

117TH CONGRESS
1ST SESSION

S. 944

To amend the Communications Act of 1934 to establish a program to expand access to broadband in unserved and underserved areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2021

Mr. GRAHAM (for himself and Mr. SCOTT of South Carolina) 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 establish a program to expand access to broadband in unserved and underserved areas, 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 “State Funding for
5 Internet Expansion Act of 2021” or the “State Fix Act
6 of 2021”.

1 **SEC. 2. EXPANSION OF BROADBAND ACCESS.**

2 Title I of the Communications Act of 1934 (47
3 U.S.C. 151 et seq.) is amended by adding at the end the
4 following:

5 **“SEC. 14. EXPANSION OF BROADBAND ACCESS.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ANCHOR INSTITUTION.—The term ‘anchor
8 institution’ means—

9 “(A) a public or private elementary school
10 or secondary school, as those terms are defined
11 in section 8101 of the Elementary and Sec-
12 ondary Education Act of 1965 (20 U.S.C.
13 7801);

14 “(B) a library;

15 “(C) a medical or healthcare provider;

16 “(D) a museum;

17 “(E) a public safety entity;

18 “(F) public housing;

19 “(G) an institution of higher education, as
20 that term is defined in section 101 of the High-
21 er Education Act of 1965 (20 U.S.C. 1001), in-
22 cluding a community college; or

23 “(H) any other community support organi-
24 zation or agency.

25 “(2) AREA.—The term ‘area’ means the geo-
26 graphic unit of measurement with the greatest level

1 of granularity that is reasonably feasible for the
 2 Commission to use in making eligibility determina-
 3 tions under this section and in meeting the require-
 4 ments and deadlines under this section.

5 “(3) ASSISTANT SECRETARY.—The term ‘As-
 6 sistant Secretary’ means the Assistant Secretary of
 7 Commerce for Communications and Information.

8 “(4) BROADBAND.—The term ‘broadband’—

9 “(A) has the meaning given the term
 10 ‘broadband internet access service’ in section
 11 8.1(b) of title 47, Code of Federal Regulations,
 12 or any successor regulation;

13 “(B) includes any service that is the func-
 14 tional equivalent of the service described in sub-
 15 paragraph (A); and

16 “(C) does not include dial-up internet ac-
 17 cess service.

18 “(5) COVERED ENTITY.—The term ‘covered en-
 19 tity’—

20 “(A) means an entity that—

21 “(i) is owned by, controlled by, affili-
 22 ated with, or acting at the direction of an
 23 entity that is organized under the laws of,
 24 or otherwise subject to the jurisdiction of,
 25 a country, the government of which is on

1 the priority watch list established by the
2 United States Trade Representative pursu-
3 ant to section 182(a) of the Trade Act of
4 1974 (19 U.S.C. 2242(a)); and

5 “(ii) has engaged in an action that is
6 prohibited under—

7 “(I) section 1(a) of Executive
8 Order 13873 (84 Fed. Reg. 22689;
9 relating to securing the information
10 and communications technology and
11 services supply chain); or

12 “(II) any regulations issued in
13 response to the Executive Order de-
14 scribed in subclause (I); and

15 “(B) includes any subsidiary, affiliate, em-
16 ployee, or representative of, and any related
17 party with respect to, an entity described in
18 subparagraph (A), without regard to the loca-
19 tion or jurisdiction of incorporation of that sub-
20 sidiary, affiliate, employee, representative, or
21 party, as applicable.

22 “(6) FUNDING RECIPIENT.—The term ‘funding
23 recipient’ means an entity that receives funding for
24 a project under this section.

1 “(7) PROGRAM.—Unless otherwise expressly in-
2 dicated, the term ‘program’ means the program es-
3 tablished under subsection (b).

4 “(8) PROJECT.—The term ‘project’ means a
5 project that uses funding made available under this
6 section to construct and deploy infrastructure for
7 the provision of broadband.

