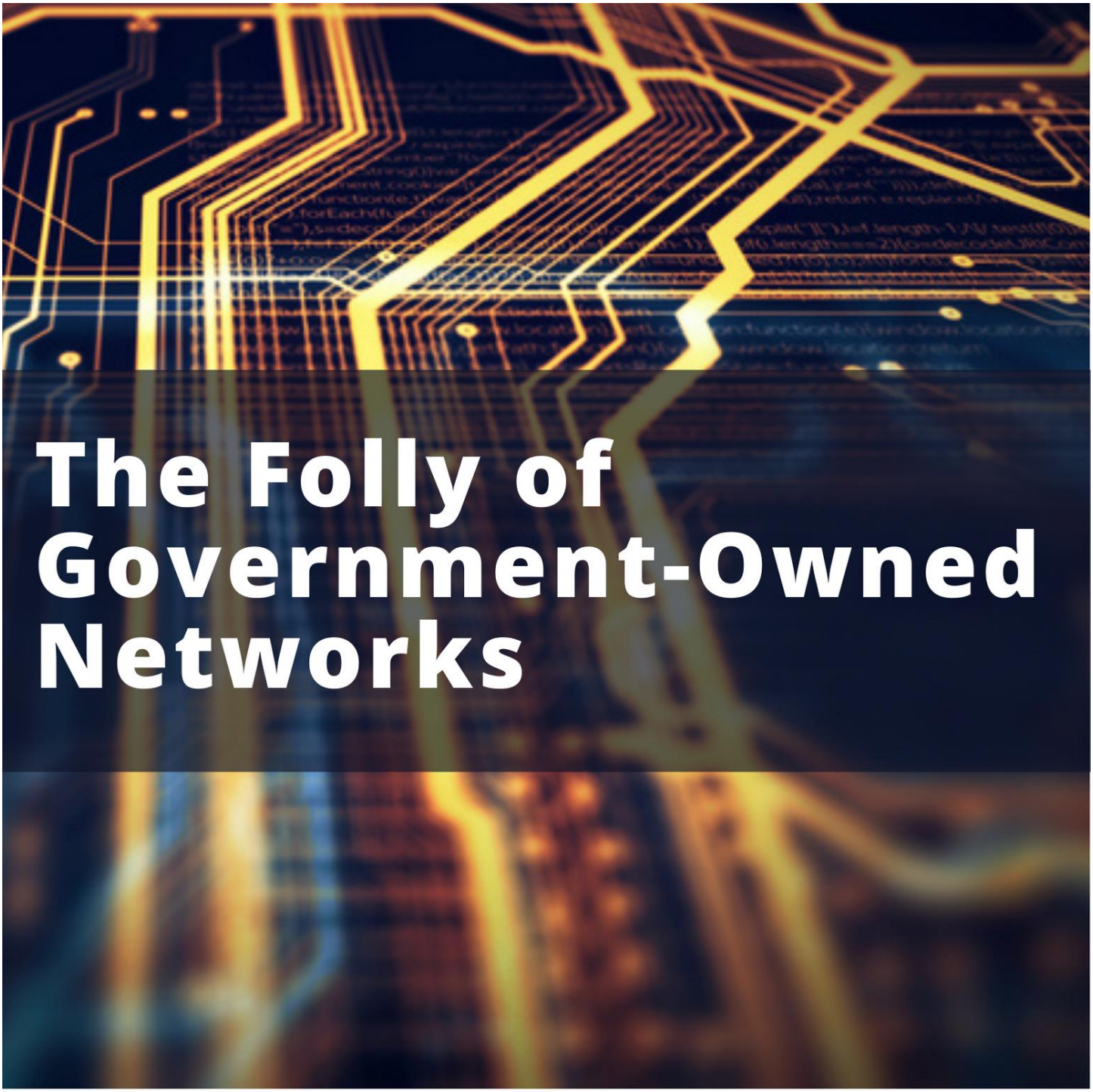

# The Folly of Government-Owned Networks

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Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in government.

CAGW was founded in 1984 by J. Peter Grace and nationally syndicated columnist Jack Anderson to build public support for implementation of the Grace Commission recommendations and other waste-cutting proposals. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government.

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# The Folly of Government-Owned Networks

## *Introduction*

When the COVID-19 pandemic forced tens of millions of Americans to work, socialize, and attend school from home, the networks that support access to the internet were faced with an unprecedented challenge. Instead of internet traffic growing at 30 percent annually as estimated before the pandemic, it grew by 38 percent in April and May 2020, the first two months after lockdowns and shutdowns began.[1]

The United States performed far better than other countries, with a median fixed broadband download speed that was 150 percent higher than the global median speed, and a median mobile broadband speed that was 70 percent higher than the global median speed.[2] The performance of European networks was significantly degraded by the sudden increase in video streaming, leading to a request by European Union (EU) commissioners to switch from high definition to standard definition (SD), which led Netflix to reduce its streaming speeds by 25 percent and YouTube to switch to SD globally.[3]

The resiliency of broadband in the U.S. during the pandemic can be attributed to the $1.78 trillion capital investment made by the private sector between 1996-2019,[4] and the light-touch regulation of the internet that has been the norm since that the mid-1990s, except for the short period of time when the Open Internet Order was in effect.[5] On a per capita basis, annual investment in the U.S. is three times as much per household as the EU, or about $700 annually, and the U.S. has significant leads in broadband adoption, deployment, and infrastructure.[6]

Yet, with all these advantages for the U.S. broadband system and 94 percent of Americans having access to the threshold speeds for both fixed and mobile service required by the Federal Communications Commission (FCC),[7] there are several bills that have been enacted into law and new proposals that dramatically increase the government's "investment" in broadband.

