

117TH CONGRESS
1ST SESSION

S. 922

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

MARCH 23, 2021

Mr. CORNYN (for himself and Mr. MANCHIN) 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 “Eliminate the Digital
5 Divide Act of 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 provides
7 broadband service, that has submitted to the Com-
8 mission, in addition to any data required to be sub-
9 mitted under section 802, data regarding the service
10 option described in subsection (f)(2) that the entity
11 would offer if the entity were to receive funding
12 under this section.

13 “(4) HIGH COST AREA.—The term ‘high cost
14 area’ means an unserved area in which the cost of
15 building out broadband service is higher, as com-
16 pared with the average such cost in the United
17 States (and as determined by the Commission), be-
18 cause of—

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

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

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

22 “(D) a high rate of poverty in the area; or

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

1 “(5) LOCATION.—The term ‘location’ has the
2 meaning given the term by the Commission under
3 rules and guidance that are in effect, as of the date
4 of enactment of this section.

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

9 “(7) UNSERVED AREA.—The term ‘unserved
10 area’ means an area that—

11 “(A) is of a standard size, as established
12 by the Commission; and

13 “(B) as determined in accordance with the
14 maps created under section 802(c)(1)—

15 “(i) has no access to broadband serv-
16 ice; or

17 “(ii) does not have access to
18 broadband service offered—

19 “(I) with a download speed of at
20 least 25 megabits per second and an
21 upload speed of at least 3 megabits
22 per second; or

23 “(II) with download and upload
24 speeds that are established as bench-

1 marks by the Commission after the
2 date of enactment of this section.

3 “(b) PROGRAM ESTABLISHED.—

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

11 “(2) RELATIONSHIP TO UNIVERSAL SERVICE.—

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

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

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

20 “(2) does not favor the use of any particular
21 technology or any particular eligible entity;

22 “(3) encourages all eligible entities, including
23 small broadband providers, to participate in the pro-
24 gram through streamlined regulatory requirements
25 for all broadband funding partners;

1 “(4) takes into account—

2 “(A) the size and scope of each unserved
3 area, and the number of locations, proposed to
4 be served by each project carried out using the
5 funds;

6 “(B) the speed of the broadband service
7 provided by eligible entities seeking funding for
8 projects under the program; and

9 “(C) the ability of the eligible entities that
10 would receive funding for projects under the
11 program to complete the proposed deployment
12 and provision of broadband service under those
13 projects in the areas served by the projects;

14 “(5) may take into account—

15 “(A) the size and proportion of the match-
16 ing funds proposed to be committed by the eli-
17 gible entities seeking funding for projects under
18 the program, which may not be provided from
19 any funds derived from government grants,
20 loans, or subsidies;

21 “(B) the speed with which the eligible enti-
22 ties seeking funding for projects under the pro-
23 gram can complete the proposed deployment
24 and provision of broadband service to house-
25 holds under those projects, which may include

1 a review of the topographical effects on the
2 areas being served those projects as a result of
3 the technology to be deployed under those
4 projects; and

5 “(C) whether an eligible entity seeking
6 funding for a project under the program has
7 the ability to leverage nearby or adjacent
8 broadband service provided by the eligible entity
9 to facilitate the deployment and provision of
10 broadband service proposed under that project;

11 “(6) establishes—

12 “(A) periodic buildout milestones, report-
13 ing requirements, and certification by
14 broadband funding partners; and

15 “(B) a maximum buildout timeframe for a
16 broadband funding partner of 3 years, begin-
17 ning on the date on which funding is provided
18 to the broadband funding partner to undertake
19 a project, except that the State may extend that
20 timeframe if the broadband funding partner es-
21 tablishes that the failure to complete the project
22 within that timeframe is due to—

23 “(i) delays by third parties, including
24 governmental entities, in providing nec-

1 necessary permits, approvals, or access to (or
2 construction of) poles; or

3 “(ii) a State or federally declared dis-
4 aster;

5 “(7) contains sufficient notice, transparency,
6 accountability, and oversight measures to—

7 “(A) provide the public and broadband
8 funding partners with notice of the funding pro-
9 vided under this section; and

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

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

15 “(A) defaults or fails to comply with the
16 buildout requirements established for the
17 project with respect to which the funding re-
18 lates; and

19 “(B) has not received an extension under
20 paragraph (6)(B);

21 “(9) establishes procedures for expedited ap-
22 proval for all necessary access to (or construction of)
23 poles, State and local rights-of-way permits, or other
24 approvals in the areas of the State served by
25 projects under the program;

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

4 “(11) provides that an eligible entity shall grant
5 access to poles, ducts, conduits, and rights-of-way
6 that the eligible entity owns or controls within the
7 State at rates, terms, and conditions regulated by
8 the Commission under, or the State consistent with,
9 section 224 and the rules of the Commission, with-
10 out regard to whether that section otherwise applies
11 with respect to those items; and

12 “(12) except as otherwise explicitly provided in
13 this section, does not require, or include consider-
14 ation of, the imposition of any new or additional reg-
15 ulatory obligations on broadband funding partners
16 beyond those required under applicable law.

