

117TH CONGRESS
1ST SESSION

S. 2473

To provide grants for the construction, improvement, and acquisition of
middle mile infrastructure.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2021

Ms. ROSEN (for herself and Mr. KING) introduced the following bill; which
was read twice and referred to the Committee on Commerce, Science, and
Transportation

A BILL

To provide grants for the construction, improvement, and
acquisition of middle mile infrastructure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Middle Mile
5 Broadband Deployment Act”.

6 **SEC. 2. ENABLING MIDDLE MILE BROADBAND INFRA-**
7 **STRUCTURE.**

8 (a) DEFINITIONS.—In this section:

9 (1) ANCHOR INSTITUTION.—The term “anchor
10 institution” means a school, library, medical or

1 healthcare provider, community college or other in-
 2 stitution of higher education, or other community
 3 support organization or entity.

4 (2) ASSISTANT SECRETARY.—The term “Assist-
 5 ant Secretary” means the Assistant Secretary of
 6 Commerce for Communications and Information.

7 (3) COMMISSION.—The term “Commission”
 8 means the Federal Communications Commission.

9 (4) ELIGIBLE ENTITY.—The term “eligible enti-
 10 ty” means—

11 (A) a State, political subdivision of a
 12 State, Tribal government, technology company,
 13 electric utility, utility cooperative, public utility
 14 district, telecommunications company, tele-
 15 communications cooperative, nonprofit founda-
 16 tion, nonprofit corporation, nonprofit institu-
 17 tion, nonprofit association, regional planning
 18 counsel, Native entity, or economic development
 19 authority; or

20 (B) a partnership of 2 or more entities de-
 21 scribed in subparagraph (A).

22 (5) FCC FIXED BROADBAND MAP.—The term
 23 “FCC fixed broadband map” means the map created
 24 by the Commission under section 802(c)(1)(B) of

1 the Communications Act of 1934 (47 U.S.C.
2 642(c)(1)(B)).

3 (6) INDIAN TRIBE.—The term “Indian Tribe”
4 has the meaning given the term in section 4 of the
5 Indian Self-Determination and Education Assistance
6 Act (25 U.S.C. 5304).

7 (7) INTERCONNECT.—The term “interconnect”
8 means the physical linking of 2 networks for the mu-
9 tual exchange of traffic on non-discriminatory terms
10 and conditions.

11 (8) INTERNET EXCHANGE FACILITY.—The term
12 “internet exchange facility” means physical infra-
13 structure through which internet service providers
14 and content delivery networks exchange internet
15 traffic between their networks.

16 (9) MIDDLE MILE INFRASTRUCTURE.—The
17 term “middle mile infrastructure”—

18 (A) means any broadband infrastructure
19 that does not connect directly to an end-user lo-
20 cation, including an anchor institution; and

21 (B) includes—

22 (i) leased dark fiber, interoffice trans-
23 port, backhaul, internet exchange facilities,
24 carrier-neutral submarine cable landing
25 stations, undersea cables, transport

connectivity to data centers, special access transport, and other similar services; and

(ii) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.

(10) MIDDLE MILE GRANT.—The term “middle mile grant” means a grant awarded under subsection (c).

(11) NATIVE ENTITY.—The term “Native entity” means—

(A) an Indian Tribe;

(B) an Alaska Native Corporation;

(C) a Native Hawaiian organization (as defined in section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517));

(D) the Department of Hawaiian Home Lands; and

(E) the Office of Hawaiian Affairs.

(12) STATE.—The term “State” has the meaning given the term in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

1 (13) SUBMARINE CABLE LANDING STATION.—

2 The term “submarine cable landing station” means
3 a cable landing station, as that term is used in sec-
4 tion 1.767(a)(5) of title 47, Code of Federal Regula-
5 tions (or any successor regulation), that can be uti-
6 lized to land a submarine cable by an entity that has
7 obtained a license under the first section of the Act
8 entitled “An Act relating to the landing and oper-
9 ation of submarine cables in the United States”, ap-
10 proved May 27, 1921 (47 U.S.C. 34) (commonly
11 known as the “Cable Landing Licensing Act”).