The Consolidated Appropriations Act, 2021, which was signed into law on December 27, 2020, included $7 billion for various broadband infrastructure initiatives.[8] The $1.9 trillion American Rescue Plan Act (ARPA), which was signed into law on March 11, 2021, included $350 billion for state and local governments, with sufficient flexibility to allow some or all of

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[1] Anna-Maria Kovacs, "U.S. broadband networks rise to the challenge of surging traffic during the pandemic," US Telecom, June 2020, p. 2, https://www.ustelecom.org/wp-content/uploads/2020/06/PP-2020-06-Kovacs-internet-performance.pdf.
[2] Ibid., p. 3.
[3] Ibid., p. 6.
[4] Mike Saperstein, "Broadband Investment Remains High in 2019," US Telecom, https://www.ustelecom.org/research/broadband-investment-remains-high-in-2019/.
[5] Phoenix Center, "New Phoenix Center Economic Analysis Demonstrates $24-$30 Billion in Broadband Investment Lost Since 2015," press release, November 1, 2018, https://www.phoenix-center.org/perspectives/Perspective18-09PressReleaseFinal.pdf.
[6] Brian Weiss, "No Contest: U.S. Leads Europe in Broadband Deployment, Adoption, Investment, and Competition," US Telecom, April 21, 2021, https://www.ustelecom.org/no-contest-u-s-leads-europe-in-broadband-deployment-adoption-investment-and-competition/.
[7] Federal Communications Commission, "Fourteenth Broadband Deployment Report," January 19, 2021, pp. 2-3, https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.
[8] Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, H.R. 133, 116th Congress (2020), https://www.congress.gov/bill/116th-congress/house-bill/133.

this money to be spent on water, sewer, and broadband infrastructure.[9] President Biden's American Jobs Plan calls for $100 billion in broadband funding and "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."[10]

The desire by the White House and Congress to increase broadband adoption and improve on next generation communications services is understandable, particularly in light of the ongoing recovery from the pandemic. However, appropriating hundreds of billions of dollars, much of which is designated for a single technology (fiber) directed to government-owned networks (GONs), also known as municipal broadband, would overbuild new networks where existing providers are already provisioning broadband, and be wasteful, anti-competitive, and cost taxpayers dearly. Instead, federal, state, and local governments should enact laws and regulations that are vendor and technology neutral, making it easier for the private sector to expand its reach in underserved and unserved communities, and stay out of the way of the incredible progress that has been made in broadband service and reach.

## *Cost Benefit Analysis of Government-Owned Networks*

GONs are typically created in communities with existing internet service providers (ISPs), rather than in areas not served by an ISP. This makes the government both a competitor and regulator, creating an unfair situation where rules can be written to benefit the GON and there are no limits on overbuilding broadband capacity.

Communities that consider building a GON often rely on various studies to determine if building a network is in the best interest of their locality, including a January 10, 2018 report by the Berkman Klein Center for Internet & Society at Harvard University (Berkman Klein Center), which asserts that GONs provide the "least-expensive local 'broadband.'"[11] This study compared pricing from GONs against private ISP competitors in 27 communities across the country, and found that in 23 cases, the community-owned (GON) Fiber-to-the-Home (FTTH) "providers' pricing was lower when the service costs and fees were averaged over four years."[12]

However, a review of the Berkman Klein Center report by the Advanced Communications Law & Policy Institute (ACLP) at New York Law School found a number of flaws in the report's methodology, as well as omissions necessary to draw accurate conclusions.[13] The ACLP determined that the Berkman Klein Center report proposed that GONs

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[9] Casey Lide, "Broadband Support Opportunities for State and Local Governments Under the American Rescue Plan Act of 2021," *The National Law Review*, April 5, 2021, https://www.natlawreview.com/article/broadband-support-opportunities-state-and-local-governments-under-american-rescue.

[10] The White House, "Fact Sheet: The American Jobs Plan," March 31, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/.

[11] David Talbot, Kira Hessekiel, and Danielle Kehl, "Community-Owned Fiber Networks: Value Leaders in America," Berkman Klein Center for Internet & Society at Harvard University (Berkman Klein Center), January 10, 2018, https://cyber.harvard.edu/publications/2018/01/communityfiber.

[12] Ibid.

[13] Michael J. Santorelli and Charles M. Davidson, "A Closer Look: Berkman's Municipal Fiber Pricing Study," Advanced Communications Law & Policy Institute at New York Law School (ACLP), January 2018, http://comms.nyls.edu/ACLP/Closer-Look-Berkman-GON-Pricing-Study-January-2018.pdf.

offered lower entry prices, but ignored data showing that private alternatives were 43 percent faster; ignored indirect costs and financial risks associated with GONs; excluded pricing data from major private providers; ignored key market conditions; and excluded bundled services, which undermined the findings.[14]

According to the ACLP, the Berkman Klein Center report also omitted details like whether the quality or price of broadband was the primary influencer of adoption decisions; that "nearly all of the GONs in the report are owned by muni utilities; such systems convey a number of unique advantages; most of the GONs in the study are not yet fully deployed; several of the systems in the study have failed or are struggling; and many of the GONs studied differ in subtle but important ways."[15] And the Berkman Klein Center report itself admitted, "our ability to study broadband pricing was constrained by the lack of standardization in internet service offerings and a shortage of available data."[16]

