



August 4, 2021

Broadband in the Bipartisan Infrastructure Package

On Sunday, Aug. 1, the group of senators negotiating the bipartisan infrastructure package unveiled the [Infrastructure Investment and Jobs Act](#). The \$1.2 trillion package contains \$550 billion in new infrastructure spending, including \$65 billion for broadband.

This alert, after providing an overview and analysis, contains a section-by-section summary of the broadband provisions within the bipartisan infrastructure bill.

OVERVIEW OF KEY BROADBAND PROVISIONS

Broadband Equity, Access and Deployment Program

The legislation authorizes and appropriates \$42.45 billion for the establishment of a new Broadband Equity, Access and Deployment Program operated by the National Telecommunications and Information Administration (NTIA), through which it would issue grants to states to increase connectivity to unserved, underserved and high-cost areas as well as to anchor institutions. Key provisions include defining unserved as lacking at least 25/3 Mbps, requiring minimum performance of 100/20 Mbps, requiring an NTIA-approved low-cost option, completing build-out in four years, banning exclusion of public providers and barring NTIA from regulating broadband rates.

Digital Equity

The bill contains several programs to advance digital equity and digital inclusion to ensure communities have access to affordable and reliable internet service and devices that allow them to participate fully in the U.S. economy. The bill also contains efforts to promote digital literacy. To achieve these goals, the bill creates a new State Digital Equity Capacity Grant Program and Digital Equity Competitive Grant program.

The legislation also calls on the Federal Communications Commission (FCC) to adopt guidance within two years to promote equal access to broadband internet service and prevent discrimination based on the predominant income level or race of a community.

Middle Mile Infrastructure

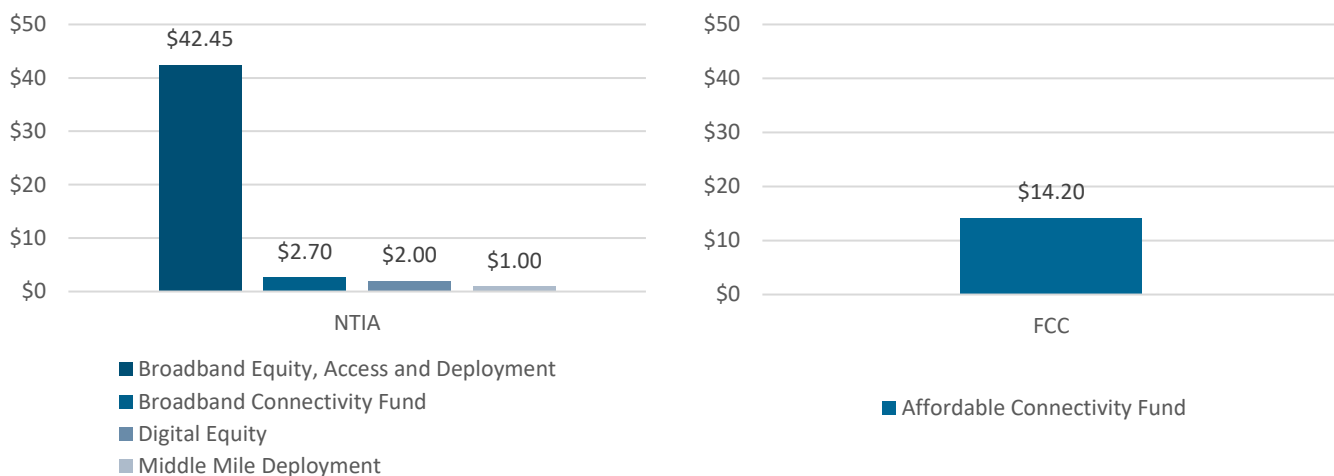
The bill authorizes and appropriates \$1 billion over five years for grants to support the construction, improvement or acquisition of “middle-mile” projects.

Broadband Affordability

The bill directs the FCC to promulgate rules extending and expanding the Emergency Broadband Benefit—renamed the Affordable Connectivity Benefit—enacted under the Consolidated Appropriations Act of 2021 (P.L.116-260). It also appropriates over \$14 billion for the program.