8 “(9) PUBLIC HOUSING.—The term ‘public hous-
9 ing’—

10 “(A) has the meaning given the term in
11 section 3(b) of the United States Housing Act
12 of 1937 (42 U.S.C. 1437a(b)); and

13 “(B) includes housing receiving tenant-
14 based rental assistance provided under section
15 8(o) of the United States Housing Act of 1937
16 (42 U.S.C. 1437f(o)).

17 “(10) REVERSE AUCTION.—The term ‘reverse
18 auction’ means an auction in which—

19 “(A) bids are submitted for a project by
20 the entities that would construct or deploy in-
21 frastructure for the provision of broadband
22 under the project; and

23 “(B) the winning bid is the bid that pro-
24 poses serving an area for the lowest cost, taking

1 into consideration the preferences under sub-
2 section (d)(2).

3 “(11) UNDERSERVED AREA.—The term ‘under-
4 served area’ means an area in which more than 10
5 percent, but not more than 50 percent, of the popu-
6 lation of the area has access to broadband—

7 “(A) with a download speed of not less
8 than 25 megabits per second and not more than
9 50 megabits per second; and

10 “(B) with an upload speed of not less than
11 3 megabits per second.

12 “(12) UNSERVED ANCHOR INSTITUTION.—The
13 term ‘unserved anchor institution’ means an anchor
14 institution that does not have access to broadband
15 offered—

16 “(A) with a download speed of not less
17 than 100 megabits per second; and

18 “(B) with an upload speed of not less than
19 10 megabits per second.

20 “(13) UNSERVED AREA.—The term ‘unserved
21 area’ means an area in which not more than 10 per-
22 cent of the population of the area has access to
23 broadband—

24 “(A) with a download speed of not less
25 than 25 megabits per second; and

1 “(B) with an upload speed of not less than
2 3 megabits per second.

3 “(b) PROGRAM ESTABLISHED.—Not later than 300
4 days after the date of enactment of this section, the Com-
5 mission, in consultation with the Assistant Secretary, shall
6 establish a program—

7 “(1) to expand access to broadband in unserved
8 areas and underserved areas, and for unserved an-
9 chor institutions, in accordance with the require-
10 ments of this section; and

11 “(2) that—

12 “(A) is separate from any universal service
13 program established under section 254; and

14 “(B) does not require a funding recipient
15 to be designated as an eligible telecommuni-
16 cations carrier under section 214(e).

17 “(c) USE OF PROGRAM FUNDS.—

18 “(1) PUBLIC NOTICE.—

19 “(A) IN GENERAL.—Not later than 300
20 days after the date of enactment of this section,
21 the Commission shall publish in the Federal
22 Register a notice informing each State and the
23 public that amounts made available to carry out
24 this section shall be distributed under this sub-
25 section.

1 “(B) CONTENTS.—The notice published
2 under subparagraph (A) shall include—

3 “(i) the manner in which a State shall
4 inform the Commission of the acceptance
5 by that State, in whole or in part, of the
6 amounts to be distributed to the State
7 under this subsection;

8 “(ii) a notification that the acceptance
9 described in clause (i) shall be due on the
10 date that is 45 days after the date on
11 which the Commission issues the public no-
12 tice; and

13 “(iii) the requirements with respect to
14 the use of the distributed amounts under
15 this section and under any further require-
16 ments that the Commission may prescribe.

17 “(2) ACCEPTANCE BY STATES.—Not later than
18 45 days after the date on which the Commission
19 publishes the notice required under paragraph (1),
20 each State accepting amounts to be distributed
21 under this subsection shall inform the Commission
22 of the acceptance, in whole or in part, by the State
23 of those amounts in the manner described by the
24 Commission in the notice.

1 “(3) EXPANDING ACCESS TO BROADBAND
2 THROUGH STATES.—

3 “(A) IN GENERAL.—Not later than 1 year
4 after the date of enactment of this section, the
5 Commission shall distribute amounts made
6 available to carry out this section among the
7 States that have agreed to accept the funds.

