

S. 2238 Wicker Substitute (modified)

S.L.C.
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AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 2238

To direct the Assistant Secretary of Commerce for Communications and Information to develop a National Strategy to Close the Digital Divide, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. WICKER

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Proper Leadership to
5 Align Networks for Broadband Act" or the "PLAN for
6 Broadband Act".

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) APPROPRIATE COMMITTEES OF CON-
10 GRESS.—The term "appropriate committees of Con-
11 gress" means—

1 (A) the Committee on Commerce, Science,
2 and Transportation of the Senate; and

3 (B) the Committee on Energy and Com-
4 merce of the House of Representatives.

5 (2) ASSISTANT SECRETARY.—The term “Assist-
6 ant Secretary” means the Assistant Secretary of
7 Commerce for Communications and Information.

8 (3) BROADBAND INTERNET ACCESS SERVICE.—
9 The term “broadband internet access service” has
10 the meaning given the term in section 8.1(b) of title
11 47, Code of Federal Regulations, or any successor
12 regulation.

13 (4) COMMISSION.—The term “Commission”
14 means the Federal Communications Commission.

15 (5) COVERED AGENCIES.—The term “covered
16 agencies” means—

17 (A) the Commission;

18 (B) the Department of Agriculture;

19 (C) the National Telecommunications and
20 Information Administration;

21 (D) the Department of Health and Human
22 Services;

23 (E) the Appalachian Regional Commission;

24 (F) the Delta Regional Authority;

25 (G) the Denali Commission;

1 (H) the Economic Development Adminis-
2 tration;

3 (I) the Department of Education;

4 (J) the Department of the Treasury;

5 (K) the Department of Transportation;

6 (L) the Institute of Museum and Library
7 Services;

8 (M) the Northern Border Regional Com-
9 mission;

10 (N) the Department of Housing and
11 Urban Development; and

12 (O) the Department of the Interior.

13 (6) DEPLOYMENT LOCATIONS MAP.—The term
14 “Deployment Locations Map” has the meaning given
15 the term in section 60105(a) of the Infrastructure
16 Investment and Jobs Act (47 U.S.C. 1704(a)).

17 (7) FEDERAL BROADBAND PROGRAM.—The
18 term “Federal broadband program” means any pro-
19 gram administered by a covered agency that is di-
20 rectly or indirectly intended to increase the deploy-
21 ment of, access to, the affordability of, or the adop-
22 tion of broadband internet access service.

23 (8) FEDERAL LAND MANAGEMENT AGENCY.—
24 The term “Federal land management agency”
25 means—

- 1 (A) the National Park Service;
2 (B) the Bureau of Land Management;
3 (C) the Bureau of Reclamation;
4 (D) the United States Fish and Wildlife
5 Service;
6 (E) the Bureau of Indian Affairs; and
7 (F) the Forest Service.

8 (9) IMPLEMENTATION PLAN.—The term “Im-
9 plementation Plan” means the implementation plan
10 developed under section 4(a).

11 (10) STRATEGY.—The term “Strategy” means
12 the National Strategy to Synchronize Federal
13 Broadband Programs developed under section 3(a).

14 **SEC. 3. NATIONAL STRATEGY TO SYNCHRONIZE FEDERAL**
15 **BROADBAND PROGRAMS.**

16 (a) IN GENERAL.—Not later than 1 year after the
17 date of enactment of this Act, the Assistant Secretary, in
18 co-leadership with the Commission, in consultation with
19 the covered agencies, and subject to the review and ap-
20 proval by the Commission under subsection (d), shall de-
21 velop and submit to the appropriate committees of Con-
22 gress a National Strategy to Synchronize Federal
23 Broadband Programs to—

- 24 (1) support better management of Federal
25 broadband programs to deliver on the goal of pro-

1 viding access to high-speed, affordable broadband
2 internet access service to all individuals in the
3 United States, while ensuring that funding for Fed-
4 eral broadband programs is used in the most effi-
5 cient and fiscally responsible manner;

6 (2) synchronize interagency coordination among
7 covered agencies for Federal broadband programs;

8 (3) synchronize interagency coordination re-
9 garding the process for approving the grant of any
10 permit, easement, right of way, or lease to, in, over,
11 or on a building or any other property owned by the
12 Federal Government for the right to install, con-
13 struct, modify, or maintain infrastructure with re-
14 spect to broadband internet access service; and

15 (4) reduce unnecessary barriers, eliminate un-
16 necessary costs, and ease administrative burdens to
17 participate in Federal broadband programs.