12 (14) TRIBAL GOVERNMENT.—The term “Tribal
13 government” means the recognized governing body
14 of any Indian or Alaska Native tribe, band, nation,
15 pueblo, village, community, component band, or com-
16 ponent reservation, individually identified (including
17 parenthetically) in the list published most recently as
18 of the date of enactment of this Act pursuant to sec-
19 tion 104 of the Federally Recognized Indian Tribe
20 List Act of 1994 (25 U.S.C. 5131).

21 (15) TRUST LAND.—The term “trust land” has
22 the meaning given the term in section 3765 of title
23 38, United States Code.

24 (16) UNDERSERVED.—The term “under-
25 served”, with respect to an area, means an area—

1 (A) that is designated as a Tribally under-
2 served area through the process described in
3 subsection (g); or

4 (B) that—

5 (i) is of a standard size not larger
6 than a census block, as established by the
7 Commission;

8 (ii) is not an unserved area; and

9 (iii) as determined in accordance with
10 the FCC fixed broadband map, does not
11 have access to broadband service with—

12 (I) except as provided in sub-
13 clause (II)—

14 (aa) a download speed of not
15 less than 100 megabits per sec-
16 ond; and

17 (bb) an upload speed of not
18 less than 20 megabits per second;

19 or

20 (II) minimum download and
21 upload speeds established as bench-
22 marks by the Commission for pur-
23 poses of this Act after the date of en-
24 actment of this Act, if those minimum

1 speeds are higher than the minimum
 2 speeds required under subclause (I).

3 (17) UNSERVED.—The term “unserved”, with
 4 respect to an area, means an area—

5 (A) that is designated as a Tribally under-
 6 served area through the process described in
 7 subsection (g); or

8 (B) that—

9 (i) is of a standard size not larger
 10 than a census block, as established by the
 11 Commission; and

12 (ii) as determined in accordance with
 13 the FCC fixed broadband map, does not
 14 have access to broadband service—

15 (I) except as provided in sub-
 16 clause (II)—

17 (aa) a download speed of not
 18 less than 25 megabits per second;
 19 and

20 (bb) an upload speed of not
 21 less than 3 megabits per second;
 22 or

23 (II) minimum download and
 24 upload speeds established as bench-
 25 marks by the Commission for pur-

1 poses of this Act after the date of en-
2 actment of this Act, if those minimum
3 speeds are higher than the minimum
4 speeds required under subclause (I).

5 (b) PURPOSE; SENSE OF CONGRESS.—

6 (1) PURPOSE.—The purposes of this section
7 are—

8 (A) to encourage the expansion and exten-
9 sion of middle mile infrastructure to reduce the
10 cost of connecting unserved and underserved
11 areas to the backbone of the internet (com-
12 monly referred to as the “last mile”); and

13 (B) to promote broadband connection resil-
14 iency through the creation of alternative net-
15 work connection paths that can be designed to
16 prevent single points of failure on a broadband
17 network.

18 (2) SENSE OF CONGRESS.—It is the sense of
19 Congress that—

20 (A) in awarding middle mile grants, the
21 Assistant Secretary should give priority to—

22 (i) projects that leverage existing
23 rights-of-way, assets, and infrastructure to
24 minimize financial, regulatory, and permit-
25 ting challenges;

1 (ii) projects in which the eligible enti-
2 ty designs the route of the middle mile in-
3 frastructure to enable the connection of
4 unserved anchor institutions, including
5 Tribal anchor institutions; and

6 (iii) projects that—

7 (I) improve the redundancy and
8 resiliency of existing middle mile in-
9 frastructure, including those projects
10 that facilitate interconnection with ex-
11 isting infrastructure, including add/
12 drop capabilities at existing amplifi-
13 cation sites and the ability to add
14 splice cases with adequate fiber slack
15 to build laterals that support future
16 carrier-neutral interconnection facili-
17 ties and connections to anchor institu-
18 tions; and

19 (II) reduce regulatory and per-
20 mitting barriers to promote the con-
21 struction of new middle mile infra-
22 structure; and

23 (B) a regulated utility should use funds re-
24 ceived from a middle mile grant as a supple-

ment to the core utility capital investment plan
of the regulated utility to—

(i) facilitate increased broadband resiliency or redundancy of existing middle mile infrastructure; or

(ii) provide connectivity to unserved areas and underserved areas within the service territory of the utility and nearby communities.