8 “(B) FORMULAS.—The amount that a
9 State receives under subparagraph (A) shall be
10 the sum of—

11 “(i) the amount obtained by—

12 “(I) dividing the number of indi-
13 viduals living in unserved areas in the
14 State by the total number of individ-
15 uals living in unserved areas in the
16 United States; and

17 “(II) multiplying 80 percent of
18 the amount made available to carry
19 out this section by the quotient ob-
20 tained under subclause (I); and

21 “(ii) the amount obtained by—

22 “(I) dividing the number of indi-
23 viduals living in underserved areas in
24 the State by the total number of indi-

1 viduals living in underserved areas in
2 the United States; and

3 “(II) multiplying 20 percent of
4 the amount made available to carry
5 out this section by the quotient ob-
6 tained under subclause (I).

7 “(4) REQUIREMENTS FOR STATE RECEIPT OF
8 AMOUNTS DISTRIBUTED.—Each State accepting
9 amounts distributed under this subsection—

10 “(A) may allocate those amounts only
11 through a statewide reverse auction or auctions,
12 in the manner prescribed by the State, subject
13 to the requirements of this section (including
14 the rules promulgated under subsection (g))
15 and any further requirements that the Commis-
16 sion may prescribe;

17 “(B) may make an allocation under sub-
18 paragraph (A) only—

19 “(i) to a funding recipient to expand
20 access to broadband in unserved areas
21 within the State;

22 “(ii) to a funding recipient to expand
23 access to broadband for unserved anchor
24 institutions located in the State; or

1 “(iii) if a State does not have, or no
2 longer has, an unserved area within the
3 State, to a funding recipient to expand ac-
4 cess to broadband in underserved areas in
5 the State;

6 “(C) shall—

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

11 “(ii) before accepting those amounts,
12 submit to the Commission a certification
13 that the State will comply with clause (i);
14 and

15 “(D) may not use more than 5 percent of
16 those amounts to administer a reverse auction
17 that complies with the requirements of this sec-
18 tion.

19 “(5) DISTRIBUTION OF REMAINING FUNDS.—In
20 the case of any amounts remaining after the
21 amounts made available to carry out this section are
22 distributed under this subsection, the Commission
23 shall transfer those amounts to the general fund of
24 the Treasury, where those transferred amounts shall
25 be dedicated for the sole purpose of deficit reduction.

1 “(d) PROGRAM REQUIREMENTS.—

2 “(1) TECHNOLOGY NEUTRALITY REQUIRED.—A
3 State administering a reverse auction to make
4 awards under subsection (c) may not favor a project
5 using any particular technology.

6 “(2) BIDDING PREFERENCE.—Consistent with
7 the program, there shall be a preference, as deter-
8 mined by the entity administering a reverse auction,
9 for a bidder in the reverse auction that proposes a
10 project that is described by any of the following:

11 “(A) Not less than 20 percent of the funds
12 provided by the bidder with respect to the
13 project are matched from private sources.

14 “(B) The project would expand access to
15 broadband on Tribal lands, as that term is de-
16 fined by the Commission.

17 “(C) The project would provide broadband
18 that has—

19 “(i) a latency of not more than 50
20 milliseconds; and

21 “(ii)(I) a download speed that is not
22 less than 100 megabits per second or an
23 upload speed of not less than 20 megabits
24 per second; or

1 “(II) a download speed of not less
 2 than 1 gigabit per second or an upload
 3 speed of not less than 100 megabits per
 4 second.

5 “(D) The project would expand access to
 6 broadband in advance of the time specified in
 7 subsection (g)(1)(D).

8 “(E) The project would expand access to
 9 broadband to areas in which the median house-
 10 hold income is below 150 percent of the poverty
 11 threshold, as defined by the Bureau of the Cen-
 12 sus.

13 “(F) The project would provide affordable
 14 payment options to subscribers in locations
 15 served.

16 “(3) NOTICE, TRANSPARENCY, ACCOUNT-
 17 ABILITY, AND OVERSIGHT REQUIRED.—The program
 18 shall contain sufficient notice, transparency, ac-
 19 countability, and oversight measures to—

20 “(A) provide the public with notice regard-
 21 ing the assistance provided under this section;
 22 and

23 “(B) deter waste, fraud, and abuse with
 24 respect to program funds.

