

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF PUBLIC KNOWLEDGE

Alisa Valentin
Broadband Policy Director

Lauren Harriman
Fellow

for

Public Knowledge
1818 N Street NW
Suite 410
Washington, DC 20036

March 4, 2024

TABLE OF CONTENTS

SUMMARY	3
I. PUBLIC KNOWLEDGE SUPPORTS ESTABLISHMENT OF AN FCC OFFICE OF CIVIL RIGHTS	4
A. The Commission Should Prioritize Specialized Civil Rights Expertise to Meet Universal Service Goals	5
B. The Commission Should Create an Office of Civil Rights Working Group	7
II. PUBLIC KNOWLEDGE SUPPORTS AFFIRMATIVE OBLIGATIONS	8
A. The Commission Should Require Submission of Availability of Low-Cost Internet Offers	8
B. Data from Annual Reports Should Be Public	9
C. ISPs Should Certify Compliance with Digital Discrimination Rules	10
CONCLUSION	11

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF PUBLIC KNOWLEDGE

SUMMARY

Public Knowledge (“PK”) submits these comments in response to the Federal Communications Commission’s (the “Commission” or “FCC”) *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-captioned proceeding.¹ Public Knowledge files these comments to underscore its continued advocacy for the Commission to meet universal service goals through the prevention and elimination of digital discrimination. First, PK highlights ongoing support for the Commission to create an Office of Civil Rights, which has broad support from both civil society and industry. PK believes this office should be empowered by the Commission to meaningfully engage in policymaking processes and be equipped with specialized expertise. PK also recommends that the Commission engage in dialogue with other federal agencies with civil rights offices, particularly those with responsibilities to process complaints of discrimination, oversee community assessments, conduct outreach, and ensure the agency's programs and policies comply with civil rights laws.

¹ *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 22-69, FCC 23-100 (rel. Nov. 20, 2023).

Additionally, Public Knowledge backs the implementation of the Commission’s proposal to set affirmative obligations to reach its congressional mandate to prevent digital discrimination. These affirmative obligations will lead to increased accountability and will help ensure providers are more proactive in their efforts to equitably close the digital divide across all communities. PK recommends that the proposed annual report extend beyond large-scale broadband deployment, upgrade, and maintenance projects to also include information about programs that ISPs operate to provide discounted internet service. Lastly, PK recommends that the Commission proceed with the proposal for providers to craft an internal compliance program which could be another accountability mechanism to ensure policies and practices to prevent and eliminate digital discrimination are followed.

I. PUBLIC KNOWLEDGE SUPPORTS ESTABLISHMENT OF AN FCC OFFICE OF CIVIL RIGHTS

Public Knowledge applauds the Commission for thoughtfully responding to Congress’ directive in the *Infrastructure Investment and Jobs Act*² to create and adopt rules and policies to prevent and eliminate digital discrimination.³ These rules, adopted in November 2023, provide a clear path forward to recognize the barriers protected classes (as defined by the statute) experience in trying to gain access to affordable, reliable high-speed internet and to eliminate and prevent those barriers by establishing norms that ensure the goal of equitable universal service is reached. Public Knowledge also commends the Commission for demonstrating its own commitment to equity by ensuring this proceeding was inclusive of impacted communities such as through the establishment of a cross-agency Task Force to Prevent Digital Discrimination that hosted listening sessions in diverse communities throughout the country. However, it is clear that

² *Codified at* 47 U.S.C. § 1754.

³ 89 FR 4128 (01/22/2024).

success will ultimately depend on meaningful enforcement of these rules in addition to continued engagement with the communities these rules are meant to protect.

A. The Commission Should Prioritize Specialized Civil Rights Expertise to Meet Universal Service Goals

As Public Knowledge previously stated in this proceeding, the Commission should establish an Office of Civil Rights; this is an action supported by both civil society and industry.⁴ Additionally, Public Knowledge agrees with members of the Leadership Conference on Civil and Human Rights Media and Telecommunications Task Force who stated that an Office of Civil Rights at the Commission would complement the already existing Disability Rights Office and Office of Native Affairs and Policy.⁵ The Commission has been an impactful agency through its creation and careful organization of bureaus and offices that are tasked with supporting the agency through their specialized expertise. Telecommunications and technology policy is increasingly intertwined with communities' ability to participate in and thrive in today's economy, democracy, and broader society. When policymakers do not explicitly address how best to protect low-income communities, communities of color, and other historically marginalized groups, policies that appear to be facially neutral can have negative impacts. An Office of Civil Rights would help the Commission take a meaningful, proactive approach to address how "exclusion has sometimes been condoned and institutionalized by government" and

⁴ Comments of Lawyers' Committee for Civil Rights Under Law, Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, Notice of Proposed Rulemaking, GN Docket No. 22-69 (filed Feb. 21, 2023); Reply Comments of Public Knowledge, EPIC, and Benton Institute, Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, Notice of Proposed Rulemaking, GN Docket No. 22-69 (filed April 20, 2023); Letter from NCBCP, BWR, NAN and NUL, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69 (filed Oct. 10, 2023); Letter from Verizon, to Marlene H. Dortch, Secretary FCC, GN Docket No. 22-69 (filed July 24, 2023).