18 (b) REQUIREMENTS.—The Strategy shall—

19 (1) list all—

20 (A) Federal broadband programs; and

21 (B) programs that exist at the State and
22 local levels that are directly or indirectly in-
23 tended to increase the deployment of, access to,
24 the affordability of, or the adoption of
25 broadband internet access service;

1 (2) describe current, as of the date on which
2 the Strategy is submitted, Federal efforts to coordi-
3 nate Federal broadband programs;

4 (3) identify gaps and limitations, including
5 laws, regulations, and covered agency policies and
6 practices, that hinder, or may hinder, coordination
7 across Federal broadband programs;

8 (4) establish clear roles and responsibilities for
9 the covered agencies, as well as clear goals, objec-
10 tives, and performance measures, for—

11 (A) the management of all Federal
12 broadband programs; and

13 (B) interagency coordination efforts with
14 respect to Federal broadband programs;

15 (5) address the cost of the Strategy, the sources
16 and types of resources and investments needed to
17 carry out the Strategy, and where those resources
18 and investments should be targeted based on bal-
19 ancing risk reductions with costs;

20 (6) address factors that increase the costs and
21 administrative burdens of participation in Federal
22 broadband programs, including with respect to ac-
23 cess to infrastructure necessary for deployment of
24 broadband internet access service;

1 (7) report information on the effectiveness of
2 each Federal broadband program in terms of how
3 many locations received broadband internet access
4 service or other assistance under each Federal
5 broadband program;

6 (8) address the extent to which covered agency
7 policies and practices do or do not establish a tech-
8 nologically neutral program;

9 (9) recommend incentives, legislative solutions,
10 and administrative actions to help State, local, and
11 Tribal governments more efficiently—

12 (A) distribute, and effectively administer,
13 funding received from Federal broadband pro-
14 grams and avoid duplication of—

15 (i) existing infrastructure with respect
16 to broadband internet access service; and

17 (ii) funded projects with respect to
18 broadband internet access service or such
19 projects otherwise subject to enforceable
20 deployment obligations;

21 (B) resolve conflicts with respect to the
22 funding described in subparagraph (A);

23 (C) use the Deployment Locations Map as
24 a key resource in carrying out subparagraphs
25 (A) and (B); and

1 (D) promote access to infrastructure or
2 rights of way necessary for deployment of
3 broadband internet access service, whether pri-
4 vately or government owned or cooperatively or-
5 ganized for broadband communications;

6 (10) recommend incentives, legislative solutions,
7 and administrative actions to—

8 (A) improve the coordination and manage-
9 ment of Federal broadband programs; and

10 (B) eliminate duplication with respect to
11 Federal broadband programs and non-Federal
12 programs with respect to broadband internet
13 access service;

14 (11) describe current, as of the date on which
15 the Strategy is submitted, efforts by covered agen-
16 cies, Federal land management agencies, and State,
17 local, and Tribal governments to streamline the
18 process for granting a permit or access to an ease-
19 ment, right of way, or lease to, in, over, or on a
20 building or any other property owned or controlled
21 by a government for the right to install, construct,
22 modify, or maintain infrastructure with respect to
23 broadband internet access service;

24 (12) identify gaps and limitations with respect
25 to allowing regional, interstate, or cross-border eco-

1 nomic development organizations to participate in
2 Federal broadband programs;

3 (13) address specific issues relating to closing
4 the gap on Tribal lands with respect to broadband
5 internet access service; and

6 (14) identify measures to prevent fraud and
7 misuse of amounts made available to carry out Fed-
8 eral broadband programs, ensure accountability for
9 the use of such funding, and implement effective re-
10 reporting requirements to measure the success of Fed-
11 eral broadband programs.