1 “(4) COMPETENCE.—The program shall contain
2 sufficient processes and requirements, as established
3 by each State participating in the program, to en-
4 sure that each entity participating in a reverse auc-
5 tion conducted by the State—

6 “(A) is capable of carrying out the applica-
7 ble project in a manner that is competent and
8 that complies with all applicable Federal, State,
9 and local laws;

10 “(B) has the financial capacity to—

11 “(i) meet the buildout obligations of
12 the applicable project; and

13 “(ii) satisfy the requirements of this
14 section and any other further requirements
15 that the Commission may prescribe in car-
16 rying out this section; and

17 “(C) has the technical and operational ca-
18 pacity to provide broadband in the manner con-
19 templated by any bid placed by the entity dur-
20 ing the reverse auction, which shall include a
21 detailed consideration of—

22 “(i) the prior performance of the enti-
23 ty in constructing broadband infrastruc-
24 ture in rural areas; and

1 “(ii) the capability of the proposed in-
2 frastructure to be constructed and de-
3 ployed by the entity to provide the pro-
4 posed broadband services in the area that
5 the infrastructure would serve.

6 “(e) PROJECT REQUIREMENTS.—Any project funded
7 through the program shall satisfy the following require-
8 ments:

9 “(1) The project shall adhere to quality-of-serv-
10 ice standards established by the Commission.

11 “(2) The project—

12 “(A) shall offer broadband that, at a min-
13 imum, provides—

14 “(i) a download speed of not less than
15 the greater of—

16 “(I) 50 megabits per second; or

17 “(II) the download speed re-
18 quired for an internet service to qual-
19 ify as an advanced telecommuni-
20 cations capability, as defined in sec-
21 tion 706(d) of the Telecommuni-
22 cations Act of 1996 (47 U.S.C.
23 1302(d));

24 “(ii) an upload speed of not less than
25 the greater of—

1 “(I) 10 megabits per second; or

2 “(II) the upload speed required
3 for an internet service to qualify as an
4 advanced telecommunications capa-
5 bility, as defined in section 706(d) of
6 the Telecommunications Act of 1996
7 (47 U.S.C. 1302(d)); and

8 “(iii) a latency of not more than 100
9 milliseconds; and

10 “(B) may offer broadband that, at a min-
11 imum, provides—

12 “(i) a download speed of not less than
13 25 megabits per second;

14 “(ii) an upload speed of not less than
15 3 megabits per second; and

16 “(iii) a latency of not more than 100
17 milliseconds.

18 “(3) The project shall incorporate prudent cy-
19 bersecurity and supply chain risk management prac-
20 tices, as specified by the Commission in the rules
21 promulgated under subsection (g), after consultation
22 with the Director of the National Institute of Stand-
23 ards and Technology and the Assistant Secretary.

24 “(4)(A) Any laborer or mechanic employed by
25 any contractor or subcontractor in the performance

1 of work on the project shall be paid wages at rates
 2 not less than those prevailing on similar construction
 3 in the locality, as determined by the Secretary of
 4 Labor under subchapter IV of chapter 31 of title 40,
 5 United States Code (commonly referred to as the
 6 ‘Davis-Bacon Act’).

7 “(B) With respect to the labor standards speci-
 8 fied in subparagraph (A), the Secretary of Labor
 9 shall have the authority and functions set forth in
 10 Reorganization Plan Numbered 14 of 1950 (64 Stat.
 11 1267; 5 U.S.C. App.) and section 3145 of title 40,
 12 United States Code.

13 “(5) The funding recipient may not purchase
 14 any materials, products, or services from a covered
 15 entity.

16 “(f) DETERMINATIONS REGARDING UNSERVED AND
 17 UNDERSERVED AREAS.—

18 “(1) INITIAL DETERMINATION.—

19 “(A) IN GENERAL.—Not later than 120
 20 days after the date of enactment of this section,
 21 the Commission shall, for the purposes of any
 22 reverse auction conducted under this section,
 23 make an initial determination as to—

24 “(i) whether an area is an unserved
 25 area or an underserved area; and

1 “(ii) whether an anchor institution is
2 an unserved anchor institution.

