

117TH CONGRESS  
1ST SESSION

# H. R. 4875

To require the Federal Communications Commission to issue a notice of inquiry related to digital redlining, to prohibit digital redlining, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2021

Ms. CLARKE of New York introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To require the Federal Communications Commission to issue a notice of inquiry related to digital redlining, to prohibit digital redlining, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Anti Digital Redlining Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

Sec. 3. Notice of inquiry to assess factors that indicate digital redlining is occurring.

- Sec. 4. Rules required to prevent digital redlining.
- Sec. 5. Public complaints at the Commission.
- Sec. 6. Enforcement of antiredlining provision.
- Sec. 7. Prohibition of ISP or MVPD exclusive agreements with multi-dwelling units.
- Sec. 8. Study of the impact of franchising agreements on consumers and competition.
- Sec. 9. No forbearance or waiver.
- Sec. 10. No preemption of consistent State or local authority.
- Sec. 11. Definitions.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Many consumers pay as much for DSL as  
 4 they do for fiber, despite fiber offering significantly  
 5 faster speeds and greater reliability.

6 (2) Internet service providers are less likely to  
 7 upgrade to fiber as a transmission medium in low-  
 8 income communities. Households where fiber net-  
 9 works are deployed have a median income 34 per-  
 10 cent higher than those with only DSL.

11 (3) Communities of color are more likely to  
 12 have slower and less reliable internet service. This  
 13 disparity creates significant barriers to accessing  
 14 employment opportunities, educational opportunities,  
 15 healthcare resources, and diminishes opportunities  
 16 for civic engagement.

17 (4) The creation of significant disparities in  
 18 internet service within a geographic area imposes  
 19 significant costs not only on the individuals with  
 20 slower or less reliable service, but on government at

1 the local, State and Federal level by requiring gov-  
2 ernments to provide non-digital as well as digital  
3 means of accessing benefits, paying bills, sharing in-  
4 formation, and otherwise choosing between either of-  
5 fering redundant non-digital means of interaction or  
6 excluding residents without access to high speed, re-  
7 liable broadband.

8 (5) Communities with poor quality broadband  
9 have difficulty attracting businesses, attracting new  
10 residents, and have difficulty competing with com-  
11 munities with superior broadband options available.

12 (6) Companies can deploy fiber to most lower  
13 income communities and generate sufficient revenue  
14 to recoup the cost of deployment.

15 (7) Broadband is an essential service and con-  
16 sumers, regardless of income, race, ethnicity, color  
17 or national origin deserve affordable reliable  
18 broadband.

19 (8) Competition between internet service pro-  
20 viders within a specific neighborhood is an important  
21 means of ensuring quality service and lower prices to  
22 the residents of that neighborhood. By contrast,  
23 neighborhoods with a single provider often suffer  
24 from lower quality service and higher prices.

1           (9) Internet service providers, State and local  
2 governments, and the Federal Communications  
3 Commission have all identified arrangements by  
4 ISPs between landlords, housing associations, and  
5 other relevant private entities designed (collectively  
6 “landlords”) to thwart access by competitors as a  
7 significant contributing factor to digital redlining by  
8 preventing or discouraging access to superior service  
9 and eliminating the threat of competition to the pre-  
10 ferred provider. These arrangements may take the  
11 form of exclusive access for a single provider, dis-  
12 counts to residents on rent, utility payments, or  
13 other landlord generated charges, additional ex-  
14 penses to either the resident or the competing pro-  
15 vider to access and install necessary equipment or  
16 inside wiring. Landlords may also impose restric-  
17 tions on access by rival providers for purposes of  
18 marketing rival services, or otherwise limit commu-  
19 nication between rival providers and residents.

20           (10) Although the Federal Communications  
21 Commission formally prohibited express exclusive  
22 agreements between landlords and broadband pro-  
23 viders in 2007, these arrangements continue to per-  
24 sist as a consequence of loopholes and the lack of an

1 effective enforcement mechanism to ensure swift ac-  
2 cess of willing competitors to willing customers.