In June 2014, the ACLP included in its report on government-owned broadband networks a "Policy Maker Toolkit," with a series of questions to help them understand what is involved in building and maintaining a GON. Policy makers were asked to consider the supply and demand side of the local broadband market, municipal factors, "the myriad costs, risks, and complexities associated with owning and operating a commercial broadband network," which covered an initial review, financing and costs, and regulatory and legal questions.[17]

An October 2020 review of the effectiveness of GONs by The Center for Growth and Opportunity at Utah State University found that "research into publicly owned networks presents a far more nuanced picture than one obtains from surveys of public opinion."[18] The report encourages policy makers to take away three lessons: "1) Building a new network is costly and risky; 2) Broadband competition is complicated but is largely a product of local conditions like population density; and 3) Municipal broadband is often a popular investment politically, but the actual benefits to citizens are often mediocre."[19]

## *Basing Broadband Funding on Speed Tests*

Building broadband networks is neither cheap nor easy, particularly in rural or remote regions of the country. Despite claims to the contrary as justification for massive government expenditures to increase broadband connections, the private sector has been working diligently to bridge the digital divide.

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[14] Ibid.
[15] Ibid.
[16] Berkman Klein Center.
[17] Charles M. Davidson and Michael J. Santorelli, "UNDERSTANDING THE DEBATE OVER GOVERNMENT-OWNED BROADBAND NETWORKS: Context, Lessons Learned, and a Way Forward for Policy Makers" (Davidson and Santorelli), ACLP, June 2014, pp. 7-9, http://comms.nyls.edu/ACLP/ACLP-Government-Owned-Broadband-Networks-FINAL-June-2014.pdf.
[18] Will Rinehart, "Are Government-Owned Broadband Networks Effective?" The Center for Growth and Opportunity at Utah State University, October 2020, https://www.thecgo.org/wp-content/uploads/2020/10/Are-Government-Owned-Broadband-Networks-Effective.pdf.
[19] Ibid., p. vi.

## The Folly of Government-Owned Networks

NCTA – The Internet and Television Association reports that 96 percent of U.S. homes have access to broadband at the FCC minimum standard speed of 25/3 Mbps, 84 percent of U.S. households subscribe to home broadband, and 5 million new households connected to the internet in 2020.[20] While internet speeds have been increasing to an average download speed of 161.1 Mbps using cable or fiber services, the cost per Mbps has decreased by 98 percent.[21]

However, even with this decrease in cost per Mbps, there are calls in Congress to set a new standard for broadband speeds regardless of the negative impact such efforts will have on broadband deployment in areas currently unserved by 25/3 Mbps or faster.

At a March 17, 2021 Senate Commerce, Science, and Transportation Committee hearing, the discussion turned to whether service speeds of 25 Mbps download and 3 Mbps upload speeds should be raised to a symmetrical 100/100 Mbps speed minimum standard for internet service. Former FCC Commissioner Michael O'Rielly testified that, "the speed thresholds seem very ambitious and could contradict the goal of connecting the truly unconnected, as opposed to updating those areas with service."[22]

Increasing minimum standards for broadband service will not enhance or improve adoption rates amongst low-income households. Instead, it will continue to increase the cost of deployment and redirect funding from areas of the country that are already deprived of broadband services at 25/3 Mbps. Currently, some fiber internet services may provide close to symmetrical speeds of 100/100 Mbps but imposing this speed as the new standard would reallocate much needed resources away from households that do not have 25/3 Mbps toward communities already served at either equal to or above that speed, continuing to increase the digital divide between rural and urban communities, rather than resolving these disparities.[23]

A much better solution would be to impose guardrails on existing government funded broadband deployment programs that would prohibit taxpayer funding from being used to deploy new broadband networks in areas that currently have service at or above the minimum 25/3 Mbps standard. Moreover, the universal service fund (USF) and the Rural Utilities Service (RUS) grant and loan programs should be reformed to ensure that broadband deployment funding is directed where it is needed most.

Congress must also get a better grip on how much broadband funding has already been allocated through appropriations legislation and emergency relief packages like the Coronavirus Aid, Relief, and Economic Security Act and the ARPA and ensure that federal agencies coordinate these broadband programs before appropriating one more dollar toward broadband deployment.

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[20] NCTA, "Broadband Facts & Stats," February 23, 2021, https://www.ncta.com/broadband-facts.
[21] Ibid., NCTA, "Broadband Facts & Stats."
[22] Michael O'Rielly, Written Testimony before the Senate Committee on Commerce, Science, & Transportation Hearing on "Recent Federal Actions to Extend Broadband: Are We Making Progress?," March 17, 2021, https://www.commerce.senate.gov/services/files/223448D3-78AE-4B72-9239-A66AB6CEE224.
[23] Deborah Collier, "The Asymmetrical Consequences of Symmetrical Speeds," *The WasteWatcher*, Citizens Against Government Waste, March 25, 2021, https://www.cagw.org/thewastewatcher/asymmetrical-consequences-symmetrical-speeds.

