

117TH CONGRESS
1ST SESSION

S. 2911

To amend the Communications Act of 1934 to provide funding to States for extending broadband service to unserved areas in partnership with broadband service providers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2021

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

A BILL

To amend the Communications Act of 1934 to provide funding to States for extending broadband service to unserved areas in partnership with broadband service providers, and for other purposes.

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 “American Broadband
5 Buildout to Eliminate America’s Digital Divide Act of
6 2021”.

1 **SEC. 2. EXPANSION OF BROADBAND ACCESS IN UNSERVED**
 2 **AREAS.**

3 (a) IN GENERAL.—The Communications Act of 1934
 4 (47 U.S.C. 151 et seq.) is amended—

5 (1) in title I (47 U.S.C. 151 et seq.), by adding
 6 at the end the following:

7 **“SEC. 14. EXPANSION AND ADOPTION OF BROADBAND**
 8 **SERVICE THROUGH STATE FUNDING.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) BROADBAND FUNDING PARTNER.—The
 11 term ‘broadband funding partner’ means an eligible
 12 entity that receives funding for a project under this
 13 section.

14 “(2) BROADBAND SERVICE.—The term
 15 ‘broadband service’—

16 “(A) means a mass-market retail service
 17 by wire or radio that provides the capability to
 18 transmit data to and receive data from all or
 19 substantially all internet endpoints, including
 20 any capabilities that are incidental to and en-
 21 able the operation of the communications serv-
 22 ice;

23 “(B) includes any service that is a func-
 24 tional equivalent of the service described in sub-
 25 paragraph (A); and

1 “(C) does not include dial-up internet ac-
2 cess service.

3 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
4 tity’ means a private provider of broadband service,
5 or a public-private partnership or cooperative (in-
6 cluding a subsidiary of a cooperative), that—

7 “(A) provides broadband service; and

8 “(B) has submitted to the Commission, in
9 addition to any data required to be submitted
10 under section 802, data regarding the service
11 option described in subsection (f)(1)(C) that the
12 entity would offer if the entity were to receive
13 funding under this section.

14 “(4) ELIGIBLE HOUSEHOLD.—The term ‘eligi-
15 ble household’ has the meaning given the term in
16 section 904(a) of title IX of division N of the Con-
17 solidated Appropriations Act, 2021 (Public Law
18 116–260).

19 “(5) HIGH COST AREA.—The term ‘high cost
20 area’ means an unserved area in which the cost of
21 building out broadband service is higher, as com-
22 pared with the average such cost in the United
23 States (and as determined by the Commission), be-
24 cause of—

25 “(A) the remote location of the area;

1 “(B) the population density of the area;

2 “(C) the unique topography of the area;

3 “(D) a high number of eligible households
4 in the area; or

5 “(E) any other factor that contributes to
6 the cost of building out that service.

7 “(6) LOCATION.—The term ‘location’ has the
8 meaning given the term by the Commission under
9 rules and guidance that are in effect, as of the date
10 of enactment of this section.

11 “(7) PROJECT.—The term ‘project’ means an
12 undertaking by a broadband funding partner under
13 this section to construct and deploy infrastructure
14 for the provision of broadband service.

15 “(8) UNSERVED AREA.—The term ‘unserved
16 area’ means an area—

17 “(A) that is of a standard size, as estab-
18 lished by the Commission; and

19 “(B) as determined in accordance with the
20 maps created under section 802(c)(1), not less
21 than 80 percent of which—

22 “(i) has no access to broadband serv-
23 ice; or

24 “(ii) does not have access to reliable
25 broadband service offered with a download

1 speed of at least 25 megabits per second
2 and an upload speed of at least 3 megabits
3 per second.

4 “(b) PROGRAM ESTABLISHED.—

5 “(1) IN GENERAL.—Not later than 100 days
6 after the date of enactment of this section, or the
7 date on which the maps created under section
8 802(c)(1) are made public, whichever is later, the
9 Commission shall establish a program for States to
10 expand access to broadband service in unserved
11 areas.

12 “(2) RELATIONSHIP TO UNIVERSAL SERVICE.—

13 The program established under paragraph (1) shall
14 be separate from any universal service program es-
15 tablished under section 254.

16 “(3) TECHNICAL SUPPORT AND ASSISTANCE.—

17 As part of the program established under paragraph
18 (1), the Commission, in collaboration with the As-
19 sistant Secretary of Commerce for Communications
20 and Information, shall provide technical support and
21 assistance to States to facilitate the establishment of
22 programs under subsection (c).

