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## **Eighth Circuit Vacates the FCC's Controversial Digital Discrimination Rule** *(Minnesota Telecom Alliance v. FCC)*

**“Today’s decision rejects a regulatory power grab that would have chilled investment, raised costs, and slowed high-speed internet deployment for consumers nationwide.”**

— Cory L. Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—The U.S. Court of Appeals for the Eighth Circuit today vacated the FCC’s final digital discrimination rule in its entirety. Enacted under the Biden administration, that rule threatened to impose a lawless disparate-impact regulatory regime on the nation’s broadband industry. The decision was welcome news for Washington Legal Foundation, which joined Pacific Legal Foundation on an amicus brief urging the result.

The case arose from the Infrastructure Investment and Jobs Act (IIJA), a \$1.2 trillion omnibus infrastructure bill that authorized the FCC to “adopt final rules to facilitate equal access to broadband internet access service,” including by “preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin.” In an amicus brief asking the Eighth Circuit to vacate the rule, WLF argued that the IIJA supplies no plausible statutory basis for the FCC’s unprecedented power grab and violates the Constitution.

A unanimous panel of the Eighth Circuit agreed. Under *Loper Bright Enterprises v. Raimondo* (2024), the appeals court independently interpreted the statute without *Chevron* deference. It held that the IIJA’s phrasing “based on” and the absence of any results-oriented or effects-focused language (such as “otherwise adversely affect” or “otherwise make unavailable”) limit the statute to disparate treatment (intentional discrimination) only. Because the FCC’s rule expressly adopted disparate impact (unintentional discrimination), the entire rule was unlawful and must be vacated.

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