3 “(B) RESOURCES.—In making a deter-
4 mination under subparagraph (A), the Commis-
5 sion shall—

6 “(i) to the extent practicable, use the
7 National Broadband Availability Map cre-
8 ated by the Assistant Secretary;

9 “(ii) to the extent practicable, use
10 data from the Broadband Serviceable Lo-
11 cation Fabric established under section
12 802(b)(1)(B);

13 “(iii) consider other data obtained or
14 purchased by the Commission that relates
15 to access to broadband;

16 “(iv) consider other publicly available
17 data or information regarding access to
18 broadband; and

19 “(v) consider other publicly available
20 data or information on State broadband
21 deployment programs and any additional
22 information States have on their constitu-
23 ents’ broadband access.

24 “(2) CHALLENGE PROCESS.—The Commission
25 shall provide for a process—

1 “(A) for challenging any initial determina-
2 tion under paragraph (1);

3 “(B) that, at a minimum, provides not less
4 than 45 days for a person to voluntarily submit
5 information concerning—

6 “(i) the broadband offered in the ap-
7 plicable area; or

8 “(ii) the broadband offered to an an-
9 chor institution, if applicable; and

10 “(C) that is sufficiently streamlined such
11 that a reasonably prudent person that submits
12 verified data, or meets other requirements im-
13 posed by the Commission, may easily challenge
14 an initial determination made under paragraph
15 (1) with little burden on that person.

16 “(3) REBUTTAL PERIOD.—The Commission
17 shall provide for a 30-day period, beginning on the
18 day after the last day of the challenge process under
19 paragraph (2), during which a person may submit a
20 rebuttal to any challenge brought under that para-
21 graph.

22 “(4) FINAL DETERMINATIONS.—Not later than
23 255 days after the date of enactment of this section,
24 and after taking into consideration the challenges
25 brought under paragraph (2) and rebuttals sub-

1 mitted under paragraph (3), the Commission shall
2 make a final determination of—

3 “(A) the areas that are unserved areas or
4 underserved areas; and

5 “(B) the anchor institutions that are
6 unserved anchor institutions.

7 “(g) RULEMAKING, DISTRIBUTION, AND AWARD OF
8 FUNDS.—

9 “(1) IN GENERAL.—Not later than 255 days
10 after the date of enactment of this section, the Com-
11 mission, in consultation with the Assistant Sec-
12 retary, shall promulgate rules that accomplish the
13 following:

14 “(A) Implement the requirements of this
15 section.

16 “(B) Establish the design of, and require-
17 ments for, a reverse auction conducted by a
18 State under this section.

19 “(C) Establish notice requirements for all
20 reverse auctions conducted under this section
21 that, at a minimum, and in accordance with the
22 determinations made under subsection (f), pro-
23 vide the public with notice of—

24 “(i) the initial determination of which
25 areas are unserved areas or underserved

1 areas under paragraph (1) of that sub-
2 section;

3 “(ii) the final determination of which
4 areas are unserved areas or underserved
5 areas under paragraph (4) of that sub-
6 section, after the processes for challenging
7 the initial determination and for rebutting
8 any such challenge have concluded; and

9 “(iii) with respect to a particular re-
10 verse auction, which entities have applied
11 to bid for funding.

12 “(D) With respect to a funding recipient
13 that receives funding under this section for a
14 project, provide that, not later than 6 years
15 after the date on which the funding recipient
16 receives the funding, the funding recipient shall
17 provide service to not less than 80 percent of
18 the areas proposed to be served by the project.

19 “(E) Establish broadband buildout mile-
20 stones and periodic certification by funding re-
21 cipients to ensure compliance with the
22 broadband buildout milestones.