23 “(c) STATE PROGRAM REQUIREMENTS.—A State
24 seeking funding under the program established under sub-
25 section (b) shall create a program that—

1 “(1) implements the requirements of this sec-
2 tion;

3 “(2) does not favor—

4 “(A) the use of any particular technology;
5 or

6 “(B) any particular eligible entity or class
7 of eligible entities;

8 “(3) encourages all eligible entities, including
9 small broadband providers, to participate in the pro-
10 gram through streamlined regulatory requirements
11 for all broadband funding partners;

12 “(4) takes into account—

13 “(A) the size and scope of each unserved
14 area proposed to be served by each project car-
15 ried out using the funds;

16 “(B) the speed of the broadband service
17 provided by eligible entities seeking funding for
18 projects under the program; and

19 “(C) the ability of the eligible entities that
20 would receive funding for projects under the
21 program to complete the proposed deployment
22 and provision of broadband service under those
23 projects in the areas served by the projects;

24 “(5) may take into account—

1 “(A) the speed with which the eligible enti-
2 ties seeking funding for projects under the pro-
3 gram can complete the proposed deployment
4 and provision of broadband service to house-
5 holds under those projects, which may include
6 a review of the topographical effects on the
7 areas being served by those projects as a result
8 of the technology to be deployed under those
9 projects; and

10 “(B) whether an eligible entity seeking
11 funding for a project under the program has
12 the ability or intention to leverage nearby or ad-
13 jacent broadband service infrastructure to fa-
14 cilitate the deployment and provision of
15 broadband service proposed under that project;

16 “(6) establishes—

17 “(A) the size and proportion of the match-
18 ing funds to be committed by an eligible entity
19 seeking funding for a project under the pro-
20 gram, which—

21 “(i) may not be provided from any
22 funds derived from government grants,
23 loans, or subsidies; and

24 “(ii) may not be less than 25 percent
25 of the amount provided by the State to the

1 eligible entity with respect to the project,
2 except that the State may reduce that
3 threshold, or waive the matching fund re-
4 quirement under this subparagraph, if—

5 “(I) the area proposed to be
6 served by the project is a high cost
7 area;

8 “(II) the applicable eligible entity
9 or the State can establish that the re-
10 duction or waiver, as applicable, is
11 necessary to ensure the deployment of
12 broadband in the area proposed to be
13 served by the project; and

14 “(III) the State gives a pref-
15 erence for other applications sub-
16 mitted by that eligible entity in which
17 the eligible entity does not seek such
18 a reduction or waiver;

19 “(B) periodic buildout milestones, report-
20 ing requirements, and certification by
21 broadband funding partners; and

22 “(C) a maximum buildout timeframe for a
23 broadband funding partner of 4 years, begin-
24 ning on the date on which funding is provided
25 to the broadband funding partner to undertake

1 a project, except that the State may extend that
 2 timeframe if the broadband funding partner es-
 3 tablishes that the failure to complete the project
 4 within that timeframe is due to—

5 “(i) delays by third parties, including
 6 governmental entities, in providing nec-
 7 essary permits, approvals, or access to (or
 8 construction of) poles; or

9 “(ii) a State or federally declared dis-
 10 aster;

11 “(7) contains sufficient notice, transparency,
 12 accountability, and oversight measures to—

13 “(A) provide the public and broadband
 14 funding partners with notice of the funding pro-
 15 vided under this section; and

16 “(B) deter waste, fraud, and abuse of pro-
 17 gram funds;

18 “(8) establishes procedures for the recovery of
 19 funds, in whole or in part, from a broadband fund-
 20 ing partner if the broadband funding partner—

21 “(A) defaults or fails to comply with the
 22 buildout requirements established for the
 23 project with respect to which the funding re-
 24 lates; and

1 “(B) has not received an extension under
2 paragraph (6)(C);

3 “(9) establishes procedures for expedited ap-
4 proval for all necessary access to (or construction of)
5 poles, dark or lit fiber, communications towers,
6 State and local rights-of-way permits, or other ap-
7 provals in the areas of the State served by projects
8 under the program;

9 “(10) provides that broadband funding partners
10 are not required to be designated as eligible tele-
11 communications carriers under section 214(e);

