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Grading the Presidential Candidates' Positions on Broadband: The Democrats Receive Mostly Poor Marks

by

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I. Introduction and Summary

The next presidential election will take place in less than twelve months. (Perhaps you've heard.) A large – though steadily shrinking – field of hopefuls vie for the opportunity to represent the Democratic Party in November 2020. As they struggle to gain support, broadband policy has emerged as a way for them to appeal to primary voters.

On the campaign trail and in their official positions, Democratic candidates emphasize their commitment to "Net Neutrality," often in its most extreme form (i.e., public utility regulation). They also promise expansive (and expensive) government-funded construction of broadband infrastructure. Neither, however, constitutes effective policy. The unprecedented success and growth of the marketplace for high-speed Internet access services are the direct result not of government intervention, but rather a deregulatory approach to network management and policies designed to maximize private investment and innovation. Below I grade the candidates, and those who turn their back on these free market principles receive poor marks.¹ In general, they all do.

In 2015, the Federal Communications Commission in place during the Obama Administration dealt a blow to sound policy when it reclassified Internet access as a "telecommunications

¹ Broadband-related issues are playing a prominent role in the hotly contested Democratic primary race, so in this *Perspectives* I focus on the leading candidates currently competing for that party's nomination. In the future I intend to return to this topic in order to address the positions of President Trump and those challenging him to represent the Republican Party in the 2020 general election.

service" under Title II. That unfortunate decision subjected broadband to public utility regulation for the first time in the Internet's history – but, thankfully, only briefly.

In late 2017, shortly after current FCC Chairman Ajit Pai's appointment by President Trump, a Republican majority of Commissioners re-reclassified Internet access as an "information service," once again according it the light regulatory touch that Title I provides. In the recent high-profile *Mozilla* court case, the D.C. Circuit Court of Appeals largely upheld that decision.

In response, Democrats competing for their party's nomination seemingly are locked in a lively battle to determine who can articulate the most aggressive plan to regulate Internet service providers. They also appear to be competing for the prize for the most expensive – and least focused – proposal to fund the buildout of broadband networks.

The reality, however, is that the Internet would not be *The Internet* were it not for the hands-off approach and private investment-promoting policies that have reigned for nearly twenty years. Internet service providers have invested mightily in infrastructure, confident in their ability to receive a return on their investment. Network operators and edge providers alike have enjoyed nearly ideal conditions in which to experiment and innovate. And, most importantly, consumers have benefited immensely from the deployment of broadband offerings, both fixed and mobile, at unprecedented rates.

Against this factual backdrop, I evaluate below the current policy positions of eight Democratic candidates for President: former Vice President Joe Biden; Senators Elizabeth Warren, Kamala Harris, Amy Klobuchar, Bernie Sanders, and Cory Booker; South Bend, Indiana Mayor Pete Buttigieg; and entrepreneur Andrew Yang. I break down these hopefuls' positions on broadband into two categories, (1) its appropriate regulatory treatment, and (2) proposals to accelerate its deployment.

With respect to the first category, I grade the candidates based upon their positions on: how Internet access services should be classified under current law; which body should take up that question going forward, Congress or the Federal Communications Commission; the role that states should play, if any; and whether "paid prioritization" should be regarded as a threat or a source of additional consumer welfare.

As you might expect, a majority of the candidates earn their (D)s on this topic: Warren, Sanders, Booker, and Yang all endorse explicitly the reclassification of Internet access as a "telecommunication service" under Title II – and Harris goes a step further, embracing state-level action, as well. Klobuchar and Buttigieg, by contrast, voice only general support for "Net Neutrality" rules and/or principles, and as a result each receives a slightly higher grade of C-. Biden's skepticism while Senator, meanwhile, provides a cause for cautious optimism, though his apparent silence on the topic as a candidate for now earns him an "Incomplete."

Regarding deployment, I evaluate the candidates on: the degree to which they would rely upon private investment to continue to expand coverage; if they intend to limit government action to those areas not served by private sector providers; and whether they would eliminate, or impose additional, regulatory hurdles.

Biden and Klobuchar receive relatively high marks – a "B-" and a "C-," respectively – primarily for their openness to working with existing providers. Buttigieg earns a "D+" for his express intention to fund infrastructure construction even where service today is available, although he does fare slightly better than candidates espousing a similar approach as a result of his promises to make more spectrum available and eliminate bureaucratic red tape. Yang receives a "D" based upon his misguided intention to try to resuscitate government-mandated local-loop unbundling as a means to promote competition, while Sanders wears a scarlet "D-" for his plan to spend a huge amount of government funds – \$150 billion – exclusively on public networks. Warren, meanwhile, garners low marks for her overriding distrust of private sector providers: not only would she deny them access to the \$85 billion she would make available to fund infrastructure construction, she also would impose investment-detering regulations with respect to pole attachments and multiple dwelling units. Finally, Senators Booker and Harris receive a grade of "Incomplete" given their lack of public statements on deployment to date.