## *Studies of Government-Owned Networks – the Good, the Bad, and the Ugly*

In 2004, Concord, Massachusetts attempted to create a publicly financed broadband communications company. As part of its efforts to oppose this plan, the Council for Citizens Against Government Waste (CCAGW) "evaluated what has happened in other municipalities when they attempted to create their own broadband system. Generally, the local governments undertake an enormous amount of financial risk to enter these types of businesses. The systems end up being far more expensive than originally expected and the towns find it difficult to remain competitive, to upgrade, and to market their product within budgetary constraints. It is common for municipal electric customers to end up subsidizing broadband customers, causing electric rates and taxes to increase."[24]

Despite CCAGW's conclusions and other reports of the excessive costs and ineffectiveness of municipal broadband projects, cities and towns around the country moved ahead with similar initiatives.

In 2014, former President Barack Obama touted the "success" of 1 GB Cities like Cedar Falls, Iowa; Kansas City, Missouri; and Chattanooga, Tennessee, while at the same time declaring that this country was not doing well enough in broadband deployment because cities like Los Angeles, New York City, San Francisco, and Washington, D.C. only have .5 GB (500 Mbps) service available. While this seems to have contributed to the impetus of building GONs across the country, it holds little weight that 500 Mbps speed service should have then been set as the minimum standard for every community or household need. With respect to the economic impact of a GON in a local community, a 2014 Mercatus Center study concluded that government-run broadband networks have virtually no impact on the economic status of a town or city, other than swelling the size of government.[25]

Indeed, the magnitude of financial losses caused by failed GONs around the country is overwhelming. From Bristol, Virginia to Provo, Utah, towns and cities across the nation have invested tens of millions of dollars to build a GON, only to sell these systems for pennies on the dollar, including in Provo, where the system was sold for exactly one dollar. When one evaluates the amount of funds expended by the private sector to build new networks, while at the same time maintaining and upgrading existing systems, it is understandable why 22 states have taken preventive measures or even implemented outright bans on GONs: Government-funded competition with the private sector does not work and the costs end up being passed onto taxpayers.[26]

Instead of building a GON, local governments should do whatever they can to encourage private broadband companies to enter their market. This would include dropping any local

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[24] Council for Citizens Against Government Waste, "CCAGW Members Oppose Municipal Overbuild in Concord, Mass.," press release (CCAGW Concord Overbuild press release), March 8, 2004, https://www.ccagw.org/media/press-releases/ccagw-members-oppose-municipal-overbuild-concord-mass.

[25] Brian Deignan, "Community Broadband, Community Benefits? An Economic Analysis of Local Government Broadband Initiatives," Mercatus Graduate Policy Essay, The Mercatus Center, George Mason University, Summer 2014, https://asp.mercatus.org/system/files/MGPE_Deignan_0.pdf.

[26] Kendra Chamberlain, "Municipal Broadband is Roadblocked or Outlawed in 22 States," BroadbandNow Research, May 13, 2020, https://broadbandnow.com/report/municipal-broadband-roadblocks/.

barriers the town may have and/or encouraging their representatives in state houses and Washington, D.C. to remove restrictions that stymie new investment in broadband and telecommunications in unserved areas.[27]

Such barriers to deployment include local digital fees and taxes, high or duplicative franchise fees, pole attachment fees, high application processing fees, and right-of-way fees. According to a November 17, 2020 Tax Foundation report, a family with four wireless lines living in Chicago can pay more than $500 per year in taxes and fees on the service alone.[28] Replacement pole costs also factor into the high cost to deploy broadband in local communities, with communications providers often being asked to bear the full cost of replacing an outdated pole when seeking to upgrade existing equipment on a pole owned by a local electric or telephone utility. These fees and replacement costs factor into the final price consumers must pay to access service when it is offered in a community.[29] Lowering the cost of entry would increase private sector competition and make it more difficult for the government to claim that it needs to build its own system to fill supposed holes in broadband coverage.

Local communities are not the only government entities entering the broadband marketplace. Statewide systems like Kentucky Wired are examples of government waste at its worst. Touted as essential economic lifeline in August 2015 to millions of Kentucky residents, then-House Appropriations Committee Chairman Hal Rogers (R-Ky.) said the network would provide "endless capacity and endless connectivity."[30] However, Kentucky Wired has been plagued by cost overruns and delays. The price tag has exceeded $500 million, $100 million over budget, and is expected to cost $1.5 billion over the next 30 years.[31]

In Minnesota, a taxpayer-backed cooperative among 27 cities and towns failed to obtain enough subscribers to sustain itself, which resulted in a $1 million revenue shortfall and tax increases to pick up the slack.[32]

The citizens of Provo, Utah learned that lesson the expensive way when, in 2004, city government officials decided to take on new debt to build a $39 million fiber-optic network, called iProvo. The effort to bring the system online "struggled due to a combination of incompetence, bad accounting and unrelenting attacks from regional incumbent Qwest. It was sold in 2008 to Broadweave for $40 million, then re-acquired by the city in 2012 and leased to a