OVERVIEW OF DIRECT BROADBAND APPROPRIATIONS

Below is an overview of the funding, in billions, for broadband programs that will be managed by NTIA and the FCC:



President Biden has not yet nominated a permanent leader for NTIA or the FCC, which could cause problems for the agencies as they manage the funds, release guidance and operate the new programs. These issues could be particularly pronounced for the FCC, which is currently deadlocked with two Republicans and two Democrats.

LEGISLATIVE PROCESS AND NEXT STEPS

With final text now on the floor, the Senate has proceeded to an open amendment process and has already approved a broadband provision offered by Sen. John Thune (R-SD). His amendment, which was adopted 95-1, would establish an interagency working group to determine how laws and regulations should be amended to promote the expansion of the telecommunications workforce.

Multiple other broadband amendments have been filed, many of which were proposed by Senate Commerce Committee Ranking Member Roger Wicker (R-MS). As of this writing, around 25 broadband amendments in total have been proposed, but it is unclear how many, if any, will receive a vote.

BROADBAND PROVISIONS: AT A GLANCE

Broadband Title

Title I—Broadband Grants for States, District of Columbia, Puerto Rico and Territories

- Sec. 60101. Findings.
- Sec. 60102. Grants for Broadband Deployment.
- Sec. 60103. Broadband DATA Maps.
- Sec. 60104. Report on Future of Universal Service Fund.

Title II—Tribal Connectivity Technical Amendments

- Sec. 60201. Tribal Connectivity Technical Amendments.

Title III—Digital Equity Act

- Sec. 60302. Definitions.
- Sec. 60303. Sense of Congress.
- Sec. 60304. State Digital Equity Capacity Grant Program.
- Sec. 60305. Digital Equity Competitive Grant Program.
- Sec. 60306. Policy Research, Data Collection, Analysis and Modeling, Evaluation, and Dissemination.
- Sec. 60307. General Provisions.

Title IV—Enabling Middle Mile Broadband Infrastructure

- Sec. 60401. Enabling Middle Mile Broadband Infrastructure.

Title V—Broadband Affordability

- Sec. 60501. Definitions.
- Sec. 60502. Broadband Affordability.
- Sec. 60503. Coordination with Certain Other Federal Agencies.
- Sec. 60504. Adoption of Consumer Broadband Labels.
- Sec. 60505. GAO Report.
- Sec. 60506. Digital Discrimination.

Other Matters

- Sec. 90008. Spectrum Auctions.

Broadband Appropriations

Title II—Commerce, Justice, Science and Related Agencies

- Broadband Equity, Access and Deployment.
- Broadband Connectivity Fund.
- Digital Equity.
- Middle Mile Deployment.

Title IV—Financial Services and General Government

- Affordable Connectivity Fund.

BROADBAND GRANTS FOR STATES, DISTRICT OF COLUMBIA, PUERTO RICO AND TERRITORIES

Sec. 60101. Findings.

- Affordable, reliable, high-speed broadband is essential to modern life, including the ability to work, learn and connect remotely.
- The “digital divide,” which disproportionately affects communities of color and lower-income areas, is a barrier to economic competitiveness and the equitable distribution of public services.
- Increased competition among broadband providers can offer more affordable, high-quality broadband options.

Sec. 60102. Grants for Broadband Deployment.

Definitions: Areas, Locations and Institutions Lacking Broadband Access	
Unserviced Location	A broadband-serviceable location, as determined in accordance with the broadband DATA maps, that (1) has no access to broadband service or (2) lacks access to 25/3 Mbps broadband service and a latency sufficient to support real-time, interactive applications.
Unserviced Service Project	A project in which at least 80% of broadband-serviceable locations served by the project are unserviced locations.
Underserved Location	A location (1) that is not an unserviced location and (2) lacks access to 100/20 Mbps broadband service and a latency sufficient to support real-time, interactive applications.
Underserved Service Project	A project in which at least 80% of broadband-serviceable locations served by the project are unserviced or underserved locations.
Eligible Community Anchor Institutions	A community anchor institution that lacks access to gigabit-level broadband service. A community anchor institution is an entity—such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization or community support organization—that facilitates greater use of broadband service by vulnerable populations, including low-income, unemployed and aged individuals.
Definitions: Other Terms	
Eligible Entity	A state.
High-Cost Area	An unserviced area in which the cost of building out broadband service is higher, as compared with the average cost of building out service in unserviced areas in the U.S.
Unserviced Area	An area in which at least 80% of broadband-serviceable locations are unserviced locations.
Priority Broadband Project	A project designed to (1) meet broadband service, speed, latency and reliability standards and (2) ensure the network can scale speeds over time to meet evolving connectivity needs and support 5G and successor wireless technologies.
Reliable Broadband Service	Service that meets performance criteria for service availability, adaptability to changing end-user requirements, length of serviceable life, other than upload and download speeds, as determined by NTIA in coordination with the FCC.

