

116TH CONGRESS
2D SESSION

S. 4789

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

OCTOBER 1, 2020

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 2020”.

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 area in which the cost of building
15 out broadband service is higher, as compared with
16 the average such cost in the United States (and as
17 determined by the Commission), because of—

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

19 “(B) the scarcity of services in the area;

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

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

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

24 “(5) LOCATION.—The term ‘location’ has the
25 meaning given the term by the Commission under

1 rules and guidance that are in effect, as of the date
2 of enactment of this section.

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

7 “(7) UNSERVED AREA.—The term ‘unserved
8 area’ means an area that, as determined in accord-
9 ance with the maps created under section
10 802(c)(1)—

11 “(A) has no access to broadband service;
12 or

13 “(B) does not have access to broadband
14 service offered—

15 “(i) with a download speed of at least
16 25 megabits per second; and

17 “(ii) with an upload speed of at least
18 3 megabits per second.

19 “(b) PROGRAM ESTABLISHED.—

20 “(1) IN GENERAL.—Not later than 100 days
21 after the date of enactment of this section, the Com-
22 mission shall establish a program for States to ex-
23 pand access to broadband service in unserved areas.

24 “(2) RELATIONSHIP TO UNIVERSAL SERVICE.—

25 The program established under paragraph (1) shall

1 be separate from any universal service program es-
2 tablished under section 254.

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

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

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

10 “(3) encourages small broadband providers to
11 participate in the program through streamlined reg-
12 ulatory requirements for all broadband funding part-
13 ners;

14 “(4) takes into account—

15 “(A) the size and scope of each unserved
16 area, and the number of locations, proposed to
17 be served by each project carried out using the
18 funds; and

19 “(B) the speed of the broadband service
20 provided by eligible entities seeking funding for
21 projects under the program;

22 “(5) may take into account—

23 “(A) the size and proportion of the match-
24 ing funds proposed to be committed by the eli-
25 gible entities seeking funding for projects under

1 the program, which may not be provided from
2 any funds derived from government grants,
3 loans, or subsidies;

4 “(B) the speed with which the eligible enti-
5 ties seeking funding for projects under the pro-
6 gram can complete the proposed deployment
7 and provision of broadband service to house-
8 holds under those projects; and

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

15 “(6) establishes—

16 “(A) periodic buildout milestones, report-
17 ing requirements, and certification by
18 broadband funding partners; and

19 “(B) a maximum buildout timeframe for a
20 broadband funding partner of 3 years, begin-
21 ning on the date on which funding is provided
22 to the broadband funding partner to undertake
23 a project, except that the State may extend that
24 timeframe if the broadband funding partner es-

1 tablishes that the failure to complete the project
2 within that timeframe is due to—

3 “(i) delays by third parties in pro-
4 viding necessary permits, approvals, or ac-
5 cess to (or construction of) poles; or

6 “(ii) a State or federally declared dis-
7 aster;

8 “(7) contains sufficient notice, transparency,
9 accountability, and oversight measures to—

10 “(A) provide the public and broadband
11 funding partners with notice of the funding pro-
12 vided under this section; and

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

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

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

22 “(B) has not received an extension under
23 paragraph (6)(B);

24 “(9) establishes procedures for broadband fund-
25 ing partners to receive expedited approval for all

1 necessary access to (or construction of) poles, State
 2 and local rights-of-way permits, or other approvals
 3 in the areas of the State served by projects under
 4 the program;

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

8 “(11) provides that an eligible entity shall grant
 9 access to poles, ducts, conduits, and rights-of-way
 10 that the eligible entity owns or controls within the
 11 State at rates, terms, and conditions regulated by
 12 the Commission under, or the State consistent with,
 13 section 224, without regard to whether that section
 14 otherwise applies with respect to those items; and

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

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

21 “(1) COMMISSION DISTRIBUTIONS.—

22 “(A) IN GENERAL.—Not later than 200
 23 days after the date of enactment of this section,
 24 the Commission, under the program established
 25 under subsection (b), and in accordance with

the requirements of this section, shall, with respect to the amounts made available to carry out this section—

“(i) reserve 10 percent of those amounts for distributions under subparagraph (B) to States that have established programs under subsection (c); and

“(ii) of the amounts not reserved under clause (i), make distributions under paragraph (2) to States that have established programs under subsection (c).

