



**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)

Reply Comments of the American Association of People with Disabilities

The American Association of People with Disabilities (“AAPD”) submits these reply comments in response to the Federal Communications Commission’s (the “Commission”) Notice of Proposed Rulemaking implementing the Infrastructure Investment and Jobs Act’s (“IIJA”) digital discrimination provisions.¹ As a civil rights organization dedicated to increasing the political and economic power of the more than 61 million people with disabilities across the United States, AAPD’s fully supports the policy goals of the IIJA to identify and address the harms experienced by historically excluded and marginalized communities. AAPD appreciates the opportunity to submit reply comments addressing how the Commission should define digital discrimination and providing further recommendations for the Commission to improve the quality of life of people with disabilities.

I. DEFINITION OF “DIGITAL DISCRIMINATION”

¹ See *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, Notice of Proposed Rulemaking, GN Docket No. 22-69, FCC 22-98 (Dec. 22, 2022).



a. The Commission has the Responsibility and Authority to Expand the Scope of Protected Classes Covered in its Interpretation of “Digital Discrimination”

AAPD strongly recommends the Commission take a comprehensive approach to defining digital discrimination and expand upon the enumerated classes in the statute to include disability status. The record illustrates support for the inclusion of disability status, as well as the Commission’s authority to expand the protected classes, in its interpretation of the statute. For example, AAPD agrees with the LGBT Technology Partnership that it is crucial that the Commission interpret the term “digital discrimination” in the broader context of the Communications Act of 1934 and Telecommunications Act of 1996, as the current limited definition does not consider the diverse demographic fabric of the American people, including those with disabilities.² As The Leadership Conference on Civil and Human Rights points out, people with “protected characteristics,” like disability status, have specific connectivity needs and are “uniquely impacted by digital discrimination.”³ Further, expanding the interpretation of the statute to better represent the various protected classes of America could bolster the Commission’s efforts to protect the vulnerable populations already named in the statute. Specifically, other commenters⁴ note adding disability status to the listed characteristics of digital discrimination would “enhance the Commission’s efforts to address digital discrimination based on income,”

² See LGBT Technology Partnership Comments, GN Docket No. 22-69, at 1 (filed Feb. 21, 2023).

³ The Leadership Conference on Civil and Human Rights Comments, GN Docket No. 22-69, at 4 (filed Feb. 21, 2023).

⁴ Electronic Frontier Foundation, Center for Accessible Technology, *et al.* Comments, GN Docket No. 22-69, at 32 (filed Feb. 21, 2023).



which is one of the IIIA’s enumerated bases of digital discrimination.⁵ Too often, people with disabilities experience discrimination because they simply were not considered. Including a broad range of protected classes, including disability status, in the Commission’s interpretation of digital discrimination is necessary to protect broadband access for historically marginalized and underserved communities.

AAPD asserts that the Commission has the requisite statutory authority to expand the enumerated classes when interpreting the digital discrimination provisions of the IIIA. Other commenters⁶ rightfully point out that the text of the IIIA provides the Commission with the authority to expand protected classes to include subscribers other than those specifically referenced by statute. Indeed, the digital discrimination statute tasks the Commission with “ensur[ing] that all people of the United States benefit from equal access to broadband internet.”⁷ AAPD and other commenters⁸ maintain the inclusion of the phrase “*all* people” manifests the deliberate intent on the part of Congress to empower the Commission to encompass a broader range of protected classes than those enumerated in the statute based on a factual record.⁹ Further, AAPD agrees with

⁵ 47 U.S.C. § 1754(b)(1).

⁶ See Electronic Frontier Foundation, Center for Accessible Technology, *et al.* Comments, at 33.

⁷ 47 U.S.C. § 1754(a)(3).

⁸ See Advocates for the EMS Disabled Comments, GN Docket No. 22-69, at 4 (filed Feb. 21, 2023) (“Although §1754(b)(1) of the Infrastructure Act does not expressly include the disabled community within its coverage, the general “equal access” to “all people” requirements in §1754(a)(2) and (3) implicitly do.”)