⁵ Letter from Leadership Conference on Civil and Human Rights Media & Telecom Task Force, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69 (filed Feb. 21, 2024).

other authorities.⁶ While all stakeholders have a role in promoting a more inclusive society, “governments are best positioned to remove the formal and informal institutional barriers that prevent some individuals and groups from taking action to improve their well-being and expand their choices.”⁷ Further, as stated previously in comments submitted by Public Knowledge et. al, specialized expertise in the civil rights context will be beneficial in the following ways:

- “When kept in a single office civil rights experts would be supervised by other civil rights experts. This means that the goal setting and monitoring of a civil rights specialist’s work would reward work that other civil rights experts see as valuable, which may differ from priorities set by non-civil rights experts.
- When divided amongst departments, civil rights specialists may face pressure to support a manager’s proposed course of action, even if their expert analysis challenges their manager’s decisions.
- [A] single functional office of civil rights would make it easier to exploit economies of scale, facilitate better quality control of the civil rights specialists’ work, identify and reward civil rights expertise, encourage the development of a common framework for addressing civil rights concerns, and encourage civil rights specialists to share and develop ideas and new solutions for civil rights challenges.”⁸

Further, as an agency that is focused on regulating aspects of an ever-evolving industry, the failure to meaningfully consider inequalities experienced by marginalized communities can skew policies so only those with the most power benefit.⁹

⁶ United Nations Department of Economic and Social Affairs: Leaving No Behind: The Imperative of Inclusive Development –Report on the World Social Situation (2016) at 28, <https://www.un.org/esa/socdev/rwss/2016/full-report.pdf>.

⁷ *Id* at 136.

⁸ Reply Comments of Public Knowledge, EPIC, and Benton Institute, Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, Notice of Proposed Rulemaking, GN Docket No. 22-69 (filed April 20, 2023) at 7.

⁹ Rachel Moran & Matthew Bui. Race, Ethnicity, and Telecommunications Policy Issues of Access and Representation: Centering Communities of Color and their Concerns (2019), *Telecommunications Policy*, 43(5), p. 461-473.

B. The Commission Should Create an Office of Civil Rights Working Group

The Commission should follow the process used to create the Office of Economics and Analytics and form a working group of FCC staff to assist with the development of an Office of Civil Rights.¹⁰ This working group should seek guidance from other federal agencies with established civil rights offices that are meaningfully integrated into the policymaking process and can also conduct specialized outreach to impacted communities (in collaboration with the Consumer and Governmental Affairs Bureau) to make certain the agency’s policymaking decisions are equitable and inclusive. Currently, there are more than 30 civil rights offices housed within federal agencies.¹¹ This provides a wealth of experience on which the Commission may draw.

For example, the Federal Emergency Management Agency (“FEMA”) has an External Civil Rights Division which is housed within the Office of Equal Rights. The work of this division ensures civil rights are upheld throughout FEMA programs and recipients of FEMA federal assistance by ensuring there is equity in program delivery and in policy decisions with the goal of “[preventing] a disproportionate impact on communities of color and low-income populations.”¹² Additionally, this division “conducts community outreach and stakeholder engagements, among several other responsibilities.”¹³ It is also instructive for the Commission to draw upon FEMA’s division of labor within their External Civil Rights Division, which has three units that take on the following tasks:

¹⁰ Federal Communications Commission. Plan for Office of Economics and Analytics (OEA) Recommendations and Report (January 9, 2018).

¹¹ Civil Rights Division, U.S. Department of Justice. Civil Rights Offices of Federal Agencies. <https://www.justice.gov/crt/fcs/Agency-OCR-Offices>.

¹² Federal Emergency Management Agency, External Civil Rights Division, <https://www.fema.gov/about/offices/equal-rights/civil-rights#Authorities>

¹³ *Id.*

- **Complaints:** Responsible for processing contacts and allegations of discrimination and engages in alternative dispute resolutions with stakeholders;
- **Civil Rights Cadre:** Oversees community assessments and conducts community outreach, engagement, and education;
- **Compliance:** Creates and reviews policies, plans, and procedures to ensure nondiscrimination, equity, and compliance with civil rights laws.