“(B) DISTRIBUTIONS FOR HIGH COST AREAS.—The amount of a distribution to a State under this subparagraph shall be calculated as follows:

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

“(ii) Multiply the quotient obtained under clause (i) by the total amount reserved under subparagraph (A)(i).

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

1 “(A) Divide the number of individuals liv-
2 ing in unserved areas in the State by the total
3 number of individuals living in unserved areas
4 in the United States, as determined in accord-
5 ance with the maps created under section
6 802(c)(1).

7 “(B) Multiply the quotient obtained under
8 subparagraph (A) of this paragraph by the
9 amount described in paragraph (1)(A)(ii).

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

15 “(e) STATE USE OF PROGRAM FUNDS.—

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

22 “(2) FUNDS USED SOLELY FOR UNSERVED
23 AREAS.—A State to which funds are distributed
24 under subsection (d)—

25 “(A) may not—

1 “(i) use any portion of those funds for
2 a project in any area that is not an
3 unserved area; or

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

8 “(B) shall—

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

17 “(ii) from the list created under
18 clause (i), remove any area in the State
19 that—

20 “(I) has been awarded funding in
21 the Rural Digital Opportunity Fund
22 Phase I auction provided for in the
23 Report and Order in the matter of
24 Rural Digital Opportunity Fund and
25 Connect America Fund adopted by

1 the Commission on January 30, 2020
2 (FCC 20–5);

3 “(II) has been awarded funding
4 through 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;

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

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

24 “(iii) establish a streamlined process
25 that allows a broadband service provider,

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

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

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

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

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

23 “(I) regarding how the State
24 spent those funds during the period
25 covered by the report, which shall in-

1 clude a description of each award
2 made with those funds; and

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

7 “(f) PROJECT REQUIREMENTS.—Any project funded
8 through the program established under subsection (b)
9 shall—

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

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

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

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

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

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

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

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

23 “(B) the impact that granting such a re-
24 quest not later than 30 days after the date on
25 which the request is submitted would have on

1 the speed at which broadband service is de-
2 ployed in the State.

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

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

24 “(h) GUIDANCE.—The Commission may provide
25 guidance to States with respect to service obligations, pro-

cedures, reporting requirements, and other requirements
in carrying out programs established under this section.

“(i) RULE OF CONSTRUCTION.—Nothing in this section may be construed to permit the Commission to use any data submitted by a provider of broadband service under this section to issue or establish additional regulatory requirements with respect to that provider.”; and

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

(A) in paragraph (1)(A)—

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

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

(iii) by adding at the end the following:

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

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

(C) in paragraph (6)—

(i) in the matter preceding subparagraph (A), by inserting “, including on a publicly available website” after “make public”;

1 (ii) in subparagraph (A), by striking
2 “and” at the end; and

3 (iii) in subparagraph (B), by striking
4 the period at the end and inserting “;
5 and”; and

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

7 “(7) beginning not later than 18 months after
8 the date of enactment of the Eliminate the Digital
9 Divide Act of 2020, ensure that the publicly avail-
10 able website described in paragraph (6)—

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

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

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

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

24 (b) DIRECT APPROPRIATION.—There is appropriated
25 to the Federal Communications Commission, out of any

1 money in the Treasury not otherwise appropriated,
2 \$10,000,000,000 for fiscal year 2020 to carry out section
3 14 of the Communications Act of 1934, as added by sub-
4 section (a)(1), which shall remain available through fiscal
5 year 2029.

○