12 (e) PUBLIC COMMENT.—In developing the Strategy,
13 the Assistant Secretary and the Commission shall jointly
14 publish a draft version of the Strategy in the Federal Reg-
15 ister for a period of notice and comment (and reply com-
16 ment) that is not less than 60 days.

17 (d) REVIEW BY COMMISSION AND PUBLIC VOTE OF
18 APPROVAL.—The Strategy may not be finalized or sub-
19 mitted to the appropriate committees of Congress unless
20 the Commission reviews and approves the Strategy
21 through a public vote of the Commission at an open meet-
22 ing in accordance with the following procedures:

23 (1) Not later than 30 days before the date on
24 which the Commission holds the open meeting, the
25 Commission shall circulate a draft version of the

1 Strategy to the public and publish that draft version
2 in the Federal Register for public comment.

3 (2) Not later than 24 hours after the draft
4 version described in paragraph (1) is circulated to
5 the commissioners of the Commission, the Commis-
6 sion shall publish that draft version on a publicly
7 available website of the Commission.

8 **SEC. 4. IMPLEMENTATION PLAN.**

9 (a) **IN GENERAL.**—Not later than 120 days after the
10 date on which the Assistant Secretary and the Commission
11 submit the Strategy to the appropriate committees of Con-
12 gress under section 3(a), and subject to the review and
13 approval by the Commission under subsection (d), the As-
14 sistant Secretary, in co-leadership with the Commission,
15 shall develop and submit to the appropriate committees
16 of Congress an implementation plan for the Strategy.

17 (b) **IMPLEMENTATION PLAN.**—The Implementation
18 Plan shall, at a minimum—

19 (1) provide a plan for implementing the roles,
20 responsibilities, goals, objectives, and performance
21 measures for the management of Federal broadband
22 programs and interagency coordination efforts iden-
23 tified in the Strategy;

24 (2) if the Strategy identifies policies and prac-
25 tices that result in programmatic differences among

1 covered agencies with respect to Federal broadband
2 programs, provide a plan to streamline and create
3 consistent policies and practices across all covered
4 agencies for the purposes of Federal broadband pro-
5 grams;

6 (3) for Federal broadband programs that are
7 not technologically neutral, determine a ceiling on
8 the amount of a subsidy or funding award to provide
9 broadband internet access service to a single loca-
10 tion, to be consistently applied and adopted by all
11 covered agencies for the funding of infrastructure
12 with respect to broadband internet access service;

13 (4) provide a plan for holding the covered agen-
14 cies accountable for the roles, responsibilities, goals,
15 objectives, and performance measures identified in
16 the Strategy;

17 (5) describe the roles and responsibilities of the
18 covered agencies, and the interagency mechanisms,
19 to coordinate the implementation of the Strategy;

20 (6) provide a plan for coordination among Fed-
21 eral broadband programs and for permitting proc-
22 esses for infrastructure with respect to broadband
23 internet access service;

24 (7) provide a plan for regular evaluation and
25 public reporting of Federal broadband programs

1 against clear objectives and performance measures,
2 permitting processes for infrastructure with respect
3 to broadband internet access service, and progress in
4 implementing the Strategy;

5 (8) with respect to the awarding of Federal
6 funds or subsidies to support the deployment of
7 broadband internet access service, provide a plan for
8 the adoption of—

9 (A) common data sets regarding those
10 awards, including a requirement that covered
11 agencies use the maps created under title VIII
12 of the Communications Act of 1934 (47 U.S.C.
13 641 et seq.) and the Deployment Locations
14 Map;

15 (B) applications regarding those awards,
16 as described in section 903(e) of the ACCESS
17 BROADBAND Act (47 U.S.C. 1307(e)); and

18 (C) rules for prohibiting awards by covered
19 agencies in areas identified as served by the
20 maps created under title VIII of the Commu-
21 nications Act of 1934 (47 U.S.C. 641 et seq.)
22 or in areas already subject to an award or en-
23 forceable deployment obligations by a covered
24 agency under a Federal broadband program or

1 a State, local, or Tribal program with respect to
2 broadband internet access service;