3 (11) Even where local and State authorities  
4 have reached agreements with competing internet  
5 service providers to deploy in neighborhoods suf-  
6 fering redlining, the presence of these agreements  
7 has thwarted competitive entry and aggravated dig-  
8 ital redlining.

9 (12) As a consequence of agreements between  
10 landlords and internet service providers, Americans  
11 can lose the benefits of competition, leading to high-  
12 er prices and poorer service.

13 (13) Traditionally, wireless technologies have  
14 been less subject to digital redlining because a single  
15 tower can cover an area of many miles. Newer wire-  
16 less technologies, such as 5G, employ towers with  
17 much smaller coverage areas—sometimes requiring  
18 multiple towers to provide adequate coverage within  
19 a neighborhood. This has generated concern that,  
20 without Congressional action, communities that now  
21 suffer digital redlining from wireline services may  
22 suffer similar wireless digital redlining in the future.

23 (14) Easements and access to private property  
24 for the purpose of providing critical and competing

1 services are a well-established regulatory tool, and  
2 do not constitute an unconstitutional taking.

3 (b) PURPOSE.—It is the purpose of this Act—

4 (1) to identify and remedy “digital redlining”,  
5 regardless of the level of competition in the market  
6 as a whole, by ensuring all Americans, especially  
7 those in traditionally underserved or marginalized  
8 communities, have access to competing broadband  
9 networks at the same quality of service, at reason-  
10 able prices, as available in other similarly situated  
11 communities with higher median incomes or dif-  
12 ferent demographic makeup;

13 (2) to empower and require the Federal Com-  
14 munications Commission to identify what constitutes  
15 digital redlining, and to empower and require the  
16 Commission to enact regulations designed to elimi-  
17 nate digital redlining; and

18 (3) to enable competing broadband providers  
19 frustrated by exclusive arrangements between rival  
20 providers and landlords to serve willing customers.

21 **SEC. 3. NOTICE OF INQUIRY TO ASSESS FACTORS THAT IN-**  
22 **DICATE DIGITAL REDLINING IS OCCURRING.**

23 Not later than 180 days after the date of the enact-  
24 ment of this Act, the Commission shall issue a notice of  
25 inquiry that seeks public comment on the following:

1           (1) Criteria necessary to determine where ISPs  
2           are not upgrading systems or deploying new systems  
3           capable of supporting robust broadband access of  
4           comparable quality with the broader community.

5           (2) Criteria to define the granularity of the geo-  
6           graphic area necessary to determine whether dis-  
7           criminatory factors are being used to delay deploy-  
8           ment of robust broadband.

9           (3) The reasons ISPs use to determine where  
10          facilities are upgraded to provide robust broadband  
11          and what factors deter deployment in those granular  
12          areas that are not served.

13          (4) The disparity investment in high-income  
14          areas compared to low-income areas within the geo-  
15          graphic service area of an ISP.

16          (5) Disparity of investment based on race.

17          (6) Availability of fiber to the home, or deploy-  
18          ment of fiber-to-the-curb or headend, within a geo-  
19          graphic service area.

20          (7) Degradation in quality of service within geo-  
21          graphic service area over a given period of time.

22          (8) Tier flattening in rural and urban service  
23          areas.

24          (9) Network resiliency issues, including fre-  
25          quency of outages.

1           (10) The reliability of networks with respect to  
2           the recovery of outages.

3   **SEC. 4. RULES REQUIRED TO PREVENT DIGITAL RED-**  
4                   **LINING.**

5           (a) RULES REQUIRED.—Not later than 2 years after  
6           the date of the enactment of this Act and based on the  
7           findings from the notice of inquiry under section 3, the  
8           Commission shall promulgate rules that do the following:

9                   (1) Overcome identified barriers from such no-  
10           tice of inquiry, including rules to prevent discrimina-  
11           tion of access based on income level, race, color, reli-  
12           gion, or national origin.