12 “(11) provides that an eligible entity shall grant
13 access to poles, ducts, conduits, and rights-of-way
14 that the eligible entity owns or controls within the
15 State at rates, terms, and conditions regulated by
16 the Commission under, or the State consistent with,
17 section 224 and the rules of the Commission (unless
18 application of the rules of the Commission would re-
19 sult in higher costs for the applicable item), without
20 regard to whether that section otherwise applies with
21 respect to those items;

22 “(12) except as otherwise explicitly provided in
23 this section, does not require, or include consider-
24 ation of, the imposition of any new or additional reg-
25 ulatory obligations on broadband funding partners

1 beyond those required under applicable Federal law;
2 and

3 “(13) maximizes the number of unserved loca-
4 tions proposed to be served by each project carried
5 out using the funds.

6 “(d) DISTRIBUTION OF FUNDS TO STATES.—

7 “(1) COMMISSION DISTRIBUTIONS.—

8 “(A) IN GENERAL.—Not later than 200
9 days after the date of enactment of this section,
10 or the date on which the maps created under
11 section 802(c)(1) are made public, whichever is
12 later, the Commission, under the program es-
13 tablished under subsection (b), and in accord-
14 ance with the requirements of this section,
15 shall, with respect to the amounts made avail-
16 able to carry out this section—

17 “(i) reserve 10 percent of those
18 amounts for distributions under subpara-
19 graph (B) to States that have established
20 programs under subsection (c); and

21 “(ii) of the amounts not reserved
22 under clause (i), make distributions under
23 paragraph (2) to States that have estab-
24 lished programs under subsection (c).

1 “(B) DISTRIBUTIONS FOR HIGH COST
2 AREAS.—The amount of a distribution to a
3 State under this subparagraph shall be cal-
4 culated as follows:

5 “(i) Divide the number of high cost
6 areas in the State by the total number of
7 high cost areas in the United States.

8 “(ii) Multiply the quotient obtained
9 under clause (i) by the total amount re-
10 served under subparagraph (A)(i).

11 “(2) AMOUNT OF DISTRIBUTIONS FOR PROJECT
12 AWARDS.—The amount of a distribution to a State
13 under paragraph (1) shall be calculated as follows:

14 “(A) Divide the number of locations in
15 unserved areas in the State by the total number
16 of locations in unserved areas in the United
17 States, as determined in accordance with the
18 maps created under section 802(c)(1).

19 “(B) Multiply the quotient obtained under
20 subparagraph (A) of this paragraph by the
21 amount described in paragraph (1)(A)(ii).

22 “(3) STATE ENTITLEMENT.—With respect to a
23 State that has established a program under sub-
24 section (c), the State shall receive a distribution

1 under both of paragraphs (1)(B) and (2) of this sub-
2 section.

3 “(e) STATE USE OF PROGRAM FUNDS.—

4 “(1) IN GENERAL.—Not later than 120 days
5 after the date on which a State receives funds under
6 subsection (d), and subject to paragraph (2), the
7 State shall make awards to eligible entities through
8 the program established by the State under sub-
9 section (c).

10 “(2) FUNDS USED SOLELY FOR UNSERVED
11 AREAS.—A State to which funds are distributed
12 under subsection (d)—

13 “(A) may not—

14 “(i) use any portion of those funds for
15 a project in any area that is not an
16 unserved area, except that such a project
17 may deploy infrastructure that traverses a
18 served area in order to provide broadband
19 service to an unserved area; or

20 “(ii) use more than 5 percent of those
21 funds to administer the program estab-
22 lished by the State under subsection (c);

23 “(B) shall—

24 “(i) before making any awards de-
25 scribed in paragraph (1), consult the maps

1 created under section 802(c)(1), as up-
2 dated through the resolution of any chal-
3 lenges brought under section 802(b)(5), to
4 create a list of areas within the State that
5 are unserved areas, which the State shall
6 make publicly available;

7 “(ii) from the list created under
8 clause (i), remove any area in the State
9 that is the subject of an enforceable com-
10 mitment by a broadband service provider
11 to provide broadband service to the area
12 with minimum speed commitments de-
13 scribed in subclause (III), even if, in any
14 such area, the broadband service is not yet
15 available, provided that the broadband
16 service provider is meeting any applicable
17 build-out deadlines, including with respect
18 to an award disbursed under—

