

**Calendar No. 311**

116TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
116-162

BROADBAND INTERAGENCY COORDINATION  
ACT OF 2019

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1294



NOVEMBER 21, 2019.—Ordered to be printed

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U.S. GOVERNMENT PUBLISHING OFFICE

99-010

WASHINGTON : 2019

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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### BROADBAND INTERAGENCY COORDINATION ACT OF 2019

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Mr. WICKER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 1294]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1294) to require Federal agencies with jurisdiction over broadband deployment to enter into an interagency agreement related to certain types of funding for broadband deployment, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

S. 1294 would require the Federal Communications Commission (FCC), the Rural Utilities Service (RUS) of the Department of Agriculture (USDA), and the National Telecommunications and Information Administration (NTIA) to enter into an interagency agreement requiring coordination and information sharing between the agencies for the distribution of funds for broadband deployment under certain programs.

#### BACKGROUND AND NEEDS

Over the past decade, several agencies have administered programs designed to promote broadband deployment in rural areas. The FCC currently funds rural broadband initiatives through its Connect America Fund programs, and the RUS at the USDA supports broadband deployment through loans, loan guarantees, and grants. The NTIA previously provided broadband deployment grants through the Broadband Technology Opportunities Program (BTOP), but that program has now lapsed.

These agencies presently are not required to coordinate their funding decisions. As a result, funding from the programs is sometimes spent overbuilding areas that already have broadband service or will be served by a project funded by another agency. At a recent hearing, broadband providers offered examples of duplicative overbuilds by competitors using Federal dollars, some from multiple agencies.<sup>1</sup> One witness at that hearing argued that such overbuilding “can be wasteful at best, and perhaps even destructive, when the government is subsidizing one of the providers.”<sup>2</sup>

When Federal funds are spent overbuilding an area, less support is available for other areas—which many believe undermines the purpose of these programs. A Government Accountability Office (GAO) report examining past broadband deployment programs found that “NTIA and RUS lack[ed] detailed data on the availability of broadband service throughout the country, making it difficult to determine whether a proposed service area is unserved or underserved.”<sup>3</sup> A separate study found that “more than 85 percent of households in the three [RUS] project areas [studied] are already passed by existing cable broadband, DSL, and/or fixed wireless broadband providers. In one of the project areas, more than 98 percent of households are already passed by at least one of these modalities.”<sup>4</sup> And finally, one provider testified to the Committee that “at least in the past, the RUS broadband loan program resulted in overbuilding of served areas rather than reaching unserved areas.”<sup>5</sup>

Overbuilding is especially harmful for unserved rural Americans. Some providers who receive Federal subsidies focus their deployment on rural areas that already have multiple providers. For example, until the Agriculture Improvement Act of 2018, the RUS program only required 15 percent of an applicant’s targeted service area to be unserved to receive an RUS grant or loan, meaning the remaining 85 percent of the area could already have broadband service. As a result, a number of rural areas were left unserved, despite the fact that these areas were the intended targets of the RUS grants or loans. Although RUS’s requirements have changed,<sup>6</sup>

<sup>1</sup>See, e.g., The Impact of Broadband Investments in Rural America: Hearing Before the Subcommittee on Communications, Technology, Innovation, and the Internet of the Committee on Commerce, Science, and Transportation, Senate, Mar. 12, 2019, webcast (<https://www.commerce.senate.gov/public/index.cfm/2019/3/the-impact-of-broadband-investments-in-rural-america>) (testimony of Justin Forde, senior director of government relations, Midcontinent Communications) (“[T]here have been some areas where we’ve even been triple-dipped on from companies where they’ve used universal service fees, Connect America funds, and USDA loans to overbuild areas where we already provided deep service . . . .”); id. (“[T]here was a recent example where we had provided gig service in an area and a competitor was able to get a USDA loan, Universal Service Funds and Connect America funds, to overbuild us in that area . . . .”); id. (testimony of Denny Law, CEO, Golden West Telecommunications Cooperative, Inc.) (“I recall talking with people who received grants from the Department of Commerce, BTOP Program many years ago. They were very proud of the fact that they were overbuilding and they were doing it because that’s where the customers were.”).

<sup>2</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Dr. Mark Jamison, visiting scholar, American Enterprise Institute).

<sup>3</sup>Government Accountability Office, GAO 10–823, Recovery Act: Further Opportunities Exist to Strengthen Oversight of Broadband Stimulus Programs at 2 (2010) (<https://www.gao.gov/assets/310/308512.pdf>).

