An Overview of Broadband Provisions in the Infrastructure Bill (as of July 30, 2021)

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On Wednesday, July 28, the U.S. Senate voted to move forward on a bipartisan infrastructure bill (the “Infrastructure Investment and Jobs Act”) that includes $65 billion to support broadband deployment and adoption. While a variety of procedural and political hurdles remain, we are cautiously optimistic about its prospects for enactment.

This blog entry highlights some of the key broadband-related provisions in the bill, derived from a draft copy of the bill that we obtained several days ago. The bill was publicly released on Sunday, August 1, and is available here.

This summary is based upon the legislation that has not yet passed either the Senate or the House. It will almost certainly change prior to adoption, perhaps in significant ways. Even so, the draft bill provides a clear indication of how this once-in-a-generation investment in broadband infrastructure and adoption could play out.

We intend to provide a much more detailed analysis if and when the bill is enacted, likely over the course of several blog entries. For now, the key aspects of the broadband provisions of the draft bill may be summarized as follows. (The remainder of this post discusses each in greater detail):

- **“Broadband Equity, Access and Deployment Program” ($42 billion):** The centerpiece of the overall broadband investment, this massive program contemplates grants being made to States. Significant local coordination would be required. States would use grant funds to competitively award subgrants for qualifying broadband infrastructure, mapping, and adoption projects. It would be administered by NTIA.

- **“Enabling Middle Mile Broadband Infrastructure” ($1 billion):** Directs NTIA to make available grants for “construction, improvement or acquisition of middle mile infrastructure.”

- **“Digital Equity Act of 2021” ($1.3 billion):** Funds State-level digital equity planning and establishes a competitive digital equity grant program available to a wide range of public-sector and not-for-profit entities.

- **“Broadband Affordability”**: The bill includes several initiatives relating to affordable
broadband:

- Extension and modification of the existing Emergency Broadband Benefit program, (including renaming it as the “Affordable Connectivity Program”);
- Adoption of a “consumer broadband label” requirement, originally put forth by the FCC in 2016;
- Digital discrimination. The bill would require the FCC to adopt rules within two years to address digital discrimination (i.e., redlining).

1. BROADBAND EQUITY, ACCESS AND DEPLOYMENT PROGRAM (TITLE I, Section 801102) ($42 billion grant program, NTIA)

The centerpiece of the overall broadband funding initiative, the “Broadband Equity, Access and Deployment Program” tasks NTIA to administer a $40 billion grant program for which “eligible entity” is defined as “a State.”[1] It directs NTIA to issue a Notice of Funding Opportunity within 180 days after the bill is enacted, establishing a process for States to submit a letter of intent, a single initial proposal, and a single final proposal for funding.

**Funding Allocation.** Each State would receive a minimum of $100 million. The remainder of the $40 billion would be allocated in accordance with a formula that considers the number of unserved and high-cost locations in the State, as compared to other States. Twenty percent of the allocated amount would be released upon approval of the State’s initial proposal, with the remaining 80 percent released upon approval of the State’s final proposal. Sec. (e)(3), (4). Funding is available to States for planning and administrative expenses. Sec. (e)(1)(C).

If a State fails to submit an application for funds by the applicable deadline, a political subdivision or consortium of political subdivisions may submit an application in its place. Sec. (c)(5)(B).

**Local Coordination Requirements.** The bill calls for significant local coordination on the part of the State. A State must submit a “5-year action plan” as part of its initial proposal, which “shall be informed by collaboration with local and regional entities.” Sec. (e)(1)(D).

An initial proposal must, among other things, “identify[], and outline[] steps to support, local and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide” and “describe[] coordination with local governments, along with local and regional broadband planning processes.” Sec. (e)(3)(A). In addition, NTIA “shall establish local coordination requirements for eligible entities to follow, to the greatest extent practicable.” Sec. (e)(3)(A)(ii).

States must allow an opportunity for political subdivisions to submit plans for consideration by the State, and to comment on the State’s initial and final proposals. Sec. (e)(4)(A).

In awarding subgrants, States “may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility for such grant funds.” Sec. (h)(1)(A).