II. The Regulatory Classification of Internet Access Services

REPORT CARD:

Klobuchar: C-
Buttigieg: C-
Warren: D
Sanders: D
Booker: D
Yang: D
Harris: D-
Biden: Incomplete

A. Background

The Internet would not be *The Internet* were it not for the light-touch regulatory approach that has prevailed –with only brief interruption – for nearly two decades. In 2002, the Federal Communications Commission ("FCC") first classified broadband Internet access as an "information service" subject to minimal oversight under Title I of the Communications Act of 1934, as amended.² Over the next thirteen years, until the FCC under Democratic Chairman Tom Wheeler unwisely reclassified Internet access as a "telecommunications service" subject to burdensome public utility regulation under Title II,³ consumers reaped the benefits of an increasingly competitive marketplace defined by massive investment, unprecedented growth, and continuous innovation. Moreover, Internet service providers ("ISPs") agreed not to block, throttle, or discriminate against legal content – and included such commitments in their terms of

² See 47 U.S.C. § 153(24) ("The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

³ See *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015); see also 47 U.S.C. § 153(53) ("The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.").

service, thereby empowering the Federal Trade Commission ("FTC") to enforce any violations that may occur.

In light of these realities, Chairman Pai was right to re-reclassify Internet access as an "information service" in 2017.⁴ Fortunately, the D.C. Circuit Court of Appeals agreed.⁵

When next a Democratic majority controls the FCC, however, it is quite likely that the regulatory classification of broadband once again will change. And a Commission with a Republican majority that takes over after that could reverse course yet again. As Free State Foundation President Randolph May recently wrote:

It is certainly not difficult to imagine that, just as in the 1993 movie *Groundhog Day*, we will be forced to relive, if not the same day, the same back-and-forth regulatory classification over and over again. Few people doubt that if a Democrat controls the White House after the 2020 election, when the composition of the FCC changes, the new majority will reverse the Restoring Internet Freedom Order. And if this happens – that is, if the ball bounces the other way again – there is little reason, absent the Supreme Court curtailing the *Chevron* deference doctrine as I have suggested, to suppose that the D.C. Circuit will not once again affirm the agency's switcheroo.⁶

Congress should settle this matter by passing a new law that establishes a market-oriented policy governing ISP network management practices. Continued investment by both ISPs and edge providers hinges upon the certainty that only Congress can provide – and optimal levels of investment require a clear rejection of public utility regulation in favor of a continued light-handed approach.

In addition, federal oversight of the broadband marketplace must acknowledge that Internet traffic inherently is interstate. By design, and in dynamic response to network congestion levels, the path(s) taken by Internet Protocol data packets may vary, even when traveling between the same two end points. In one instance they may traverse facilities located in states 1, 2, and 3, and, in the next, states A, B, and C (or even countries X, Y, and Z). As a consequence, any state-level attempt to regulate ISP network practices technically would be unworkable. To say nothing of the inefficiencies and other harms that a "patchwork" approach would impose.

Finally, "paid prioritization" agreements between ISPs and edge providers guaranteeing a specific quality-of-service level of traffic delivery should not be prohibited. They encourage higher levels of facilities investment, enable innovative new services, and provide tangible

⁴ See *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd. 311 (2018) (*Restoring Internet Freedom Order*).

⁵ See *Mozilla Corp. v. FCC & USA*, No. 18-1051 (D.C. Cir. October 1, 2019).

⁶ Randolph J. May, "The Ongoing Saga of Chevron and Net Neutrality," *The Regulatory Review* (October 21, 2019), available at https://www.theregreview.org/2019/10/21/may-ongoing-saga-chevron-net-neutrality/?utm_source=The+Regulatory+Review+newsletter+and+alert+subscribers&utm_campaign=214ee446ac-EMAIL_CAMPAIGN_4_21_2019_15_21_COPY_02&utm_medium=email&utm_term=0_d70039d0ef-214ee446ac-711780201 (citation omitted). May characterizes this court-sanctioned loop as "an example of uber-*Chevron* deference – or *Chevron* out-*Chevrons* *Chevron*" and argues that "Congress should do its job and establish the fundamental policy governing the conduct of [ISPs] in the digital age." *Id.*

benefits to consumers. It is inappropriate to lump them together with blocking, throttling, and discriminatory treatment of lawful content, or otherwise to prohibit ISPs from entering such arrangements.