Broadband Equity, Access and Deployment Program

- **Establishment.** Within 180 days of enactment, NTIA shall establish a program through which to award grants to bridge the digital divide.
 - **Appropriations.** The program shall be authorized \$42.45 billion.
 - **General Assistance.** In providing technical support and assistance, NTIA shall (1) prioritize expansion in rural areas and states that consistently rank below others in broadband access and (2) assist with federal cybersecurity resources.
- **Allocations.** The bill allocates funds in three segments, all of which are contingent on NTIA's approval of a state's application, which consists of a letter of intent to participate, initial proposals and final proposals:
 - 10% of the appropriated amount is allocated to deploy broadband to unserved locations in high-cost areas;
 - An initial minimum allocation of \$100 million for each state and \$100 million to be equally shared by U.S. territories; and
 - Remaining amounts shall be allocated to states based on the ratio of a state's unserved locations to all unserved locations nationwide.
- **Implementation.**
 - **Notice of Funding Opportunity.** Within 180 days of enactment, NTIA shall (1) issue a notice of funding opportunity for the program and invite states to submit letters of intent to participate, (2) establish a process to provide funding to states for planning and pre-deployment activities, (3) publish a template of initial and final proposals and (4) establish standards for how states shall assess the capabilities of a prospective subgrantee.
 - **Letter of Intent.** NTIA may establish a form states must submit to participate in the program that may include (1) its existing broadband program or office, (2) known barriers to administering a program with the funds, (3) additional needs to implement the requirements and (4) any partners that may inform broadband deployment.
 - **Planning Funds.** In the letter of intent, states may request up to 5% of its initial minimum allocation for research and data collection, conducting outreach, training employees and establishing a broadband office.
 - **Action Plan.** States receiving planning funds shall submit a five-year plan detailing investment priorities and costs and align spending with economic development, telehealth and other connectivity efforts.
 - **Initial Proposal.** States shall submit an initial proposal that (1) outlines long-term objectives for broadband deployment, closing the digital divide and promoting economic growth, (2) outlines steps to support local and regional broadband planning processes, (3) identifies existing federally or state funded broadband efforts within the state, (4) identifies each unserved or underserved location and community anchor institution and (4) contains a plan to *competitively* award subgrants in a timely fashion. (The reference to competitively awarding funds suggests states may hold reverse auctions to identify funding recipients).
 - If NTIA approves the initial proposal, the state shall receive 20% of the grants allocated.
 - A state may only submit one initial proposal.

- **Final Proposal.** After NTIA approves the initial proposal, states may submit a final proposal for the remainder of the allocated amount. The final proposal shall contain (1) a plan of how the state will allocate funds consistent with the bill’s multitiered priority funding scheme, (2) a timeline for implementation, (3) a process of oversight and accountability and (4) a description of intergovernmental coordination.
 - NTIA, in coordination with the FCC, shall issue a notice of how much each state will be allocated based on the finalized data maps and invites initial and final proposals.
- **Use of Funds.** States may use funds for (1) unserved and underserved service projects, (2) connecting community anchor institutions, (3) data collection and broadband mapping, (4) installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multifamily residential building and (5) affordability, including for internet-capable devices.
- **General Program Requirements.** Subgrantees, entities that receive funds from states to carry out projects, (1) shall comply with quality of service standards, cybersecurity and supply chain risk management practices as specified by NTIA, (2) shall incorporate best practices for ensuring reliability and broadband infrastructure resilience and (3) may not use the funds to purchase or support untrusted communications equipment or service or fiber optic cable and optical transmission equipment manufactured in China.
- **Broadband Network Deployment Prioritization.** In awarding subgrants, states shall (1) prioritize unserved service projects, underserved service projects then anchor institutions and with respect to each prioritize “priority broadband projects,” (2) not exclude private companies, cooperatives, nonprofits, public-private partnerships, utilities or local governments for grant funds and (3) give further priority to projects based on poverty rates, speeds of the proposed service, expediency of completion and demonstration of compliance with federal labor laws.
 - **Challenge Process.** Before grants are allocated, there shall be a transparent and expeditious challenge process under which a unit of local government, nonprofit or other service provider can challenge a state’s determination as to whether a location or community anchor institution is eligible for the grant funds, including whether it is unserved or underserved.
 - **Matching Requirement.** A state shall provide, or require a subgrantee to provide, a contribution of at least 25% of project costs.
 - **Service Requirements.** Subgrantees shall:
 - provide service (1) of at least *100/20 Mbps* with (2) a latency that is sufficiently low to allow reasonably foreseeable, real-time, interactive applications and (3) that has no more than 48 hours of network outages per any 365-day period, on average;
 - provide access to each customer served by the project that desires broadband service;
 - offer at least *one NTIA-approved low-cost broadband service option* for eligible subscribers;
 - deploy the network and *begin providing service to each customer within four years* after receiving the funds;
 - include interspersed conduit access points at regular and short intervals for projects involving the laying of fiber optic cables or conduit underground or along a roadway;
 - provide public notice that the network has been deployed;
 - carry out public awareness campaigns to highlight the value and benefits of broadband service; and
 - sell the network capacity at a reasonable, wholesale rate to other service providers or public sector entities if it is no longer able to provide service.