13                   (2) Define the granularity of the geographic  
14           area in which the Commission considers compliance  
15           with the rules adopted, taking into account whether  
16           information at a census-block level or a more dis-  
17           crete level is needed to identify areas where redlining  
18           is occurring.

19                   (3) Determine what factors would permit an  
20           ISP to not deploy to the entirety of a clearly defined  
21           geographic area with comparable robust broadband  
22           service, taking into account that deployment plan-  
23           ning for areas may proceed in differing stages. In  
24           developing this determination, the Commission shall  
25           establish a process by which a provider may request



1 an exemption from a requirement to deploy robust  
2 broadband to the entirety of a clearly defined geo-  
3 graphic area upon a showing that factors other than  
4 income level, race, color, religion, or national origin  
5 are the causes of the inability to deploy broadband.

6 (b) COMMISSION POLICIES.—The Commission shall  
7 ensure that the policies of the Commission promote equal  
8 access to robust broadband by prohibiting deployment dis-  
9 crimination based on the income level of an area, the pre-  
10 dominant race or ethnicity composition of an area, or  
11 other factors the Commission determines based on the  
12 findings in the record developed from this any rule pro-  
13 mulgated under this section and the notice of inquiry  
14 under section 3.

15 **SEC. 5. PUBLIC COMPLAINTS AT THE COMMISSION.**

16 An individual may file a complaint using the public  
17 complaint system of the Commission for a violation of this  
18 Act. A complaint shall specify which provision of this Act  
19 or rule of the Commission is allegedly violated. The Com-  
20 mission shall adopt such rules as are necessary to facili-  
21 tate the filing and enforcement of any such complaint.

22 **SEC. 6. ENFORCEMENT OF ANTIREDLINING PROVISION.**

23 (a) COMMISSION ORDERS.—The Commission may  
24 issue an order to remedy a violation of a rule issued pursu-  
25 ant to section 4, which may include any of the following:

1           (1) An order to provide interconnection to any  
2       other ISP willing to provide service to the area  
3       found to be redlined and to whatever additional area  
4       the Commission may determine is necessary to make  
5       service to the redlined area reasonably profitable and  
6       sustainable.

7           (2) An order to compel an ISP to provide serv-  
8       ice to the area found to be redlined—

9                (A) which shall detail the services required  
10       to be offered and may require that the prices  
11       offered for such services be just, reasonable,  
12       and affordable to the residents of the relevant  
13       geographic area; and

14               (B) which may not threaten the commer-  
15       cial viability of the ISP.

16           (3) An order to require a party not subject to  
17       the jurisdiction of the Commission to provide access  
18       to any physical premises, wiring, or facility.

19           (4) Any other relief or penalty authorized under  
20       this Act.

21       (b) FEDERAL FUNDS.—

22           (1) IN GENERAL.—For any ISP that receives  
23       Federal funds on or after the date of the enactment  
24       of this section for the purpose of providing service  
25       to a geographic area that includes an area subject

1 to redlining, the Commission shall assess the cost of  
2 provision of robust broadband to the redlined area  
3 and shall require the ISP to return the funds for  
4 that portion of the grant that should have provided  
5 service to that area. The Commission shall include  
6 interest from the date of the disbursement of the  
7 Federal funds to the date of payment for any funds  
8 returned under this paragraph.

9 (2) USE OF FUNDS.—The Commission may use  
10 any funds returned under paragraph (1) for any  
11 broadband deployment or digital inclusion fund su-  
12 pervised by the Commission.

