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**The BRIDGE Act: The Wrong Way Forward on Broadband Policy**

by

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**I. Introduction and Summary**

On July 9, 2021, President Biden promulgated a new ["Executive Order on Promoting Competition in the American Economy,"](#) and not surprisingly it contains provisions relating to broadband. This follows President Biden's [announcement](#) on June 24 that his administration had reached a deal on a \$1.2 trillion infrastructure package with a bipartisan group of ten Senators: five Democrats and five Republicans. According to the [Fact Sheet](#) released by the White House, it includes \$65 billion to "[c]onnect every American to reliable high-speed internet." As one reporter [noted](#), "[l]ittle detail was available about how the broadband funds would be spent."

While the details may be unknown at this point, it is clear that the issues surrounding funding of broadband infrastructure will be at the forefront over the next few months. As the "Further Readings" listing at the end of this *Perspectives* demonstrates, Free State Foundation scholars have been researching and writing intensively regarding broadband deployment since the beginning of the year. This particular *Perspectives* focuses on the problematic aspects of the

BRIDGE Act, a recently introduced broadband bill that unapologetically rejects the power of competition and the efficient operation of marketplace forces in favor of a backwards-looking public utility model. The BRIDGE Act should be rejected.

In particular, the BRIDGE Act advocates harmful policies that would:

- **Overbuild privately funded networks.** Without providing any evidence that consumers have interest in gigabit upload speeds, the BRIDGE Act treats all existing providers that offer less than symmetrical gigabit speeds as deserving of government-subsidized competition. This would discourage further investment; cast doubt on the wisdom of assuming entrepreneurial risk; undermine competition; and reduce innovation.
- **Encourage, and discriminate in favor of, municipal broadband projects,** Not at all coincidentally, municipal broadband projects primarily involve fiber – which just so happens to be able to provide symmetrical gigabit speeds. The BRIDGE Act would preempt approximately twenty state laws that seek to protect residents from the financial risk and fallout that frequently result from misguided municipal attempts to enter the broadband marketplace. It also would provide local governments the ability to disadvantage rival subsidy applicants through a "letter of endorsement" mechanism.
- **Invite the use of inaccurate availability data just as the FCC is working on a definitive, nationwide map.** Congress, through the Broadband DATA Act, and the Commission, through the Digital Opportunity Data Collection initiative, both have recognized the importance of a single, reliable source of information regarding where broadband is and is not available. The BRIDGE Act would permit the use of other, potentially less accurate, data. Given the inevitable conflicts of interest that municipalities face, as both regulators and rivals, they would have a clear incentive to cherry pick data that justifies construction in high-profit areas where service, in actuality, already is provided.
- **Regulate the rate that subsidy recipients may charge certain low-income consumers.** History makes clear that government attempts to set rates are an exercise in futility. Particularly in the case of a highly competitive service, such as broadband, where the operation of the free market already ensures that prices are set to efficient levels. The BRIDGE Act's requirement that subsidy recipients agree to provide a rate-regulated offering, on the other hand, would further advantage municipal offerings, lead to lengthy FCC administrative proceedings and likely court challenges, and negatively impact the marketplace.

The cosponsors of the BRIDGE Act, and other advocates for its policies that would move backwards on broadband policy, knowingly disregard the progress achieved by privately funded broadband marketplace participants. Already, due primarily to nearly \$2 trillion in broadband infrastructure investment by private sector companies, at the end of 2019, 96 percent of Americans have broadband service available. The figure is undoubtedly even higher today.

Despite this indisputable progress, the BRIDGE Act proponents embrace unrealistic technical specifications, which have no connection to actual consumer demand, in an attempt to justify a regressive and unwarranted overhaul of a longstanding, light-touch regulatory approach with undeniable pro-consumer results. The alternative – an objective and wide-eyed assessment – reveals that effective competition is realizing the very goals – lower prices, faster speeds, wider availability – they claim to champion.

## **II. The BRIDGE Act Embraces Symmetrical Speeds As a Means to Disregard the Effectiveness of Intermodal Competition**

Through a series of *Perspectives*, Free State Foundation President Randolph May and I have taken issue with numerous facets of the Biden Broadband Plan: (1) how its stated intention to "[future proof](#)" subsidized networks is an unachievable and [wasteful](#) objective; (2) how it improperly rejects the competition-maximizing principle of technological neutrality; (3) how it appears to favor fiber over other distribution technologies in order to further its stated goal of promoting government-operated networks; (4) how it, and its proponents, [misrepresent](#) the breadth of competition that exists; and, (5) how it overlooks the extent to which competition is producing benefits for consumers, including [lower prices and faster speeds](#). But the Biden Broadband Plan is only a vague wish list of priorities set out in a [White House Fact Sheet](#). A high-level broad(band) framework, if you will. The BRIDGE Act, on the other hand, is actual draft legislation. And the specifics are concerning.