- **No Regulation of Rates Permitted.** Nothing in this title may be construed to authorize NTIA to regulate the rates charged for broadband service.
- **Reporting.**
 - **Initial Report.** Within 90 days, states must submit a report describing the planned and actual use of funds and its oversight processes.
 - **Semiannual Report.** Within one year of receiving funds and semiannually thereafter, states shall submit a report that describes how funds were expended, the service provided and the number of locations assisted and subgrantees must provide semiannual reports to the states.
 - **Final Report.** Within one year of expending all funds, states must submit a report that describes the use of funds, the service provided, the number of locations assisted and the reports received by subgrantees.
 - **Website on Broadband Subsidies and Low-Income Plan.** Within two years of enactment, NTIA shall establish a website that allows consumers to determine whether they are eligible for government broadband subsidies or a low-income plan with respect to broadband service.
- **Judicial Review.** The U.S. District Court for the District of Columbia has exclusive jurisdiction to review an NTIA decision and establishes a high bar for reversal.

Sec. 60103. Broadband DATA Maps.

- **FCC Data Collection Assistance.** Broadband providers shall provide the FCC with any information necessary to augment the FCC's Form 477 data collection program.
- **Data Deadline Notice.** The FCC shall notify providers at least 60 days before the initial deadline for submission of data under section 802(a)(1)(A) of the Communications Act of 1934, under which the FCC is responsible for a Broadband Map for depicting broadband internet access in the U.S.
- **Census.** The Secretary of Commerce shall submit to the FCC a count of the aggregate number of housing units in each census block, as collected by the Bureau of the Census.

Sec. 60104. Report on Future of Universal Service Fund.

- **Universal Service Goals Proceeding.** Within 30 days of enactment, the FCC shall commence a proceeding to evaluate the implications of this act on how it should achieve the universal service goals for broadband.
- **Report.** Within 270 days of enactment, the FCC shall submit a report on the options of the FCC for improving its effectiveness in achieving such goals. The report may also contain recommendations for Congress.

TRIBAL CONNECTIVITY TECHNICAL AMENDMENTS

Sec. 60201. Tribal Connectivity Technical Amendments.

- **Tribal Broadband Connectivity Extension.** Extends the Tribal Broadband Connectivity Grants to be used beyond the COVID-19 pandemic.
 - Provides 18 months, rather than 180 days, for grant recipients to commit grant funds.
 - Provides four years, rather than one, for grant recipients to expend grant funds.

DIGITAL EQUITY ACT

Sec. 60302. Definitions.

Definitions	
Covered Household	A household, the income of which for the most recently completed year is less than 150% of the poverty level.
Covered Populations	Individuals that live in a covered household, aging individuals, incarcerated individuals, veterans, individuals with disabilities, individuals with a language barrier, members of a racial or ethnic minority and individuals who reside in a rural area.

Sec. 60304. State Digital Equity Capacity Grant Program.

