission Should Look Toward its State and Local Partners for Advice and Creative Solutions to Digital Discrimination.

Many state and community leaders are acutely aware of how digital discrimination affects their residents. Municipal officials are among the first to hear about their communities' significant connectivity challenges.

⁸ 47 U.S.C. § 1754(c).

⁹ See Comments of NCTA at 15-16; Comments of ACA Connects at 8-9; Comments of USTelecom at 18-22.

For example, the County and City of San Francisco, California, highlighted that one of the greatest challenges they face is that of single-room occupancy (“SRO”) or multi-tenant environments (“MTE”).¹⁰ San Francisco’s Article 52 provided avenues for partnership between the City and local Internet service providers to connect SROs and MTEs.¹¹ This is a significant step forward for the residents of those buildings, but it was not a complete solution. As San Francisco noted, residents whose buildings lacked the necessary wiring to support Internet access were unable to benefit.¹² San Francisco has also undertaken efforts such as fiber to housing which seeks to connect the city’s affordable housing to a city-owned fiber network.¹³

Additionally, the City of Dallas, Texas, highlighted that affordable housing areas saw marked differences in connectivity than other portions of the city.¹⁴ Dallas expressly urged the Commission to define equal access broadly enough to comprehensively capture *all* ways in which digital discrimination affects people.¹⁵

The Connecticut Office of State Broadband (“CT OSB”) recommended specific actions the Commission can take to address digital discrimination. Specifically, CT OSB noted that there are already model policies in effect for the Commission to use as a resource.¹⁶ In California, for instance, the legislature codified access and service parameters for consumers as a right. The state also set new build-out and service requirements that ensure no resident is digitally discriminated against.¹⁷

¹⁰ Comments of City and County of San Francisco, California at 5-7.

¹¹ *Id.* at 6-7.

¹² *Id.*

¹³ *Id.* at 9.

¹⁴ Comments of the City of Dallas, Texas at 3-4.

¹⁵ *Id.* at 4.

¹⁶ Comments of the Connecticut Office of State Broadband at 5.

¹⁷ *Id.* at 5-7.

Municipal officials are on the front lines every day addressing the challenges their communities face. They have the clearest picture of what solutions will best connect their residents. Here, the Commission must engage with local and state officials to even begin collecting the data and experiences that will help address digital discrimination.

IV. Conclusion

Digital discrimination will continue to be a significant problem for as long as we do not consider income as a determining factor for connectedness. Many commenters on this docket have defended industry choices to both neglect and avoid already disadvantaged communities simply because they would be unable to turn a profit. However, Congress has charged the Commission with facilitating equal access to broadband service that transcends demographic information and income level. Failing to take this into account not only defies congressional intent but undercuts the Commission's express goals to achieve universal service.