On June 15, 2021, Senators Michael Bennet (D - CO), Rob Portman (R - OH), and Angus King (I - ME), introduced S.2071, the "[Broadband Reform and Investment to Drive Growth in the Economy Act of 2021](#)" (the BRIDGE Act). The BRIDGE Act would provide \$40 billion in taxpayer dollars to states, U.S. territories, and Tribal governments to fund a variety of broadband-related initiatives, including duplicative mapping projects, distance learning, telehealth, free or reduced cost broadband service, and connecting eligible community anchor institutions. Its primary objective, however, is to subsidize the construction of so-called "future proof" broadband infrastructure. The [Press Release](#) announcing the introduction of this legislation highlights that it would "rais[e] the minimum speeds for new broadband networks to at least 100/100 Mbps, with flexibility for areas where this is technologically or financially impracticable."

At the outset, I want to flag the fourth of five "Findings" found in Section Two of the BRIDGE Act. It states that "[i]n many communities across the country, increased competition among broadband providers has the *potential* to offer consumers more affordable, high-quality options for broadband service" (emphasis added). The truth, however, is that steadily increasing competition – utilizing numerous distribution technologies: fiber, hybrid coaxial-fiber (HFC) cable, 5G, licensed and unlicensed wireless spectrum, and satellite – already is doing exactly that throughout the vast majority of this country.

As I have stated on numerous occasions, the use of federal money to accelerate the timing by which all Americans have access to broadband connectivity, in theory, is a worthy exercise, particularly in light of the essential role that high-speed Internet access has played in the lives of

so many during the COVID-19 pandemic. At the same time, though, it is essential that policymakers do not lose sight of where we are already in terms of deployment – and how we got here. The FCC recently [reported](#) that, as of the end of 2019, (1) 96 percent of consumers could subscribe to fixed broadband at speeds of 25 megabits per second (Mbps) downstream and 3 Mbps upstream (25/3 Mbps), and (2) virtually everyone has access to either 25/3 Mbps fixed broadband or mobile 4G LTE at a median speed of 10/1 Mbps. Availability of fixed broadband surely has increased in the nearly two intervening years.

The catalyst for that incredible progress in deployment is private investment compelled by rapidly expanding competition. Broadband providers have [risked](#) nearly \$2 trillion overall and \$80 billion annually each of the last several years. And the number of rivals – whether telecommunications providers, cable companies, mobile broadband carriers, fixed wireless ISPs, or satellite operators – continues to grow. According to the FCC, upwards of [74 percent](#) of consumers were able to choose from two or more options as of year-end 2019. As USTelecom data reveals, that competition is benefiting consumers through steadily declining [prices](#) – the cost of the most popular broadband offerings dropped by 7.5 percent between 2020 and 2021 – and ever-increasing [speeds](#). Today, 92 percent of Americans have access to download speeds of 100 Mbps, 82 percent more than just ten years prior, and 87 percent have access to Gigabit download speeds.

Thus, there is clear evidence that effective competition does exist throughout the vast majority of the country, that that competition requires providers to respond to consumer demand, and, critically, that consumers demand far more download than upload capacity. According to NCTA, downstream usage [outweighs](#) upstream usage by roughly 16 times, thanks to the ever-growing consumption of streaming video. As a direct consequence, and as the numbers above demonstrate, the top downstream speeds that broadband providers make available (though by no means do all consumers choose to purchase) increasingly are in the 100 Mbps to gigabit range. By contrast, consumer demand for upstream bandwidth is far less – and so is the amount of upstream capacity that rational, cost-focused operators choose to provide. Symmetrical speeds might look to some like a good idea on paper, or a way to limit subsidies to municipalities and others that rely upon fiber, but it is clear that they simply are not compelled by marketplace forces.

### **III. The BRIDGE Act Would Subsidize the Construction of Broadband Infrastructure in Areas Where It Already Exists**

Although the BRIDGE Act prioritizes funding for projects that target "unserved areas" – defined, consistent with [the FCC's informed conclusion](#), as less than 25/3 Mbps – it would allow up to half of its \$40 billion to be used to subsidize network construction in areas it defines as "underserved" – that is, where speeds are less than 100/25 Mbps – and, most alarmingly, in what it refers to as "other qualifying area[s]," *i.e.*, anywhere that lacks symmetrical gigabit service. The intent appears to be to discriminate in favor of fiber-based municipal broadband projects, even where privately funded providers, using a range of distribution media, already deliver the speeds that consumers actually want.

