



Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Margaret Huang
Southern Poverty Law Center
Derrick Johnson
NAACP
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Secretary
Fatima Goss Graves
National Women's Law Center
Treasurer
Lee A. Saunders
American Federation of State,
County and Municipal Employees

Board of Directors
Abed Ayoub
American-Arab
Anti-Discrimination Committee
Gloria L. Blackwell
AAUW
Ray Curry
International Union, UAW
Jocelyn Frye
National Partnership for
Women & Families
Jonathan Greenblatt
Anti-Defamation League
Mary Kay Henry
Service Employees International Union
Damon Hewitt
Lawyers' Committee for
Civil Rights Under Law
David H. Inoue
Japanese American Citizens League
Virginia Kase Solomon
League of Women Voters of the
United States
Marc Morial
National Urban League
Janet Murguía
UnidosUS
Svante Myrick
People For the American Way
Janai Nelson
NAACP Legal Defense and
Educational Fund, Inc.
Christian F. Nunes
National Organization for Women
Rabbi Jonah Pesner
Religious Action Center
of Reform Judaism
Rebecca Pringle
National Education Association
Lisa Rice
National Fair Housing Alliance
Kelley Robinson
Human Rights Campaign
Anthony Romero
American Civil Liberties Union
Liz Shuler
AFL-CIO
Fawn Sharp
National Congress of American Indians
Maria Town
American Association of
People with Disabilities
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice |
AAJC

President and CEO
Maya Wiley

February 21, 2023

The Honorable Jessica Rosenworcel
Chair
Federal Communications Commission
45 L Street
Washington, DC 20554

Re: Prevention and Elimination of Digital Discrimination, GN Docket 22-69

Dear Chair Rosenworcel:

On behalf of The Leadership Conference on Civil and Human Rights and its Media/Telecommunications Task Force, we write in response to the Notice of Proposed Rulemaking implementing the civil rights provisions of the Infrastructure Investment and Jobs Act.¹

The Leadership Conference is a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the rights of all persons in the United States, and its Media/Telecommunications Task Force is committed to ensuring that all communities, especially the historically underserved, have access to affordable, reliable, high-quality advanced communications services. High-speed broadband has become an integral platform for education, employment, health care, economic development, civic participation, and communications with family and friends. The lack of access to broadband internet service among communities of color, low-income households, and rural communities means that many vulnerable households are disproportionately excluded from full participation in our society and, thus, raises a critical equity and civil rights concern. Congress agrees, and in the Infrastructure Investment and Jobs Act, the Federal Communications Commission (FCC or commission) and the U.S. Department of Justice have been charged with “eliminating” digital discrimination.²

In these comments, The Leadership Conference:

- urges the commission to take a comprehensive approach in defining digital discrimination;

¹ Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, Notice of Proposed Rulemaking, GN Docket No. 22-69 (rel. Jan. 20, 2024) (“NPRM”).

² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, §60506(b)(2) (2021), codified at 47 U.S.C. § 1754(b)(2).

- emphasizes the importance of robust data collection and utilization, drawing on sources across the federal government, state governments, and private and public sectors; and
- suggests that the FCC must enhance capacity, revise internal procedures, and draft strong enforcement provisions to ensure the law can be effectively enforced.

I. The Commission must take a comprehensive approach in defining digital discrimination

In paragraph 12 of the NPRM, the commission proposes to adopt a definition of “digital discrimination of access” that “encompasses actions or omissions by a provider that differentially impact consumers’ access to broadband internet access service, and where the actions or omissions are not justified on grounds of technical and/or economic infeasibility,” and then provides two different definitions to draw from.³ The key difference in the two definitions is the word “intended,” and if the commission is to effectively tackle its congressional mandate to eliminate digital discrimination, it must cover all types of discrimination, not just the policies and practices that are intended to differentially impact consumers’ access to broadband services.⁴

We urge the commission to take a comprehensive approach in defining digital discrimination, with a definition rooted in disparate impact, that covers non-subscribers and subscribers alike, includes more characteristics than those enumerated in the statute, and goes beyond just the provision of broadband service.