B. Grading the Candidates

In order to assign a grade to each of the Democratic candidates, I evaluate their positions on "Net Neutrality" with respect to criteria that reflect the principles set forth above. They include:

- Regulatory classification: should the unprecedented growth and expansion of Internet access be allowed to continue under Title I ("information service") or will private investment be deterred under Title II ("telecommunications service")?
- Decision-making body: should Congress provide clarity and relative certainty on this issue or will the FCC be allowed to continue to reverse course whenever the political composition of the agency changes?
- Federal vs. state: should oversight of inherently interstate broadband networks occur exclusively at the federal level or will state and local governments be allowed to impose an unworkable "patchwork" of rival rules?
- Paid prioritization: should ISPs and edge providers be allowed to experiment and innovate with such arrangements or will restrictions on their use deter investment and reduce consumer welfare?

SENATOR AMY KLOBUCHAR: Although Klobuchar has embraced "Net Neutrality," she has not called explicitly for the reinstatement of the FCC's common carrier rules under Title II. Instead, she has promised action within her first 100 days in office to ensure compliance with "Net Neutrality" principles through the federal contracting process, presumably via executive order.⁷ While on the wrong path, at least Klobuchar avoids reclassification – and has chosen a means to impose rules that, relatively speaking, would be easy for her successor to reverse. As a consequence, her grade is a "C-."

MAYOR PETE BUTTIGIEG: Buttigieg highlights the fact that, as Mayor of South Bend, Indiana, he signed the Cities Open Internet Pledge, which – similar to Sen. Klobuchar's plan – ensures adherence to "Net Neutrality" principles via government contracting.⁸ And if elected president, he has vowed to require ISPs receiving government funds from his proposed \$80 billion Internet For All initiative to "abide by strict open Internet rules that prohibit the blockage or throttling of websites and services."⁹ To his credit, however, Buttigieg has not committed to reclassifying Internet access services under Title II, and it is noteworthy that he does not specifically group paid prioritization in with blocking and throttling. Finally, he "believes that legislation will *ultimately* be necessary to provide real protections for net neutrality on the

⁷ See Andrew Wyrich, "Amy Klobuchar wants to wield the White House to save net neutrality," *The Daily Dot* (August 15, 2019), available at <https://www.dailydot.com/layer8/net-neutrality-amy-klobuchar-2020/>.

⁸ "Cities Open Internet Pledge," available at <https://docs.google.com/forms/d/e/1FAIpQLSctOwOuAZajo8BgYGzM4l0WemNeyBFnURoNWPg44971caMcuQ/viewform>.

⁹ "A Commitment to America's Heartland: Unleashing the Potential of Rural America," available at https://storage.googleapis.com/pfa-webapp/documents/PFA_Unleashing-the-Potential-of-Rural-America-1-3.pdf.

Internet,"¹⁰ which, while recognizing the need for congressional action, does not foreclose the possibility of FCC involvement in this area, as well.

Buttigieg's official policies sidestep Title II, recognize the need for a new federal law, and do not advocate specifically for a ban on paid prioritization arrangements. For this he, too, receives a "C-."

SENATOR ELIZABETH WARREN: Warren wholly embraces reclassification under Title II, vowing to "appoint FCC Commissioners who will restore net neutrality, regulat[e] internet service providers as 'common carriers' and maintain[] open access to the Internet."¹¹ As a Senator she has been open to congressional action to overturn the *Restoring Internet Freedom Order*,¹² but as a candidate she advocates for yet another reversal by the FCC. Support for Title II reclassification earns Professor Warren a "D."

SENATOR BERNIE SANDERS: Like Warren, Sanders has promised to "appoint FCC commissioners who will reinstate net neutrality protections and make sure that giant corporations treat all content and traffic equally."¹³ Also like Warren, Sanders receives a "D."

SENATOR CORY BOOKER: Although candidate Booker has not released any official plans specifically addressing broadband-related issues, as a Senator he has voiced both his disapproval of the FCC's 2017 decision to reclassify Internet access as an "information service" under Title I and his support for congressional efforts to reinstate the Commission's common carrier regulations – including, it would appear, the ban on paid prioritization arrangements.¹⁴ Like his fellow Senators, Booker's grade is a "D."

ANDREW YANG: Yang also wants to appoint FCC Commissioners who would reclassify Internet access services under Title II.¹⁵ Despite his outsider status and background in tech, on this issue at least he walks in lockstep with traditional Democratic politicians. That is why he, too, warrants a "D."

