



**ALA Comments on Prevention and
Elimination of Digital Discrimination**

**Before the
Federal Communications Commission
Washington, DC 20054**

In the Matter of

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

Introduction

The American Library Association (ALA) appreciates the opportunity to respond to the Federal Communications Commission Notice for Proposed Rulemaking on the prevention and elimination of digital discrimination.¹

ALA is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. For more than 140 years, ALA has been the trusted voice and advocate for our nation’s 123,000 academic, public, school, government, and special libraries.

Libraries have long been a cornerstone for equitable access to information and broadband-enabled services. Libraries support individuals as they apply digital tools and services to achieve important goals for themselves, their communities, and the nation. Libraries have been promoting and providing broadband services and access, supporting and advancing digital literacy by providing informal and formal digital literacy training, and by providing technology access to devices.

The coronavirus pandemic made highly visible the troubling access disparities that those working in libraries have long observed and worked to address. To fully participate in and benefit from community assets, Americans require access to affordable, reliable, high-speed internet and clear, simple information to make informed subscription choices. Without

¹ Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, Notice of Proposed Rulemaking, FCC Num. 22-98 (2022) (*hereinafter* NPRM)

broadband access, Americans are deprived of economic, education, health, employment, social and cultural benefits that those with broadband access can regularly avail themselves. This disparity only continues to grow as more and more of our daily activities in some way require internet access. For many, not participating in the digital economy is not a choice, but instead caused by discriminatory practices, whether intended or unintentional, that have led to unequal internet access across the nation. This unequal access has led historically marginalized and underserved communities to experience yet another barrier to successfully achieving the American dream.

ALA Executive Director Tracie D. Hall was interviewed as part of the DEI Working Group², highlighting the important role libraries play in supporting digital equity and helping our communities overcome the barriers caused by digital discrimination. She has written and spoken about how libraries can create an equitable digital future. In particular, she has highlighted how “pervasive and persistent inequities in information and digital access — and the degree to which they are profoundly raced and classed,” is a form of information redlining.³ Libraries serve a critical role for those experiencing digital inequity by providing “digital access and literacy triage efforts.”⁴

The ALA supports Congress’s charge as outlined in the Infrastructure Investment and Jobs Act to adopt rules to “facilitate equal access to broadband internet access service” (Sec 60506 (b)). Everyone deserves to have equal access to broadband, as ALA asserted in a resolution affirming that broadband is a human right.⁵ When there are barriers precluding equal access to the internet, there should be policies in place to prevent and rectify digital discrimination. It should not matter if the discrimination is intentional or unintentional, and who you are and where you live should not restrict your access to the digital economy. This rulemaking process offers an important step toward ensuring that digital equity is available to everyone in the United States in the years to come.

² NPRM paragraph 29

³ Hall, Tracie D. Ending Information Redlining: The role of libraries in the next wave of the civil rights movement. American Libraries. November 2, 2020. Available at <https://americanlibrariesmagazine.org/2020/11/02/ending-information-redlining/>

⁴ Hall, Tracie D. “Information Redlining: The Urgency to Close the Digital Access and Literacy Divide and the Role of Libraries as Lead Interveners.” *Journal of Library Administration*. 61(4), 2021. Available at: <https://doi.org/10.1080/01930826.2021.1906559>

⁵ American Library Association. *Resolution in Support of Broadband as a Human Right*. January 25, 2021. Available at: <https://www.ala.org/aboutala/sites/ala.org/aboutala/files/content/Resolution%20in%20Support%20of%20Broadband%20as%20a%20Human%20Right%20FINAL.pdf>

III Discussion

A. Defining Digital Discrimination

1. Disparate Impact and Disparate Treatment

The Commission seeks comment on whether to adopt the definition of digital discrimination based on disparate impact (i.e., discriminatory effect), disparate treatment (i.e., discriminatory intent), or both. Section 60506 states, “the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service” (a)(3) Sec 60506.