There are good reasons to object to funding programs that allow government-subsidized overbuilds. Importantly, they discourage private investment and, in turn, competition and innovation. They also waste limited resources intended to deliver broadband access to areas where it is not yet available. And they lead to higher consumer costs.

Given the choice, and permission, to choose between constructing facilities in (1) areas characterized by low population density, geographical challenges, and a reduced potential return, or (2) areas where the economics are sufficiently positive to have prompted already the use of private capital to deploy service, rational funding recipients would be expected to choose the latter. The goal, though, is to connect every American, and rules that allow the use of subsidies in areas beyond those that in fact are unserved are, from an economic perspective, unquestionably counterproductive.

But in this case, yet another basis exists to sound the alarm. The BRIDGE Act, in defining an "other qualifying area" in a manner that, from a technical perspective, excludes all non-fiber distribution media, wouldn't just subsidize new entrants. It also would discriminate in favor of municipal broadband projects, a misguided objective that I discuss further below.

#### **IV. The BRIDGE Act Would Explicitly Encourage Municipal Broadband Boondoggles**

Approximately twenty states have passed laws restricting local-government entry into the broadband marketplace, and for good reason: [they tend to fail](#) and, when they do, taxpayers are left holding the bag. The financial impact for consumers may not be direct or obvious, but the losses sustained when a municipality lacking the necessary operational and/or technical expertise fails to run a broadband network successfully must be [offset](#) in one way or another.

The BRIDGE Act, however, would preempt those state laws and, in doing so, violate their sovereignty in a manner inconsistent with [principles of federalism](#). And it would take additional steps to discriminate in favor of a public utility approach to broadband service. For one, and as noted in the previous section, it would explicitly allow the use of government subsidies to overbuild *any* existing infrastructure incapable of providing gigabit speeds in the upstream direction – that is, any non-fiber network. Municipal broadband networks largely are fiber-based, so this would favor them via technical specification.

The BRIDGE Act also would provide municipalities serving as both regulators and competitors – a conflict-creating situation in and of itself, one that incentivizes [abuse of administrative processes](#), such as permitting and access to rights of way, in order to disadvantage rivals – yet another anticompetitive tool: the power to provide, or, more to the point, refuse to provide, a "letter of endorsement." The BRIDGE Act would have states "give priority" to a subsidy applicant with "a letter of endorsement for the project from the local government for each community that the project will service." Where both the municipality and a privately funded provider seek subsidies to serve a given area, the former would have every incentive to deny a letter of endorsement to the latter.

## V. The BRIDGE Act Would Allow the Use of Inaccurate Availability Information

It may seem obvious, but government cannot target subsidies to those areas in fact unserved without accurate and detailed information as to where broadband service already exists. The FCC, under then-Chairman Ajit Pai, [began](#) a process to generate updated broadband availability maps in 2017 with the Digital Opportunity Data Collection (DODC). Congress responded in March 2020 with the [Broadband Deployment Accuracy and Technological Availability \(DATA\) Act](#), which directs the FCC to "create a common dataset of all locations in the United States where fixed broadband can be installed," "develop a process through which the Commission can collect verified data," and establish "uniform standards for the reporting of broadband internet access service data." Once such maps have been produced, the FCC must rely upon them "to determine the areas in which ... broadband internet access service is and is not available."

The BRIDGE Act, however, would allow states to identify which areas are unserved "using data drawn from sources *including* the [FCC's DODC map], another broadband map of the Commission that is in effect, the National Broadband Availability Map created by the Assistant Secretary [of NTIA], or State-level broadband data" (emphasis added). This affords states a wide degree of discretion, obviously.

By contrast, the [earlier version](#) of the BRIDGE Act that Senator Bennet introduced in 2020 required the use of the DODC map once created. Per the [section-by-section summary](#), "States and Tribes must identify all areas eligible for funding using the FCC's Broadband Map once overhauled according to the Broadband DATA Act. Until that overhaul is complete, States and Tribes have discretion to use existing FCC data or make their own determinations about eligible areas."

The goal shared by Congress and the FCC is to produce a single, authoritative source for information on the availability of broadband service, one that, once completed – and indications are that it will be ready within "[months](#)" – can serve reliably as the basis for funding and policy decisions. By allowing states to choose alternative sources of information, the 2021 version of the BRIDGE Act would incentivize the cherry picking of data that justifies municipal entry into high-profit areas that in fact are served already by privately funded broadband providers. This would provide municipalities with yet another unjustified financial advantage. It also would divert federal subsidies away from areas in fact unserved.

