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February 21, 2023

Jessica Rosenworcel  
Chair  
Federal Communications Commission  
45 L Street  
Washington, DC 20554  
Re: Prevention and Elimination of Digital Discrimination, GN Docket 22-69

Dear Chair Rosenworcel:

On behalf of the American Association of People with Disabilities, I write in response to the Notice of Proposed Rulemaking implementing the Infrastructure Investment and Jobs Act's mandate to prevent and eliminate digital discrimination.

The American Association of People with Disabilities (AAPD) is a national, cross disability civil rights organization dedicated to increasing the political and economic power of the more than 61 million people with disabilities across the United States. For more than 25 years, AAPD has advocated for the promotion of equal opportunity, economic mobility, independent living, and political participation for disabled people. The lives of disabled people have been indelibly shaped by internet connectivity, or lack thereof, with the growing use of remote work and education, digital commerce, online service provision and more. As the need for internet connectivity grows and becomes even more ubiquitous in our lives, people with disabilities can experience greater social isolation, a lack of education and employment opportunities, and experience difficulties accessing vital services and supports, including healthcare and benefits programs. This is particularly true for multiply-marginalized disabled people who experience intersecting forms of oppression and represents significant concerns regarding equity and the advancement of civil rights.

In section SEC. 60506(a)(3) the statutory language of the Infrastructure Investment and Jobs Act requires that "the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service."<sup>1</sup> It is in the spirit of the phrase "all people " that AAPD recommends the Commission should ensure that it takes a comprehensive approach to defining digital discrimination. Part of this comprehensive approach must involve expanding upon the enumerated classes in the statute, and include disability status in its definition of which

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<sup>1</sup> Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, §60506(b)(2) (2021), codified at 47 U.S.C. § 1754(b)(2).

populations can experience digital discrimination. People with disabilities are 13% less likely to have access to the internet than people without disabilities. Many rely on assistive technology to access information online.<sup>2</sup> Further, disability may also contribute to the digital discrimination experienced by other populations included in this statute, as disability occurs at greater frequency in communities of color, low-income communities, and in rural communities.<sup>3</sup> We join with our colleagues and also call for the inclusion of further protected characteristics such as sex, sexual orientation, gender identity or expression, familial status, domestic violence survivor status, or homelessness.

In order for the Commission to take a comprehensive approach to preventing and eliminating digital discrimination, the Commission must recognize based on disparate impact and differential treatment. For decades the disability community has noted that discrimination occurs unintentionally and often results from seemingly neutral policies that result in discrimination. Too often disabled people experience discrimination not because of malicious intent or explicit exclusion within programs or policies but because the disabled people were simply not considered in the first place. The recognition that people with disabilities can experience disparate impact was enshrined in the Rehabilitation Act of 1973. As recently as 2022, the disability community has had to defend the importance of disparate impact claims under the Rehabilitation Act.<sup>4</sup> AAPD urges the Commission to align its definition of digital discrimination with this civil rights framework that has existed for fifty years.

In furtherance of the statutory requirement to “take steps to ensure that all people of the United States benefit from equal access to broadband internet access services.” Nonsubscribers should be included in the digital discrimination rules. Digital discrimination occurs for subscribers and non-subscribers, and without the inclusion of nonsubscribers in the digital discrimination rules, millions of individuals currently without access to broadband will continue to lack connectivity. Through the inclusion of nonsubscribers in the digital discrimination rules, the Commission will be able to better understand the issues that impact connectivity and internet usage and pursue programs and policies that address these issues. AAPD is particularly interested in the inclusion of nonsubscribers because they are likely to be people with disabilities. Despite many efforts from government, nonprofit, and for profit entities to close the disability digital divide, there remain persistent disparities in the home internet subscription rates between nondisabled people and people with disabilities. Between 2015 and 2019, only 78.4 percent of people with disabilities had any kind of internet subscription, compared

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<sup>2</sup> Andrew Perrin and Sara Atske, “Americans with Disabilities Less Likely than Those Without to Own Some Digital Devices,” Pew Research Center (Sept. 10, 2021), <https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/>.

<sup>3</sup> American Community Survey, “S1810: DISABILITY CHARACTERISTICS,” US Census Bureau (2019), <https://data.census.gov/table?q=S1810:+DISABILITY+CHARACTERISTICS&tid=ACSST1Y2019.S1810&hidePreview=true>.