The Commission should adopt rules that encompass disparate impact claims because the statute does not specify that intent is a required element of digital discrimination. To ensure “all people of the United States benefit from equal access to broadband internet access service,” it should not matter if there was/is discriminatory intent creating unequal access to broadband internet services. What matters is that digital discrimination, either intended or unintentional, was a foreseeable or expected outcome by the provider.

If discriminatory intent is the only requirement, then the FCC rules would be meaningless because many marginalized and underserved people and communities would still experience digital discrimination but would not be covered by the protections of this rulemaking process.

2. Other Components of the Definition

Covered Entities

The Commission asks, “what types of entities should be covered by our definition of digital discrimination of access.”⁶ ALA believes the definition should extend beyond broadband providers to include all entities involved in the ecosystem of providing internet access. As stated previously, what matters is that *the effect* was digital discrimination. Digital discrimination should not be left unchecked just because the discrimination occurred not because of a broadband provider but through some other entity that supports broadband access.

Prohibited Practices and Policies

In paragraph 31, the Commission asks, “*what* “policies or practices . . . differentially impact consumers' access to broadband internet access service?”⁷ ALA agrees with the commenters that the Commission consider policies and practices related to “broadband infrastructure deployment, network upgrades, marketing or advertising, service provision, network

⁶ NPRM paragraph 29

⁷ NPRM paragraph 31

maintenance, and customer service; service provider use of algorithms to make decisions about deployment.”⁸ It is important to address policies and procedures prohibiting discriminatory practices, as well as the access itself, to ensure consumers do not end up with inequitable outcomes.

For instance, information about consumer broadband services can be opaque and hard to decipher when trying to select which plan is right for me or my family. It can be hard for an individual to determine what is included in the plan, identify if they are duplicating services, what is and is not included in a bundle, etc. Broadband Consumer Labels is an example of how transparency, simple and consistent language, and consistent formatting can make it easier to understand and compare services and processes across multiple providers.⁹ Clarity and transparency can be important tools to reduce digital discrimination.

Technical and Economic Feasibility

The question is raised, “*in what circumstances* is a differential impact to consumers’ access to broadband “justified by genuine issues of technical or economic feasibility?”¹⁰ If a provider asserts that it is not technically or economically feasible to comply with the FCC rules prohibiting digital discrimination, the provider must be required to provide documentation that this is the case. There should be a publicly available process documenting what is required to prove this justification, including why it is not feasible and the process the provider used to try to identify a technically or economically feasible solution. This should include the provider working with other organizations, like local or state governments, community anchors, etc., to try to achieve equitable broadband access. While it may not be technically or economically feasible for the provider to accomplish the broadband deployment, upgrade, or maintain existing infrastructure on its own, collaborating with local or state community partners could lead to a successful outcome.

The process for determining if a particular broadband deployment is not technically or economically feasible should be transparent. The community should be able to track the provider requests for exemptions. The community should also be able to lodge challenges to those exemptions. The process for community members or entities to challenge the assertion should be well-documented, transparent, and publicly accessible online. The final decision of the Commission to a challenge should also be made publicly accessible online.

Consumers

The question is raised, should we “limit our concept of “subscribers” to only current subscribers, and not include non-subscribers or consumers generally.”¹¹ ALA does not agree

⁸ NPRM paragraph 31

⁹ FCC. *Broadband Consumer Labels*. Available at: <https://www.fcc.gov/broadbandlabels>

¹⁰ NPRM paragraph 34

¹¹ NPRM paragraph 39

with this position. Sec. 60506 states that “the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service.” There are “people of the United States” who are not subscribers because they experience digital discrimination that precludes them from becoming subscribers. These groups and individuals should not be excluded from the protections that will be adopted in support of Sec 60506 because digital discrimination does not allow them to become subscribers. The definition of Consumer should include those individuals and populations outlined in the Listed Characteristics, which is described more in-depth in the paragraph below.