(c) MIDDLE MILE GRANTS.—The Assistant Secretary shall establish a program under which the Assistant Secretary makes grants on a technology-neutral, competitive basis to eligible entities for the construction, improvement, or acquisition of middle mile infrastructure.

(d) APPLICATIONS FOR GRANTS.—

(1) IN GENERAL.—The Assistant Secretary shall establish an application process for middle mile grants in accordance with this subsection.

(2) EVALUATION OF APPLICATIONS.—In establishing an application process for middle mile grants under paragraph (1), the Assistant Secretary shall give priority to an application from an eligible entity that satisfies 2 or more of the following conditions:

(A) The eligible entity adopts fiscally sustainable middle mile strategies.

1 (B) The eligible entity commits to offering
2 non-discriminatory interconnect to terrestrial
3 and wireless last mile broadband providers and
4 any other party making a bona fide request.

5 (C) The eligible entity identifies specific
6 terrestrial and wireless last mile broadband pro-
7 viders that have—

8 (i) expressed written interest in inter-
9 connecting with middle mile infrastructure
10 planned to be deployed by the eligible enti-
11 ty; and

12 (ii) demonstrated sustainable business
13 plans or adequate funding sources with re-
14 spect to the interconnect described in
15 clause (i).

16 (D) The eligible entity has identified sup-
17 plemental investments or in-kind support (such
18 as waived franchise or permitting fees) that will
19 accelerate the completion of the planned
20 project.

21 (E) The eligible entity has demonstrated
22 that the middle mile infrastructure will benefit
23 national security interests of the United States
24 and the Department of Defense.

1 (3) GRANT APPLICATION COMPETENCE.—The
2 Assistant Secretary shall include in the application
3 process established under paragraph (1) a require-
4 ment that an eligible entity provide evidence that the
5 eligible entity is capable of carrying out a proposed
6 project in a competent manner, including by dem-
7 onstrating that the eligible entity has the financial,
8 technical, and operational capability to carry out the
9 proposed project and operate the resulting middle
10 mile broadband network.

11 (e) ELIGIBILITY.—

12 (1) PRIORITIZATION.—To be eligible to obtain a
13 middle mile grant, an eligible entity shall agree, in
14 the application submitted through the process estab-
15 lished under subsection (d), to prioritize—

16 (A) connecting middle mile infrastructure
17 to last mile networks that provide or plan to
18 provide broadband service to households in
19 unserved areas;

20 (B) connecting non-contiguous trust lands;
21 or

22 (C) the offering of wholesale broadband
23 service at reasonable rates on a carrier-neutral
24 basis.

1 (2) BUILDOUT TIMELINE.—Subject to para-
2 graph (5), to be eligible to obtain a middle mile
3 grant, an eligible entity shall agree, in the applica-
4 tion submitted through the process established under
5 subsection (d), to complete buildout of the middle
6 mile infrastructure described in the application by
7 not later than 5 years after the date on which
8 amounts from the grant are made available to the el-
9 igible entity.

10 (3) PROJECT ELIGIBILITY REQUIREMENTS.—

11 (A) CAPABILITY TO SUPPORT RETAIL
12 BROADBAND SERVICE.—A project shall be eligi-
13 ble for a middle mile grant if, at the time of the
14 application, the Assistant Secretary determines
15 that the proposed middle mile broadband net-
16 work—

17 (i) will be capable of supporting retail
18 broadband service that meets speed, la-
19 tency, reliability, consistency in quality of
20 service, and related criteria, as the Assist-
21 ant Secretary shall determine; and

22 (ii) will be able to easily scale speeds
23 over time to—

1 (I) meet the evolving connectivity
2 needs of households, businesses, and
3 anchor institutions; and

4 (II) support the deployment of
5 5G, successor wireless technologies,
6 and other advanced services.

