

AB 2239: ENDING DIGITAL DISCRIMINATION IN CA

The COVID-19 pandemic shined a stark light on the profound digital inequities that leave California's communities of color and low-income neighborhoods disproportionately disconnected. Today, the digital divide persists as a critical issue. A staggering number of California families, students, and small businesses remain stranded on the wrong side of the digital divide: **1 in 5 households are not connected to broadband**. As a result, historically marginalized communities' access to education, health care, jobs, housing, public benefits, and civic life is restricted, deepening longstanding and widespread inequities.

Internet service providers' (ISPs) business practices are part of the problem. For example, **some ISPs routinely offer faster, more affordable internet to high-income, predominantly white communities than to low-income communities and communities of color**, resulting in those communities having disproportionately low connectivity rates.

3.5M



CALIFORNIA RESIDENTS
REMAIN DISCONNECTED.

THE BEST PREDICTORS OF
INTERNET CONNECTIVITY?
INCOME & RACE.

BLACK, LATINO, LOW-INCOME,
AND RURAL CALIFORNIANS
ARE THE LEAST LIKELY TO BE
CONNECTED.

\$10 - \$30/mo

THE ADDITIONAL ADVERTISED
COST OF BROADBAND SERVICE
FOR SOME LOW-INCOME
COMMUNITIES COMPARED THEIR
WEALTHIER NEIGHBORS

What Does AB 2239 Do?

- Clearly defines "digital discrimination of access" in California's Civil Rights code using a disparate impact standard, which looks at discriminatory outcomes (not just intent) and makes discrimination against CA law.
- Allows for and clearly defines exemptions based on "technical feasibility" and/or "economic feasibility"
- Adds provisions to the California Public Utilities Code with respect to implementation of the definition at the CA Public Utilities Commission, one of the two agencies that administer California's Broadband for All agenda and budget.
- Mirrors policy language adopted in November 2023 by the Federal Communications Commission following nearly two years of consideration.
- Echoes California's Net Neutrality policy, which was litigated for nearly two years and multiple courts affirmed is allowable under federal law.

AB 2239 Definitions

"Digital Discrimination of Access" | Policies or practices, not justified by genuine issues of technical or economic feasibility, that (1) differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin or (2) are intended to have such differential impact.

"Economically feasible" | Reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated new economic conditions clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and used.

"Technically feasible" | Reasonably achievable as evidenced by prior success by covered entities under similar circumstances or demonstrated technological advances clearly indicating that the policy or practice in question may reasonably be adopted, implemented, and used.

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Myths vs. Facts

<p>AB 2239 opponents argue that discriminatory outcomes should be disregarded if discriminatory intent can't be proven.</p>	<p>Fact: California decision-makers can and should address both intentional discrimination and discriminatory outcomes.</p> <p>Digital discrimination should be approached in the same way as many other basic needs and civil rights in California, with a "disparate impact" standard that does not require proof or evidence of discriminatory intent, but instead requires proof that policies and practices have a disproportionate adverse impact, regardless of intent. We must be concerned about correcting <i>outcomes</i> that extend and exacerbate California's persistent digital divide.</p>
<p>AB 2239 opponents falsely claim that California does not have the legal authority to protect Californians from digital discrimination.</p>	<p>Fact: AB 2239 opponents made the same claims when they sued to block California's Net Neutrality law. They argued then, as they do now, federal preemption.</p> <p>The 9th Circuit Court categorically rejected these claims. Quoting from the ruling summary:</p> <p><i>"The panel held that, by classifying broadband internet services as information services, the FCC no longer had the authority to regulate in the same manner that it did when these services were classified as telecommunications services. The FCC, therefore, could not preempt state action, like SB-822, that protects net neutrality. The panel held that SB-822 did not conflict with the Communications Act itself, which only limits the FCC's regulatory authority."</i></p> <p>The same large ISPs and their industry associations that oppose AB 2239 have fought every equal access measure at the state and federal levels. The same companies and associations that oppose AB 2239, and are suing the FCC to block its digital discrimination rules, also sued to block California's Net Neutrality law (SB 822). They lost.</p> <p>AB 2239's digital discrimination prohibition and definition echo SB 822 and is in the same code section. The burden to prove federal preemption is again on opponents.</p>
<p>AB 2239 opponents falsely claim that the FCC or Congress disallowed States from enacting protections and direct them instead to adopt FCC model policies.</p>	<p>Fact: Congressional direction to the FCC did not create any new obligations for States, nor did it in any way limit further State action. Neither did the FCC's implementation of this direction. Quoting <u>word for word</u> the only mention of States in the federal legislation:</p> <p><i>SEC. 60506. DIGITAL DISCRIMINATION.(d) MODEL STATE AND LOCAL POLICIES. The Commission shall develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination.</i></p>
<p>AB 2239 opponents claim that exemptions for technical or economic infeasibility are unreasonable.</p>	<p>Fact: AB 2239 mirrors the FCC's definitions of technical and economic feasibility with a commonsense, compromise guideline that something is presumed to be feasible if it has been done before under similar circumstances.</p>

For more information on digital discrimination and AB 2239, visit cadigitalequity.org