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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Eliminate the Digital Divide Act of 2021”.
SEC. 2. EXPANSION OF BROADBAND ACCESS IN UNSERVED AREAS.

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

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

"SEC. 14. EXPANSION AND ADOPTION OF BROADBAND SERVICE THROUGH STATE FUNDING.

“(a) DEFINITIONS.—In this section:

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

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

“(A) means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service;

“(B) includes any service that is a functional equivalent of the service described in subparagraph (A); and
“(C) does not include dial-up internet access service.

“(3) ELIGIBLE ENTITY.—The term ‘eligible entity’ means a private provider of broadband service, or a public-private partnership or cooperative (including a subsidiary of a cooperative) that provides broadband service, that has submitted to the Commission, in addition to any data required to be submitted under section 802, data regarding the service option described in subsection (f)(2) that the entity would offer if the entity were to receive funding under this section.

“(4) HIGH COST AREA.—The term ‘high cost area’ means an unserved area in which the cost of building out broadband service is higher, as compared with the average such cost in the United States (and as determined by the Commission), because of—

“(A) the remote location of the area;

“(B) the population density of the area;

“(C) the unique topography of the area;

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

“(E) any other factor that contributes to the cost of building out that service.
“(5) LOCATION.—The term ‘location’ has the meaning given the term by the Commission under rules and guidance that are in effect, as of the date of enactment of this section.

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

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

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

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

“(i) has no access to broadband service; or

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

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

“(II) with download and upload speeds that are established as bench-
marks by the Commission after the

date of enactment of this section.

“(b) Program Established.—

“(1) In general.—Not later than 100 days

after the date of enactment of this section, or the
date on which the maps created under section
802(c)(1) are made public, whichever is later, the
Commission shall establish a program for States to
expand access to broadband service in unserved
areas.

“(2) Relationship to universal service.—
The program established under paragraph (1) shall
be separate from any universal service program es-
tablished under section 254.

“(c) State Program Requirements.—A State
seeking funding under the program established under sub-
section (b) shall create a program that—

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

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

“(3) encourages all eligible entities, including
small broadband providers, to participate in the pro-
gram through streamlined regulatory requirements
for all broadband funding partners;
“(4) takes into account—

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

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

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

“(5) may take into account—

“(A) the size and proportion of the matching funds proposed to be committed by the eligible entities seeking funding for projects under the program, which may not be provided from any funds derived from government grants, loans, or subsidies;

“(B) the speed with which the eligible entities seeking funding for projects under the program can complete the proposed deployment and provision of broadband service to households under those projects, which may include
a review of the topographical effects on the areas being served those projects as a result of the technology to be deployed under those projects; and

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

“(6) establishes—

“(A) periodic buildout milestones, reporting requirements, and certification by broadband funding partners; and

“(B) a maximum buildout timeframe for a broadband funding partner of 3 years, beginning on the date on which funding is provided to the broadband funding partner to undertake a project, except that the State may extend that timeframe if the broadband funding partner establishes that the failure to complete the project within that timeframe is due to—

“(i) delays by third parties, including governmental entities, in providing nec-
necessary permits, approvals, or access to (or
construction of) poles; or
“(ii) a State or federally declared dis-
aster;
“(7) contains sufficient notice, transparency,
accountability, and oversight measures to—
“(A) provide the public and broadband
funding partners with notice of the funding pro-
vided under this section; and
“(B) deter waste, fraud, and abuse of pro-
gram funds;
“(8) establishes procedures for the recovery of
funds, in whole or in part, from a broadband fund-
ing partner if the broadband funding partner—
“(A) defaults or fails to comply with the
buildout requirements established for the
project with respect to which the funding re-
lates; and
“(B) has not received an extension under
paragraph (6)(B);
“(9) establishes procedures for expedited ap-
proval for all necessary access to (or construction of)
poles, State and local rights-of-way permits, or other
approvals in the areas of the State served by
projects under the program;
“(10) provides that broadband funding partners
are not required to be designated as eligible tele-
communications carriers under section 214(e);
“(11) provides that an eligible entity shall grant
access to poles, ducts, conduits, and rights-of-way
that the eligible entity owns or controls within the
State at rates, terms, and conditions regulated by
the Commission under, or the State consistent with,
section 224 and the rules of the Commission, with-
out regard to whether that section otherwise applies
with respect to those items; and
“(12) except as otherwise explicitly provided in
this section, does not require, or include consider-
ation of, the imposition of any new or additional reg-
ulATORY obligations on broadband funding partners
beyond those required under applicable law.
“(d) DISTRIBUTION OF FUNDS TO STATES.—
“(1) COMMISSION DISTRIBUTIONS.—
“(A) IN GENERAL.—Not later than 200
days after the date of enactment of this section,
or the date on which the maps created under
section 802(c)(1) are made public, whichever is
later, the Commission, under the program es-
tablished under subsection (b), and in accord-
ance 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:

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

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

“(3) State entitlement.—With respect to a State that has established a program under subsection (c), the State shall receive a distribution under both of paragraphs (1)(B) and (2) of this subsection.

