

Internet providers say the FCC should not investigate broadband prices

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Internet service providers and their lobby groups are fighting a US plan to prohibit discrimination in access to broadband services. In particular, ISPs want the Federal Communications Commission to drop the plan's proposal to require that prices charged to consumers be non-discriminatory.

In 2021, Congress required the Federal Communications Commission to issue rules "preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin" within two years. FCC Chairwoman Jessica Rosenworcel last month released her draft plan to comply with the congressional mandate and scheduled a November 15 commission vote on adopting final rules.

The plan is likely to pass in a party-line vote as Rosenworcel has a 3-2 Democratic majority, but aspects of the draft could be changed before the vote. Next week's meeting could be a contentious one, judging by a statement issued Monday by Republican Commissioner Brendan Carr.

Carr described Rosenworcel's proposal as "President Biden's plan to give the administrative state effective control of all Internet services and infrastructure in the US." He also

objects to the Rosenworcel plan's statement that the FCC rules may apply to entities that are not broadband providers, such as landlords, if they "impede equal access to broadband Internet access service."

Consumer advocates generally support the proposal but say the planned system for handling complaints, ISP responses, and investigations is not transparent enough, reducing the system's potential to act as a deterrent. Consumer advocates also say Internet users who have already been harmed by discrimination may not get any relief because the proposed rules do not apply retroactively.

ISPs: Don't investigate our prices

ISPs including Comcast, Charter, AT&T, and Verizon have held a flurry of meetings with FCC officials and commissioners in which they argued that the rules are too broad. The broadband firms are especially concerned about the FCC's plan to consider the prices consumers pay when determining whether an ISP practice is discriminatory. The industry wants the FCC to consider only the deployment of broadband, not other factors such as how much it costs.

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In a meeting with Rosenworcel's staff, cable company executives "stated that the Draft Order would impose overbroad liability standards that impede further broadband investment and are legally vulnerable by adopting a disparate impact rather than a disparate treatment liability approach," according to an ex parte filing submitted yesterday by cable lobby group NCTA-The Internet & Television Association. The meeting included executives from Comcast, Charter, and Cox.

The cable companies said the FCC "should define digital discrimination as disparate treatment and should limit the standard to policies and practices involving the deployment of broadband network facilities. It should not regulate rates or

non-technical aspects of broadband service.” The cable industry filing said “it is especially important for the Commission to exclude ‘price’ from the list of ‘covered elements of service.’”

Similar arguments were raised by wireless industry trade group CTIA. “Evaluating matters such as pricing, deposits, discounts, and data caps is price regulation because the Commission may levy consequences based on the price per level of service that a provider chooses to offer,” CTIA said. “Commission evaluation of price is unnecessary in the competitive wireless marketplace and may deter offering discounts and enticements to switch providers that consumers enjoy today.”

More opposition came in filings submitted by AT&T, Verizon, and the USTelecom industry group. ISPs and their trade groups will likely sue the FCC if the rules are approved.

“The draft rules ignore the statute’s clear focus on broadband deployment and instead cast a net so wide it would capture every business decision a provider makes concerning how to sell its product, with little regard to the reasonableness (or usefulness) of that decision,” AT&T said. “This regulatory overreach will impose unnecessary regulation on broadband providers and divert attention and vital resources from broadband investment and deployment at this key juncture in the bipartisan Infrastructure Act’s Broadband, Equity, Access & Deployment Program (BEAD).” That’s a reference to a \$42 billion grant program that will pay ISPs to expand their networks.

ISPs previously complained about an unrelated rule requiring them to list all their monthly fees, but the FCC rejected their complaints and issued the rule.

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