A. The definition of digital discrimination should be based on disparate impact and rooted in existing civil rights law and FCC precedent

We stated in our May 16, 2022 comments that “civil rights protections deserve maximum breadth,” and the commission should address digital discrimination that prohibits *both* disparate impact and disparate treatment.⁵ This sentiment was echoed by other commenters in the record, who insisted that if the commission is to effectively address discrimination as it happens in the real world, the commission must define digital discrimination based on disparate impact.⁶ If the commission wants the digital discrimination rules to fully protect consumers, it should proactively look for cases of disparate impact.

The commission has two sources of precedent it can look to while drafting the digital discrimination rules. We urge the commission here, as we did in our previous comments, to draw on its prior case law under Sections 202 and 208 — which, respectively, establish a non-discrimination standard and the right to file a complaint.⁷ Both sources of precedent point toward a robust and expansive interpretation of the new law.

³ NPRM at 6-7.

⁴ NPRM at 6-7.

⁵ *Comments of the Leadership Conference on Civil and Human Rights*, WC Docket 22-69 at 5 (2022)(“Leadership Conference Comments”).

⁶ Kevin Taglang, “More Questions About Addressing Digital Discrimination,” Benton Institute for Broadband and Society (Jan. 3, 2023), <https://www.benton.org/blog/more-questions-about-addressing-digital-discrimination>.

⁷ Leadership Conference Comments at 5.

Courts utilize a three-part analysis to determine whether or not a carrier has violated Section 202.⁸ The first part of this analysis is an inquiry into whether the services are ‘like’; if they are, the next inquiry is whether there is a price difference between them; and if so, the third inquiry is whether the difference is reasonable.⁹ The burden is on the complainant to establish the first two elements. If the complainant makes this showing, the burden shifts to the carrier to justify the price disparity as reasonable. Under the three-part test, the commission follows a “functional equivalency” test to determine which products are “like,” which “examine[s] both the nature of the services and the customer perception of the functional equivalency of the services” to determine whether the differences are “functionally material” or “of practical significance” to customers.¹⁰ We continue to urge the commission to adopt a similar burden shifting approach, and under the digital discrimination rules, the burden should shift to the provider once an initial showing is made under the formal complaint process.¹¹

There are other sources of civil rights law that the commission could draw from to develop affirmative requirements for broadband and digital service providers. The Affirmatively Furthering Fair Housing (AFFH) provision of the Fair Housing Act (FHA) requires the Department of Housing and Urban Development (HUD) and its grantees to further the policies and purposes of the FHA.¹² This obligation requires recipients of HUD funds to take meaningful actions, in addition to combating discrimination, which overcome segregation and discrimination, and promote inclusive communities free from barriers that restrict access to housing opportunity based on protected characteristics.¹³ The commission could include a similar provision in the digital discrimination rules and require broadband and digital service providers to take affirmative steps to end digital discrimination — and any grantees must not engage in digital discrimination themselves, take actions that perpetuate digital segregation, or diminish equitable access to broadband resources and opportunities.¹⁴

B. Non-subscribers must be covered by the commission’s definition of digital discrimination of access

Digital discrimination happens to subscribers and non-subscribers alike, and without the inclusion of non-subscribers in the digital discrimination rules, millions of individuals currently without access to broadband will continue to lack connectivity. Despite the suggestion in the record that the commission should not include non-subscribers or “consumers generally,”¹⁵ the fact is that the statute states “the

⁸ Leadership Conference Comments at 5 (citing *Nat’l Communications Ass’n, Inc. v. AT&T Corp.*, 238 F.3d 124, 127 (2d Cir. 2001)).

⁹ *Id.*

¹⁰ Leadership Conference Comments at 5 (citing *In the Matter of Cellexis International*, 16 FCC Rcd 22887, 22892 (2001)).