- **Establishment.** NTIA shall establish the State Digital Equity Capacity Grant Program, which shall promote digital equity and inclusion through grants to states.
- **State Digital Equity Plan.** States shall develop a plan, which shall include:
 - Barriers to digital equity;
 - Measurable objectives for documenting and promoting availability and affordability of fixed and wireless broadband, online accessibility and inclusivity of public resources, digital literacy, secure online privacy and cybersecurity and affordable consumer devices and technical support for them;
 - How the objectives will interact with economic goals, educational and health outcomes, civic engagement and the delivery of essential services;
 - A description of how the state will collaborate with key stakeholders; and
 - A list of organizations with which the administering entity collaborated.
- **State Capacity Grants.** NTIA shall award grants annually within two years of initially awarding planning grants.
 - **Grant Formula.** NTIA shall make the following calculation for each eligible state:
 - 50% of the total grant amount shall be based on the population of the state in proportion to the total population of all states.
 - 25% of the total grant amount shall be based on the number of individuals in a covered population in proportion to the total of individuals in all covered populations throughout the U.S.
 - 25% of the total grant amount shall be based on the comparative lack of availability and adoption of broadband in the state in proportion to the lack of availability and adoption in all eligible states.
 - **Minimum Award.** States shall not receive less than 0.5% of the total amount made available to all states.
 - **Use of Funds.** States may use the funding to:
 - Implement the State Digital Equity Plan;

- Pursue digital inclusion activities; and
- Carry out administrative costs.
- **Termination of Grant.** NTIA shall terminate an award if the grant funds are not contributing to the development or execution of the State Digital Equity Plan, if the state is not upholding its assurances and if NTIA determines the grant is no longer necessary to achieve the original purpose of the award.
- **Reporting and Information Requirements; Internet Disclosure.** Any recipient of a grant shall publicly report the use of that grant, the progress toward fulfilling the objectives of the grant, and maintain a searchable database of its grant awards and reports submitted.
- **Rules.** There are authorized to be appropriated:
 - \$60 million for planning grant until expended;
 - \$240 million for FY 2022; and
 - \$300 million for FY 2023 through 2026.

Sec. 60305. Digital Equity Competitive Grant Program.

- **Establishment.** Within 30 days of awarding grants, NTIA shall establish the Digital Equity Competitive Grant Program to support efforts to achieve digital equity, promote digital inclusion and spur broadband adoption.
- **Eligibility.** NTIA may award a grant to any of the following if it has not served as the administering entity for the State Digital Equity Capacity Grant Program:
 - Subdivision, agency or instrumentality of a state;
 - Tribes;
 - A not-for-profit entity other than a school;
 - Community anchor institutions; and
 - Workforce development program entities.
- **Award of Grants Consideration.** NTIA shall consider, when practicable, the comparative geographic diversity of the application in addition to whether it would increase internet access and adoption, result in unjust enrichment and the extent to which it might lead to program duplication.
- **Use of Funds.** Recipients shall use grants for at least one of the following purposes:
 - Implement digital inclusion activities;
 - Facilitate the adoption of broadband;
 - Implement training and workforce development programs;
 - Make available equipment, instrumentation, networking capability, hardware and software or digital network technology for broadband services at low or no cost; and
 - Construct, upgrade, expend or operate new or existing public access computing centers through community anchor institutions.
- **Time Limitations.** Entities shall expend grant amounts within four years.
- **Federal Share.** The federal share of any project may not exceed 90%.

- **Termination of Grant.** NTIA may terminate a grant if the grant is not being used in a manner consistent with the application and is no longer necessary to achieve the original purpose of the grant.
- **Reporting and Information Requirements; Internet Disclosure.** Entities shall submit a report annually detailing the grant amount, the use of grant funds and the progress toward fulfilling the grant objectives. Entities must also maintain a searchable database of its grant awards and reports submitted.
- **Rules.** There are authorized to be appropriated \$250 million for each of the first five fiscal years to carry out this section and additional sums as may be necessary for each fiscal year thereafter.

Sec. 60306. Policy Research, Data Collection, Analysis and Modeling, Evaluation and Dissemination.