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[27] Ibid., CCAGW Concord Overbuild press release.
[28] Scott Mackey and Ulrik Boesen, "Wireless Tax Burden Remains High Due to Federal Surcharge Increase," Tax Foundation, November 17, 2020, https://files.taxfoundation.org/20201116124929/Wireless-Tax-Burden-Remains-High-Due-to-Federal-Surcharge-Increase.pdf.
[29] Thomas A. Schatz, "Before the Federal Communications Commission, Washington, D.C. In the Matter of Accelerating Broadband Deployments by Removing Barriers to Local Infrastructure Investment (WC Docket No. 17-84)," Citizens Against Government Waste, September 2, 2020, https://www.cagw.org/legislative-affairs/agency-comments/cagw-comments-fcc-declaratory-petition-pole-attachments.
[30] Spencer Chretien, "National group questions state broadband project," *Lexington Herald Leader*, October 17, 2017, https://www.kentucky.com/opinion/op-ed/article179327481.html.
[31] Alfred Miller, "KentuckyWired promised broadband and high-tech jobs. Will it ever deliver?" *Louisville Courier Journal*, January 15, 2020, https://www.courier-journal.com/story/news/politics/2020/01/15/kentuckywired-projects-unclear-future-leaves-state-reeling/4307356002/.
[32] Lee Schafer, "Minnesota's Lake County Looks for Exit on Broadband Project," *Star Tribune*, June 29, 2017, https://www.startribune.com/lee-schafer-county-looks-for-exit-on-broadband-project/431591253/.

company by the name of Veracity."[33] The city then sold the network to Google for $1 in 2013.[34] The sale at least got Provo out of the business of providing internet service to its residents, but local taxpayers are still paying off the debt their city's ill-fated experiment previously incurred.[35]

The fiber optic network in Bristol, Virginia, is another example of a failed municipal project. Originally intended to improve the connections among the Bristol Virginia Utility Authority's (BVUA) eight electric substations, it was expanded to include public schools, libraries, city hall, and the police and fire departments, and eventually become available to the entire community. BVUA obtained nearly $124 million in federal, state, and local funding through grants and loans to build out the system.[36]

The lack of internal controls and exemption from Freedom of Information Act requests enabled the BVUA to escape scrutiny until a 2013 criminal investigation by the Bristol sheriff's department into its accounting practices, which led to "the conviction and sentencing of nine individuals for various offenses, including misuse of public funds, evasion of employment taxes, failure to report employee income to the IRS, bid-rigging, procurement violations, and violations of the State and Local Government Conflict of Interests Act. In October 2016, the Virginia Auditor of Public Accounts released the results of an audit of the BVUA, noting that fraud happens when 'internal controls are inadequate, policies and procedures do not exist or are not enforced, and collusion occurs.'"[37]

Chattanooga, Tennessee has often been held up as a model for municipal broadband excellence, but the Chattanooga project is not the paragon of self-sufficiency it is made out to be. In an August 18, 2016 article in *The Tennessean*, Dr. George Ford, the chief economist at the Phoenix Center for Advanced Legal & Economic Public Policy Studies, noted that the city's $330 million expenditure included $105 million from taxpayers outside Tennessee, and the remainder was funded through the city's captive electricity ratepayers.[38] Most Chattanoogans continue to purchase internet services from private providers rather than relying on the city-owned network.

In its June 2014 broadband report, the ACLP included case studies of the background, cost and financing, network, and impact on the community of 10 projects across the country, including Bristol, Chattanooga, and Provo.[39] The report's 10 findings included that the GONs

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[33] Karl Bode, "Google Fiber Coming to Provo, Utah," *DSL Reports*, April 18, 2013, http://www.dslreports.com/shownews/Google-Fiber-Coming-to-Provo-Utah-123915.
[34] Ibid.
[35] Deborah Collier, "Municipal Broadband Proposal Seeks to Overturn State Laws," *The WasteWatcher*, Citizens Against Government Waste, January 14, 2014, https://www.cagw.org/thewastewatcher/municipal-broadband-proposal-seeks-overturn-state-laws.
[36] Thomas A. Schatz, "Schatz: Municipal Broadband Is Wasteful," *The Roanoke Times*, February 1, 2017, https://roanoke.com/opinion/commentary/schatz-municipal-broadband-is-wasteful/article_ba20b096-51a6-5965-99d6-e5ebcfc77afe.html.
[37] Ibid.
[38] George S. Ford, "Questionable economic benefits of Chattanooga's gig: Municipal broadband networks are not as great as they are made out to be," *The Tennessean*, August 17, 2016, https://www.tennessean.com/story/opinion/contributors/2016/08/17/questionable-economic-benefits-chattanoogas-gig/88908270/.
[39] Davidson and Santorelli, pp. 47-91.

"raise fundamental concerns regarding sustainability, fair competition, and consumer welfare. … Calls for achieving subjective speed benchmarks should not supplant actual consumer demand as the primary driving force shaping the broadband ecosystem. … Governments are not well-equipped to compete in dynamic markets. … The substantial costs of building, maintaining, and operating GONs mitigate perceived benefits. … Pursuit of a GON often diverts scarce public resources from more pressing priorities. … GONs are not optimal remedies for perceived or actual broadband connectivity challenges."[40]

Yet rather than learn from the lessons in other cities and states, many local governments continue to develop plans to build GONs, even though there are one or more broadband providers with franchises from the city to operate. In Gainesville, Florida where both Cox Communications and AT&T operate broadband networks,[41] city officials are looking to build their own GON that would directly compete against these private sector companies to supposedly drive down costs, rather than working with them to reduce costs and increase competition.[42]

The decision to build a GON is complex and should not be done without considering the detailed analyses and cautionary examples of the use of limited taxpayer resources to build, upgrade, and maintain a broadband network, including in upcoming discussions on President Biden's $2.25 trillion infrastructure package, which will soon be debated in Congress.

