



What Is Digital Discrimination?

The FCC adopted rules to prevent “digital discrimination of access,” which aim to ensure that all people have access to broadband services regardless of sex, race, income, and other characteristics. The rules prohibit not only intentional discrimination but also any actions that have the effect of creating disparate results. The rules can be invoked to address maintenance and deployment actions; credit checks; service packages and rates; and other aspects of ISP business operations.

What does it mean?

Because the rules prohibit differential outcomes even where there was no intent to discriminate, ISPs could be found to be in violation of the rules even if decisions were made in accordance with normal and ordinary business practices. Although the regulations recognize and provide allowances for instances of technical and economic infeasibility, the FCC rules create a high bar that could effectively compel companies to either adjust their risk tolerance or reduce network or service offerings to avoid appearing to offer benefits to one group but not another. The rules implicate substantial costs — estimated to be between \$33,700 and \$115,000 for the first year of compliance — and introduce significant risks of investigations and follow-on litigation.

What is NTCA doing?

NTCA by itself and in partnership with other organizations is advocating actively to demonstrate that (1) there is no evidence of small provider discrimination, and (2) Universal Service Fund and other rules to which small providers are subject already effectively prohibit such practices. The digital discrimination rules, which the FCC intends to apply to any entity that affects the provision of broadband, have been appealed in Federal court by numerous parties including telecom, construction/contractors, and business associations. NTCA mostly recently filed comments urging the commission to exempt small providers from additional requirements.