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Broadband: Biden's Plan Would Not Close the Digital Divide

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KEY TAKEAWAYS

Despite the government acting as both a competitor and a regulator, municipal broadband networks often fail, costing taxpayers millions of dollars.

Setting arbitrary benchmarks for broadband speeds will lead to wasteful overbuilding and will not narrow the digital divide.

Policies for broadband networks should encourage innovation from all technologies rather than allowing the government to pick winners and losers.

The COVID-19 pandemic has brought broadband, and particularly the state of rural broadband, front and center in the infrastructure debate. Closing the "digital divide"—the divide between those who have Internet access and those who do not—has become a top priority for policymakers on both sides of the aisle. Especially since over half of Americans believe that the ability to access the Internet has become essential during the COVID-19 outbreak.[1]

The Biden Administration attempted to address this issue when it allocated $100 billion in the American Jobs Plan (AJP) to "bring affordable, reliable, high-speed broadband to every American"[2] (though the White House agreed to reduce this amount to $65 billion).[3] However, the President has made no compromises regarding his underlying broadband policies.

The AJP appears to be influenced by progressive advocates by prioritizing funds for government-run broadband networks.[4] In addition, it calls for the construction of "future-proof" infrastructure, and while details have not been readily forthcoming, this could entail dramatically changing the benchmark speeds for what qualifies as broadband.[5] The Biden proposal also exhibits a clear preference for fiber-optic broadband rather than remaining technology neutral.

While it is certainly laudable to want to ensure that America remains competitive in the ever-evolving cyber environment, the solutions proposed by the White House only serve to exacerbate the current framework of an outdated and ineffectual regulatory regime of price controls, entry barriers, geographically divided markets, and restricted choice.

The Dangers of Government-Run Broadband Networks

The Biden Administration's plan "prioritizes support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities." These government and nonprofit-run broadband networks are typically referred to as "municipal broadband."

When a government acts as both a competitor and regulator, as is the case with municipal broadband, the government has a significant advantage. It can promulgate rules that benefit itself while simultaneously putting private service providers at a distinct disadvantage.

Municipal broadband networks have numerous government-provided potential advantages over private networks, such as easy access to rights of way and reduced taxes and fees. Yet despite these advantages, municipal broadband networks are unable to turn a profit in a reasonable time, if they do so at all.[6]

On the other hand, private broadband providers are forced to pay "pole attachment fees" that are nearly double the federally regulated rate. Municipal broadband networks are legally exempt from these fees.[7]

Despite these advantages, the history of municipal broadband networks is replete with examples of failed projects that have cost taxpayers millions. For example, Lake County, Minnesota, built a municipal broadband network that relied on nearly $80 million in federal stimulus funds. With the small number of users for the network, the county was paying approximately $22,000 per subscriber in subsidies by the time the project was officially declared a failure.[8]

According to the Taxpayers Protection Alliance Foundation, 44 states have at least one failed taxpayer-funded broadband network.[9]

For all the risks that the taxpayers assume when backing a municipal broadband network, there is very little economic benefit. A 2014 paper from the Mercatus Center found that municipal broadband networks have no discernible effect on private-sector employment. The only institution that benefits from a municipal broadband network is the government, which grows in size by around 6 percent.[10]

Further, the costs of broadband services in markets with municipal broadband networks are higher than those in markets without government-run networks. George Ford of the Phoenix Center found that prices in cities with municipal broadband were 13 percent higher than in cities without government-run networks.[11]

Sarah Oh of the Technology Policy Institute has demonstrated that municipal broadband networks are unsuccessful in increasing Internet adoption rates.[12] So municipal broadband networks even fail at bridging the digital divide.

The tragic reality is that municipal broadband networks are most often implemented in communities that are already served by Internet service providers rather than in locations that are truly unserved.

Overbuilding existing networks is a zero-sum game. Resources that are spent to build and deploy new networks in markets that are already served results in those resources being diverted from unserved areas.

Municipal broadband also often discourages private-sector investment and competition.[13] As economist (and Obama Treasury Secretary) Lawrence Summers, wrote, expanding broadband networks is "clearly the responsibility of the private sector. Policy frameworks that streamline regulatory decision-making and reduce uncertainty could help spur investment in these sectors."[14]

When local governments overbuild existing networks and take customer share, service providers that are already serving the area find it more difficult to recoup their costs, deliver service, and upgrade their networks.[15]

It is private broadband providers, not municipal broadband networks, that have provided the most critical advancements in broadband technology. In fact, the private sector has made a $1.78 trillion capital investment in broadband between 1996 and 2019.[16] In 2018 alone, the telecom industry invested $3.7 billion in research in development.[17] The Biden Administration's clear preference for government-run broadband networks would discourage further investment by the private sector.