## *National Infrastructure Proposals and Broadband Deployment*

In 2009, Congress passed former President Obama's $831 billion stimulus program, which included $7.2 billion in broadband funding through the U.S. Department of Agriculture's RUS Broadband Initiatives Program (BIP) and the National Technology Information Administration's (NTIA) Broadband Opportunities Program (BTOP).[43]

BIP funds totaling $1,151,246,819 were awarded for 227 stimulus loans, grants, and contract awards. By December 2011, "15 projects had been completed; 110 were less than 50 percent complete; 69 were more than 50 percent complete; and 33 had not yet started. By 2013, RUS had obligated $3.5 billion in funding for the BIP program ($1 billion more than the amount provided in the stimulus) for 320 projects in 44 states and territories. According to a July 28, 2015 *Politico* exposé, 'Wired to Fail,' RUS sometimes ignored its rural mission by using stimulus funding for high-speed internet in well-populated areas; mismanaged broadband projects so badly that they failed or were ineffective; allowed loans to go delinquent; and permitted borrowers to go into default."[44]

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[40] Ibid., pp. 92-108.
[41] Alexa Mickler, "Gainesville Attempts Further Municipal Broadband Discussion, But Costs and COVID-19 Stall Progress," WUFT PBS, November 30, 2020, https://www.wuft.org/news/2020/11/30/gainesville-attempts-further-discussion-of-municipal-broadband-yet-doesnt-seem-to-progress/.
[42] Ibid.
[43] Deborah Collier, "FCC Commissioner Offers Commonsense Advice to Rural Utilities Service," *The WasteWatcher*, Citizens Against Government Waste, September 11, 2018, https://www.cagw.org/thewastewatcher/fcc-commissioner-offers-commonsense-advice-rural-utilities-service.
[44] Ibid.

The BTOP program was even worse. As of the third quarter of 2011, the completion rate of projects funded through the BTOP was zero. There were 844 grant awards and contracts totaling $4,456,797,171, of which 26 were completed, 192 were less than 50 percent complete, 623 were more than 50 percent complete, and three had not yet started.[45]

The 2018 Farm bill included $350 million in grant funding over a period of five years to the RUS to provide for expanded broadband deployment into unserved or underserved rural communities.[46] However, the bill contained little program oversight on how the funds would be allocated and did not include any provisions to prevent the funding from being used to build new networks on top of existing broadband infrastructure.[47]

The ineffectiveness and wastefulness of the projects in the stimulus and Farm bill should give members of Congress pause in providing taxpayer funding for rural or municipal broadband, especially at substantially enhanced spending levels.

On March 11, 2021, Rep. James Clyburn (D-S.C.) and Sen. Amy Klobuchar (D-Minn.) re-introduced the Accessible, Affordable Internet for All Act, H.R. 1783/S. 745, which would invest another $94 billion in taxpayer resources to build high-speed broadband infrastructure in unserved and underserved communities and permit the funds to be used to build GONs. The legislation not only fails to provide guardrails against overbuilding existing networks using federal funds, it also encourages such wasteful spending by defining "underserved" communities in a manner that would expand the availability of the funding to areas that already have high-speed internet service. Overbuilding in these areas makes it more difficult to provide broadband access in communities where service is difficult to obtain due to factors like terrain and distance.[48]

While the legislation's sponsors tout the bill as another response to the current pandemic and emphasize the importance of keeping Americans across the country connected while similar arguments are being made for the $100 billion provided in the American Jobs Plan, the call for more broadband funding fails to recognize the $92 billion over 10 years that the FCC has allocated for broadband deployment;[49] the $7 billion appropriated in the December 2020 relief package;[50] and the flexibility provided for the use by state and local governments in the ARPA. There is $219.8 billion for state, territories, and Tribal governments and $120.2 billion for metropolitan cities, cities with fewer than 50,000 residents, and counties "to respond to the

[45] Deborah Collier, "Recovery Act Broadband Funds: Boon or Bust," *The WasteWatcher*, Citizens Against Government Waste, November 12, 2012, https://www.cagw.org/thewastewatcher/recovery-act-broadband-funds-boon-or-bust.
[46] Agriculture Improvement Act of 2018, H.R. 2, Pub. L. No. 115-334, 115th Congress (2018), https://www.congress.gov/bill/115th-congress/house-bill/2.
[47] Deborah Collier, "Farm Bill Conferees Should Avoid Broadband Overbuild," *The WasteWatcher*, Citizens Against Government Waste, November 19, 2018, https://www.cagw.org/thewastewatcher/farm-bill-conferees-should-avoid-broadband-overbuild.
[48] Accessible, Affordable Internet for All Act, H.R. 1783, 117th Congress (2021), https://www.congress.gov/bill/117th-congress/house-bill/1783; S. 745, 117th Congress (2021), https://www.congress.gov/bill/117th-congress/senate-bill/745.
[49] Federal Communications Commission, "Rural Digital Opportunity Fund Phase I Results," December 7, 2020, https://www.fcc.gov/reports-research/maps/rdof-phase-i-dec-2020/.
[50] Margaret Harding McGill, "COVID relief bill provides $7 billion for broadband access," *Axios*, December 21, 2020, https://www.axios.com/broadband-access-covid-relief-bill-7-billion-5be48439-c1a4-4927-a0c4-515312a1d281.html.