<sup>4</sup>Jeffrey A. Eisenach & Kevin W. Caves, Examining the Cost-Effectiveness of RUS Broadband Subsidies: Three Case Studies, Navigant Economics, Apr. 13, 2011 (<https://prodnet.www.neca.org/publicationsdocs/wwpdf/41311rus.pdf>).

<sup>5</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Justin Forde).

<sup>6</sup>Agriculture Improvement Act of 2018, Pub. L. 115–334, section 6201 (increasing from 15 percent to 90 percent the share of households in a proposed service area that must be unserved for broadband projects funded by RUS grants, loan/grant combinations, loans with subsidized

the possibility that Federal dollars go to areas already served by multiple competitors instead of unserved rural areas remains.

Many have suggested that better interagency coordination on broadband deployment funding should help prevent overbuilding.<sup>7</sup> One provider recommended formalizing coordination, because without it, “there will be gaps or there will be overlaps.”<sup>8</sup> Another provider testified before the Committee that, “[w]e have to have that coordination to prevent [overbuilding]. Otherwise, we’re going to still have areas that are not going to be able to get broadband service.”<sup>9</sup>

Information sharing, particularly regarding which areas are served and unserved, is believed to be an essential component of this coordination process.<sup>10</sup> This information sharing should include information on project milestones, completion of required buildouts, and interim and final deployments.<sup>11</sup> Sharing such information, according to one witness who testified before the Committee, will “ensure that subsequent rounds of funding are not inadvertently used to overbuild hard-earned progress.”<sup>12</sup> It also has the added benefit of ensuring that “the government as a whole is efficiently tackling the problem and not potentially working at cross purposes.”<sup>13</sup>

#### SUMMARY OF PROVISIONS

S. 1294 would do the following:

- Require the FCC, RUS, and NTIA to enter into an interagency agreement requiring coordination and information sharing between the agencies regarding the distribution of funds for broadband deployment.
- Designate the FCC as the entity primarily responsible for coordinating information sharing among the agencies, and storing and maintaining access to broadband deployment data.

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interest rates, and payment assistance loans; and increasing 15 percent to 50 percent the share of households in a proposed service area that must be unserved for broadband projects funded by RUS loans or loan guarantees).

<sup>7</sup>See, e.g., Broadband Mapping: Challenges and Solutions: Hearing Before the Committee on Commerce, Science, and Transportation, Senate, Apr. 10, 2019, webcast (<https://www.commerce.senate.gov/public/index.cfm/2019/4/broadband-mapping-challenges-and-solutions>) (testimony of Chairman Roger F. Wicker) (“Increased coordination and information sharing would . . . assure Federal funds are targeted to unserved areas.”).

<sup>8</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Senator John Thune) (“I have repeatedly said that coordination between these particular programs is essential if we’re truly going to reach areas lacking sufficient access to broadband.”); id. (testimony of Senator Amy Klobuchar) (“[W]e know there’s a lot of different funding sources designed to support broadband build-outs in rural areas, FCC, USDA, and while these programs all help reduce the digital divide, it’s crucial they’re working effectively together.”); id. (testimony of Denny Law, CEO, Golden West Telecommunications Cooperative, Inc.) (“[A] continued focus on coordination among Federal agencies is critical. It is essential to avoid the prospect for dueling Federal support programs and networks built in rural areas that cannot sustain either one without the assistance of Federal programs.”); id. (testimony of Justin Forde) (“[A]ll relevant agencies must coordinate with each other to avoid overbuilding.”).

<sup>9</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Denny Law).

<sup>10</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Justin Forde).

<sup>11</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Carol Matthey, principal, Matthey Consulting LLC) (stating that agencies need to “share information and specifically they need to share real information.”).

<sup>12</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Justin Forde).

<sup>13</sup>Id.

<sup>14</sup>See, hearing, The Impact of Broadband Investments in Rural America (testimony of Carol Matthey).

- Direct the FCC to seek public comment on the effectiveness of the agreement, with a report to Congress on those comments.

#### LEGISLATIVE HISTORY

S. 1294 was introduced on May 2, 2019, by Senator Wicker (for himself and Senator Klobuchar) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. Senators Young and Baldwin are additional cosponsors. On May 15, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 1294 reported favorably without amendment.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

<b>S. 1294, Broadband Interagency Coordination Act of 2019</b>			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on May 15, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	*	*
Revenues	0	*	*
Deficit Effect	0	*	*
Spending Subject to Appropriation (Outlays)	0	1	n.e.
Statutory pay-as-you-go procedures apply?	Yes	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
n.e. = not estimated; * = between -\$500,000 and \$500,000.			

