



June 30, 2022

**Via Electronic Submission**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street, NE  
Washington, DC 20554

**Re: Notice of Inquiry, Federal Communications Commission; In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination (GN Docket No. 22-69)**

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“Chamber”) appreciates the opportunity to submit reply comments on the Federal Communications Commission’s (“the Commission”) Notice of Inquiry in the above referenced proceeding (“NOI”), which will inform the Commission’s implementation of the Infrastructure Investment and Jobs Act (“IIJA”).<sup>1</sup>

Closing the digital divide is essential to ensure that millions of Americans benefit from a digital 21<sup>st</sup> century economy. The private sector is the leader in providing cutting edge internet-based services to Americans as well as investing tens of billions annually in building broadband networks.<sup>2</sup> Even as American consumers are facing significant price increases due to inflation, broadband prices are decreasing, making internet connectivity more affordable.<sup>3</sup>

The record does not support the claim that internet service providers (“Providers”) are engaging in any form of widespread digital discrimination.<sup>4</sup> Consequently, as the Commission develops rules to implement the IIJA’s equal access provision, the Chamber urges the Commission to follow its historically light touch regulatory approach to broadband by applying any rules prospectively. We further

---

<sup>1</sup> In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, Notice of Inquiry, FCC-22-69 (rel. March 17, 2022) (Notice).

<sup>2</sup> See AT&T comments at 1.

<sup>3</sup> See AT&T comments at 8 (citing research that “[despite inflation, [broadband] prices continue to fall—by 7.5% for the most popular wireline broadband services between 2020 and 2021 and by 2.3% for the highest-speed services”).

<sup>4</sup> See ITIF comments at 2-3; NCTA comments at 8.

caution the Commission not to impose prescriptive rules and unfunded mandates, or to pursue objectives that are either tangential or unrelated to the central purpose of the authorizing provision.

## **I. Utilize Broadband Data Collection Maps**

The IIJA correctly prioritizes unserved and underserved areas for broadband deployment under the Broadband Equity, Access, and Deployment (“BEAD”) Program, and requires the use of updated broadband maps to ascertain unserved and underserved areas. Similarly, accurate broadband maps are crucial to serve as a basis for understanding any alleged instances of digital discrimination.

The Chamber agrees that the Commission should rely on existing sources of broadband mapping data, specifically through the Broadband Data Collection (“BDC”) Program, considering it reflects Congressional intent relating to broadband mapping and will be used to fulfill other IIJA programs such as BEAD.<sup>5</sup> Consequently, the Commission should limit any new data collections given the comprehensive nature of the BDC program and recognizing the burden of any new and duplicative mapping requirements on the private sector.<sup>6</sup> Looking ahead, the Chamber agrees with commenters who propose that the Commission incorporate data from forthcoming broadband networks that are financed through state and federal broadband programs to provide a fully accurate picture of current and planned broadband deployment locations.<sup>7</sup>

## **II. Interpret Equal Access Flexibly**

The IIJA defines equal access as “the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions.”<sup>8</sup> The Chamber agrees with commenters that note that comparable does not mean identical given variations in different types of broadband technologies, geography, and relevant market conditions.<sup>9</sup> Flexibility in applying the equal access requirement is paramount to ensuring this requirement does not become too prescriptive and micromanage the deployment of broadband networks. Instead, requirements should focus on preventing intentional discrimination based on the classes defined in the statute.<sup>10</sup>

## **III. Ensure Economic and Technical Feasibility**

---

<sup>5</sup> See NCTA comments at 25; US Telecom comments at 20.

<sup>6</sup> See T-Mobile comments at 19.

<sup>7</sup> See Microsoft comments at 7.

<sup>8</sup> 47 U.S.C. § 1754(a)(2).

<sup>9</sup> See US Telecom comments at 9.

<sup>10</sup> *Id.*

The IJJA requires that the Commission account for “issues of technical and economic feasibility” when adopting rules to facilitate equal access to broadband.<sup>11</sup> This statutory directive reflects commonsense economic, business, and technical realities of the challenges associated with building broadband networks and providing internet service. The Chamber views this provision as precluding mandatory build-out obligations—unfunded mandates which contradict the approach taken by the federal government in broadband subsidy and regulatory contexts, which recognizes that broadband deployment in high-cost areas may not be feasible without public support.<sup>12</sup>

Building broadband networks is not an easy task given high capital costs, the need for significant technical expertise, and availability and cost of relevant materials.<sup>13</sup> As other commenters have noted, a panoply of factors contribute to the decision to build a broadband network. These include regulatory and permitting requirements, consumer demand, competition, and geography.<sup>14</sup> Moreover, broadband technology is rapidly evolving, so considerations such as upgrade cycles to improve networks must be taken into account to avoid second-guessing reasonable business and engineering judgments and discouraging investment in network improvements.<sup>15</sup> Finally, there are differences based on varying business models, such as between wireless and wireline technologies, which directly relates to the economic and technical feasibility of building networks.<sup>16</sup>

The Chamber agrees with the recommendations offered by some commenters that the Commission should establish a set of safe harbor protections to implement economic and technical feasibility considerations based on some of the considerations outlined above. This would effectively account for clear technical and economic limitations and provide certainty for the private sector.<sup>17</sup> Similarly, the Commission will want to ensure that any burdens of proof to demonstrate discrimination account for legitimate economic and technical considerations to avoid mandates and ensure continued private sector investment in broadband networks.<sup>18</sup>

#### **IV. Commission Must Pursue An Intent-Based Inquiry**

---

<sup>11</sup> 47 U.S.C. § 1754(b).