Instead of engaging in these costly top-down programs with unproven success, policymakers should seek to work with the private sector and encourage further innovative solutions to improve access to high-quality, high-speed Internet and encourage Internet adoption.

Artificial Benchmarks

While the President's plan called for building "future-proof" broadband infrastructure, it provides scant details on what that actually means. A recently introduced bill by congressional Democrats may shed some light on what the AJP intends. The Accessible, Affordable Internet for All Act refers to "future proof" broadband as fiber broadband with symmetrical upload and download speeds of at least 100 megabits per second (Mbps).[18] A letter to government officials from a bipartisan group of Senators calls for a quadrupling of base high-speed broadband delivery speeds to the symmetrical upload/download speed of 100 Mbps.[19]

The definition of *broadband* is not, and should not be, simply "the fastest option available." Currently, the Federal Communications Commission (FCC) defines *broadband* as a minimum of 25 Mbps download and 3 Mbps upload.

When the FCC redefined the speed designation of broadband as 25 Mbps in 2015, many rural broadband providers could no longer offer broadband services because they did not meet this new—arbitrary—25 Mbps threshold.[20]

Redefining *broadband* yet again, this time setting the floor at a symmetrical upload and download speed of 100 Mbps, would result in 58 percent of American households that currently have broadband would now be considered unserved. That is a marked increase in the percentage of "unserved" households, which is currently only 6 percent of American homes.[21]

Should that occur, any funds that Congress appropriates to help connect the "unserved" would be distributed across the 58 percent of American households that already have adequate Internet access, rather than focusing on the 6 percent of American homes that are truly unserved.

Economic literature has shown that the biggest societal gain from broadband infrastructure comes when users are able to access the Internet, even at modest speeds. It is not from increasing the symmetrical upload and download speed to 100 Mbps.[22] If the needs of consumers can be met at lower speeds, and subsequently lower costs, then arbitrary government requirements lead to wasteful overbuilding and no reduction in the digital divide.

A Technology-Neutral Approach

Another potential consequence of the Biden Administration's call to "future-proof" broadband connectivity is that it could exclude innovative technology that is unable to meet the arbitrary benchmark speed.

Ernesto Falcon, senior legislative counsel of the Electronic Frontier Foundation, said that the Accessible, Affordable Internet for All Act "will deliver future-proof fiber-optic connections into communities across the country where none exists or will ever exist without this bill."[23] Similarly, when the AJP uses terms such as *future-proof*, *physical connection*, or *scalable*, it is likely meant to signal a preference for fiber-based networks over wireless, satellite, or cable providers.

The government should not be picking winners and losers among broadband technology, as it undermines the intermodal competition that drives innovation.

As Jennifer Huddleston of the American Action Forum argued, "Access in rural areas will require creative thinking and new technologies such as improved satellite internet. While calls for universal broadband may appeal to many, the reality of the cost to connect the most rural areas may make it difficult using only traditional broadband."[24]

Often, unserved areas present geographical challenges that require new innovations, such as 5G networking and low-earth-orbit satellites, in order to bring Internet connectivity. The private sector has continually brought new technologies to serve these areas, but this is possible only without government interference.

Another consideration is that Internet service providers (ISPs) spend an average of under $500 in capital per fixed wireless customer, while the average capital expenditure per fiber customer is approximately $4,500.[25] Policymakers need to remain cognizant of the costs that are incumbent with each type of technology.

The reality is that there simply is no such thing as a "future-proof" network. All broadband infrastructure will need continuous maintenance and upgrades.

Policies for broadband networks should encourage innovation from all technologies rather than picking winners and losers. It is vital that network models be tailored to the needs of the community and not politicians' need to score political points.

Hidden Costs of Price Regulation

President Biden asserts that "Americans pay too much for the internet" when compared to other countries. However, this framing is not entirely

accurate. The FCC's International Broadband Data Report ranks the United States as the seventh-most affordable country for broadband out of the 29 countries that the FCC tracks.[26]

Further disputing Biden's framing is the Inclusive Internet Index for 2020, authored by the Economist Intelligence Unit for Facebook, which ranked the United States as number one (out of 100 countries) in affordability and third overall.[27] The Inclusive Internet Index takes into consideration income and competition, which are often ignored by similar reports that focus narrowly on advertised prices.

Beyond the mischaracterization of the affordability of American broadband, the Administration's proposal strongly implies that the solution is rate regulation. The effects of this policy would be disastrous.