⁹ See, e.g., 47 U.S.C. § 1754(c)(3) (referring explicitly to “other factors” when the Commission considers “equal access” to broadband services).



other commenters¹⁰ highlighting that Congress’s inclusion of 47 U.S.C. § 1754(c)(3) provides the Commission with express permission to consider discrimination beyond the explicitly identified categories in the statute due to referencing “other factors the Commission determines to be relevant based on the findings in the record”¹¹ The Commission should expand the protected class to include more factors, including disability status, to adequately protect historically vulnerable populations.

b. The Definition of Digital Discrimination Should Consider Barriers to Access Beyond Internet Deployment

In addition, AAPD believes the Commission must consider factors outside of broadband deployment when defining “digital discrimination.” The mere presence of a broadband internet connection does not mean that every American has equal access to that connection, as certain vulnerable populations face additional barriers to access. For example, factors such as broadband capacity, speed, and latency affect the use of the assistive technologies that many people with disabilities depend on for access to communications infrastructure. In addition, as the American Foundation for the Blind emphasizes, the “timeliness, accessibility, and responsiveness” of

¹⁰ See Electronic Frontier Foundation, Center for Accessible Technology, *et al.* Comments at 33; American Library Association Comments, GN Docket No. 22-69, at 5 (filed Feb. 21, 2023) (“Congress included the clause allowing for additional 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.”); Connecticut Office of State Broadband Comments, GN Docket No. 22-69, at 5 (filed Feb. 21, 2023) (“Congressional intent is equally clear in the grant of discretion to the Commission to decide appropriate additional protected categories in the context of deployment discrimination.”); see Advocates for the EMS Disabled Comments, GN Docket No. 22-69, at 4 (filed Feb. 21, 2023) (“Although §1754(b)(1) of the Infrastructure Act does not expressly include the disabled community within its coverage, the general “equal access” to “all people” requirements in §1754(a)(2) and (3) implicitly do.”)

¹¹ 47 U.S.C. § 1754(c)(3).



customer service calls uniquely impact those with disabilities.¹² Limiting digital discrimination to deployment issues dismisses the reality that consumers in low-income communities (whether rural or urban) generally have slower broadband speeds and more limited capacities and often pay higher prices for lower quality services.¹³ These factors create an uneven playing field for people with disabilities. At the very least, the Commission should consider these realities when crafting its definition of digital discrimination. At best, AAPD recommends the Commission use its authority under 47 U.S.C. § 1754(a)(3) to pursue possible remedies for these issues through existing programs under its jurisdiction.

c. The Definition of Digital Discrimination Should Include Non-Subscribers as well as Subscribers

While certain commenters argue the statute directs the Commission to promote only equal access to “subscribers,” AAPD strongly disagrees. As referenced previously, the digital discrimination statute seeks to ensure that *all* people of the United States have equal access to broadband,¹⁴ subscribers and non-subscribers alike. Non-subscribers are potential subscribers, and further, digital discrimination affects both subscribers *and* non-subscribers. Including both in the interpretation of digital discrimination will allow the Commission to understand holistically the

¹² American Foundation for the Blind Comments, GN Docket No. 22-69, at 4 (filed Feb. 21, 2023).

¹³ See Leon Yin and Aaron Sankin, “Poor, Less White US Neighborhoods Get Worst Internet Deals,” Associated Press (Oct. 19, 2022), available at <http://bit.ly/3ZRHLiV> (last visited Mar. 16, 2023).

¹⁴ 47 U.S.C. § 1754(a)(3) (emphasis added).



underlying issues related to broadband deployment and “take rates” of these services throughout the United States.