<sup>12</sup> See AT&T comments at 20.

<sup>13</sup> See US Telecom comments at 14.

<sup>14</sup> *Id.* at 15-17.

<sup>15</sup> See NCTA comments at 14.

<sup>16</sup> See AT&T comments at 21.

<sup>17</sup> See NCTA comments at 22.

<sup>18</sup> See T-Mobile comments at 18.

Rules facilitating equal access should not be transformed into a burdensome regulatory regime and punitive enforcement tool. The focus should be on intentional discrimination by providers, to the extent it exists and can be proven through credible evidence.<sup>19</sup> The Chamber urges the Commission to reject proposals by some commenters to adopt a disparate impact standard for evaluating digital discrimination claims, which would encompass a wide range of outcomes and factors beyond the control of providers.<sup>20</sup> Applying a disparate impact standard would be inconsistent with Congressional intent, highly impractical for the Commission to administer, and chill competition and deployment, which contradicts the goals outlined in the IJA.<sup>21</sup>

Instead, the Commission should adopt a tailored and intent-based inquiry whereby establishing disparate impact is a necessary but not sufficient step for proving discrimination.<sup>22</sup> This approach is consistent with the underlying statute and with the overarching purpose of the IJA which is to close the digital divide through widespread broadband deployment and dedicated funding for broadband adoption.<sup>23</sup> In addition, the Chamber supports the Commission requiring a rigorous analysis on the part of complainants and the Commission to prove a digital discrimination claim.<sup>24</sup> Taking this approach will weed out unsupported allegations to preserve Commission resources and avoid limiting broadband investment.

## **V. Establish an Effective and Workable Complaint Process**

Section 60506(e) directs the Commission to revise its public complaint process to receive complaints pertaining to digital discrimination.<sup>25</sup> A robust mechanism to process complaints is an important tool for the Commission to investigate allegations of digital discrimination. The Chamber agrees with commenters that note that any effective complaint process must be efficient and filter out allegations that lack factual support or, even if accurate, would not demonstrate discriminatory conduct by providers.<sup>26</sup> All complaints should be evaluated by the Commission and not require automatic review and response by a provider.<sup>27</sup> Doing so would both overwhelm the Commission as well as impose a significant compliance burden on providers.<sup>28</sup>

## **VI. Address Other Barriers to Broadband Deployment and Adoption**

---

<sup>19</sup> See US Telecom comments at 13.

<sup>20</sup> See Public Knowledge comments at 21-22.

<sup>21</sup> See AT&T comments at 17.

<sup>22</sup> See US Telecom comments at 11.

<sup>23</sup> See AT&T comments at 17.

<sup>24</sup> *Id.* at 19; Public Knowledge comments at 25

<sup>25</sup> 47 U.S.C. § 1754(e).

<sup>26</sup> See US Telecom comments at 22.

<sup>27</sup> *Id.* at 22-23.

<sup>28</sup> *Id.* at 23

As noted earlier, ensuring that all Americans have access to high-speed broadband internet is a multifaceted effort. As the Commission continues its work on this proceeding, the Commission should prioritize addressing other barriers to broadband deployment and adoption to facilitate equal access to broadband for Americans. As reflected in other provisions of the IJA itself, other policy solutions include deployment, affordability, digital skills, and access to devices, and will require a whole of government effort and partnership with the private sector.

First, the Commission should continue focus on issues relating to affordability, such as ensuring the success of the Affordable Connectivity Program (“ACP”). To the extent that affordability is a barrier to broadband adoption, the ACP in combination with private sector efforts such as the broadband plans providers offer to low-income households will significantly make internet access affordable for millions of Americans

Second, we agree with other commenters that reducing the costs of deployment through public agency permitting reform can serve as an important tool to help ensure equal access. The Chamber urges the Commission to review existing permitting and regulatory barriers that inhibit wireline and wireless deployment.<sup>29</sup> The Commission should seek stakeholder input as to existing barriers and potential solutions to address those barriers.

Third, the Chamber encourages the Commission to examine, and collaborate with other relevant federal agencies, on supply chain challenges that may hinder broadband deployment. The Buy America mandates in the IJA exacerbate this challenge and will ultimately make building broadband networks using federal funds more costly and subject to unnecessary delays.

Fourth and finally, the Universal Service Fund (“USF”) is in dire straits with and requires substantial reform, which will impact the utility of USF programs to close the digital divide and enable equal access. The Chamber is encouraged by the recent USF reform proceeding and urges the Commission to move expeditiously to produce a final report.<sup>30</sup> In particular, we emphasize that transitioning universal service programs into the Congressional appropriations process is the most effective and viable long term solution to revitalizing the USF.

## VII. Conclusion

---

<sup>29</sup> *Id.* at 20; T-Mobile comments at 15.

<sup>30</sup> *Report on the Future of the Universal Service Fund*, Notice of Inquiry, FCC-21-127 (rel. Dec. 15, 2021) (Notice).

The Chamber appreciates the Commission for considering our views on this NOI and we look forward to collaborating on the equal access rulemaking moving forward. If you have any questions, please reach out to Matt Furlow at [mfurlow@uschamber.com](mailto:mfurlow@uschamber.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Furlow', with a stylized flourish at the end.

Matt Furlow  
Policy Director  
Chamber Technology Engagement Center  
U.S. Chamber of Commerce