- **Reporting Requirements.** Within one year of enactment and annually thereafter, NTIA shall:
 - submit to Congress a report that documents evaluation findings, a list of grants awarded, recipients of such grants and any deobligation or grant modification; and
 - conduct evaluations of the activities carried out under the programs.
- **Contracting Authority.** NTIA may award grants and enter into contracts or agreements with public and private organizations to evaluate the impact and efficacy of activities supported by grants and develop, catalog, disseminate and promote the exchange of best practices to achieve digital equity.
- **Authorization of Appropriations.** There are authorized to be appropriated such sums as may be necessary to carry out this section, which shall remain available until expended.

Sec. 60307. General Provisions.

- **Technological Neutrality.** NTIA shall, to the extent practicable, carry out this title in a technologically neutral manner.

ENABLING MIDDLE MILE BROADBAND INFRASTRUCTURE

Sec. 60401. Enabling Middle Mile Broadband Infrastructure.

Definitions	
Anchor Institution	A school, library, medical or health care provider, community college or other institution of higher education or other community support entity.
Eligible Entity	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, native entity or economic development authority.
Interconnect	The physical linking of two networks for the mutual exchange of traffic on nondiscriminatory terms and conditions.
Internet Exchange Facility	Physical infrastructure through which ISPs and content delivery networks exchange internet traffic between their networks.

Middle Mile Infrastructure	Any broadband infrastructure that does not connect directly to an end-user location, including an anchor institution and includes (1) leased dark fiber, interoffice transport, backhaul, carrier-neutral interest exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport and (2) wired or private wireless broadband 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.
Underserved	An area (1) that is designated as a tribally underserved area or (2) that is not larger than a census block, not in an unserved area and does not have access to 100/20 Mbps or minimum speeds established as benchmarks by the FCC under this act if those minimum speeds are higher.
Unserved	An area (1) that is designated as a tribally underserved area or (2) that is not larger than a census block and does not have access to 25/3 Mbps or minimum speeds established as benchmarks by the FCC under this act if those minimum speeds are higher.

- **Purpose.** The purpose of this section is to encourage the expansion and extension of middle mile infrastructure to reduce the cost of connecting unserved and underserved areas to the last mile and to promote connection resiliency through the creation of alternative network connection paths that can be designed to prevent single points of failure on a network.
- **Sense of Congress.** It is the sense of Congress that:
 - In awarding grants, NTIA should prioritize projects that leverage existing rights-of-way, assets and infrastructure to minimize challenges; projects in which the entity designs the route of the infrastructure to enable connection to unserved anchor institutions; projects that facilitate the development of carrier-neutral interconnection facilities; and projects that improve resiliency and reduce regulatory and permitting barriers to the construction of new middle mile infrastructure.
 - A regulated utility should use funds received from a middle mile grant as a supplement to the core utility capital investment plan to facilitate resiliency and redundancy of middle mile infrastructure or provide connectivity to unserved and underserved areas within the service territory and nearby communities.
- **Middle Mile Grants.** NTIA shall establish a program to make grants on a technology-neutral, competitive basis to entities for the construction, improvement or acquisition of middle mile infrastructure.
- **Applications for Grants.** NTIA shall give priority to applicants that satisfy two or more of the following conditions:
 - Adopts fiscally sustainable middle mile strategies;
 - Commits to offering nondiscriminatory interconnect to terrestrial and wireless last mile broadband providers and any other party making a bona fide request;
 - Identifies specific terrestrial and wireless last mile providers that have (1) expressed written interest in interconnecting with middle mile infrastructure planned to be deployed by the entity and (2) demonstrated sustainable business plans or adequate funding sources with respect to the interconnect;
 - Identifies supplemental investments or in-kind support that will accelerate the completion of the planned project; and
 - Demonstrates that the middle mile infrastructure will benefit the national security interest of the U.S. and Department of Defense.
- **Eligibility.** To be eligible, entities shall agree to prioritize connecting unserved areas, connecting noncontiguous trust lands or the offering of wholesale broadband service at reasonable rates on a carrier-neutral basis.