<sup>4</sup> American Association of People with Disabilities, “[Disability Rights Groups Urge Supreme Court to Uphold Protections Against Disability Discrimination](https://www.aapd.com/press-releases/cvs-statement/),” AAPD (October 29, 2021), <https://www.aapd.com/press-releases/cvs-statement/>.

to 91.5% of people without disabilities. Only 80% of disabled people with any home internet subscription had high-speed internet service (cable, DSL or fiber). Disability and aging go hand-in-hand, as the presence of disability increases with age, and similar to disability itself, the connectivity gap also increases with age with disabled people over 65 being among the least likely to have a home internet connection.<sup>5</sup> According to the US Department of Labor's Office of Disability Employment Policy, the "The disability internet subscription gap was also largest among people who live under or just above the Census Bureau's federal poverty threshold," with only 69% of people with disabilities with a family income from 100 to 199 percent of the federal poverty threshold having a home internet subscription.

While a lack of internet connectivity must be one of the primary concerns in addressing digital discrimination, the Commission's definition of digital discrimination must concern issues broader than internet deployment. The presence of a home internet connection does not mean that an individual will actually be able to use the internet. In fact, even people with disabilities used the internet at lower rates and more often cited cost as a barrier to home use. In November 2019, 83.4 percent of people over age 15 without disabilities used the internet at home, work, school or elsewhere, while only 63.8 percent of people with disabilities did. Working-age adults with disabilities (ages 25 to 64) also reported that cost or affordability was their household's primary barrier to home internet use at higher rates than working-age adults without disabilities (22.3 percent vs. 18.9 percent).<sup>6</sup> In addition to issues related to cost, Americans with disabilities are far less likely to own digital devices than people without disabilities.<sup>7</sup> Sixty-two percent of adults with a disability say they own a desktop or laptop computer, compared with 81% of those without a disability, according to a Pew Research Center survey of U.S. adults conducted January 25th through February 8th, 2021. Many people with disabilities may also need additional assistive technology and applications to use the internet, which comes with additional cost and literacy burdens for the individual. Assistive technology also often requires greater bandwidth.<sup>8</sup> For disabled people (deaf people, deaf/blind, etc) that use visual language to communicate, broadband must provide adequate speeds, capacities, latency, and other quality of service metrics in a given area to support video relay service and other forms of video communication.

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<sup>5</sup> Amy Fong and Savi Swick. "Disability and the Digital Divide: Internet Subscriptions, Internet Use and Employment Outcomes," US Department of Labor Office of Disability Employment Policy (June 2022), <https://www.dol.gov/sites/dolgov/files/ODEP/pdf/disability-digital-divide-brief.pdf>.

<sup>6</sup> Amy Fong and Savi Swick. "Disability and the Digital Divide: Internet Subscriptions, Internet Use and Employment Outcomes," US Department of Labor Office of Disability Employment Policy (June 2022), <https://www.dol.gov/sites/dolgov/files/ODEP/pdf/disability-digital-divide-brief.pdf>.

<sup>7</sup> Andrew Perrin and Sara Atske, "Americans with Disabilities Less Likely than Those Without to Own Some Digital Devices," Pew Research Center (Sept. 10, 2021), <https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/>.

<sup>8</sup> Todd Cunningham a, Bronwyn Lamond. "The weak link in assistive technology – the internet," *Computers and Electrical Engineering* (July 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0045790621002664#preview-section-abstract>.

The minimum broadband speed of 25/3 Mbps is often not adequate for most households daily needs, and for people with disabilities who require assistive technologies this lack of adequate connection speed may result in an inability to effectively communicate, violating an individual's civil rights. Finally, even with access to affordable, high speed internet connectivity and necessary digital devices, disabled people still experience significant barriers to internet usage because websites and applications remain inaccessible.

There are actions the Commission can pursue to address regular and frequent digital discrimination faced by disabled people. The Commission should explore increasing minimum broadband speed. The Commission should also work with agencies across the federal government on efforts to increase the accessibility of websites and web-based applications, especially those administered and maintained using federal funding. The Affordable Connectivity Program (ACP) offers an important and much needed path to provide older adults and people with disabilities access to affordable broadband, but these connections will be meaningless if these communities do not have the devices they need to go online. AAPD strongly encourages the Commission to examine ways that the ACP could be used to cover devices, particularly assistive technology for disabled people.

In today's society, accessing the American dream requires access to digital goods and services. For far too long disabled people have been denied the American dream because of discriminatory policies, programs, and standards that did not consider people with disabilities or actively prevented us from being a part of the fabric of American life. The digital realm should have been a boon of access for disabled people, and yet it has become plagued with similar types of inaccessibility that persist in our built environment. Congress created an incredible opportunity when it tasked the FCC with addressing digital discrimination, and AAPD looks forward to working with the Commission as it carries out this vital work.

Thank you for the opportunity to submit these comments. Please do not hesitate to reach out should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Maria Town". The signature is written in a cursive, flowing style.

Maria Town  
mtown@aapd.com  
President and CEO  
American Association of People with Disabilities