Listed Characteristics

The Commission proposes “to include the same characteristics as bases for discrimination as those identified in section 60506.”¹² Section 60506 of the Infrastructure Investment and Jobs Act (47 U.S.C. § 1754) mandates that the FCC should adopt 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;

It also includes the statement that

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

meaning that the Commission can and should include other characteristics to ensure that “all people of the United States” are protected from digital discrimination.

The Commission should not only include those characteristics already included in section 60506, including “income level, race, ethnicity, color, religion, or national origin.” ALA believes that the Commission should broaden this list to cover other historically marginalized and underserved communities including the covered populations in 60301 of the Digital Equity Act and individuals with disabilities as examples. While some commenters have asserted that the listed characteristics are exclusive, arguing that Congress was deliberate in its choice to specify the listed characteristics¹³, ALA disagrees. Congress included the clause allowing for additional

¹² NPRM paragraph 40

¹³ NPRM paragraph 40

factors to be considered during the rulemaking process (60506 (c)(3)) and, therefore, the FCC should ensure that all groups that are historically marginalized or underserved are protected through this rulemaking process.

Differential Impact

The Commission asks the question, “when is consumers' access to broadband internet access service “differentially impact[ed]” by policies or practices, whether intentionally or not.”¹⁴ The simplest example is when households in a community pay more for a similar or lesser internet connection than households in other parts of the community. How is this discrimination determined? ALA agrees that “technical merits such as speed, capacity, and network outage, as well as non-technical factors such as caliber of customer service” should be considered,¹⁵ as well as other metrics that include latency, data caps, and data throttling thresholds.

In the next paragraph, the Commission asks, “Should we understand “equal access” and “discrimination of access” to focus on the availability of broadband, adoption of broadband, quality of broadband, or some combination of these factors? Are there other factors we should consider?”

The differential impact should focus on what discriminatory barriers impede someone from successfully subscribing to the internet and achieving their online goals. Digital discrimination involves more than just discriminatory broadband deployment.

Discrimination can begin before an individual is even a subscriber. For instance, when someone tries to subscribe to the internet they can encounter barriers that cannot be easily overcome, thus denying them access to the internet. It could be a person with mobility issues who cannot install the internet device independently and cannot pay someone to install it. A website may not be user-friendly, making it hard for someone to find a phone number to call for enhanced assistance.

The Commission should also consider barriers like how the lack of digital literacy skills impacts the adoption of broadband services, especially for those individuals and communities that have been historically marginalized and underserved. This can include not having access to an internet-enabled device or the needed digital skills to use the device to accomplish an individual's goals online.

¹⁴ NPRM paragraph 44

¹⁵ NPRM paragraph 44

B. Revising the Commission's Informal Consumer Complaint Process

ALA supports the revisions the Commission proposed to the consumer complaint process for digital discrimination, including to:

- (1) add a dedicated pathway for digital discrimination of access complaints;
- (2) collect voluntary demographic information from filers who submit digital discrimination of access complaints; and
- (3) establish a clear pathway for organizations to submit digital discrimination of access complaints.¹⁶

We also support making “anonymized complaint data available to the public through the FCC's Consumer Complaint Data Center to inform third-party analyses” but want to reinforce that the data should be packaged in a way that protects patron privacy while still providing data at a level that it is useful for research and analysis.

We also support the establishment of a “pathway for organizations representing communities experiencing digital discrimination of access to submit digital discrimination complaints.”¹⁷ This will allow organizations to advocate on behalf of those either unserved or underserved due to digital discrimination but are either unable, reluctant, or unwilling to file a complaint on their own behalf. This pathway would assure that even when a person cannot advocate on their behalf, they can still be eligible for protection by the Commission. To facilitate this work, the portal should support some type of bulk uploading process so that an organization can easily submit multiple complaints at one time.