public health emergency … including assistance to households, small businesses, and nonprofits … or to make necessary investments in waste, sewer, or broadband infrastructure …"[51]

Given the flexibility provided in the law, all or none of this money could be used for any of these purposes, including broadband, which in turn could be used for deployment to unserved areas or to fund GONs and overbuild existing private sector broadband. It appears that projects can be "paid" for by the deadline of December 31, 2024 and not completed for several years thereafter. The only potential oversight of these expenditures to prevent waste, fraud, and abuse is through the Treasury Department, which "may" issue regulations to carry out these provisions and provide an accounting of the use of the funds but is not required to do so.[52]

On top of these funds, there is $10 billion for Capital Projects Funds for states, territories, and Tribal governments to enable work, education, and health monitoring in response to the coronavirus pandemic; $10 billion for a Homeowners Assistance Fund that can be used to pay for qualified expenses including broadband internet access service; and $3 billion for the Economic Development Administration for projects in economically distressed communities.[53]

Montana and Vermont are two of the states that are using ARPA funds for broadband. Montana received $5 billion from the federal government's pandemic-related legislation enacted into law to date, equal to a 42 percent increase over the state's two-year $12 billion budget. More than $1 billion of that money was initially being proposed for infrastructure, with the largest allocation of $350 million going to broadband, including a new state agency charged with expanding rural broadband to underserved areas of the state.[54] The final plan approved by the legislature reduced that amount to $250 million.[55] Montana state law does not allow funds to be used for GONs.

Vermont Governor Phillip Scott (D) issued his proposal for how to use the state's $2.7 billion from ARPA funds on April 6, 2021 an amount equal to a 44 percent increase over the state's $6.1 billion FY 2020 budget, including up to $250 million for broadband.[56] Local governments could either build their own GON or enter into a public private partnership. According to a 2019 Magellan report provided to the Public Service Department (PSD), reaching the then-underserved 68,899 state residents at that time would cost "approximately $4,240 per location. More recent PSD analysis estimates that there are now approximately 52,729 locations that lack access to broadband service at 25/3 Mbps or that do not have a wired funded solution in place to deploy this service."[57] The $223.6 million provided in the governor's proposal would be

[51] Casey Lide, "Broadband Support Opportunities for State and Local Governments Under the American Rescue Plan Act of 2021," *The National Law Review*, April 5, 2021, https://www.natlawreview.com/article/broadband-support-opportunities-state-and-local-governments-under-american-rescue.
[52] Ibid.
[53] Ibid.
[54] Holly Michaels and Sam Wilson, "Talk on how to spend $3 trillion in COVID-19 aid dominates Montana legislature," *Independent Record*, March 19, 2021, https://helenair.com/news/state-and-regional/govt-and-politics/talk-on-how-to-spend-3-billion-in-covid-19-aid-dominates-montana-legislature/article_5a43d7e4-2d52-5e80-a0f2-7f189f5f62b7.html.
[55] Arren Kimball-Sannet, "Montana House passes monumental COVID-19 relief bill," *Great Falls Tribune*, March 31, 2021, https://www.greatfallstribune.com/story/news/2021/03/31/montana-house-passes-monumental-covid-19-aid-bill/4821601001/.
[56] Governor Phillip B. Scott, "Proposed Investment of American Rescue Plan Funds," State of Vermont, April 6, 2021, https://governor.vermont.gov/sites/scott/files/documents/Governor%20Scott%20Proposed%20ARPA%20Budget.pdf.
[57] Ibid., p. 11.

sufficient to provide broadband service in all of these locations, and some of all of that money can be used to build or expand on a GON.

Other states are receiving similar funding from the ARPA in relation to their annual or two-year budgets, and they will also have the flexibility to use hundreds of millions of dollars in smaller states and billions of dollars in larger states for broadband infrastructure. Like Vermont, it could mean all underserved areas would be covered. Since ARPA did not pre-empt state law, the 22 states that have either complete or partial restrictions on GONs are bound by those restrictions.

The use of ARPA funds for broadband, along with the tens of billions of unspent dollars from prior initiatives, would seem to mitigate or eliminate the need for any more money from the federal government to build or expand broadband in underserved or unserved areas of the country, including the $94 billion Clyburn-Klobuchar bill and the $100 billion for broadband in the American Jobs Plan. The Jobs Plan is particularly troubling since it "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."[58]

The White House claims its plan would "save taxpayer money" by "reducing internet prices for all Americans, increase adoption in both rural and urban areas, and hold providers accountable." In other words, ignore, devalue, undermine, and eliminate the private sector companies that effectively invested $1.78 trillion of their own money to give consumers increased internet speeds at a reduced cost the opportunity to access the Jobs Plan funds, and give $100 billion of the taxpayer's money to fund GONs, which have almost entirely proven to be a failure.

The $100 billion broadband proposal in the Jobs Plan would not only duplicate funds that are already available from the ARPA and other sources, it would also adversely impact areas of the country that do not have broadband service at even the most minimum speed threshold, which currently comprises of 5 percent of the population, and harm small providers, like rural wireless ISPs that are bidding for assistance from the federal government to connect the portions of the population that currently are without any service.