## VI. The BRIDGE Act Would Set the Rate for an "Affordable Broadband Service Plan"

Providers receiving subsidies under the BRIDGE Act would have to agree to make available an "affordable broadband service plan" to certain low-income households at a rate determined by the FCC. But the efficient operation of marketplace forces already does a far better job at ensuring consumer prices are reasonable than the Commission, given its history in this area as well as the lessons of basic economic theory, ever could. In addition, the rate-setting process itself would be contentious, open to legal challenges, and likely to drag on for years. Competition, meanwhile, steadily does the work of driving down consumer costs and improving quality. According to USTelecom's [2021 Broadband Pricing Index](#), prices of the most popular

broadband packages today are over 26 percent lower than they were in 2015 – and provide speeds 126 percent faster.

Moreover, broadband providers already engage in voluntary efforts to connect low-income households. Cable operators alone have signed up [over 14 million](#) consumers over the last ten years for programs such as Comcast's [Internet Essentials](#) and Charter's [Spectrum Internet@Assist](#). These are actions that ought to be celebrated and encouraged. In addition, Congress recently embraced a more comprehensive approach to assisting consumers with their Internet bills, appropriating \$3.2 billion to the pandemic-specific [Emergency Broadband Benefit Program](#) (EBBP). Unlike the BRIDGE Act's requirement that only a subset of providers – that is, those that accept subsidies – offer a rate-regulated service, the EBBP empowers consumers to make their own choices by providing a direct benefit and encourages participation by a much broader number of providers. FCC Acting Chairwoman Jessica Rosenthal has [suggested](#) that a permanent version of that temporary program may be appropriate.

## VII. Conclusion

As lawmakers begin the difficult work of translating the \$1.2 trillion bipartisan agreement into specific legislative text, they would be wise to reject the misguided approach embraced by the BRIDGE Act. Precious taxpayer dollars ought to target only those areas that in fact lack 25/3 Mbps broadband service – not leveraged as part of a broader effort to favor municipal, fiber-based broadband experiments. States' sovereign authority to prohibit localities from taking on what experience makes plain is unreasonable financial risk should be respected, consistent with principles of federalism – not trampled in order to replace competitive broadband offerings with a regulated public utility. States dispersing federal funds should be bound by the national broadband availability map under development at the FCC – just as Congress specified that the Commission itself be bound. They should not be allowed to indulge the incentive to cherry pick from unreliable data sources. And rate regulation should be rejected as a proven failure, one that discourages investment, competition, and innovation; invites lengthy legal challenges; and, in this specific instance, would benefit consumers far less than the continued, unfettered, and efficient machinations of the marketplace.

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### Further Readings

Randolph J. May and Andrew Long, "[Biden Broadband Plan: 'Future Proofing' Is Likely Fool's Proofing](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 32 (June 24, 2021).

Randolph J. May, "[MEDIA ADVISORY: A BRIDGE Act Too Far](#)," *FSF Blog* (June 16, 2021).



Randolph J. May and Andrew Long, "[Biden Broadband Plan: Transparency and Accuracy Required for Sound Policy](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 27 (June 2, 2021).

Randolph J. May and Seth L. Cooper, "[Why Biden's Broadband Plan Is Constitutionally Suspect](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 26 (May 20, 2021).

Randolph J. May and Seth L. Cooper, "[Biden Broadband Plan Favoring Government-Owned Networks Lacks a Constitutional Foundation](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 24 (May 11, 2021).

Andrew Long, "[Latest FSF Critique of Biden Broadband Plan Disproves Claim That Service is 'Too Expensive'](#)," *FSF Blog* (May 7, 2021).

Randolph J. May and Andrew Long, "[Biden Broadband Plan: Claims That Broadband Is 'Too Expensive' Are Unfounded](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 23 (May 7, 2021).

Randolph J. May and Andrew Long, "[Biden Broadband Plan: Misdirected Broadband Subsidies Hurt Competition and Consumers](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 21 (April 28, 2021).

Andrew Long, "['Future Proofing' Subsidized Broadband Would Inflate Consumer Prices](#)," *FSF Blog* (April 13, 2021).

Theodore R. Bolema, "[Hiding the Subsidy: The Financial Transparency Problem With Municipal Broadband Systems](#)," *Perspectives from FSF Scholars*, Vol. 16, No. 8 (February 12, 2021).

Theodore R. Bolema, "[Municipal Broadband Proponents Falsely Claim No Harm to Taxpayers](#)," *Perspectives from FSF Scholars*, Vol. 15, No. 41 (July 27, 2020).

Andrew Long, "[Legislative 'Best Practices' to Expand and Accelerate Broadband Coverage](#)," *Perspectives from FSF Scholars*, Vol. 15, No. 42 (July 29, 2020).