¹⁰ *Id.* (emphasis added).

¹¹ "Investing in Rural America," available at <https://elizabethwarren.com/plans/invest-rural>.

¹² See Devin Coldewey, "Bernie Sanders makes reinstating net neutrality a campaign promise," *TechCrunch* (July 30, 2019), available at <https://techcrunch.com/2019/07/30/bernie-sanders-makes-reinstating-net-neutrality-a-campaign-promise/> (reporting that Warren, in a 2018 Senate floor speech, argued that "[i]f the FCC will not stand up for the public interest, it's up to Congress to do so").

¹³ *Id.*

¹⁴ See, e.g., Cory Booker, *Facebook* (January 8, 2018), available at <https://www.facebook.com/corybooker/posts/the-fccs-vote-to-gut-net-neutrality-protections-was-a-massive-blow-to-the-fundam/10157573629757228/> ("The FCC's vote to gut net neutrality protections was a massive blow to the fundamental ideals of a free and open internet for all. Congress shouldn't stand passively by while innovation is stifled and the democratizing power of the internet is dismantled because of this arbitrary policy change. That's why I'm signing on to Senator Markey's effort to restore net neutrality, and will continue fighting to protect small businesses, consumers, and many, many others from the hazards of an internet where content is throttled, blocked, or given unequal preference.").

¹⁵ "Policy: Net Neutrality," available at <https://www.yang2020.com/policies/net-neutrality/> (promising to "[a]ppoint members to the FCC that will immediately reclassify ISPs under Title II of the Communications Act, thus allowing the FCC to regulate them and reinforce net neutrality)."

SENATOR KAMALA HARRIS: Not only would President Harris "appoint an FCC Chair who is committed to bringing back net neutrality,"¹⁶ but Senator Harris, in the wake of the D.C. Circuit Court of Appeals' decision in *Mozilla*, has offered praise for state-level efforts – like those of her California home – to regulate the network practices of ISPs.¹⁷ For her support of both Title II reclassification and an unworkable "patchwork" approach, Harris earns not just a "D," but a "D-."

FORMER VICE PRESIDENT JOE BIDEN: In his current bid for the White House, Biden so far appears to have avoided discussing "Net Neutrality." However, there may be reason to believe he could break from the Democratic pack on this topic – not withstanding his prominent role in the Obama Administration, under which Internet access first was classified as a "telecommunications service."

In 2006, then-Senator Biden questioned the likelihood that the claimed harms motivating possible congressional action in fact would occur, remarking that, if they did, "the chairman [of the Senate Judiciary Committee] will be required to hold this meeting in [the] largest room in the Capitol, and there will be lines wandering all the way down to the White House."¹⁸

While perhaps cause for cautious optimism, Biden's statements from over a decade ago on their own cannot settle the matter. Given candidate Biden's apparent silence to date, at this time I have no choice but to issue an "Incomplete."

III. Proposals to Expand Broadband Coverage

REPORT CARD:

Biden: B-
Klobuchar: C-
Buttigieg: D+
Yang: D
Sanders: D-
Warren: F
Booker, Harris: Incomplete

A. Background

Thanks to free market policies designed to encourage network construction, commercial ISPs have invested vast sums in infrastructure. According to NTCA – The Internet & Television

¹⁶ Andrew Wyrich, "Kamala Harris says she will restore net neutrality if elected," *The Daily Dot* (August 20, 2019), available at <https://www.dailydot.com/layer8/net-neutrality-kamala-harris-2020/>.

¹⁷ Andrew Wyrich, "Kamala Harris on net neutrality: 'the fight to protect the future of the internet continues,'" *The Daily Dot* (October 2, 2019), available at <https://www.dailydot.com/layer8/net-neutrality-court-kamala-harris/> ("After today's court decision on net neutrality, the fight to protect the future of the internet continues," Harris said in a statement to the Daily Dot late Tuesday. "The court sent a clear message that state and local governments can continue their leadership to protect net neutrality in their communities, such as California has done.").

¹⁸ Anne Broache, "Senate ponders policing of Net neutrality offenses," *CNET* (June 14, 2006), available at <https://www.cnet.com/news/senate-ponders-policing-of-net-neutrality-offenses/> (describing how Biden and "[o]thers on the committee questioned the need for 'preemptive' action against a problem they're not convinced exists").