During a May 6, 2021 House Energy and Commerce Committee hearing entitled "Broadband Equity: Addressing Disparities in Access and Affordability," several committee members and witnesses continued to confuse "access" with "adoption" in order to justify rate regulation through "community networks," which is the new buzzword for municipal or government-owned broadband. The hearing discounted the success of private sector networks in favor of an underlying desire for the government to take charge of broadband internet services and operate them as publicly owned utilities in the name of making internet access "more affordable."[59]

[58] The White House, "The American Jobs Plan."
[59] House Energy and Commerce Committee, "Broadband Equity: Addressing Disparities in Access and Affordability," May 6, 2021, https://energycommerce.house.gov/committee-activity/hearings/hearing-on-broadband-equity-addressing-disparities-in-access-and.

## The Folly of Government-Owned Networks

The Jobs Plan appears to limit the type of service offerings strictly to FTTH. This outdated mode of thinking discounts the innovative methods of offering broadband, including cable, DSL, FTTH, fixed wireless broadband, mobile broadband, low earth orbit satellites, and the use of TV white spaces. What works for one region of the country may not work at all in others depending on distance and topography. All funding for broadband should be vendor and technology neutral, and there should be no preferences for government-owned systems.

Broadband funding must also rely on new broadband maps that will show where service is truly needed with guardrails to avoid overbuild in areas that already have service, as required by the Broadband DATA Act, signed into law on March 23, 2020.[60] The Consolidated Appropriations Act, 2021 included $65 million to support the Broadband DATA Act requirements.[61]

The Broadband DATA Act requires the FCC to develop and disseminate at a granular level maps that demonstrate a true picture of broadband deployment across the country, including whether it is provided from wired, fixed-wireless, satellite, and mobile broadband providers. The bill also requires the Government Accountability Office to report on identified locations where fixed broadband can be installed.

Prior to enactment of the Broadband DATA Act, broadband maps were hit or miss at best, indicating a lack of service where it was widely available, and widespread service where it was unserved or underserved. This created a disparity in the distribution of federal funds for broadband deployment. Knowing where the holes in broadband deployment are located through improved mapping will help to allocate the funding more accurately.

However, even that effort appears to be delayed, as noted by Senate Commerce, Science, and Transportation Committee Ranking Member Roger Wicker (R-Miss.), when he asked the committee chairwoman in a March 30, 2021 letter to hold a hearing on the status of the FCC's broadband mapping initiative. Sen. Wicker noted, "Unfortunately, the FCC recently suggested they would not have new maps ready until 2022, despite previous statements from Acting FCC Chairwoman Jessica Rosenworcel that the agency could complete new maps in 'just a few months.' However, at our March 17, 2021 hearing, you stated that Acting Chairwoman Rosenworcel had intimated to you that we could have an answer for mapping in four months. These conflicting timelines clearly need to be resolved."[62]

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[60] Broadband DATA Act, Pub. L. No. 116-113, S. 1822, 116th Congress (2020), https://www.congress.gov/bill/116th-congress/senate-bill/1822.

[61] Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, H.R. 133, 116th Congress, (2020), https://www.congress.gov/bill/116th-congress/house-bill/133.

[62] Sen. Roger Wicker, "Letter to Senate Commerce, Science, and Transportation Committee Chairwoman Maria Cantwell requesting a hearing on FCC Broadband Maps," March 30, 2021, https://www.commerce.senate.gov/2021/3/wicker-requests-hearing-on-fcc-broadband-maps.

## *Conclusion*

The perils and pitfalls of GONs are well-documented. From Bristol, Virginia to Provo, Utah, GON projects have proven to be costly, unsustainable, and anti-competitive, while they divert taxpayer resources from higher priorities and fail to solve connectivity issues.

Simply declaring that everyone should have internet access does not mean it can easily or effectively be accomplished, particularly if it is limited to a single technology (FTTH) and a single provider (the government). Proposals by members of Congress and the Biden administration to preclude private sector participation in up to $100 billion in broadband funding will stifle innovation and cripple investment in new technology.

The $831 billion Obama-Biden stimulus included $7.2 billion in broadband funding through the RUS and NTIA. RUS funding went to well-populated areas and many were so poorly managed that they were ineffective or failed, loans became delinquent, and borrowers defaulted. The NTIA project completion rate was abysmal.

The American Jobs Plan would provide 14 times the amount of money that was spent on broadband in the stimulus plan. It is difficult to imagine a potentially more wasteful expenditure of the taxpayers' money in the history of the United States.

The broadband proposals being considered in Congress are another example of solving a problem that does not exist by creating an expensive and ineffective program. The private sector continues to be hard at work to increase internet speeds for all Americans, as AT&T announced on April 26, 2021, that it would be increasing its 100 Mbps customers to 300 Mbps and 300 Mbps customers to 500 Mbps, while those with a 1 gig plan will get free HBO Max. All customers will get a new gateway at no cost.[63]

Every technology must be available for broadband, including cable, DSL, FTTH, fixed wireless broadband, mobile broadband, low earth orbit satellites, and the use of TV white spaces. Accurate broadband mapping is essential to avoid building broadband infrastructure where it already exists and ensuring the truly unserved and underserved customers are provided with internet connections. If a GON is absolutely necessary, it should always be the last rather than first option, and such projects should be subject to strict scrutiny and oversight. Otherwise, taxpayers will be stuck with a large bill, poor service, and limited options for new innovation.

[63] Linda Hardesty, "AT&T gives gratis bump-up in fiber speeds," *Fierce Telecom,* April 26, 2021, https://www.fiercetelecom.com/operators/at-t-gives-gratis-bump-up-fiber-speeds.