7 (B) MAPPING DATA.—

8 (i) USE OF MOST RECENT DATA.—In
9 mapping out gaps in broadband coverage,
10 an eligible entity that uses a middle mile
11 grant to build out terrestrial or fixed wire-
12 less middle mile infrastructure shall use
13 the most recent broadband mapping data
14 available from one of the following sources:

15 (I) The FCC fixed broadband
16 map.

17 (II) The State in which the area
18 that will be served by the middle mile
19 infrastructure is located, or the Tribal
20 government with jurisdiction over the
21 area that will be served by the middle
22 mile infrastructure (if applicable).

23 (III) Speed and usage surveys of
24 existing broadband service that—

(aa) demonstrate that more than 25 percent of the respondents display a broadband service speed that is slower than the speeds required for an area to qualify as unserved; and

(bb) are conducted by—

(AA) the eligible entity;

(BB) the State in

which the area that will be served by the middle mile infrastructure is located; or

(CC) the Tribal govern-

ment with jurisdiction over the area that will be served by the middle mile infrastructure (if applicable).

(ii) SHARING FACILITY LOCATIONS.—

(I) DEFINITION.—In this clause, the term “covered recipient”, with respect to an eligible entity, means—

(aa) the Assistant Secretary;

(bb) the Commission;

(cc) the Tribal government with jurisdiction over the area

1 that will be served by the middle
2 mile infrastructure (if applica-
3 ble); and

4 (dd) the State broadband of-
5 fice for the State in which the
6 area that will be served by the
7 middle mile infrastructure is lo-
8 cated.

9 (II) PROVISION OF INFORMA-
10 TION.—Subject to subclauses (III)
11 and (IV), an eligible entity that con-
12 structs, improves, or acquires middle
13 mile infrastructure using a middle
14 mile grant shall share with each cov-
15 ered recipient the location of all the
16 middle mile broadband infrastructure.

17 (III) FORMAT.—An eligible enti-
18 ty shall provide the information re-
19 quired under subclause (II) to each
20 covered recipient in a uniform format
21 determined by the Assistant Sec-
22 retary.

23 (IV) PROTECTION OF INFORMA-
24 TION.—

1 (aa) IN GENERAL.—The in-
2 formation provided by an eligible
3 entity under subclause (II) may
4 only be used for purposes of car-
5 rying out the grant program
6 under subsection (c) and any re-
7 porting related thereto.

8 (bb) LEGAL DEFENSES.—

9 (AA) IN GENERAL.—A
10 covered recipient may not
11 receive information under
12 subclause (II) unless the
13 covered recipient agrees in
14 writing to assert all available
15 legal defenses to the disclo-
16 sure of the information if a
17 person or entity seeks disclo-
18 sure from the covered recipi-
19 ent under any Federal,
20 State, or local public disclo-
21 sure law.

22 (BB) RULE OF CON-
23 STRUCTION.—Nothing in
24 subitem (AA) is intended to
25 be or shall be construed as a

1 waiver of Tribal sovereign
2 immunity.

3 (C) CONNECTION TO ANCHOR INSTITU-
4 TIONS.—To the extent feasible, an eligible enti-
5 ty that receives a middle mile grant to build
6 middle mile infrastructure using fiber optic
7 technology shall—

8 (i) ensure that the proposed middle
9 mile broadband network will be capable of
10 providing broadband to an anchor institu-
11 tion at a speed of not less than—

12 (I) 1 gigabit per second for
13 downloads; and

14 (II) 1 gigabit per second for
15 uploads to an anchor institution; and

16 (ii) include direct interconnect facili-
17 ties that will facilitate the provision of
18 broadband service to anchor institutions lo-
19 cated within 1,000 feet of the middle mile
20 infrastructure.

