



Before the
Federal Communications Commission
Washington, D.C. 20554

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

**Comments of National Taxpayers Union
June 9, 2022**

National Taxpayers Union (NTU) is a nonprofit, nonpartisan organization advocating on behalf of taxpayers at all levels of government. As a free market group, we encourage policymakers to utilize light-touch regulations to foster competition, reduce compliance costs, and promote economic growth. As the Federal Communications Commission (FCC) determines how to interpret Sec. 60506 of the Infrastructure Investment and Jobs Act (IIJA), we welcome the opportunity to share our views.

Sec. 60506 of IIJA states that, “insofar as technically and economically feasible,” subscribers should have “equal access” to broadband internet service. “Equal access” is defined as the “equal opportunity” to subscribe to a service with comparable speeds, capacities, latency, and other quality of service metrics in a given area for comparable terms and conditions.

As the FCC accepts input under this Notice of Inquiry, the agency should avoid distorting free market principles. Evidence suggests that broadband providers want to serve consumers to the greatest extent economically feasible and that they do not intentionally engage in the digital discrimination against certain groups.¹ There are gaps in accessibility and affordability, but chalking these gaps up to intentional, harmful discrimination rather than rationale economic behavior would be a mistake.

¹ Kane, Joe and Dine, Jessica. “Broadband Myths: Do ISPs Engage in ‘Digital Redlining?’.” Information Technology & Innovation Foundation. Accessed June 3, 2022.
<https://itif.org/publications/2022/04/13/broadband-myths-do-isps-engage-digital-redlining>

There are several factors that can make a certain population or geographic region more difficult or costly to serve, including low population density and rugged terrain. Deploying broadband comes with large upfront costs and requires continual investment.² Like any business, broadband providers must determine the potential costs and revenues for their investments. In interpreting Sec. 60506, the FCC must be careful to avoid crafting rules that would punish broadband providers for making economic decisions as these heavy-handed rules could undermine the goal of promoting universal service.

There are, however, ways in which the FCC can promote equal access to broadband. It already possesses and is employing many of these tools, but some can be improved. Importantly, in promoting equal access, the FCC should avoid overbuilding or creating heavy-handed rules that would stifle investments. Market-oriented solutions remain the best approach.

Targeted funding and subsidies to encourage private sector investment and increase adoption of potential subscribers would be a better way to address gaps in accessibility. The FCC should continue to evaluate ways to improve programs like the Universal Service Fund (USF). The USF provides targeted funding to encourage investments in unserved and underserved areas. Programs like the Affordable Connectivity Program (ACP) administered by the FCC helps subsidize the costs of broadband internet and an internet-capable device for low-income households. While this program should continue to be evaluated, this is another way in which the FCC and Congress can work to promote broadband access. The FCC can also improve on digital literacy efforts and should focus on areas where broadband is available but adoption rates are low.

Apart from funding, the FCC can evaluate where regulatory barriers make building infrastructure or expanding service prohibitively expensive. The agency recently took a positive step by evaluating pole attachment disputes. Overall, the FCC would be better off looking at where the government, at all levels, stands in the way of broadband deployment rather than expanding the federal government to address a problem that is not supported by the facts.³

The FCC's task of promoting equal access is a laudable but difficult goal. Prudence and caution are warranted to ensure that burdensome rules and regulations do not impede progress. There are issues the FCC should address to ensure unserved and subsequently underserved communities receive the necessary support. To the FCC's credit, important work has been or is currently being done. However, economic-based decision making by broadband companies is normal and should not be conflated with nefarious intent, which could unnecessarily hinder the important goal of ensuring all Americans are connected.

² "Economics of Broadband Deployment." National Telecommunications and Information Administration. Accessed June 6, 2022. <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-03/Economics%20of%20Broadband%20Networks%20PDF.pdf>

³ Cannon, Jonathan. "Reducing Digital Discrimination by Avoiding Digital Red Herrings." Accessed June 2, 2022. <https://www.rstreet.org/2022/04/29/reducing-digital-discrimination-by-avoiding-digital-red-herrings>