3 (9) provide a plan to monitor, publicly report,
4 and reduce waste, fraud, and abuse in Federal
5 broadband programs, including wasteful spending re-
6 sulting from fragmented, overlapping, and duplica-
7 tive programs;

8 (10) require consistent obligation and expendi-
9 ture reporting by covered agencies for Federal
10 broadband programs, which shall be consistent with
11 section 903(c)(2) of the ACCESS BROADBAND
12 Act (47 U.S.C. 1307(c)(2)) and the Deployment Lo-
13 cations Map;

14 (11) provide a plan to increase awareness of,
15 and participation in, Federal broadband programs
16 relating to the affordability and adoption of
17 broadband internet access service; and

18 (12) describe the administrative and legislative
19 action that is necessary to carry out the Strategy.

20 (e) PUBLIC COMMENT.—In developing the Implemen-
21 tation Plan, the Assistant Secretary and the Commission
22 shall jointly publish a draft version of the Implementation
23 Plan in the Federal Register for a period of notice and
24 comment (and reply comment) that is not less than 60
25 days.

1 (d) REVIEW BY COMMISSION AND PUBLIC VOTE OF
2 APPROVAL.—The Implementation Plan may not be final-
3 ized or implemented unless the Commission reviews and
4 approves the Implementation Plan through a public vote
5 of the Commission at an open meeting in accordance with
6 the following procedures:

7 (1) Not later than 30 days before the date on
8 which the Commission holds the open meeting, the
9 Commission shall circulate a draft version of the Im-
10 plementation Plan to the public and publish that
11 draft version in the Federal Register for public com-
12 ment.

13 (2) Not later than 24 hours after the draft
14 version described in paragraph (1) is circulated to
15 the commissioners of the Commission, the Commis-
16 sion shall publish that draft version on a publicly
17 available website of the Commission.

18 **SEC. 5. BRIEFINGS AND IMPLEMENTATION.**

19 (a) BRIEFING.—Not later than 21 days after the date
20 on which the Assistant Secretary and the Commission sub-
21 mit the Implementation Plan to the appropriate commit-
22 tees of Congress under section 4(a), the Assistant Sec-
23 retary, and appropriate representatives from the covered
24 agencies involved in the formulation of the Strategy, shall

1 provide a briefing on the implementation of the Strategy
2 to the appropriate committees of Congress.

3 (b) IMPLEMENTATION.—

4 (1) IN GENERAL.—The Assistant Secretary
5 shall—

6 (A) implement the Strategy in accordance
7 with the terms of the Implementation Plan; and

8 (B) not later than 90 days after the date
9 on which the Assistant Secretary begins to im-
10 plement the Strategy, and not less frequently
11 than once every 90 days thereafter until the
12 date on which the Implementation Plan is fully
13 implemented, brief the appropriate committees
14 of Congress on the progress in implementing
15 the Implementation Plan.

16 (2) RULE OF CONSTRUCTION.—Nothing in this
17 subsection may be construed to affect the authority
18 or jurisdiction of the Commission or confer upon the
19 Assistant Secretary or any executive agency the
20 power to direct the actions of the Commission, either
21 directly or indirectly.

22 **SEC. 6. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
23 **AND REPORT.**

24 Not later than 1 year after the date on which the
25 Assistant Secretary and the Commission submit the Im-

1 plementation Plan to the appropriate committees of Con-
2 gress under section 4(a), the Comptroller General of the
3 United States shall commence a study—

4 (1) that shall—

5 (A) examine the efficacy of the Strategy
6 and the Implementation Plan in coordinating
7 funding across the Federal Government with re-
8 spect to broadband internet access service;

9 (B) make recommendations regarding how
10 to improve the Strategy and the Implementa-
11 tion Plan;

12 (C) examine any existing or new perform-
13 ance goals and measures for Federal broadband
14 programs;

15 (D) examine any awards made by covered
16 agencies under Federal broadband programs, or
17 under State, local, and Tribal programs with
18 respect to broadband internet access service—

19 (i) in areas identified as served with
20 respect to broadband internet access serv-
21 ice; or

22 (ii) that are duplicative of other
23 awards under such a program; and

1 (E) identify programmatic changes that
2 would prevent occurrences described in subpara-
3 graph (D) in the future; and

4 (2) the results of which the Comptroller Gen-
5 eral shall submit to the appropriate committees of
6 Congress.