Association, cable operators alone have invested nearly \$300 billion over the last two decades.¹⁹ As a result, consumers have benefited greatly. As the FCC noted in its *2019 Broadband Deployment Report*:

[T]he digital divide has narrowed substantially, and more Americans than ever before have access to high-speed broadband. In the time since the Commission's last *Broadband Deployment Report*, the number of Americans lacking a connection of at least 25 Mbps/3 Mbps (the Commission's current benchmark) has dropped from 26.1 million Americans at the end of 2016 to 21.3 million Americans at the end of 2017, a decrease of more than 18%. Moreover, the majority of those gaining access to such connections, approximately 4.3 million, are located in rural America. Higher-speed services are being deployed at a rapid rate as well. For example, the number of Americans with access to at least 250 Mbps/25 Mbps broadband grew in 2017 by more than 36%, to 191.5 million. And the number of rural Americans with access to such broadband increased by 85.1% in 2017.²⁰

Nevertheless, there remain some parts of the country – largely in rural, low-population-density settings – where service is not yet available. But the question, of course, is how best to ensure that broadband reaches these areas in a timely fashion. Continued reliance upon private investment, supplemented with government incentives to accelerate network expansion into unserved areas plagued by particularly high costs? Or massive government spending that (1) undermines private investment and competition, thereby reducing overall consumer welfare, and (2) in the case of publicly owned and operated networks, tilts the playing field toward municipalities and other government-supported entities and saddles taxpayers with the financial risk of failure?

Private investment is the time-proven best method to drive broadband deployment – and investment approaches optimal levels in the absence of regulatory burdens. I therefore maintain that, to the extent that government does intrude into the broadband marketplace, it should do so only to (a) remove regulatory barriers, (b) free up additional spectrum, or (c) narrowly target those areas where service is not available. Government funding certainly should not be used to fund infrastructure construction in areas already served by the private sector,²¹ and, as a general matter, municipal broadband projects should be viewed as problematic.

When considering candidates' commitments to spend enormous sums on broadband infrastructure, it is important to keep in mind how similar efforts in the recent past have fared. As

¹⁹ "Broadband by the Numbers," available at <https://www.ncta.com/broadband-by-the-numbers>.

²⁰ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, 2019 Broadband Deployment Report, FCC 19-44, ¶ 2 (released May 29, 2019).

²¹ See generally Randolph J. May, "Overbuilding Broadband Networks With Public Funds Harms Consumers," *Perspectives from FSF Scholars*, Vol. 14, No. 36 (November 5, 2019), at 3, available at <https://freestatefoundation.org/wp-content/uploads/2019/11/Overbuilding-Broadband-Networks-with-Public-Funds-Harms-Consumers-110519-2.pdf> (explaining that "[a]dopting programs that disincentivize[] private sector investment in new broadband facilities in the face of government-subsidized new entry almost certainly will reduce overall consumer welfare in the long-run and possibly even the short-term too. And it is an unwise use of scarce public funds to establish managed-competition programs in areas in which service already exist").

one commenter argues, "[t]he Obama administration had great failures with its broadband grant programs. Projects funded with US Department of Agriculture grants had high failure rates and provided only about 10 percent of the broadband promised. The US Department of Commerce grants were equally ineffective and laden with political cronyism."²² And with respect to municipal broadband projects, Free State Foundation scholars Theodore R. Bolema and Michael J. Horney point out that they "often crowd out private investment, discourage competition, and burden taxpayers with long-term debt."²³ As a result, Bolema and Horney conclude that:

[I]t is not surprising that many state legislatures have preempted local governments from establishing new municipal broadband utilities. Texas prohibits any municipalities from offering broadband services, while other states require ballot initiatives or in-depth cost-benefit analyses before municipalities can move forward. More common are requirements that local governments show an unwillingness by private providers to enter the local broadband market. States have a legitimate interest to make sure their political subdivisions act in a financially responsible way and to protect their residents from risky, ill-conceived burdensome municipal ventures. States also have legitimate reasons to be concerned about local governments both competing with and regulating private broadband services.²⁴

Thus, neither government grants nor publicly owned and operated infrastructure are a panacea for the problem of unserved areas – or even an acceptable substitute for privately funded broadband networks.

B. Grading the Candidates

Based upon the above discussion, I grade the Democratic candidates' plans to promote broadband deployment against the following considerations:

- Trust in private investment: will the private sector continue to drive the expansion of broadband availability, or will the government dedicate limited resources to less efficient projects that interfere with a well-functioning marketplace?
- Unserved areas: will government-led efforts to address the "Digital Divide" be targeted to those areas where service does not exist, or will limited resources be used to overbuild existing networks?
- Barriers to investment: will the federal government act to remove regulatory obstacles and preempt state- and local-level interference, or will it act in ways that disrupt investment-driven broadband expansion?