In 2015, under Democratic leadership, the FCC adopted the Open Internet Order,[28] which reclassified ISPs as quasi-public utilities under Title II of the Communications Act of 1934, subjecting them to price controls. During the two years that the Open Internet Order was in effect, there was "a decline in broadband infrastructure investment between 2014 and 2015 by $500 million and an even deeper decline of $2.7 billion between 2015 and 2016."[29] This reduction in spending is a natural consequence of price controls, because there is a corresponding reduction in returns. Companies do not have an incentive to invest if they are unable to recoup that investment.

Price controls also have a deleterious effect on the resiliency of the broadband networks. In Europe, where regulators control the price of broadband, networks were unable to handle the increased traffic due to the COVID-19 pandemic. Officials had to ask Netflix and YouTube to downgrade the quality of their video streams or risk collapsing the networks.[30]

Federal COVID-19 Broadband Expenditures

The AJP is only the most recent in a long line of federal proposals for broadband programs. Within the last three pandemic relief bills alone, Congress has spent a significant amount on various broadband programs. The Consolidated Appropriations Act[31] included $3.2 billion for the Emergency Broadband Connectivity Fund and $1 billion for the Tribal Broadband Connectivity Program.

Several months later, Congress passed the CARES Act,[32] which set aside $150 billion for state, local, and tribal governments which they can use to expand broadband infrastructure.

The most recent relief bill, the American Rescue Plan,[33] contained $7 billion to expand Internet access and $350 billion for state, local, and tribal governments to bolster infrastructure, including broadband.

These funds are in addition to many already existing FCC programs intended to help bridge the digital divide, such as the Universal Service Fund, the High Cost Program, the Connect America Fund, the Lifeline Program, the Rural Health Care Program, and the Schools and Libraries Program.

Beyond the FCC, the Department of Commerce manages the BroadbandUSA program, the Broadband Infrastructure Deployment Grant Program, the Tribal Broadband Connectivity Grant Program, and the Connecting Minority Communities Pilot Program. The Department of Agriculture also administers five broadband and telecommunications programs, and the Department of Health and Human Services funds telehealth services.[34]

This federal spending spree creates an acute risk of subsidized overbuilding of existing broadband infrastructure.[35] It is clear that simply continuing to throw money at the digital divide is not the solution.

Recommendations for Policymakers

The FCC and state lawmakers should:

- **Streamline regulatory regimes.** Broadband networks have been deployed with a variety of technology and providers, including incumbent local exchange carriers, competitive local exchange carriers, cable companies, wireless providers, phone companies, and satellite companies. All of these technologies and providers operate under different federal and state regulatory regimes. Policymakers should streamline these regulatory regimes to create a level playing field for all involved.

- **Eliminate barriers to broadband.** Broadband faces many hurdles, including permitting and access to right of ways, local franchising, zoning, and pole connection fees. Lawmakers should work to eliminate these barriers to create market competition.

Congress should:

- **Exercise its oversight responsibilities of federal agencies.** Congress has abdicated its role by giving broad authority to federal agencies to promulgate regulations, modify or waive requirements, and define terms as they see fit. Congress should narrow the guardrails put in place to ensure that there is consistency in the manner in which the law is applied.

- **Avoid rate regulation of broadband services.** Legislators should not authorize any federal agency to set the price for Internet service providers. Market forces, not government intervention, should determine prices.

- **Prevent the government from acting as a competitor in the marketplace.** Congress should prevent state and local governments from acting as competitors in broadband markets while regulating those same markets—a clear conflict of interest.

- **Avoid artificial definitions of broadband.** Congress should refrain from setting artificial speed benchmarks, which could lead to subsidized overbuilding of broadband networks in areas that are already served—as well as providers exiting the marketplace in rural areas.

- **Remain technology neutral.** Congress should not be in the business of picking winners and losers. Instead, lawmakers should encourage innovation that brings disruptive new forms of competition to broadband markets, thus ensuring a healthier overall level of broadband network infrastructure investment.

Conclusion

Taken together, the policies found in the AJP demonstrate that the Biden Administration is less interested in bridging the digital divide than it is about transforming the United States' successful intermodal competitive system into a utility provided by local governments.

Federal intervention to promote municipal broadband networks only serves to distort competition, enriching incumbents and hindering the development of new technology. Governments, whether at the local, state, or federal level, are not well equipped to compete in dynamic markets. The best way to lower prices is not with heavy-handed price controls and cumbersome regulation but through robust competition.

Who is best equipped to drive innovation while simultaneously bearing the uncertainty that is inherent in innovation: the taxpayer or the shareholder?

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