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

18 “(1) COMMISSION DISTRIBUTIONS.—

19 “(A) IN GENERAL.—Not later than 200
20 days after the date of enactment of this section,
21 or the date on which the maps created under
22 section 802(e)(1) are made public, whichever is
23 later, the Commission, under the program es-
24 tablished under subsection (b), and in accord-
25 ance with the requirements of this section,

1 shall, with respect to the amounts made avail-
2 able to carry out this section—

3 “(i) reserve 10 percent of those
4 amounts for distributions under subpara-
5 graph (B) to States that have established
6 programs under subsection (c); and

7 “(ii) of the amounts not reserved
8 under clause (i), make distributions under
9 paragraph (2) to States that have estab-
10 lished programs under subsection (c).

11 “(B) DISTRIBUTIONS FOR HIGH COST
12 AREAS.—The amount of a distribution to a
13 State under this subparagraph shall be cal-
14 culated as follows:

15 “(i) Divide the number of high cost
16 areas in the State by the total number of
17 high cost areas in the United States.

18 “(ii) Multiply the quotient obtained
19 under clause (i) by the total amount re-
20 served under subparagraph (A)(i).

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

24 “(A) Divide the number of locations in
25 unserved areas in the State by the total number

1 of locations in unserved areas in the United
2 States, as determined in accordance with the
3 maps created under section 802(c)(1).

4 “(B) Multiply the quotient obtained under
5 subparagraph (A) of this paragraph by the
6 amount described in paragraph (1)(A)(ii).

7 “(3) STATE ENTITLEMENT.—With respect to a
8 State that has established a program under sub-
9 section (c), the State shall receive a distribution
10 under both of paragraphs (1)(B) and (2) of this sub-
11 section.

12 “(e) STATE USE OF PROGRAM FUNDS.—

13 “(1) IN GENERAL.—Not later than 120 days
14 after the date on which a State receives funds under
15 subsection (d), and subject to paragraph (2), the
16 State shall make awards to eligible entities through
17 the program established by the State under sub-
18 section (c).

19 “(2) FUNDS USED SOLELY FOR UNSERVED
20 AREAS.—A State to which funds are distributed
21 under subsection (d)—

22 “(A) may not—

23 “(i) use any portion of those funds for
24 a project in any area that is not an
25 unserved area; or

1 “(ii) use more than 5 percent of those
2 funds to administer the program estab-
3 lished by the State under subsection (c);
4 and

5 “(B) shall—

6 “(i) before making any awards de-
7 scribed in paragraph (1), consult the maps
8 created under section 802(c)(1), as up-
9 dated through the resolution of any chal-
10 lenges brought under section 802(b)(5), to
11 create a list of areas within the State that
12 are unserved areas, which the State shall
13 make publicly available;

14 “(ii) from the list created under
15 clause (i), remove any area in the State
16 that—

17 “(I) has been awarded funding—

18 “(aa) in the Rural Digital
19 Opportunity Fund Phase I auc-
20 tion provided for in the Report
21 and Order in the matter of Rural
22 Digital Opportunity Fund and
23 Connect America Fund adopted
24 by the Commission on January
25 30, 2020 (FCC 20–5); or

1 “(bb) under subpart D of
2 part 54 of title 47, Code of Fed-
3 eral Regulations, or any suc-
4 cessor regulations;

5 “(II) has been awarded funding
6 through any Rural Utilities Service
7 broadband funding program with a
8 minimum speed commitment of 25
9 megabits per second for downloads
10 and 3 megabits per second for
11 uploads;

12 “(III) has been awarded funding
13 through any existing program estab-
14 lished by the State with minimum
15 speed commitments described in sub-
16 clause (II); or

17 “(IV) is the subject of an en-
18 forceable commitment by a broadband
19 provider to serve the area with min-
20 imum speed commitments described in
21 subclause (II), even if, in any such
22 areas, the service is not yet available,
23 provided that the broadband provider
24 is meeting any applicable build-out
25 deadlines;

1 “(iii) establish a streamlined process
2 that allows a broadband service provider,
3 the State, or a unit of local government
4 within the State not less than 30 days
5 after the date on which the list created
6 under clause (i), as updated under clause
7 (ii), is made publicly available to bring a
8 challenge regarding whether an area on
9 that final list is an unserved area;