7 **SEC. 7. BROADBAND FUNDING MAP REPORTING.**

8 (a) IN GENERAL.—Not later than 60 days after the
9 date of enactment of this Act, the head of each covered
10 agency shall submit to the Assistant Secretary and the ap-
11 propriate committees of Congress a report containing a
12 comprehensive update on the measures that each respec-
13 tive covered agency has taken since May 15, 2023, to co-
14 ordinate with the National Telecommunications and Infor-
15 mation Administration, pursuant to subsection (c)(2)(A)
16 of the ACCESS BROADBAND Act (47 U.S.C.
17 1307(c)(2)(A)), and the Commission to populate the De-
18 ployment Locations Map.

19 (b) CONTENTS.—Each report required under sub-
20 section (a) shall include—

21 (1) a description of the extent to which the cov-
22 ered agency submitting the report is submitting the
23 data necessary to populate the Deployment Loca-
24 tions Map in a complete and timely manner; and

1 (2) identification of any outstanding challenges
2 associated with the requirement for the submission
3 of data described in paragraph (1).

4 **SEC. 8. TRACKING AND IMPROVING PROCESSING TIMES**
5 **FOR COMMUNICATIONS USE APPLICATIONS.**

6 Section 6409(b)(3) of the Middle Class Tax Relief
7 and Job Creation Act of 2012 (47 U.S.C. 1455(b)(3)) is
8 amended by adding at the end the following:

9 “(E) TRACKING AND IMPROVING PROC-
10 ESSING TIMES.—

11 “(i) DATA CONTROLS.—An executive
12 agency shall develop controls to ensure
13 that data is sufficiently accurate and com-
14 plete to track the processing time for each
15 application described in subparagraph (A).

16 “(ii) REQUIREMENT TO ANALYZE, AD-
17 DRESS, AND REPORT ON DELAY FAC-
18 TORS.—With respect to the factors that
19 contribute to delays in processing applica-
20 tions described in subparagraph (A), an
21 executive agency shall—

22 “(I) analyze the factors as the
23 delays are occurring;

24 “(II) take actions to address the
25 factors; and

1 “(III) provide an annual report
2 on the factors to—

3 “(aa) the Committee on
4 Commerce, Science, and Trans-
5 portation of the Senate;

6 “(bb) the Committee on En-
7 ergy and Natural Resources of
8 the Senate;

9 “(cc) the Committee on En-
10 ergy and Commerce of the House
11 of Representatives;

12 “(dd) the Committee on
13 Natural Resources of the House
14 of Representatives; and

15 “(ee) each committee of
16 Congress with jurisdiction over
17 the executive agency.

18 “(iii) METHOD FOR ALERTING STAFF
19 TO AT-RISK APPLICATIONS.—An executive
20 agency shall establish a method to alert
21 employees of the executive agency to any
22 application described in subparagraph (A)
23 with respect to which the executive agency
24 is at risk of failing to meet the 270-day
25 deadline under that subparagraph.”.

1 **SEC. 9. MINIMUM BROADBAND PROJECT COST.**

2 Section 41001(6)(A) of the FAST Act (42 U.S.C.
3 4370m(6)(A)) is amended—

4 (1) in clause (iii), by striking “or” at the end;

5 (2) by redesignating clause (iv) as clause (v);

6 and

7 (3) by inserting after clause (iii) the following:

8 “(iv)(I) is subject to NEPA;

9 “(II) involves the construction of in-
10 frastructure for broadband; and

11 “(III) is likely to require a total in-
12 vestment of more than \$5,000,000; or”.

13 **SEC. 10. RULE OF CONSTRUCTION.**

14 Nothing in this Act, or any amendment made by this
15 Act, may be construed to confer authority on the Federal
16 Government, or any State, local, or Tribal government, to
17 regulate broadband internet access service.