**Use of Funds.** (Sec. (f)) A State may use grant funds “to competitively award subgrants” for:
• Unserved service projects and underserved service projects.

  1. An “unserved location” lacks access to reliable broadband service offered with speed of not less than 25Mbps/3Mbps. “Unserved service projects” are projects serving areas in which not less than 80% of locations are unserved. *(a).*

  2. An “underserved location” lacks access to reliable broadband service offered with speed of not less than 100Mbps/25Mbps. “Underserved service projects” serve areas in which not less than 80% of locations are underserved. *(a).*

• Connecting eligible community anchor institutions. An “eligible” community anchor institution is defined as one that lacks access to gigabit service. *(a)(E).*

  1. Notably, the definition of “community anchor institution” includes “public housing organization or community support organization…. *(a)(E).* This suggests that support could be available for some urban areas that lack gigabit connectivity.

• Data collection, broadband mapping, and planning;

• Installing broadband infrastructure or providing reduced-cost service within a multi-family residential building, with priority given to a building that “has a substantial share” of unserved households or that is in a designated poverty area; and

• Broadband adoption, including programs to provide affordable devices.

**Funding Prioritization.** Subgrant awards are to be funded in accordance with the following prioritization *(Sec. (h)(1)):

• Unserved service projects;

• Underserved service projects (after the State certifies that it will ensure universal coverage of all unserved locations); and

• Eligible community anchor institutions (after prioritizing underserved service projects).

As another element of prioritization, a State “shall give priority to projects based on” deployment of a broadband network to persistent poverty counties or high-poverty areas; the speeds of the proposed broadband service; and the expediency of project completion. *(Sec. (h)(1)).

**Broadband Service Standards.** A subgrantee for the deployment of a broadband network must provide broadband service at a speed of not less than 100Mbps/20Mbps, with sufficiently low latency “to allow reasonably foreseeable, real-time, interactive applications.” *(Sec. (h)(4)).

Funded broadband networks must offer at least one low-cost broadband service option for eligible subscribers (as described in *(Sec. (h)(5)).

The network must be deployed and service commenced no later than four years after the date of the subgrant. *(Sec. (h)).
**Subgrants.** The program authorizes a State to only use grant funds to competitively award subgrants involving a permitted use of the funds (in addition to planning and administrative expenses). States are directed to ensure that subgrantees have the financial, managerial, technical and operational capability to carry out the activities contemplated in the subgrant. *Sec. (g)(2)(A).* Subgrantees must also comply with various obligations, including quality-of-service and broadband reliability and resilience “best practices,” as defined by NTIA. *Sec. (g).*

**Matching Requirement.** A State must provide, or must require a subgrantee to provide, a matching contribution equivalent to at least 25 percent of project costs, *Sec. (h)(3).* NTIA may waive the matching contribution requirement and the match requirement does not apply in high-cost areas.

In general, the match must be derived from non-Federal funds. However, the Act specifically provides that matching funds *may* come from a Federal regional commission or authority, as well as the CARES Act, the Consolidated Appropriations Act of 2021, or the American Rescue Plan Act of 2021, if the funds were for the purpose of deployment of broadband service. *Sec. (h)(3)(B)(iii).*

The match “may include in-kind contributions.” *Sec. (h)(3)(B)(ii).*

**Relation to Other Public Funding.** The Act explicitly allows a subgrant to be made to “an entity that has received amounts from the Federal Government or a State or local government for the purpose of expanding access to broadband service.” *Sec. (k).* Grant funds made available to States must “supplement, and not supplant,” amounts that the State would otherwise make available for broadband purposes. *Sec. (l).*

**Report on Future of Universal Service Fund (Sec. 801104).** Title I of the Act also directs the FCC to commence a proceeding within 30 days, and provide a report within 270 days, evaluating the implications of the Act on how the FCC “should achieve universal service goals for broadband.” *Sec. 004.* Notably, the term “universal service fund” is not used in Section 004 other than in the section title.