¹¹ Leadership Conference Comments at 5.

¹² Leadership Conference Comments at 10.

¹³ Leadership Conference Comments at 10 (citing National Fair Housing Alliance, Notice of Proposed Rulemaking, HUD’s Affirmatively Further Fair Housing Proposed Rule (Mar. 16, 2020), <https://nationalfairhousing.org/wp-content/uploads/2020/03/NFHAComments-on-HUDs-2020-Proposed-AFFH-Reg-3.16.20.pdf>).

¹⁴ Leadership Conference Comments at 10.

¹⁵ NPRM at 21-22.

commission should take steps to ensure that *all* people of the United States benefit from equal access to broadband internet access services.”¹⁶ Further, someone may not subscribe to broadband because, as a result of digital discrimination, broadband service may be unaffordable, unable to meet their needs, or unavailable in their area.¹⁷ There is no way to account for these consumers if the definition is only limited to subscribers, and extending the definition to non-subscribers would ensure the commission is able to effectively aid all consumers who have been affected by digital discrimination. As an analogy, this would be similar to stating that only people who were working for a particular company could bring employment discrimination claims against it, but not the people who were never hired because of discriminatory policies and practices, which is an interpretation that would defeat the purpose of the statute and severely limit the commission in enforcement.

C. The commission must expand upon the enumerated classes in the statute, and take into account the intersectionality of the characteristics list

When considering other characteristics to include in its definition of digital discrimination, the commission should include discrimination based on protected characteristics such as sex, disability, sexual orientation, gender identity or expression, familial status, domestic violence survivor status, or homelessness.¹⁸ These groups have their own connectivity needs and are uniquely impacted by digital discrimination. Unhoused individuals need broadband to maintain contact with social service workers, among other things, but struggle to get connected to the internet.¹⁹ Only 41 percent of people with disabilities have broadband access at home,²⁰ and some are reliant on assistive technology to access information online.²¹ The statute, in addition to directing the commission to prevent digital discrimination against the enumerated groups, says the commission “should take direct steps to ensure that all people in the United States benefit from equal access to broadband internet access service.”²² All of the groups we list above are included in that definition, and the commission has the discretion to include them in its definition of digital discrimination.

The commission must also consider intersectional identities when giving meaning to the characteristics listed in the statute and included in the proposed definition. For example, disability status is more

¹⁶ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, §60506(b)(2) (2021), codified at 47 U.S.C. § 1754(b)(2).

¹⁷ Jenna Leventoff, “Digital Redlining: Why Some Older Adults Overpay for Bad Internet, National Council on Aging (June 10, 2022), <https://www.ncoa.org/article/digital-redlining-why-some-older-adults-overpay-for-bad-internet>.

¹⁸ Leadership Conference Comments at 5.

¹⁹ Laura Hautala, “Wi-Fi is a Lifeline in the Pandemic. It’s Even Harder to Get If You’re Homeless,” CNET (May 14, 2020), <https://www.cnet.com/tech/services-and-software/staying-connected-vital-for-facing-coronavirus-pandemic-while-homeless/>.

²⁰ Susannah Fox, “Americans Living with Disability and Their Technology Profile,” Pew Research Center (Jan. 21, 2011), <https://www.pewresearch.org/internet/2011/01/21/americans-living-with-disability-and-their-technology-profile/>.

²¹ “Technology,” American Association of People with Disabilities (last accessed Feb. 10, 2023), <https://www.aapd.com/advocacy/technology/>.

²² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, §60506(a)(3) (2021), codified at 47 U.S.C. § 1754(a)(3).

prevalent in low-income populations and communities of color.²³ This community faces unique challenges regarding access and use of broadband services, which is why the commission must take into account how broadband providers treat this group.²⁴ The commission could conduct a similar analysis regarding discrimination against other characteristics suggested in the record.