²² See, e.g., Mark Jamison, "Elizabeth Warren's rural broadband plan repeats historical mistakes," *AEIdeas* (August 13, 2019), available at <https://www.aei.org/technology-and-innovation/telecommunications/elizabeth-warrens-rural-broadband-plan-repeats-historical-mistakes/>.

²³ Theodore R. Bolema and Michael J. Horney, "The Problem with Municipal Broadband and Solutions for Promoting Private Investment," *Perspectives from FSF Scholars*, Vol. 12, No. 21 (June 21, 2017), at 2, available at <https://freestatefoundation.org/wp-content/uploads/2019/05/The-Problem-with-Municipal-Broadband-and-Solutions-for-Promoting-Private-Investment-062017.pdf>.

²⁴ *Id.* at 8.

FORMER VICE PRESIDENT JOE BIDEN: To date, Biden's official proposals with respect to broadband deployment are quite modest. If elected, he has made only the following promises: to invest \$20 billion in "rural broadband infrastructure" and to triple "Community Connect" grants.²⁵ (It is not clear whether this additional grant money is separate from, or included within, the \$20 billion.) Compared to the plans announced by some of his rivals, Biden's funding amount is much more fiscally responsible: \$20 billion versus \$80 billion (Buttigieg), \$85 billion (Warren), \$150 billion (Sanders), and an undefined portion of \$1 trillion (Klobuchar). And it is significant that for-profit corporations are eligible to participate in the Department of Agriculture's Community Connect grant program.²⁶ On the other hand, on his website Biden only discusses "partner[ing] with municipal utilities" – not commercial ISPs.²⁷ Nevertheless, because his plans are limited in scope and appear to respect the role of private sector firms, Biden receives a "B-."

SENATOR AMY KLOBUCHAR: Klobuchar has promised to "connect every household in America to the internet by 2022" as part of her comprehensive \$1 trillion infrastructure plan.²⁸ Specifically, she intends to "focus on creating accurate broadband maps to identify areas that lack adequate access, bringing high-speed internet infrastructure to areas most in need, including by expanding Rural Utility Service grants, and providing greater incentives for existing providers to upgrade their networks to cover unserved and underserved areas."²⁹

The precise meaning of the term "adequate access" is unclear, but suggests a willingness to expend government funding in areas where service already is available. It is also worth noting that her home state of Minnesota's definition of "underserved area" is rather extreme: 100 Mbps in the downstream direction and 20 Mbps upstream.³⁰ Further, the same commenter quoted above on the problems with government funding generally has criticized the Rural Utility Service grant program specifically as "a lesson in how to not build broadband."³¹

But to her credit, Klobuchar would include "existing providers" in her efforts to expand coverage.³² Moreover, unlike many of her fellow candidates, she has not announced plans to

²⁵ See "The Biden Plan for Rural America," available at <https://joebiden.com/rural/>.

²⁶ See "Community Connect Grants," available at <https://www.rd.usda.gov/programs-services/community-connect-grants>.

²⁷ "The Biden Plan for Rural America," available at <https://joebiden.com/rural/>.

²⁸ "Amy's Plan to Build America's Infrastructure," *Medium* (March 28, 2019), available at <https://medium.com/@AmyforAmerica/amys-plan-to-build-america-s-infrastructure-671b08a10751>.

²⁹ "Senator Klobuchar's Plan from the Heartland: Strengthening our Agricultural and Rural Communities," *Medium* (August 7, 2019), available at <https://medium.com/@AmyforAmerica/senator-klobuchars-plan-from-the-heartland-strengthening-our-agricultural-and-rural-communities-405cb6b3234d>.

³⁰ See "Broadband Grant Program," Minnesota Office of Broadband Development, available at <https://mn.gov/deed/programs-services/broadband/grant-program/> ("An underserved area is an area of Minnesota in which households or businesses do not receive service at or above the FCC threshold but lack access to wire-line broadband service at speeds 100 megabits per second download and 20 megabits per second upload.") (emphasis omitted).

³¹ Mark Jamison, "Failure to Connect: USDA's Rural Utilities Service shows why government subsidized broadband is a losing investment," *US News & World Report* (August 6, 2015), available at <https://www.usnews.com/opinion/economic-intelligence/2015/08/06/usda-shows-government-subsidized-broadband-is-a-bad-investment>.

³² "Amy's Plan to Build America's Infrastructure," *Medium* (March 28, 2019), available at <https://medium.com/@AmyforAmerica/amys-plan-to-build-america-s-infrastructure-671b08a10751> (stating that she would "provide greater incentives for existing providers to use funds to upgrade their networks to cover unserved

interfere with states' decisions regarding municipal broadband. For these reasons, she receives a "C-" grade.