“(e) State use of program funds.—

“(1) In general.—Not later than 120 days after the date on which a State receives funds under subsection (d), and subject to paragraph (2), the State shall make awards to eligible entities through the program established by the State under subsection (c).

“(2) Funds used solely for unserved areas.—A State to which funds are distributed under subsection (d)—

“(A) may not—

“(i) use any portion of those funds for a project in any area that is not an unserved area; or
“(ii) use more than 5 percent of those funds to administer the program established by the State under subsection (c); and

“(B) shall—

“(i) before making any awards described in paragraph (1), consult the maps created under section 802(c)(1), as updated through the resolution of any challenges brought under section 802(b)(5), to create a list of areas within the State that are unserved areas, which the State shall make publicly available;

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

“(I) has been awarded funding—

“(aa) in the Rural Digital Opportunity Fund Phase I auction provided for in the Report and Order in the matter of Rural Digital Opportunity Fund and Connect America Fund adopted by the Commission on January 30, 2020 (FCC 20–5); or
“(bb) under subpart D of part 54 of title 47, Code of Federal Regulations, or any successor regulations;

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

“(III) has been awarded funding through any existing program established by the State with minimum speed commitments described in subclause (II); or

“(IV) is the subject of an enforceable commitment by a broadband provider to serve the area with minimum speed commitments described in subclause (II), even if, in any such areas, the service is not yet available, provided that the broadband provider is meeting any applicable build-out deadlines;
“(iii) establish a streamlined process that allows a broadband service provider, the State, or a unit of local government within the State not less than 30 days after the date on which the list created under clause (i), as updated under clause (ii), is made publicly available to bring a challenge regarding whether an area on that final list is an unserved area;

“(iv) provide a written notice regarding how each challenge brought under clause (iii) was decided, including the reasons for that decision;

“(v) update the list created under clause (i) to reflect the results of challenges brought under clause (iii);

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

“(vii) not later than 2 years after the date on which the funds are distributed to the State, and biennially thereafter, submit to the Commission a report—
“(I) regarding how the State spent those funds during the period covered by the report, which shall include a description of each award made with those funds; and

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

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

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

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

“(g) **PROMOTING BROADBAND DEPLOYMENT.**—Not later than 1 year after the date on which a State receives funding under this section, the State shall publish on a
publicly available website of the State a report that analyzes the following:

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

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

“(B) the impact that granting such a request not later than 30 days after the date on which the request is submitted would have on the speed at which broadband service is deployed in the State.

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

“(A) the speed with which the State or local authority, as applicable, responds to such a request; and
“(B) the impact that granting such a request not later than 30 days after the date on which the request is submitted would have on the speed at which broadband service is deployed in the State.

“(3) The impact on the deployment of broadband service within the State of not requiring a permit or other authorization for emergency work performed in the rights-of-way if a broadband facility supported through access to poles, ducts, conduits, or rights-of-way notifies the State, or the applicable local authority within the State, regarding the emergency and the associated work.

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

“(h) GUIDANCE.—The Commission may provide guidance to States with respect to service obligations, procedures, 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”; and

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

(D) by adding at the end the following:

“(7) beginning not later than 18 months after the date of enactment of the Eliminate the Digital Divide Act of 2021, ensure that the publicly available website described in paragraph (6)—

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

“(i) to receive a Federal or State subsidy with respect to broadband internet access service; or

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

“(B) with respect to a consumer who is eligible under clause (i) or (ii) of subparagraph (A), contains information regarding how to apply for the applicable benefit.”.
(b) **DIRECT APPROPRIATION.**—There is appropriated to the Federal Communications Commission, out of any money in the Treasury not otherwise appropriated, $10,000,000,000 for fiscal year 2021 to carry out section 14 of the Communications Act of 1934, as added by subsection (a)(1), which shall remain available through fiscal year 2030.