D. Digital discrimination goes beyond just the provision of broadband services

The commission's proposed definition of "digital discrimination of access" should encompass the provision of services outside of deployment. Congress intended the scope of the digital discrimination statute to go beyond deployment of broadband services, as the term "digital" is much broader than "deployment," and the definition of "equal access" found in the statute includes quality of service metric like speeds, capacities, and latency.²⁵ Differences in policies and practices in different service areas can result in vastly different consumer experiences with regard to technical aspects of service quality like speeds, capacities, latency, and other quality of service metrics and non-technical aspects of service quality, such as customer wait times, terms and conditions, or service outages.²⁶

Merely looking at deployment misses the fact that consumers in low-income communities, both urban and rural, often have slower speeds, more limited capacities, and pay higher prices for lower quality service.²⁷ These slower speeds limit the ability of students to succeed academically,²⁸ make it difficult for consumers to access telehealth services,²⁹ prevent deaf individuals and those with other disabilities from using the services they need to access the internet,³⁰ and hinder the ability of job-searchers to find employment.³¹ Differences in the price of service have similar harms and highlight digital discrimination in practice. Studies show that service providers frequently reserve their best deals for residents of

²³ Nanette Goodman, Michael Morris & Kelvin Boston, *Financial Inequality: Disability, Race, and Poverty in America*, National Disability Institute (2019), <https://www.nationaldisabilityinstitute.org/reports/financial-inequality-disability-race-and-poverty-in-america/>.

²⁴ Andrew Perrin and Sara Atske, "Americans with Disabilities Less Likely than Those Without to Own Some Digital Devices," Pew Research Center (Sept. 10, 2021), <https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/>.

²⁵ Leadership Conference Comments at 5; Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, §60506(a)(2)(2021), codified at 47 U.S.C. § 1754(a)(2).

²⁶ Leadership Conference Comments at 5.

²⁷ Leon Yin and Aaron Sankin, "Poor, Less White US Neighborhoods Get Worst Internet Deals," Associated Press (Oct. 19, 2022), <https://apnews.com/article/broadband-internet-speed-inequality-01a99247a08b355e89cc54595aecdafa>.

²⁸ Johannes Baur, Caroline Brooks, and Keith Hampton, "Broadband and Student Performance Gaps," James H. and Mary B. Quello Center, Michigan State University (2020), https://quello.msu.edu/wp-content/uploads/2020/03/Broadband_Gap_Quello_Report_MSU.pdf.

²⁹ Anusha Roy, "Telehealth Is a Good Option - if Your Internet is Fast Enough," 9News (Jan. 16, 2020), <https://www.9news.com/article/news/local/next/telehealth-is-a-good-option-if-your-internet-connection-is-fast-enough/73-1bed9e35-914b-4c97-a435-9c5622c0b42f>.

³⁰ "Lifeline," National Association of the Deaf (last accessed Feb. 13, 2023), <https://www.nad.org/resources/technology/lifeline/>.

³¹ Jim Puzanghera, "A Lack of High-Speed Internet Can Slow Down a Job Search, Pew Survey Finds," Chicago Tribune (Dec. 28, 2015), <https://www.chicagotribune.com/business/la-fi-internet-job-search-pew-20151228-story.html>.

wealthier neighborhoods, while offering those in low-income neighborhoods slower service at higher prices and contracts with worse terms and conditions.³² For example, some providers will offer two years of promotional pricing in wealthier communities and will only offer one year of promotional pricing in low-income communities.³³ These disparities are even manifested in how providers advertise these plans, as neighborhoods within miles from each other receive different advertisements.³⁴

E. Providers must not be able to use claims of “technical and economic feasibility” to circumvent the statute

While the statute requires the commission to consider “the issues of technical and economic feasibility presented by the objective,” the commission cannot allow these claims to serve as a loophole for providers to engage in discriminatory practices without consequence.³⁵ Prior to this rulemaking, internet service providers have used claims of “technical and economic considerations” to rebut any argument that they discriminate, and they will frustrate FCC enforcement with similar claims here.³⁶ As other commenters have urged, the commission should not evaluate “technical and economic feasibility” claims based on the short-term profitability of providing service, but should look at economic feasibility over the life of the network.³⁷