MAYOR PETE BUTTIGIEG: Buttigieg has released an ambitious proposal to, among other things, expand access to "all currently unserved and underserved communities," free up additional spectrum for wireless broadband, and promote satellite-based offerings.³³ While he deserves credit for those aspects of his plan designed to promote deployment and remove regulatory barriers, in general his approach suffers from a familiar flaw: it advocates government-backed participants in areas where service already exists. He therefore merits a "D+."

President Pete's "Internet For All" initiative would allocate \$80 billion in order to deploy broadband to "regions private companies won't cover"³⁴ – though to be fair, he does appear to envision at least some role for private entities.³⁵ He wouldn't stop there, however: "[w]here companies have not provided coverage or it is unaffordable, his Administration will fight to create a public option to compete with these companies and make access affordable for communities being left behind."³⁶ Thus, under a Buttigieg administration, taxpayer funds would be expended even in areas where Internet access services already are available. He also would pursue federal law preempting state efforts to restrict or regulate municipal broadband.³⁷

On a positive note, however, Buttigieg does have plans to make additional capacity available for mobile broadband. For example, he advocates for spectrum sharing and an auction of C-Band spectrum. He also would encourage next-generation satellite-based offerings "by investing in R&D and supporting initiatives to cut bureaucratic red-tape, such as simplifying new generation broadband technology licensing rules while ensuring safety in space."³⁸

ANDREW YANG: With respect to unserved areas, Yang has voiced a fairly reasonable approach, tweeting that "[o]ne thing we should do pronto – wire rural areas with broadband. With some federal incentives we can get it up to 99.8% without undue difficulty and expense."³⁹ On promoting broadband competition, however, he has embraced a concept that not only deters

and underserved areas"); *see also* "Senator Amy Klobuchar Releases Plan of More Than 100 Actions for Her First 100 Days as President," *Medium* (June 18, 2019), available at <https://medium.com/@AmyforAmerica/amys-first-100-days-b7adf9f91262> (stating an intention to "encourage[e] public-private partnerships in the areas of greatest need").

³³ *See* "A Commitment to America's Heartland: Unleashing the Potential of Rural America," available at https://storage.googleapis.com/pfa-webapp/documents/PFA_Unleashing-the-Potential-of-Rural-America-1-3.pdf. He also intends to close the "homework gap," modernize 911, and "[b]uild the first network of 'connected' rural communities." *Id.*

³⁴ *Id.*

³⁵ *See id.* ("But in rural communities where private companies do not provide quality or affordable coverage, Pete will work with state and local governments to invest billions of dollars directly in community-driven broadband networks, such as public-private partnerships, rural co-ops or municipally owned broadband networks.") (emphasis added).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Andrew Yang (@AndrewYang), *Twitter* (June 19, 2019, 9:10 pm), available at <https://twitter.com/andrewyang/status/1141181408561586177?lang=en>.

network investment, but already has been tried and, and to a large extent, rejected by the FCC: government-mandated local-loop unbundling.⁴⁰ On that basis alone he merits a "D."

SENATOR BERNIE SANDERS: As the self-identified Socialist in the race, it perhaps is not surprising that Sanders has vowed to provide "\$150 billion in infrastructure grants and technical assistance for municipalities and states to build publicly owned and democratically controlled, co-operative, or open access broadband networks."⁴¹ \$150 billion is a huge government expenditure, even as compared to the plans of his fellow candidates. And the potential role for private sector ISPs is at best unclear: perhaps they could provide service over the "open access broadband networks" that he would construct? Sanders' proposal ignores the critical role that commercial ISPs have played in deploying and expanding broadband availability, expresses a clear preference for municipal networks, and comes with a very high price tag. For that he deserves a "D-."

SENATOR ELIZABETH WARREN: Make no mistake, Senator Warren has a plan for it: "a public option for broadband." Massive in scope, her proposal touches upon everything from mapping to deployment, municipal broadband laws to Native American lands, pole attachments to building access, required speeds to the Universal Service Fund. Evaluated against the criteria set forth above, it falls short on all accounts. By promising to favor public networks over private sector offerings, allocate government funding for redundant infrastructure where service already is available, and impose burdensome regulation that would impede a well-functioning marketplace and discourage private investment, Warren distinguishes herself from the pack – though not in a good way. She receives an "F."