10 “(iv) provide a written notice regard-
11 ing how each challenge brought under
12 clause (iii) was decided, including the rea-
13 sons for that decision;

14 “(v) update the list created under
15 clause (i) to reflect the results of chal-
16 lenges brought under clause (iii);

17 “(vi) not later than 10 years after the
18 date of enactment of this section, return
19 any unused portion of those funds to the
20 Commission; and

21 “(vii) not later than 2 years after the
22 date on which the funds are distributed to
23 the State, and biennially thereafter, submit
24 to the Commission a report—

1 “(I) regarding how the State
2 spent those funds during the period
3 covered by the report, which shall in-
4 clude a description of each award
5 made with those funds; and

6 “(II) that contains a certification
7 that the State has complied with the
8 requirements of this section during
9 the period covered by the report.

10 “(f) PROJECT REQUIREMENTS.—Any project funded
11 through the program established under subsection (b)
12 shall—

13 “(1) adhere to the same quality-of-service
14 standards established by the Commission with re-
15 spect to the Rural Digital Opportunity Fund set
16 forth in subpart J of part 54 of title 47, Code of
17 Federal Regulations (or any successor regulations);
18 and

19 “(2) offer a low-cost broadband service option
20 for low-income subscribers with eligibility for the
21 service option determined by the applicable
22 broadband funding partner.

23 “(g) PROMOTING BROADBAND DEPLOYMENT.—Not
24 later than 1 year after the date on which a State receives
25 funding under this section, the State shall publish on a

1 publicly available website of the State a report that ana-
2 lyzes the following:

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

7 “(A) the speed with which the State or
8 local authority, as applicable, responds to such
9 a request; and

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

15 “(2) The process by which the State, or any
16 local authority within the State, acts on a non-
17 emergency request for authorization to place, con-
18 struct, or modify facilities with respect to broadband
19 service that are supported through access to poles,
20 ducts, conduits, or rights-of-way, which shall include
21 an analysis of—

22 “(A) the speed with which the State or
23 local authority, as applicable, responds to such
24 a request; and

1 “(B) the impact that granting such a re-
2 quest not later than 30 days after the date on
3 which the request is submitted would have on
4 the speed at which broadband service is de-
5 ployed in the State.

6 “(3) The impact on the deployment of
7 broadband service within the State of not requiring
8 a permit or other authorization for emergency work
9 performed in the rights-of-way if a broadband facil-
10 ity supported through access to poles, ducts, con-
11 duits, or rights-of-way notifies the State, or the ap-
12 plicable local authority within the State, regarding
13 the emergency and the associated work.

14 “(4) The impact on the deployment of
15 broadband service within the State of requiring the
16 State, or any instrumentality of the State, whenever
17 the State or instrumentality intends to modify or
18 alter a pole, duct, conduit, or right-of-way, or con-
19 duct road work in which there will be open trenches,
20 to provide prior written notification of that action to
21 any broadband service provider, or other entity, that
22 has obtained an attachment to a pole, duct, or con-
23 duit, or right-of-way that may be affected, so that
24 the applicable entity may have a reasonable oppor-

1 tunity to add to or modify its existing attachment or
2 facilities.

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

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

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

13 (A) in paragraph (1)(A)—

14 (i) in clause (i), by striking “and” at
15 the end;

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

18 (iii) by adding at the end the fol-
19 lowing:

20 “(iii) the areas of the United States in
21 which options described in section 14(f)(2)
22 are available;”;

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

25 (C) in paragraph (6)—

1 (i) in the matter preceding subpara-
2 graph (A), by inserting “, including on a
3 publicly available website,” after “make
4 public”; and

5 (ii) in subparagraph (B), by striking
6 the period at the end and inserting “;
7 and”; and

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

9 “(7) beginning not later than 18 months after
10 the date of enactment of the Eliminate the Digital
11 Divide Act of 2021, ensure that the publicly avail-
12 able website described in paragraph (6)—

13 “(A) allows a consumer to determine,
14 based on financial information entered by the
15 consumer, whether the consumer is eligible—

16 “(i) to receive a Federal or State sub-
17 sidy with respect to broadband internet ac-
18 cess service; or

19 “(ii) to qualify for a low-income plan
20 with respect to broadband internet access
21 service; and

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

1 (b) DIRECT APPROPRIATION.—There is appropriated
2 to the Federal Communications Commission, out of any
3 money in the Treasury not otherwise appropriated,
4 \$10,000,000,000 for fiscal year 2021 to carry out section
5 14 of the Communications Act of 1934, as added by sub-
6 section (a)(1), which shall remain available through fiscal
7 year 2030.

○