Finally, the Office of Civil Rights working group should be required by the Commission to create a report with findings and recommendations to help in the development of a mission, responsibilities, and leadership structure.

II. PUBLIC KNOWLEDGE SUPPORTS AFFIRMATIVE OBLIGATIONS

The Commission proposed two sets of affirmative obligations to prevent digital discrimination in this *FNPRM*. These affirmative obligations can assist in building an additional layer of accountability that ensures internet service providers take proactive steps to equitably close the digital divide in communities with protected classes as defined by the statute.

A. The Commission Should Require Submission of Availability of Low-Cost Internet Offers

The Commission suggests that internet service providers be required to submit an annual, publicly-available supplement to the BDC that describes, “on a state-by-state or territory-by-territory basis, any large-scale broadband deployment, upgrade, and maintenance projects that were completed or substantially completed during the preceding calendar year and the communities served by such projects.”¹⁴ Because the Commission's digital discrimination rules go beyond physical access to broadband infrastructure, it is reasonable to request that providers also submit information that describes the low-cost broadband offerings available at the sites of large-scale deployment, upgrade, and maintenance projects.

¹⁴ *See supra* n.1.

Recent FCC data show that “68% or over two-thirds [of ACP enrollees] had inconsistent connectivity or zero connectivity prior to ACP” and “80% of [that] group cited affordability as the reason for having inconsistent or zero connectivity.”¹⁵ While USAC does report on ACP participation, not all internet service providers participate in the ACP. Further, due to funding requirements associated with Broadband Equity, Access, and Deployment program (“BEAD”) for providers to offer a low-cost option, this data will assist researchers, civil society, and the broader public understand the relationship between low-cost offerings, state subsidy programs, and federal subsidy programs, as well as the availability of quality, resilient broadband infrastructure. Finally, the reporting and analysis of this information can help policymakers in setting requirements for future deployment and adoption subsidy programs.

B. Data from Annual Reports Should be Public

Public Knowledge agrees with the Commission’s tentative conclusion that publicly available annual reports will help increase transparency regarding broadband investments. More specifically, such a report would be useful because it can help promote increased accountability in an industry that is the beneficiary of billions of dollars of government funding and will further incentivize investments in unserved and underserved communities. Publicly-available data will also help researchers and civil society in the creation of policy recommendations, including how to target philanthropic dollars for on-the-ground efforts ranging from digital skills training to workforce development to civic engagement. Further, it will help reduce the duplication of efforts to gather such data.

The Commission should conduct an analysis of the reports on an annual basis that summarizes trends in providers’ investments (including the impact of government funding

¹⁵ Federal Communications Commission. Measuring the Impact of ACP: Survey Results, (February 2024), <https://www.fcc.gov/sites/default/files/ACP-Survey-Results.pdf>.

initiatives), the areas investments are being targeted, and the availability of consumer choice. More specifically, the Commission should aim to overlay the data collected annually from providers about broadband deployment, upgrades, maintenance, and the availability of low-cost options with American Community Survey (“ACS”) data. ACS data is critical to understanding key demographics that fall within protected classes as defined by the statute. It is also critical to better understand broadband adoption trends including computer ownership status and the types of internet subscriptions held by households.¹⁶ Further, additional data such as educational attainment and labor force status, which are both available through the ACS, can help with broader federal policymaking goals that intersect with the closing of the digital divide.

C. ISPs Should Certify Compliance with Digital Discrimination Rules

Public Knowledge agrees with other commenters who state that “ISPs should file an annual certification with the FCC, signed by an executive of the company with responsibility for the provider’s compliance with the FCC’s digital discrimination rules confirming that the provider has established policies and operating procedures designed to facilitate compliance with those rules.” This is already an established practice such as with the Customer Proprietary Network Information (“CPNI”) rules and accessibility recordkeeping.¹⁷ The certification process will also help promote ethical behavior and mitigate risks that if unchecked can negatively impact protected classes.

¹⁶ United States Census Bureau. Why We Ask Questions About Computer and Internet Use. <https://www.census.gov/acs/www/about/why-we-ask-each-question/computer/>.

¹⁷ Federal Communications Commission. Customer Proprietary Network Information (CPNI) Home. <https://apps.fcc.gov/eb/CPNI/index.cfm>; Federal Communications Commission. RCCI Filing Instructions. <https://www.fcc.gov/sites/default/files/RCCCI-Filing-Instructions-2024.pdf>.

CONCLUSION

For the reasons described above, the Commission should establish an Office of Civil Rights and proceed with the adoption of affirmative obligations to prevent and eliminate digital discrimination.

Respectfully Submitted,

/s/ Alisa Valentin

Broadband Policy Director

1818 N Street NW

Suite 410

Washington, DC 20036

alisa@publicknowledge.org

March 4, 2024