- **Build-out Timeline.** Entities should also agree to complete build-out middle mile infrastructure within five years of receiving grant funding.
- **Project Eligibility.** A project shall be eligible for a middle mile grant if NTIA determines the proposed network will be capable of supporting retail broadband service.
- **Sharing Facility Locations.** Entities that construct, improve or acquire middle mile infrastructure using a grant shall share with each covered recipient the location of all middle mile broadband infrastructure.
- **Connection to Anchor Institutions.** To the extent feasible, entities receiving grants to build middle mile infrastructure using fiber optic technology shall (1) ensure the network will be capable of providing broadband to an anchor institution speeds of at least 1 Gbps for downlands and uploads and (2) include direct interconnect facilities that will facilitate the provision of broadband service to anchor institutions within 1,000 feet of the middle mile infrastructure.
- **Interconnection and Nondiscrimination.** Entities building a middle mile project using fiber optic technology shall offer interconnection in perpetuity, where technically feasible without exceeding current or reasonably anticipated capacity limitations, or reasonable rates and terms to be negotiated with requesting parties.
 - The interconnection required to be offered includes the ability to connect to the public internet and physical interconnection for the exchange of traffic.
- **Federal Share.** The amount of a middle mile grant awarded to an eligible entity may not exceed 70% of the total project cost.
- **Authorization of Appropriations.** There is authorized to be appropriated \$1 billion for FY 2022 through 2026.

BROADBAND AFFORDABILITY

Sec. 60502. Broadband Affordability.

- **Emergency Broadband Benefit Extension.** Extends the Emergency Broadband Benefit Program and renames it the “Affordable Connectivity Benefit.”
 - **High-Cost Areas.** Directs the FCC to issue regulations to establish a mechanism by which providers in a high-cost area may provide affordable connectivity benefit for an internet service offering provided on tribal land upon a showing that the applicability of the lower limit would cause particularized economic hardship to the provider such that it may not be able to maintain the operation or part or all of its network.
 - **Requirement to Allow Customers to Apply Affordable Connectivity Benefit to Any Internet Service Offering.** Participating providers shall allow households to apply the affordable connectivity benefit to *any* internet service offering from the provider and may not require them to submit to a credit check.
 - **Nonpayment.** Providers may terminate service after 90 days of nonpayment.
 - **Public Awareness.** Participating providers shall carry out public campaigns to highlight the value of internet access and the existence of the Affordable Connectivity Program.

- **Oversight.** The FCC shall establish a complaint process for consumers; require providers to supply information about the existence of the complaint process to subscribers; expeditiously investigate and enforce compliance, including imposing forfeiture penalties; and issue reports about the complaints.
- **Consumer Protection.** The FCC shall promulgate rules to protect consumers who participate in the Affordable Connectivity Program.
- **Delayed Amendments to Affordable Connectivity Program.**
 - **Eligible Household.** Amends the definition of “eligible household” for the Affordable Connectivity Benefit so:
 - It expands the program so that those at or below 200% of the federal poverty line, rather than 135%, qualify for the benefit;
 - It no longer requires at least one member of the household to have experienced a substantial loss of income since Feb. 29, 2020; and
 - It allows households in which at least one member receives assistance through the special supplemental nutritional program for women, infants and children to qualify for the program.
 - **Broadband Benefit.** Makes the following changes to the Affordable Connectivity Benefit:
 - Removes the requirement that the monthly discount be no more than the standard rate for an internet service offering and associated equipment; and
 - Reduces the monthly subsidy from \$50 to \$30.
 - **Internet Service Offering.** Removes from the definition of “internet service offering” the requirement that it be “offered in the same manner, and on the same terms, as described in any of such provider’s offerings for broadband internet access service to such household, as on Dec. 1, 2020.”
 - **Broadband Transparency Rules.** Within one year of enactment, the FCC shall issue final rules regarding the annual collection of data related to the price and subscription rates of each provider that participates in the Affordable Connectivity Program.
 - **Guidance.** The FCC may issue guidance as necessary to carry out the programs of this section.
 - **Coordination.** Within 60 days of enactment, the Secretary of Agriculture, Secretary of Education and the Secretary of Health and Human Services shall enter into a memorandum of understanding with the Universal Service Administrative Company to provide for the expeditious sharing of data through the National Certifier for the purposes of verifying consumer eligibility for the program. Within 90 days of enactment, they shall begin to share data under the MOU.

Sec. 60504. Adoption of Consumer Broadband Labels.

- **Final Rule.** Within one year of enactment, the FCC shall promulgate regulations requiring the display of broadband consumer labels to disclose information regarding broadband internet service plans.
 - The label shall include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.
- **Hearings.** The FCC shall conduct a series of public hearings to assess how consumers evaluate broadband internet access service plans and whether disclosures to consumers of information regarding service plans are available, effective and sufficient.