Warren would endow a new Office of Broadband Access with \$85 billion in grant money to "make sure every home in America has a fiber broadband connection at a price families can afford"⁴² – and explicitly deny commercial ISPs access to that funding.⁴³ She also would push new federal law preempting state-imposed restrictions on municipal broadband projects. And she would attempt to micromanage and dictate terms in the marketplace for Internet access services by mandating that grant recipients "offer at least one plan with 100 Mbps/100 Mbps speeds"⁴⁴ – well beyond not just the FCC's minimum thresholds, but the current needs of broadband users.

However, Warren wouldn't simply rely exclusively on public networks to expand coverage to unserved and underserved areas. She also would fund public overbuilding projects in areas deemed to be subject only to "minimal competition,"⁴⁵ a mischievous and amorphous concept susceptible to a broad range of interpretations, including ones that invite government support for favored firms.

⁴⁰ See "Policy: Net Neutrality," available at <https://www.yang2020.com/policies/net-neutrality/> (contending that "competition should be increased through local-loop unbundling. This would provide startups with access to the expensive, final wires connecting the internet 'backbone' to residences so that they can innovate and compete in an otherwise stifled market. By doing so, prices will come down away from their current monopoly levels and thus increase internet access further").

⁴¹ "Issues: The Green New Deal," available at <https://berniesanders.com/issues/green-new-deal/>.

⁴² "Investing in Rural America," available at <https://elizabethwarren.com/plans/invest-rural>.

⁴³ See *id.* ("That means publicly-owned and operated networks – and no giant ISPs running away with taxpayer dollars."); see also *id.* (declaring that "[u]nder [her] plan, only electricity and telephone cooperatives, non-profit organizations, tribes, cities, counties, and other state subdivisions will be eligible for grants from this fund").

⁴⁴ See *id.*

⁴⁵ *Id.*

Finally, Warren would take steps to address what she describes as "the range of sneaky maneuvers giant private providers use to unfairly squeeze out competition, hold governments hostage, and drive up prices."⁴⁶ Specifically, she would (1) hand over to localities control of poles and conduits,⁴⁷ which could distort the marketplace by raising costs for commercial providers – but not for public networks;⁴⁸ and (2) restrict the ability of building owners and private ISPs to enter agreements regarding access and inside wiring⁴⁹ – thereby undermining incentives to deploy broadband infrastructure.

SENATOR CORY BOOKER: Candidate Booker has been relatively quiet on deployment-related issues. As a Senator, however, he has backed legislation preempting state laws restricting municipal broadband.⁵⁰ Until we hear more, however, Booker gets an "Incomplete."

SENATOR KAMALA HARRIS: It does not appear that Harris has weighed in on this topic. Therefore she, too, at this time receives an "Incomplete."

IV. Conclusion

With only brief interruption, for roughly twenty years federal government oversight of high-speed Internet access services has adhered to sound free market principles. The results are undeniable. A hands-off regulatory approach to ISP network management practices and pro-investment policies have incentivized the private sector to build and operate ever faster, more reliable broadband networks at a remarkable and timely pace. And all the while, ISPs have remained committed to bedrock "Net Neutrality" principles: no blocking, throttling, or discriminatory treatment of legal content.

Real-world facts notwithstanding, the concept of public utility regulation has been embraced by many Democratic presidential hopefuls. And while more ubiquitous broadband coverage is a noble goal, one that warrants a certain sense of urgency, it cannot justify undisciplined government spending, particularly in areas where the private sector already provides service. By and large, the candidate positions described above would impede competition, discourage private investment, and constrain innovation – all to the detriment of overall consumer welfare. The grades I award reflect that.

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⁴⁶ *Id.*

⁴⁷ *See id.*

⁴⁸ *See generally* Theodore R. Bolema, "Municipal Broadband's Tilted Playing Field: Advantages Created by City Self-Dealing," *Perspectives from FSF Scholars*, Vol. 14, No. 30 (October 10, 2019), available at <https://freestatefoundation.org/wp-content/uploads/2019/10/Municipal-Broadband's-Tilted-Playing-Field-Advantages-Created-by-City-Self-Dealing-101019.pdf> (arguing that, because obtaining access to rights-of-way is one of the most expensive and time-consuming aspects of deploying broadband facilities for a private ISP, the ability of municipality-owned providers to avoid that hassle and cost is a government-created competitive advantage).

⁴⁹ *See* "Investing in Rural America," available at <https://elizabethwarren.com/plans/invest-rural>.

⁵⁰ *See, e.g.,* John Eggerton, "Booker to Introduce Bill Backing Muni Broadband," *Multichannel News* (January 23, 2015), available at <https://www.multichannel.com/news/booker-introduce-bill-backing-muni-broadband-387176>.