The Commission seeks comments on collecting “voluntary demographic information from filers who submit digital discrimination of access complaints.”¹⁸ We caution that the more information the Commission requests, the less likely someone will be to complete the process, thus reducing the number of people experiencing digital discrimination from self-reporting. In addition, historically marginalized and underserved communities may be fearful about sharing this information because of how this information may be used in the future. Discrimination impact can be determined during the investigatory process. Those charged with investigating the complaint have access to data that can be used to identify if digital discrimination may have occurred, such as the National Broadband Map, census tracts, Consumer Inquiries and Complaint Center, etc. The investigators can also contact the complainant if additional information is required.

The Commission seeks “comment on any other changes we should make to our informal consumer complaint process to accept complaints of digital discrimination of access.”¹⁹ ALA agrees with other comments that the process for filing a complaint needs to be easier for

¹⁶ NPRM paragraph 52

¹⁷ NPRM paragraph 54

¹⁸ NPRM paragraph 55

¹⁹ NPRM paragraph 56

individuals who do not speak English and would also ask that it be accessible for those with low-literacy skills. The process to file complaints should use simple language, avoid jargon whenever possible and provide prompts to aid the user as they submit their complaint. ALA also supports improving the process for submitting a complaint other than through the internet-based Consumer Complaint Center. Not all individuals will have access to the internet to submit complaints. In addition, individuals with low digital skills or disabilities, for example, should have alternative pathways to submit a complaint that does not involve using a website.

Finally, the process should be clear about accountability and enforcement. If complaints are regularly filed and nothing happens, what is the incentive to file? The person discriminated against must believe that if digital discrimination is found, that complaint will be made whole. Otherwise, it is unlikely a complaint will be filed, and discrimination will be underreported.

C: Adoption of Rules

The Commission seeks “comment on the punishments or remedies the Commission could impose and award as part of our enforcement of rules prohibiting digital discrimination of access.”²⁰ First, a successful complainant should receive the internet access that is due them, along with any compensation due for past overpayment. If a pattern of discrimination is found, the FCC or another designated government entity should be able to levy financial punishment and collect the imposed penalties. The financial punishments should be placed in a fund for digital equity projects.

D: State and Local Model Policies and Best Practices

On November 7, 2022, the members of the full Communications Equity and Diversity Council (CEDC) voted unanimously in favor of finalizing the report for the Commission. The CEDC included members from industry, government, academia, non-profits, and community organizations and interviewed additional experts from across the country, including ALA Director Tracie D. Hall.

We appreciate the work of all those who contributed to these policies and best practices to address digital discrimination. This framework is useful for demonstrating what is possible, but it should not be seen as comprehensive or exclusive. We see this document as the beginning framework but that it will evolve and need to adapt as this work continues over the coming year.

For instance, the working group highlights the important role that “digital navigation services for historically disadvantaged and other vulnerable populations” play in the community.²¹ Still, they are not the only ones who serve this important role. Other community members also play

²⁰ NPRM paragraph 70

²¹ Communications Equity and Diversity Council Federal Communications Commission. *Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity: DEI Working Group Recommendations to Support Digital Equity*. November 7, 2022.

an important role in building digital and information literacy skills, including librarians and teachers just to name a few. It will take a variety of individual, and public and private organizations at the local, state, and federal level working to advance digital equity locally and across the nation.

Conclusion

ALA greatly appreciates this NPRM and thanks the FCC for laying a solid foundation for it through the Commission's Equity and Diversity Council. Combatting digital discrimination is at the core of the work of libraries, library workers, and the ALA. Indeed, ALA Executive Director Tracie Hall served on a Connecticut Public Radio panel with Chairwoman Rosenworcel on digital redlining in October 2022,²² further illustrating the importance of this issue for both of our organizations and our common interests. ALA looks to the FCC to continue its efforts to provide digital opportunity for all through its many programs and activities, as well as using its role in the communications ecosystem as a bully pulpit to highlight digital discrimination and the ways to overcome it.

Respectfully submitted,

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²² Connecticut Public Radio/WNPR. *How the FCC and Local Libraries are Addressing "Digital Redlining."* October 4, 2022. Available at <https://www.ctpublic.org/show/where-we-live/2022-10-04/how-the-fcc-and-local-libraries-are-addressing-digital-redlining>