Moreover, many people in the United States are prevented from subscribing to broadband internet due to the very problem the statute seeks to remedy—digital discrimination. Non-subscribers may face barriers to entry, like unaffordable pricing or unavailability of service, preventing them from subscribing to service. Failure to include non-subscribers when examining these issues would severely limit the Commission’s ability to adequately assess the accessibility landscape and likely will allow discrimination to continue. Broadband providers could disregard the needs of non-subscribers, particularly those living in areas where there are no subscribers at all. Excluding non-subscribers in such a scenario would provide the Commission with no insight as to why this is the case and is inconsistent with the agency’s statutory mandate. AAPD agrees with the Leadership Council that without the inclusion of non-subscribers in the definition of digital discrimination, millions of people who lack access to broadband will continue to lack that connectivity.¹⁵ This revision is important for closing the digital divide, and AAPD urges the Commission to include non-subscribers in the definition of digital discrimination.

The three recommendations outlined above align with the IJJA’s policy goal of “ensur[ing] that all people of the United States benefit from equal access to broadband internet.”¹⁶ Disability status is inextricably tied to this specific charge given to the Commission.

¹⁵ See The Leadership Conference on Civil and Human Rights Comments, at 3.

¹⁶ 47 U.S.C. § 1754(a)(3).



II. FURTHER RECOMMENDATIONS FOR THE COMMISSION'S CONSIDERATION

a. *The Commission Should Increase Acceptable Minimum Broadband Speeds*

AAPD commends the Commission for its important work in promoting equal access to broadband for Americans with disabilities and thanks the Commission for the opportunity to provide recommendations to further this goal in the context of the digital discrimination provisions of the IIJA. Looking to the future, the Commission has the power to implement changes that will improve the quality of life of individuals living with disabilities. Among these changes, AAPD strongly urges the Commission to increase acceptable minimum broadband speeds. The digital discrimination statute 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.”¹⁷ For disabled people, notably deaf Americans that rely on visual language communication, broadband must provide adequate speed, capacity, and latency in order to support telecommunications relay services, especially video relay services. As assistive technology often requires greater bandwidth,¹⁸ AAPD believes that minimum broadband speed of 25/3 Mbps fails to meet the daily needs of people with disabilities. AAPD strongly encourages the Commission consider and act on the need for faster broadband

¹⁷ 47 U.S.C. § 1754(a)(2) (emphasis added).

¹⁸ See Todd Cunningham and Bronwyn Lamond, “The weak link in assistive technology –the internet,” Computers and Electrical Engineering (July 2021), available at <https://bit.ly/3JMYa2P> (last visited Mar. 16, 2023).



speeds so as to provide adequate connections that allow those with disabilities to effectively communicate.

b. *The Commission Should Use its Existing Authority to Provide Better Access to Specialized Software and Equipment for Disabled Americans*

In order to provide truly equal access to broadband and thereby prevent further digital discrimination, the Commission should use its authority to address the unique access obstacles faced by the disabled community. Disabled Americans often need specialized software and equipment to overcome barriers to broadband access and effectively communicate. Members of this community have a right to effective communication, and specialized software and equipment level the playing field. The Commission has an obligation to make reasonable modifications to its policy and procedures to preserve this right and thereby should use its existing authority to provide access to specialized software and equipment.

i. *TRS Fund for Software*

Under Title IV of the Americans with Disabilities Act,¹⁹ as amended, the Commission must ensure the provision of telecommunications relay service (“TRS”). Historically, the Commission has used the TRS program to assist people with hearing or speech disabilities communicate.²⁰ AAPD whole-heartedly supports the TRS program’s goals, but it also recognizes its constraints.

¹⁹ 42 U.S.C. § 12101 *et. seq.*

²⁰ “In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” 47 U.S.C. Section 225(b)(1).