II. The Commission should utilize a wide range of data sources to identify instances of digital discrimination.

Without robust data collection, analysis, and utilization, the commission will be unable to effectuate the digital discrimination statute. Studies from Communications Workers of America,³⁸ the Markup,³⁹ Free Press,⁴⁰ and others have helped advocates gain greater awareness of the scope of the problem. The commission has a wealth of both internal and external data sources at its disposal, and should take full advantage of them to identify instances of digital discrimination and monitor regulatees for compliance. This will require not only collecting and utilizing the data in enforcement, but also cross-referencing and overlaying the different data sets.

³² Slower and More Expensive, California Community Foundation and Digital Equity LA (2022), <https://search.issueab.org/resource/slower-and-more-expensive-internet-pricing-disparities-report.html>.

³³ *Id.*

³⁴ *Id.*

³⁵ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, §60506(a)(2021), codified at 47 U.S.C. § 1754(a).

³⁶ Zoey Howell-Brown, “Verizon Rejects Claims of Redlining, \$759 Million from ReConnect, Utopia Fiber Survey, Broadband Breakfast (Oct. 27, 2022), <https://broadbandbreakfast.com/2022/10/verizon-rejects-claims-of-redlining-759-million-from-reconnect-utopia-fiber-survey/>.

³⁷ *Comments of Public Knowledge*, WC Docket 22-69 at 33-34 (2022)(“Public Knowledge Comments”).

³⁸ AT&T’s Digital Redlining: Leaving Communities Behind for Profit, Communications Workers of America and National Digital Inclusion Alliance (Oct. 2020).

³⁹ Leon Yin and Aaron Sankin, “Poor, Less White US Neighborhoods Get Worst Internet Deals,” Associated Press (Oct. 19, 2022), <https://apnews.com/article/broadband-internet-speed-inequality-01a99247a08b355e89cc54595aecdafa>.

⁴⁰ S. Derek Turner, Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption, Free Press (Dec. 2016)

A. Studies and other external data sources offered by commenters in the record are persuasive and provide examples of the research needed to identify digital discrimination

Throughout the record, commenters offer examples of well-researched studies and external data sources that can be drawn upon to evaluate claims of digital discrimination and inform the Commission's efforts.⁴¹ Studies that come out after the digital discrimination rules are in place can guide the investigations and could be overlaid with internal FCC data. Excluding these studies would be detrimental to the commission's efforts to prevent digital discrimination.

Similarly, commenters urge the commission to utilize other data sources within the federal government, such as the U.S. Census Bureau's American Community Survey (ACS) data and state broadband maps.⁴² These data sources can help complete the FCC's data and provide a more complete picture of the state of broadband access in the United States. State broadband maps, used in combination with the FCC's maps, can help the commission find areas of particular concern when there are discrepancies in federal and state data.⁴³

B. The commission should leverage and improve internal data sources for evaluation of digital discrimination of access

In the NPRM, the commission asks which internal data sources could be best helpful in identifying digital discrimination and how to best leverage these data sources.⁴⁴ In addition to the broadband maps, the Broadband Consumer Label, the Affordable Connectivity Program, and Lifeline will provide data that will assist the Commission in identifying instances of digital discrimination.⁴⁵ The commission could even draw on the information in the Consumer Complaint Data Center to identify specific geographic areas or providers for further investigation.

However, merely having the data is not enough. The programs the commission will be drawing on cut across different bureaus, including the Wireline Competition Bureau, Consumer Affairs Bureau, and Enforcement Bureau. For this reason, the commission should ensure all of the staff who are working on this issue are trained to understand how a given data set may show digital discrimination. This can be done through agency-wide assessments of data literacy and data skills and the subsequent development of a plan to close any gaps these assessments may find.⁴⁶

⁴¹ Letter from Jonathan Walter, Policy Counsel, The Leadership Conference on Civil and Human Rights, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22- 69, at 2 (filed Nov. 7, 2022) ("Leadership Conference Ex Parte").