23 “(F) Establish periodic reporting require-
24 ments for funding recipients that require those
25 funding recipients to identify, at a minimum,

1 with respect to the project to which the funding
2 relates—

3 “(i) the technology used;

4 “(ii) the level of service offered; and

5 “(iii) the percentage of the applicable
6 area served.

7 “(G) Establish mechanisms to reduce
8 waste, fraud, and abuse within the program
9 with respect to any reverse auction conducted
10 under this section.

11 “(H) Establish processes to—

12 “(i) assist States in conducting state-
13 wide reverse auctions;

14 “(ii) coordinate with States to ensure
15 that funds disbursed by the Commission
16 and program funds awarded by the States
17 are not used to expand access to
18 broadband in the same unserved areas;

19 “(iii) ensure the efficient use of pro-
20 gram funds by coordinating with other
21 Federal programs that expand access to
22 broadband, such as—

23 “(I) the program set forth under
24 subpart D of part 54 of title 47, Code

1 of Federal Regulations (or any suc-
2 cessor regulations);

3 “(II) the program set forth under
4 subpart J of part 54 of title 47, Code
5 of Federal Regulations (or any suc-
6 cessor regulations); and

7 “(III) the broadband loan and
8 grant pilot program known as the
9 ‘Rural eConnectivity Pilot Program’
10 or the ‘ReConnect Program’ author-
11 ized under section 779 of division A of
12 the Consolidated Appropriations Act,
13 2018 (Public Law 115–141; 132 Stat.
14 399); and

15 “(iv) ensure that each participating
16 State conducts a reverse auction in a man-
17 ner that—

18 “(I) achieves the goals of this
19 section; and

20 “(II) does not conflict with the
21 rules of, or reverse auctions conducted
22 by, the Commission.

23 “(2) SENSE OF CONGRESS.—It is the sense of
24 Congress that, in conducting the rulemaking under
25 paragraph (1), the Commission should consider

1 using milestones for completion under the program
 2 that are similar to those with respect to the program
 3 set forth under subpart J of part 54 of title 47,
 4 Code of Federal Regulations (or any successor regu-
 5 lations).

6 “(3) STATE RULEMAKING REQUIREMENTS.—A
 7 State that accepts funding under the program shall
 8 promulgate rules that establish—

9 “(A) standard penalties for any funding
 10 recipient or project that does not comply with
 11 this section or with any additional requirements
 12 imposed by the State with respect to a reverse
 13 auction conducted by the State; and

14 “(B) procedures for the recovery of funds,
 15 in whole or in part, from a funding recipient if
 16 the funding recipient, or the project carried out
 17 by the funding recipient, fails to comply with
 18 the requirements of this section or with any ad-
 19 ditional requirements imposed by the State with
 20 respect to a reverse auction conducted by the
 21 State.

22 “(h) REPORTS REQUIRED.—

23 “(1) INSPECTOR GENERAL AND COMPTROLLER
 24 GENERAL ANNUAL REPORTS.—Not later than 1 year
 25 after the date on which funds are first awarded

1 under the program, and annually thereafter through
2 fiscal year 2030, the Inspector General of the Com-
3 mission and the Comptroller General of the United
4 States shall submit to the Committee on Commerce,
5 Science, and Transportation of the Senate and the
6 Committee on Energy and Commerce of the House
7 of Representatives a report that—

8 “(A) reviews the program for the year cov-
9 ered by the report; and

10 “(B) includes any recommendations to ad-
11 dress waste, fraud, and abuse with respect to
12 the program.

13 “(2) STATE REPORTS.—A State that, in a year,
14 receives funds under the program shall submit to the
15 Commission—

16 “(A) a report regarding how those funds
17 were spent during the applicable year; and

18 “(B) a certification that the State, for that
19 year, has complied with the requirements of this
20 section and with any further requirements pre-
21 scribed by the Commission in carrying out this
22 section, including a description of services pro-
23 vided with those funds and the number of loca-
24 tions to which broadband service was provided
25 with those funds.

1 “(i) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Commission
3 \$20,000,000,000 for fiscal year 2021 to carry out the pro-
4 gram, which shall remain available through fiscal year
5 2030.”.