2. **ENABLING MIDDLE MILE BROADBAND INFRASTRUCTURE (TITLE IV, Sec. 80401 et seq.)** ($1 billion for fiscal years 2022 through 2026, NTIA)

Title IV of the bill would establish a much smaller grant program to support the development of middle-mile infrastructure. The bill directs NTIA to make grants available “on a technology-neutral, competitive basis to eligible entities for the construction, improvement, or acquisition of middle mile infrastructure.” *Sec. (b).*

The program has two stated purposes (*Sec. (b)*):

- “to encourage expansion of middle mile infrastructure to reduce the cost of connecting unserved and underserved areas to the backbone of the internet (commonly referred to as the ‘last mile’) and

- “to promote broadband connection resiliency through the creation of alternative network connection paths that can be designed to prevent single points of failure on a broadband network.”
**Middle Mile Infrastructure.** The term "middle mile infrastructure" (Sec. (a)):

- "means any broadband infrastructure that does not connect directly to an end-user location, including an anchor institution; and

- includes –

  - leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and

  - wired or private wireless infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links."

**Eligible Entities.** For the middle mile grant program, an “eligible entity” includes “a State, political subdivision of a State, Tribal government, technology company, electric utility, utility cooperative, public utility district, telecommunications company, telecommunications cooperative, nonprofit foundation, nonprofit corporation, nonprofit institution, nonprofit association, regional planning counsel [sic], Native entity, or economic development authority”; or a partnership of two or more such entities. Sec. (a)(4).

**Prioritization.** An eligible entity must agree to prioritize (A) “connecting middle mile infrastructure to last mile infrastructure that provide or plan to provide broadband service to households in unserved areas; (B) connecting non-contiguous trust lands, or [sic] (C) the offering of wholesale broadband service at reasonable rates on a carrier neutral basis.” Sec. (e)(1).

Buildout must be completed within five years, although an extension may be available. Sec. (e)(2).

**Interconnection and Nondiscrimination Requirement.** An entity that receives a middle mile grant using fiber optic technology “shall offer interconnection in perpetuity, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties.” Sec. (e)(3)(D).

**Federal Share Limited to 70 Percent.** The amount of a middle mile grant may not exceed 70% of the total project cost.

3. **DIGITAL EQUITY ACT OF 2021 (Title III, Sec. 80301 et seq.)** ($1.3 billion over five years)

On the adoption side, the legislation includes the “Digital Equity Act of 2021.” The Digital Equity Act creates a “State Digital Equity Capacity Grant Program” and a “Digital Equity Competitive Grant Program.”

The State Digital Equity Capacity Grant Program authorizes $60 million for planning grants to be made available to States for the development of State Digital Equity Plans, and $650 million over five years for grants to States to support the implementation of State Digital Equity Plans and digital inclusion activities.
The Digital Equity Competitive Grant Program makes available $650 million over five years for grants to a wide variety of public-sector and not-for-profit entities. Sec. (b). Funds may be used for a range of digital inclusion and broadband adoption activities. Sec. (d)(2).

4. BROADBAND AFFORDABILITY (TITLE V, Sec. 80501 et seq.)

Extension and Modification of Emergency Broadband Benefit (Sec. 80502). Title V of the bill would indefinitely extend the Emergency Broadband Benefit Program, originally adopted as a COVID-relief measure. It renames the program the “Affordable Connectivity Program,” and implements a variety of other changes.

Adoption of Consumer Broadband Labels (Sec. 80504). The legislation would require the display of “consumer broadband labels,” as described by the FCC in April 2016. Sec. 004.

Digital Discrimination (Sec. 80506) The bill includes a brief provision relating to “digital discrimination” (i.e., “redlining”). It requires the FCC to adopt rules within two years “to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including (1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion or national origin and (2) identifying necessary steps for the [FCC] to take to eliminate such discrimination.” Sec. (b). It also directs the FCC to develop “model policies and best practices” for States and localities to prevent digital discrimination.

The term “State” is defined with reference to 47 U.S.C. 942, which defines “State” as “any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession of the United States,” but excludes the phrase “any other territory or possession of the United States.”

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