⁴² Leadership Conference Comments at 4.

⁴³ Sarah Vogelsong, "The Feds Have Mapped Broadband Availability. Are They Right About Virginia?," Virginia Mercury (Jan. 11, 2023), <https://www.virginiamercury.com/2023/01/11/the-feds-have-mapped-broadband-availability-are-they-right-about-virginia/>.

⁴⁴ NPRM at 28-31.

⁴⁵ Leadership Conference Comments at 4-5.

⁴⁶ U.S. Gov't Accountability Off., GAO-21-152, *Data Governance: Agencies Made Progress in Establishing Governance, But Need To Address Key Milestones* (2021).

III. The FCC must enhance capacity, revise internal procedures, and draft strong enforcement provisions to ensure the law can be effectively enforced

A. Office of Civil Rights

Throughout the record, The Leadership Conference and other civil rights organizations have advocated for the establishment of an Office of Civil Rights (OCR) at the FCC.⁴⁷ An Office of Civil Rights must be multi-functional, like civil rights offices within other agencies. For example, the Department of Labor’s Civil Rights Center (Civil Rights Center) or the Consumer Financial Protection Bureau’s Office of Civil Rights both have offices that enforce existing civil rights policy, issue policy guidance, and conduct investigations.⁴⁸ An Office of Civil Rights at the FCC would not only play a critical role in enforcing the digital discrimination rules, but it would also provide the commission with civil rights expertise in other proceedings that impact the communications needs of underserved and unserved communities.⁴⁹ As we told the commission in our December 7, 2022 meeting and in our previous comments, many of the other proceedings before the commission, including the proceedings addressing the cost and accessibility of communication for incarcerated people and their families, and the commission’s Quadrennial Review proceedings, impact communities of color and would benefit from expert staff who can look at these proceedings through a civil rights and equity lens.⁵⁰ In order to properly engage in civil rights issues, the OCR should have sufficient capacity to identify and address communications issues impacting marginalized communities. Other agencies house expertise within an independent, central unit, and it makes sense for the FCC to do the same.

B. Full and Robust Enforcement

The FCC’s current tools can provide a strong foundation for enforcing a broad prohibition on digital discrimination. The FCC may issue subpoenas, cease-and-desist letters, monetary forfeitures, and enter into consent decrees.⁵¹ However, as we stated in our previous comments, the FCC must make sure it is able to take advantage of all the enforcement tools available at its disposal.⁵² For example, when collecting monetary fines, the commission must define instances of non-compliance on a granular level and work closely with the Department of Justice to ensure these fines are collected.⁵³ Similarly, the commission must ensure regulatees under consent decrees are closely monitored for compliance and provide support for state enforcement efforts.

⁴⁷ See Leadership Conference Comments at 6-7; Common Cause, CWA, National Urban League, etc

⁴⁸ U.S. Department of Labor, “Civil Rights Center” (last accessed Feb. 6, 2023), <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center>; Consumer Financial Protection Bureau, “Office of Civil Rights” (last accessed Feb. 6, 2023), <https://www.consumerfinance.gov/office-civil-rights/#:~:text=The%20mission%20of%20the%20Office,into%20the%20CFPB's%20everyday%20business..>

⁴⁹ *Comments of the National Urban League*, WC Docket 22-69 (2022)(“National Urban League Comments”).

⁵⁰ Leadership Conference Ex Parte.

⁵¹ Leadership Conference Comments at 7.

⁵² *Id.*

⁵³ *Id.*

Additionally, the commission should continue and adopt rules providing for monitoring any behavioral conditions with verification and enforcement requirements, as it has in the T-Mobile, Dish, and Verizon compliance dockets.⁵⁴ Further, the commission should consider adding additional grant conditions to ensure any grants made are affirmatively advancing the purpose of the digital discrimination statute.