21 (D) INTERCONNECTION AND NON-
22 DISCRIMINATION.—

23 (i) IN GENERAL.—An eligible entity
24 that receives a middle mile grant to build
25 a middle mile project using fiber optic

1 technology shall offer interconnection in
 2 perpetuity, where technically feasible with-
 3 out exceeding current or reasonably antici-
 4 pated capacity limitations, on reasonable
 5 rates and terms to be negotiated with re-
 6 questing parties.

7 (ii) NATURE OF INTERCONNECTION.—

8 The interconnection required to be offered
 9 under clause (i) includes both the ability to
 10 connect to the public internet and physical
 11 interconnection for the exchange of traffic.

12 (iii) INCLUSION IN APPLICATION.—An

13 applicant for a middle mile grant shall dis-
 14 close the applicant's proposed interconnec-
 15 tion, nondiscrimination, and network man-
 16 agement practices in the application sub-
 17 mitted through the process established
 18 under subsection (d).

19 (4) ACCOUNTABILITY.—The Assistant Sec-

20 retary shall—

21 (A) establish sufficient transparency, ac-
 22 countability, reporting, and oversight measures
 23 for the grant program established under sub-
 24 section (c) to deter waste, fraud, and abuse of
 25 program funds; and

1 (B) establish—

2 (i) buildout requirements for each eli-
3 gible entity that receives a middle mile
4 grant, which shall require the completion
5 of a certain percentage of project miles by
6 a certain date; and

7 (ii) penalties, which may include re-
8 scission of funds, for grantees that do not
9 meet requirements described in clause (i)
10 or the deadline under paragraph (2).

11 (5) EXTENSIONS.—

12 (A) IN GENERAL.—At the request of an el-
13 igible entity, the Assistant Secretary may ex-
14 tend the buildout deadline under paragraph (2)
15 by not more than 1 year if the eligible entity
16 certifies that—

17 (i) the eligible entity has a plan for
18 use of the middle mile grant;

19 (ii) the project to build out middle
20 mile infrastructure is underway; or

21 (iii) extenuating circumstances require
22 an extension of time to allow completion of
23 the project to build out middle mile infra-
24 structure.

1 (B) EFFECT ON INTERIM BUILDOUT RE-
 2 QUIREMENTS.—If the Assistant Secretary
 3 grants an extension under subparagraph (A),
 4 the Assistant Secretary shall modify any build-
 5 out requirements established under paragraph
 6 (4)(B)(i) as necessary.

7 (f) FEDERAL SHARE.—The amount of a middle mile
 8 grant awarded to an eligible entity may not exceed 70 per-
 9 cent of the total project cost.

10 (g) SPECIAL RULES FOR TRIBAL GOVERNMENTS.—

11 (1) WAIVERS; ALTERNATIVE REQUIREMENTS.—

12 The Assistant Secretary, in consultation with Tribal
 13 governments and Native entities, may waive, or
 14 specify alternative requirements for, any provision of
 15 subsections (c) through (f) if the Assistant Secretary
 16 finds that the waiver or alternative requirement is
 17 necessary—

18 (A) for the effective delivery and adminis-
 19 tration of middle mile grants to Tribal govern-
 20 ments; or

21 (B) the construction, improvement, or ac-
 22 quisition of middle mile infrastructure on trust
 23 land.

24 (2) TRIBALLY UNSERVED AREAS; TRIBALLY UN-
 25 DERSERVED AREAS.—The Assistant Secretary, in

1 consultation with Tribal governments and Native en-
2 tities, shall develop a process for designating Trib-
3 ally unserved areas and Tribally underserved areas
4 for purposes of this section.

5 (h) MAINTENANCE OF STANDARDS.—Section 602 of
6 the Public Works and Economic Development Act of 1965
7 (42 U.S.C. 3212) shall apply to any entity that receives
8 assistance, whether directly or indirectly, under any pro-
9 gram—

10 (1) that pertains to deploying broadband serv-
11 ice; and

12 (2) for which the Assistant Secretary has ad-
13 ministrative responsibility as provided by law or by
14 delegation of authority pursuant to law.

15 (i) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated to carry out this section
17 \$2,000,000,000 for fiscal years 2022 through 2026.

○