Sec. 60505. GAO Report.

- **Broadband Speed Requirements.** Within one year of enactment, the GAO shall issue a report evaluating the process used by the FCC to establish, review and update the upload and download speed thresholds, including:
 - How the FCC reviews and updates speed thresholds;
 - Whether the FCC should consider future speed needs when establishing speed thresholds; and
 - Whether the FCC should consider the impacts of changing uses of the internet in establishing, reviewing or updating speed thresholds, including the proliferation of internet-based businesses, working remotely, video teleconferencing, distance learning and cloud data storage.

Sec. 60506. Digital Discrimination.

- **Statement of Policy.** It is U.S. policy that, insofar as technically and economically feasible:
 - Subscribers should benefit from equal access to broadband within the service area of a provider;
 - The term “equal access” means equal opportunity to subscribe to a service that provides comparable speeds, capacities, latency and quality of service; and
 - The FCC should take steps to ensure all people of the U.S. benefit from equal access to broadband service.
- **Adoption of Rules.** Within two years of enactment, the FCC shall adopt final rules to facilitate equal access to broadband internet access service, taking into account the prevention of digital discrimination of access based on income, race, ethnicity, color, religion or national origin.
- **Federal Policies.** The FCC and Attorney General shall ensure federal policies promote equal access by prohibiting deployment discrimination based on the income level of an area or the predominant race or ethnicity of an area.
- **Model State and Local Policies.** The FCC shall develop policies and best practices that can be adopted by states and localities to ensure service providers do not engage in digital discrimination.
- **Complaints.** The FCC shall revise its public complaint process to accept complaints related to digital discrimination.

SPECTRUM AUCTIONS

- **Pre-Auction Funding.** On the date of enactment, the Office of Management and Budget shall transfer \$50 million from the Spectrum Relocation Fund to the Department of Defense (DOD) for research and development, engineering studies, economic analyses, activities with respect to systems or other planning activities to improve efficiency and effectiveness of spectrum use of DOD to make spectrum in the 3.1-3.45 GHz band available for reallocation for federal and non-federal commercial licensed use and auction.
- **Report.** The Secretary of Defense shall report the findings of the planning activities to the Secretary of Commerce.
- **Identification.** Within 21 months of enactment, the Secretary of Commerce—in coordination with the Secretary of Defense, the Director of the Office of Science and Technology Policy and the relevant congressional

committees—shall determine the frequencies within the 3.1-3.45 GHz band that could be made available on a shared basis between federal and non-federal commercial use and submit a report to the president and the FCC.

- **Auction.** Not earlier than Nov. 30, 2024, NTIA shall begin competitive bidding to grant new licenses for the identified spectrum. Auction proceeds shall cover 110% of federal relocation or sharing costs.
- **Sharing of Spectrum.** After May 31, 2025, the president shall modify any federal frequency assignment to accommodate spectrum sharing.
- **Authority.** Grants the FCC authority for seven years after enactment to grant licenses or permits with respect to this spectrum band.

NTIA APPROPRIATIONS—COMMERCE, JUSTICE AND SCIENCE

- **Broadband Equity, Access and Deployment**
 - \$42.45 billion to remain until expended.
- **Broadband Connectivity Fund**
 - \$2 billion to remain until expended.
- **Digital Equity**
 - \$2.75 billion to remain until expended:
 - FY 2022
 - \$60 million for the State Digital Equity Plan planning grants.
 - \$240 million for the State Digital Equity Plan state capacity grants.
 - \$250 million for the Digital Equity Competitive Grant Program.
 - FY 2023–FY 2026
 - \$300 million for the State Digital Equity Plan state capacity grants.
 - \$250 million for the Digital Equity Competitive Grant Program.
- **Middle Mile Deployment**
 - \$1 billion to remain until Sept. 30, 2026, for Enabling Middle Mile Broadband Infrastructure grants.

FCC APPROPRIATIONS—FINANCIAL SERVICES AND GENERAL GOVERNMENT

- **Affordable Connectivity Fund**
 - \$14.2 billion to remain until expended.

Michael Pryor

Shareholder

Al Mottur

Shareholder

Greta Joynes

Senior Policy Advisor

Michael Marn

Policy Analyst

This document is intended to provide you with general information regarding broadband provisions in federal infrastructure packages. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.