19 “(I) the Rural Digital Oppor-
20 tunity Fund Phase I auction provided
21 for in the Report and Order in the
22 matter of Rural Digital Opportunity
23 Fund and Connect America Fund
24 adopted by the Commission on Janu-
25 ary 30, 2020 (FCC 20–5);

1 “(II) subpart D of part 54 of
2 title 47, Code of Federal Regulations,
3 or any successor regulations;

4 “(III) any Rural Utilities Service
5 broadband funding program with a
6 minimum speed commitment of 25
7 megabits per second for downloads
8 and 3 megabits per second for
9 uploads; or

10 “(IV) any existing program es-
11 tablished by the State with minimum
12 speed commitments described in sub-
13 clause (III);

14 “(iii) establish a streamlined process
15 that allows a broadband service provider,
16 the State, or a unit of local government
17 within the State not less than 30 days
18 after the date on which the list created
19 under clause (i), as updated under clause
20 (ii), is made publicly available to bring a
21 challenge regarding whether an area on
22 that final list is an unserved area;

23 “(iv) provide a written notice regard-
24 ing how each challenge brought under

1 clause (iii) was decided, including the rea-
2 sons for that decision;

3 “(v) update the list created under
4 clause (i), as updated under clause (ii), to
5 reflect the results of challenges brought
6 under clause (iii);

7 “(vi) not later than 10 years after the
8 date of enactment of this section, return
9 any unused portion of those funds to the
10 Commission;

11 “(vii) not later than 2 years after the
12 date on which the funds are distributed to
13 the State, and biennially thereafter, submit
14 to the Commission a report—

15 “(I) regarding how the State
16 spent those funds during the period
17 covered by the report, which shall in-
18 clude a description of each award
19 made with those funds; and

20 “(II) that contains a certification
21 that the State has complied with the
22 requirements of this section during
23 the period covered by the report; and

24 “(viii) match not less than 25 percent
25 of the amount of those funds, as confirmed

1 by the Commission in a manner deter-
 2 mined by the Commission; and

3 “(C) to satisfy the requirement under sub-
 4 paragraph (B)(viii), may use any manner of im-
 5 plementation that the State determines appro-
 6 priate, including by using funds—

7 “(i) the source of which is a local gov-
 8 ernment in the State; or

9 “(ii)(I) that were provided to the
 10 State under—

11 “(aa) the Families First
 12 Coronavirus Response Act (Public
 13 Law 116–127; 134 Stat. 178);

14 “(bb) the CARES Act (Public
 15 Law 116–136; 134 Stat. 281);

16 “(cc) the Consolidated Appro-
 17 priations Act, 2021 (Public Law 116–
 18 260; 134 Stat. 1182);

19 “(dd) the American Rescue Plan
 20 Act of 2021 (Public Law 117–2; 135
 21 Stat. 4); or

22 “(ee) any amendment made by
 23 an Act described in any of items (aa)
 24 through (dd); and

1 “(II) the purpose of which, as de-
 2 scribed in the applicable provision of law
 3 described in subclause (I), is for the de-
 4 ployment of broadband service.

5 “(f) PROJECT REQUIREMENTS.—With respect to a
 6 project funded through the program established under
 7 subsection (b)—

8 “(1) the project shall—

9 “(A) adhere to the same quality-of-service
 10 standards established by the Commission with
 11 respect to the Rural Digital Opportunity Fund
 12 set forth in subpart J of part 54 of title 47,
 13 Code of Federal Regulations (or any successor
 14 regulations);

15 “(B) provide reliable broadband service at
 16 a speed of not less than 100 megabits per sec-
 17 ond for downloads and 20 megabits per second
 18 for uploads; and

19 “(C) offer a low-cost broadband service op-
 20 tion for low-income subscribers, as defined by
 21 the Commission, with the price and eligibility
 22 for the service option determined by the appli-
 23 cable broadband funding partner; and

24 “(2) the applicable broadband funding partner,
 25 in collaboration with the applicable State, shall carry

1 out public awareness campaigns in service areas that
2 are designed to highlight the value and benefits of
3 broadband service in order to increase the adoption
4 of broadband service by consumers.