13 **SEC. 7. PROHIBITION OF ISP OR MVPD EXCLUSIVE AGREE-**  
14 **MENTS WITH MULTI-DWELLING UNITS.**

15 (a) EXCLUSIVE AGREEMENTS PROHIBITED.—An  
16 ISP and MVPD may not, individually or jointly, enter into  
17 an agreement with a multi-dwelling unit that limits the  
18 ability of an ISP or MVPD (or that has the effect of such  
19 limitation) from serving a resident of the MDU. Nor may  
20 an MDU unreasonably restrict access to an ISP or MVPD  
21 to which a resident subscribes.

22 (b) INCENTIVES PROHIBITED.—A landlord may not  
23 offer an incentive to a resident to select a specific ISP  
24 or MVPD, or any action designed to prevent or discourage  
25 any resident from subscribing to any ISP or MVPD.

1       (c) LANDLORD INDUCEMENT PROHIBITED.—An ISP  
2 or MVPD may not offer an inducement to a landlord  
3 that—

4           (1) promotes or favors any ISP or MVPD with  
5 regard to marketing, obtaining or retaining residents  
6 of a multi-dwelling unit as subscribers; or

7           (2) in any way discourage a resident of a multi-  
8 dwelling unit from subscribing to an ISP or MVPD  
9 the resident chooses.

10       (d) PUBLIC AVAILABILITY OF AGREEMENTS.—An  
11 ISP or MVPD shall make any agreement made by an ISP  
12 or MVPD with a multi-dwelling unit available to the pub-  
13 lic.

14       (e) ACCESS TO PREMISES, ACCESS TO WIRING.—An  
15 ISP and MVPD shall have reasonable access to the prem-  
16 ises of the multi-dwelling unit, and to any wiring or other  
17 resource or facility controlled by the multi-dwelling unit  
18 necessary to provide service. A multi-dwelling unit may re-  
19 quire all ISPs or MVPDs to share a common set of con-  
20 duits or wires to minimize the need for disruptive access  
21 and any requirement or charge for use of common con-  
22 duits or wires—

23           (1) shall be just, reasonable, and non-discrimi-  
24 natory;

1           (2) does not impose an undue burden on an  
2       ISP or MVPD seeking to provide service;

3           (3) does not unreasonably interfere with the  
4       ability of an ISP or MVPD to upgrade or repair its  
5       network; and

6           (4) can accommodate the speed, quality of serv-  
7       ice, and channel capacity the ISP or MVPD offers  
8       its subscribers.

9       (f) REGULATIONS REQUIRED.—

10           (1) COMMENCEMENT OF PROCEEDING.—Not  
11       later than 180 days after the date of the enactment  
12       of this Act, the Commission shall commence a pro-  
13       ceeding to determine the rules that are necessary to  
14       effectuate the prohibitions described in subsections  
15       (a) through (e).

16           (2) ISSUANCE OF RULES.—Not later than 180  
17       days after the date on which the proceeding is com-  
18       menced pursuant to paragraph (1), the Commission  
19       shall publish the rules in the Federal Register. The  
20       rules shall contain the following requirements:

21           (A) COMPENSATION FOR ACCESS TO AND  
22       USE OF WIRING.—Ensure that a multi-dwelling  
23       unit or another owner of a premises, wiring, or  
24       other facility to which access is necessary to  
25       meet the requirements of this Act receive just

1 and reasonable compensation for access to, and  
2 use of, their property, which shall be charged  
3 on a non-discriminatory basis to each ISP and  
4 MVPD seeking such access and use. A multi-  
5 dwelling unit may not charge an ISP or MVPD  
6 to enter the multi-dwelling unit to provide serv-  
7 ice within the residence of a subscriber, or to  
8 provide customer premise equipment that does  
9 not require any physical modification of the res-  
10 idence.

11 (B) CHARGES FOR DAMAGES, DEPOSIT,  
12 PROOF OF INSURANCE.—A multi-dwelling unit,  
13 resident, or other entity that suffers damage to  
14 its physical property may demand reasonable  
15 compensation from the ISP or MVPD respon-  
16 sible, including the cost of repair. A multi-  
17 dwelling unit may require a reasonable deposit  
18 or proof, or both, of reasonable insurance cov-  
19 erage from an ISP or MVPD prior to providing  
20 access to the multi-dwelling unit.