Namely, previous Commission orders have demonstrated that the TRS Fund does not include equipment used by a customer to access TRS,²¹ meaning crucially important augmentative devices are not covered by the program. However, software for off-the-shelf devices could be covered, as indicated by Commission Staff’s December 2022 IP CTS Notice of Proposed Rulemaking.²²

As Staff note, some providers offer Internet Protocol Captioned Telephone Service (“IP CTS”) via software applications that consumers access via web browser or download to a personal off-the-shelf device like a computer, tablet, or mobile device.²³ In light of this reality, Staff proposed to allow TRS Fund support for the “reasonable cost of developing, maintaining, and providing software and web-based applications” that allow users to access IP CTS from their off-

²¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, para. 17 (2006); *see also Telecommunications Relay Services and Speech-To-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03- 123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20170-71, para. 82 (2007); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8629, paras. 193-94 (2013); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Report and Order and Order, 32 FCC Rcd 5891, 5897-901, para. 12-19 (2017); *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5819-20, paras. 33-34 (2018); *Sorenson Communications, Inc., v. FCC*, 659 F.3d 1035, 1044-45 (D.C. Cir. 2011) (*Sorenson 2011*) (statute does not require that “VRS users receive free equipment and training,” only that they “pay no higher rates for calls than others pay for traditional phone services,” and exclusion of CPE costs does not undermine section 225 goal of not discouraging or impairing development of improved technology); *Sorenson Communications, Inc., v. FCC*, 765 F.3d 37, 44 (D.C. Cir. 2014).

²² *Internet Protocol Captioned Telephone Service Compensation*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97, paras. 32-34 (2022) (“December 2022 IP CTS Notice of Proposed Rulemaking”).

²³ *Id.* at para. 32.



the-shelf devices.²⁴ Despite the fact that these proposed rules apply to a different proceeding, they indicate Staff’s inclination to use the TRS Fund to enhance and expand access to communications services through the provision of software applications for personal devices. As such, the Commission should use the TRS Fund to support a monthly subscription service for software that enables speech on users’ existing off-the-shelf devices. Using the TRS Fund to make speech-enabling software more affordable increases the accessibility of broadband for disabled people, thereby furthering the Commission’s mandate to facilitate effective communication. Further, allowing the TRS Fund to cover a software subscription service for existing devices would eliminate the need for, cost, and inconvenience of an additional device and would capitalize on the universality of mobile devices. Considering these realities, AAPD strongly urges the Commission to use the TRS Fund to support a monthly subscription service for software that enables speech on users’ existing off-the-shelf devices.

ii. *ACP for Specialized Equipment*

Another barrier to access disabled Americans commonly face is the cost of specialized equipment needed for effective broadband access. As explained, certain disabled populations, including the deaf and deafblind, rely on specialized equipment and software to support their communication needs. The LGBT Technology Partnership rightfully highlights that “[a]ccess to internet-connected hardware is essential” for communications.²⁵ However, this specialized

²⁴ *Id.* at para. 33.

²⁵ LGBT Technology Partnership Comments, at 2.



equipment can be cost-prohibitive. As such, AAPD urges the Commission to both expand the Affordable Connectivity Program (“ACP”) to cover specialized equipment and give providers better direction on administering ACP subsidies for specialized equipment. In addition, AAPD requests the Commission consider increasing the amount that may be spent on disability-related equipment under the ACP, as often the subsidy does not fully cover a device. These remedies would improve disabled Americans’ access to broadband and move the Commission closer to closing the digital divide. Accordingly, AAPD agrees with commenters²⁶ that the Commission should work with Congress to extend the life of the ACP, as funds are expected to run out sometime in the next year. AAPD stresses that affordable access to specialized equipment is critical in creating equal access to communications for marginalized communities, including disabled Americans, and therefore requests that the Commission continue to advocate for extending the duration of the ACP as well as its scope to cover specialized equipment.

