

December 13, 2023



Dear Member of Congress,

The Federal Communications Commission (FCC) is out of control.

On November 15, the agency voted to adopt a *Report and Order* on Digital Discrimination which will divide Americans by race, sex, income level, and many other categories while far exceeding its statutory mandate to prevent “digital discrimination.”

This *Report and Order* uses a one-page authorization from the Infrastructure Investment and Jobs Act (IIJA) to justify 218 pages of regulations that upend decades of Civil Rights precedent. This far exceeds the agency’s statutory authority.

Specifically, the FCC would trade the sound “disparate treatment” standard for the unjust and arbitrary “disparate impact” standard. Whereas longstanding precedent has held that the government or third-party plaintiffs would have to provide evidence of intentional discrimination on the part of a business for them to be held liable under Civil Rights law, now they must only demonstrate that different groups of people use the same service at different rates.

In the context of digital services, this will empower leftist activists to shake down any telecommunications company that tries to expand broadband to unserved areas under the threat of a lawsuit. As they enrich their activist friends, the FCC simultaneously grants itself the power to regulate every single ISP’s:

- “network infrastructure deployment, network reliability, network upgrades, network maintenance, customer-premises equipment, and installation”;
- “speeds, capacities, latency, data caps, throttling, pricing, promotional rates, imposition of late fees, opportunity for equipment rental, installation time, contract renewal terms, service termination terms, and use of customer credit and account history”;
- “mandatory arbitration clauses, pricing, deposits, discounts, customer service, language options, credit



checks, marketing or advertising, contract renewal, upgrades, account termination, transfers to another covered entity, and service suspension.”



This micromanagement and liability double whammy will chill investment and discourage providers from participating in the Broadband Equity, Access, and Deployment (BEAD) Program, which was the entire purpose of the infrastructure law in the first place.



Furthermore, in most cases it is not even the decision of the provider where they get to build. Local and state governments largely control the permitting process that dictates where telcos can operate. If they had their druthers, there is little doubt providers would seek to gain as many new customers as possible from unserved areas.



As the branch of government most representative of and responsive to the people, Congress is tasked with protecting Americans from bureaucratic overreach and the economic devastation that may accompany it. We hope you will hold the FCC accountable for this power-grab and restore the rule of law, rather than the rule of lawfare, to internet service.



Signed,

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*Americans for Tax Reform*

Phil Kerpen  
*American Commitment*



Steve Pociask  
*American Consumer Institute*

Nathan Leamer  
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