S. 1294 would require the Federal Communication Commission (FCC), Department of Agriculture (USDA), and the National Telecommunications and Information Administration (NTIA) to enter into an interagency agreement to coordinate how federal funding for the deployment of broadband internet technologies is distributed. The agreement would cover data and information sharing among those agencies. As the group's coordinator, the FCC would be required to seek public comment on the agreement's effectiveness; it also would be required to evaluate public comments and submit a report to the Congress.

Using information from agencies that would be involved in the agreement, CBO expects that implementing S. 1294 would cost \$1 million over the 2019–2024 period. Costs would stem from creating the agreement, managing and sharing broadband data, and coordinating data sharing requests. Because the FCC is authorized under current law to collect fees sufficient to offset the appropriated costs of its regulatory activities each year, CBO estimates that the net

cost to the FCC would be negligible, assuming appropriation actions consistent with that authority. CBO expects that spending by USDA and NTIA would total around \$1 million over the next five years, subject to the availability of appropriated funds.

S. 1294 also would require that the FCC's High Cost program administered through the Universal Service Fund (USF) share certain information with USDA and NTIA. The High Cost program, designed to expand broadband service in remote and underserved communities, is funded by revenues collected from telecommunications providers under permanent statutory authority. The revenues are available to be spent on authorized purposes without further appropriation. CBO expects that implementing the data sharing agreement mandated by S. 1294 would have a negligible net effect on USF's revenues and direct spending.

If the FCC increases annual fee collections to offset the costs of implementing provisions in the bill, S. 1294 would increase the cost of an existing private-sector mandate on entities required to pay those fees. Using information from the FCC, CBO estimates that the incremental cost of the mandate would be small—less than \$400,000 annually—and would fall well below the annual threshold established in the Unfunded Mandates Reform Act for private-sector mandates (\$164 million in 2019, adjusted annually for inflation).

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by Theresa Gullo, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### NUMBER OF PERSONS COVERED

S. 1294, as reported, would not create any new programs or impose any new regulatory requirements. Therefore, it would not subject any individuals or businesses to new regulations.

##### ECONOMIC IMPACT

S. 1294, as reported, is not expected to have a negative impact on the Nation's economy.

##### PRIVACY

S. 1294, as reported, would not have any adverse impact on the personal privacy of individuals.

##### PAPERWORK

S. 1294, as reported, would not increase paperwork requirements for private individuals or businesses. The bill directs the FCC to file a report to Congress on the results of the comments filed in response to the proceeding on the effectiveness of the interagency agreement required by the bill. To the extent the bill increases paperwork burdens, though, it is aimed at increasing the effective-

ness of various broadband deployment programs by preventing unnecessary overbuilding.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section would provide that the bill may be cited as the “Broadband Interagency Coordination Act of 2019”.

##### *Section 2. Interagency agreement*

Subsection (a) of this section would define the key terms “covered agency” and “high-cost programs” as they are used in section 2. The term covered agency, in particular, includes only the FCC, USDA, and NTIA.

Subsection (b) would direct the covered agencies to enter into an interagency agreement within 180 days of enactment requiring coordination for the distribution of funds for new broadband deployment projects. The agreement would cover the FCC’s high-cost programs, RUS programs, and NTIA programs. Although NTIA does not currently provide funding for broadband deployment, it has in the past, and the intent of its inclusion here is to bind the agency to the interagency agreement should it provide such funding in the future.

Subsection (c) of this section would provide that the interagency agreement covers the sharing of information about existing or planned broadband deployment projects that have received or will receive funding through the relevant programs. Upon a specific request, covered agencies also would be required to share information with one another about: (1) entities providing broadband service provided in a project area; (2) the levels of broadband service provided in the project area; (3) the geographic scope of broadband service coverage in the project area; and (4) each entity that has received or will receive funds from programs covered by the Act in the project area. If one agency designates as confidential any information provided to another agency, the receiving agency would be required to protect the confidentiality of that information, consistent with the confidentiality protections for such information established by the initial agency.

Subsection (c) also would designate the FCC as the entity primarily responsible for coordinating among the agencies and storing and maintaining access to deployment data. It would further direct the covered agencies to consider basing the distribution of broadband deployment funds in the relevant programs on standardized data. Finally, subsection (c) would require that the agreement be updated periodically, except that the scope of the agreement with respect to the FCC cannot expand beyond the high-cost programs.

Subsection (d) of this section would require that, not later than 1 year after entering into the interagency agreement, the FCC seek



public comment on: (1) its effectiveness; (2) the availability of Tribal, State, and local broadband deployment data and the inclusion of that data in interagency coordination; and (3) potential modifications to the agreement. Not later than 18 months after enactment of the Act, the FCC would have to review and assess the comments filed with the agency under this subsection, and submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives detailing findings and recommendations from that assessment.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