Revisions to the complaint process will benefit enforcement. The Affordable Connectivity Program (ACP) has a dedicated complaint process that allows consumers to file informal complaints with the FCC, and it requires providers to supply information about this complaint process to consumers.⁵⁵ We support the commission's plan to develop a dedicated complaint process for digital discrimination and offer additional suggestions for how the commission could improve upon ACP's process and tailor it to claims of digital discrimination. First, the commission must ensure that the complaint process, as well as information about the complaint process, are accessible in a wide range of languages. Second, the commission can make the complaint process more accessible to consumers by adding questions to assist them in evaluating whether or not their complaint is about digital discrimination.⁵⁶ Third, the commission should establish a dedicated portal for organizational and municipal complaints.

Further, the commission must consider prohibiting the inclusion of mandatory arbitration clauses in service contracts or, at a minimum, require providers from applying these clauses to digital discrimination claims. Not only do these clauses deprive consumers of important legal protections, but they would frustrate the commission's enforcement of the statute. A study by the Consumer Financial Protection Bureau found that 99.9 percent of wireless subscribers were subject to mandatory arbitration clauses, and past FCC Commissioners have raised concerns about the impact of these clauses on the ability of consumers to hold providers accountable.⁵⁷ Limiting pre-dispute arbitration clauses would have positive downstream effects and help to facilitate truly equal access, as these clauses disproportionately harm low-income consumers.⁵⁸

C. Remedies

We recommend, in addition to those remedies mentioned in the NPRM, that the commission consider the following:

- Clawback of grants/funds/awards
- Revocation of licenses
- Allocation of settlement funds toward activities closing the digital divide

⁵⁴ See "FCC Establishes T-Mobile, Dish, and Verizon Monitoring and Compliance Dockets," Telecommunications Law Professionals (May 25, 2022), <https://www.tlp.law/2022/05/25/fcc-establishes-t-mobile-dish-and-verizon-monitoring-and-compliance-dockets/>.

⁵⁵ 47 U.S.C. § 1752(b)(9)(B).

⁵⁶ *Comments of Public Knowledge*, WC Docket 22-69 at 24-27 (2022).

⁵⁷ Jon Brodtkin, "Mandatory Arbitration Restricts Rights of ISP Customers, says FCC Democrat," *Ars Technica* (Oct. 24, 2016), <https://arstechnica.com/tech-policy/2016/10/mandatory-arbitration-restricts-rights-of-isp-customers-says-fcc-democrat/>.

⁵⁸ *Id.*

IV. Conclusion

Today, nondiscriminatory access to digital services and products is a necessity, not a luxury. Policymakers and the public now recognize the importance of digital services and products and broadband access, as vast numbers of essential services and civic institutions have moved online. Congress has spoken: Digital discrimination has no place in the United States. The civil rights community stands ready to act as a close partner to the commission as it undertakes the extremely important task of carrying out Congress' direction.

Thank you for your consideration of our recommendations on the implementation of the civil rights provisions of the Infrastructure Investment and Jobs Act. We look forward to working with you on this issue and others of importance to our country. If you have any questions about this letter, please contact Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, United Church of Christ Media Justice Ministry, at cleanza@alhmail.com; Yosef Getachew, director of the media and democracy program at Common Cause, at YGetachew@commoncause.org; Anita Banerji, senior director of the media/tech program at The Leadership Conference, at banerji@civilrights.org; or Jonathan Walter, media/tech policy counsel at The Leadership Conference, at walter@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Association of People with Disabilities
American Civil Liberties Union
Common Cause
Communications Workers of America (CWA)
Japanese American Citizens League
NAACP
National Consumer Law Center, on behalf of its low-income clients
National Hispanic Media Coalition
Sikh American Legal Defense Education Fund (SALDEF)
United Church of Christ Media Justice Ministry