5 “(g) PROMOTING BROADBAND DEPLOYMENT.—Not
6 later than 1 year after the date on which a State receives
7 funding under this section, the State shall publish on a
8 publicly available website of the State a report that ana-
9 lyzes the following:

10 “(1) The process by which the State, or any
11 local authority within the State, acts on a new re-
12 quest to access poles, ducts, conduits, or rights-of-
13 way, which shall include an analysis of—

14 “(A) the speed with which the State or
15 local authority, as applicable, responds to such
16 a request; and

17 “(B) the impact that granting such a re-
18 quest not later than 30 days after the date on
19 which the request is submitted would have on
20 the speed at which broadband service is de-
21 ployed in the State.

22 “(2) The process by which the State, or any
23 local authority within the State, acts on a non-
24 emergency request for authorization to place, con-
25 struct, or modify facilities with respect to broadband

1 service that are supported through access to poles,
2 ducts, conduits, or rights-of-way, which shall include
3 an analysis of—

4 “(A) the speed with which the State or
5 local authority, as applicable, responds to such
6 a request; and

7 “(B) the impact that granting such a re-
8 quest not later than 30 days after the date on
9 which the request is submitted would have on
10 the speed at which broadband service is de-
11 ployed in the State.

12 “(3) The impact on the deployment of
13 broadband service within the State of not requiring
14 a permit or other authorization for emergency work
15 performed in the rights-of-way if a broadband facil-
16 ity supported through access to poles, ducts, con-
17 duits, dark or lit fiber, or rights-of-way notifies the
18 State, or the applicable local authority within the
19 State, regarding the emergency and the associated
20 work.

21 “(4) The impact on the deployment of
22 broadband service within the State of requiring the
23 State, or any instrumentality of the State, whenever
24 the State or instrumentality intends to modify or
25 alter a pole, duct, conduit, dark or lit fiber, or right-

1 of-way, or conduct road work in which there will be
 2 open trenches, to provide prior written notification
 3 of that action to any broadband service provider, or
 4 other entity, that has obtained an attachment to a
 5 pole, duct, or conduit, or right-of-way that may be
 6 affected, so that the applicable entity may have a
 7 reasonable opportunity to add to or modify its exist-
 8 ing attachment or facilities.

9 “(h) GUIDANCE.—The Commission may provide
 10 guidance to States with respect to service obligations, pro-
 11 cedures, reporting requirements, and other requirements
 12 in carrying out programs established under this section.

13 “(i) RULE OF CONSTRUCTION.—Nothing in this sec-
 14 tion may be construed to permit the Commission to use
 15 any data submitted by a provider of broadband service
 16 under this section to issue or establish additional regu-
 17 latory requirements with respect to that provider.”; and

18 (2) in section 802(c) (47 U.S.C. 642(c))—

19 (A) in paragraph (1)(A)—

20 (i) in clause (i), by striking “and” at
 21 the end;

22 (ii) in clause (ii), by adding “and”
 23 after the semicolon at the end; and

24 (iii) by adding at the end the fol-
 25 lowing:

1 “(iii) the areas of the United States in
 2 which options described in section
 3 14(f)(1)(C) are available;”;

4 (B) in paragraph (5), by striking “and” at
 5 the end;

6 (C) in paragraph (6)—

7 (i) in the matter preceding subpara-
 8 graph (A), by inserting “, including on a
 9 publicly available website,” after “make
 10 public”; and

11 (ii) in subparagraph (B), by striking
 12 the period at the end and inserting “;
 13 and”; and

14 (D) by adding at the end the following:

15 “(7) beginning not later than 18 months after
 16 the date of enactment of the American Broadband
 17 Buildout to Eliminate America’s Digital Divide Act
 18 of 2021, ensure that the publicly available website
 19 described in paragraph (6)—

20 “(A) allows a consumer to determine,
 21 based on financial information entered by the
 22 consumer, whether the consumer is eligible—

23 “(i) to receive a Federal or State sub-
 24 sidy with respect to broadband internet ac-
 25 cess service; or

1 “(ii) to qualify for a low-income plan
2 with respect to broadband internet access
3 service; and

4 “(B) with respect to a consumer who is eli-
5 gible under clause (i) or (ii) of subparagraph
6 (A), contains information regarding how to
7 apply for the applicable benefit.”.

8 (b) DIRECT APPROPRIATION.—There is appropriated
9 to the Federal Communications Commission, out of any
10 money in the Treasury not otherwise appropriated,
11 \$40,000,000,000 for fiscal year 2021 to carry out section
12 14 of the Communications Act of 1934, as added by sub-
13 section (a)(1), which shall remain available through fiscal
14 year 2030.

○