In addition, the Commission should consider expanding coverage of specialized equipment under other existing authority like, for example, the National Deaf-Blind Equipment Distribution Program (“NDBEDP”). Under the NDBEDP, the Commission may provide up to \$10 million annually from the TRS Fund to support local programs that distribute equipment to eligible low-income individuals who are deafblind so that these individuals can access telecommunications service, internet access service, and advanced communications services. AAPD acknowledges that

²⁶ See U.S. Chamber of Commerce Comments, GN Docket No. 22-69, at 8 (filed Feb. 21, 2023).



expanding this program could bring about better access for the deafblind and welcomes such an expansion. AAPD also encourages the Commission to think more broadly about the diverse needs of the disabled community and beyond the limits of the NDBEDP when remedying the need for specialized equipment.

iii. Section 504 for Disability-Related Expenses

AAPD requests the Commission use existing authority, such as Section 504 of the Rehabilitation Act of 1973, as amended,²⁷ to provide coverage for disability-related costs of acquiring broadband access, or the difference between the ACP limit and the cost of a capable device. Section 504 of the Rehabilitation Act forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services. More specifically, Section 504 prohibits federal agencies, programs, and activities receiving federal financial assistance from discriminating against individuals with disabilities. AAPD views the statute as a path forward in the effort to close the digital divide.

As explained, those with disabilities often must pay more fees in order to access the internet. For example, those with physical disability struggles often must pay additional costs for software and specialized equipment, and those that rely on a visual language to communicate often must pay for additional speed or data usage to effectively communicate. The cost of, for instance,

²⁷ 29 U.S.C. § 794.



a speech-generating device oftentimes exceeds the ACP limit on the cost of hardware to enable access to broadband, leaving a gap in coverage for many disabled Americans. Certain existing federal programs, namely Medicaid, while noble in their endeavors, simply do not go far enough to address this issue. Currently, those eligible for Medicaid may receive coverage for software and augmentative devices. However, the program requires the use of a standalone device. Standalone devices are often very expensive, and frankly, inconvenient to use. Many disabled Americans prefer to use specialized software on their personal device rather than carry a separate, potentially indelicate secondary device. Many blind people, for example, use an iPhone to effectively navigate an online environment over a stream reader. Other disabled individuals use eye movement tracking devices that allow them to type on a keyboard by using their eyes. Further, someone without a great deal of dexterity while using their hands may use a modified controller to navigate the internet. Unfortunately, Medicaid only covers speech generating technology, not other forms of augmentative devices used by many members of the disabled community. For example, magnifying technology that blind Americans use for basic tasks, such as reading their prescriptions, currently is not covered by Medicaid. Moreover, not every disabled individual qualifies for Medicaid, leaving a lot of Americans without assistance.

Using its authority under Section 504, the FCC can address gaps in coverage under a different statutory framework. As such, AAPD urges the Commission to use Section 504's directive and fill the gaps where Medicaid assistance ends. Specifically, AAPD requests the Commission provide coverage through its existing programs for disability-related costs of



acquiring broadband access. AAPD believes Section 504 could be used to ensure coverage for those disabled Americans who do not currently qualify for Medicaid, as well as those low-income individuals who require assistance for non-speech related disabilities that are not covered by Medicaid. Using Section 504 to address these gaps in coverage would provide disabled Americans with the assistance they need and better facilitate equal access to broadband. Please note, AAPD acknowledges that Section 504 is one of the many tools the Commission may use to remedy this issue, and the Commission should examine all possible approaches to assisting disabled people in these circumstances. As AAPD views Section 504 as one path forward in these endeavors, it requests the Commission use Section 504 authority to make reasonable modifications to its policies and procedures when doing so would allow the Commission to remedy situations when disabled people incur disability-related expenses when trying to access broadband. However, if the Commission, in its expertise, views another source of authority as more appropriate in addressing disability-related costs, AAPD encourages the Commission to pursue a solution under an alternative authority.

III. CONCLUSION

AAPD appreciates the opportunity to participate in this proceeding, especially as it concerns preventing digital discrimination. AAPD maintains that the Commission's digital discrimination rules should protect vulnerable populations, including those with disabilities, and ensure equal access to broadband. AAPD looks forward to future opportunities to work with the



Commission to ensure that Americans living with disabilities have functionally equivalent access to communications services.

Respectfully submitted,

/s/ *Maria Town*

Maria Town
President and CEO
American Association of People with Disabilities