21 (C) RESTRICTION ON CHARGES.—A multi-  
22 dwelling unit may not directly charge a sub-  
23 scriber for any expense accrued by an ISP or  
24 MVPD under this section.

1 (D) SUBSCRIBER CHARGES.—An ISP or  
2 MVPD may charge a subscriber for expenses  
3 accrued under this section by an ISP or  
4 MVPD. Any charges to a subscriber under this  
5 subparagraph are subject to section 642 of the  
6 Communications Act of 1934 (47 U.S.C. 562).

7 (g) ENFORCEMENT.—

8 (1) CIVIL ACTION.—A violation of this section  
9 or any rule issued under this section by any multi-  
10 dwelling unit, ISP, or MVPD shall be subject to a  
11 civil action by any resident of the multi-dwelling unit  
12 as if the multi-dwelling unit, ISP, or MVPD violated  
13 section 631(f) of the Communications Act of 1934  
14 (47 U.S.C. 551(f)). This right to civil action may  
15 not be waived or subject to any arbitration require-  
16 ment.

17 (2) REQUEST FOR ACCESS.—An ISP, MVPD,  
18 or resident of a multi-dwelling unit may file a re-  
19 quest to the Commission, or to the Federal district  
20 court with jurisdiction over the multi-dwelling unit,  
21 for an order to allow access to the premises to install  
22 and provide service.

23 (3) LIMITATIONS TO ACCESS.—Any access  
24 granted under paragraph (2) shall be consistent with  
25 any applicable Commission rule, any applicable State

1 or local building code, or any other additional con-  
2 sideration to protect life, safety, or the quality of life  
3 of other residents of the multi-dwelling unit.

4 (4) DEADLINE FOR ISSUING ORDER.—Not later  
5 than 90 days after the date on which a request for  
6 an order is filed under paragraph (2), the Commis-  
7 sion or district court, as applicable, shall make a de-  
8 termination and issue the order or a denial of the  
9 order granting access.

10 (5) SERVICE OF PROCESS REQUIRED.—Any  
11 party that files a request for an order under para-  
12 graph (2) shall serve a copy of the request on the  
13 multi-dwelling unit, and on any ISP or MVPD that  
14 offers service to residents of the multi-dwelling unit.

15 **SEC. 8. STUDY OF THE IMPACT OF FRANCHISING AGREE-**  
16 **MENTS ON CONSUMERS AND COMPETITION.**

17 (a) PROCEEDING BY FCC.—

18 (1) IN GENERAL.—

19 (A) INITIATION.—Not later than 1 year  
20 after the date of the enactment of this Act, the  
21 Commission shall initiate a proceeding to ana-  
22 lyze the use of franchising agreements between  
23 telecommunications providers and municipal  
24 governments as well as the impact of these  
25 agreements on the price and quality of service



1 for consumers and competition in the local mar-  
2 ket.

3 (B) CONCLUSION.—Not later than 1 year  
4 after initiating the proceeding under subpara-  
5 graph (A), the Commission shall conclude the  
6 proceeding.

7 (2) MATTERS FOR ANALYSIS.—The analysis  
8 conducted under paragraph (1) shall include the fol-  
9 lowing:

10 (A) ESTIMATION OF FRANCHISE AGREE-  
11 MENTS.—An estimation of the number of fran-  
12 chising agreements in effect or entered into  
13 during the covered period.

14 (B) CONSUMER COSTS.—An examination  
15 of the cost of broadband for consumers living in  
16 areas within the jurisdiction of the franchise  
17 and comparative analysis relative to comparable  
18 localities without such agreements.

19 (C) QUALITY OF SERVICE.—An examina-  
20 tion of the quality of service provided to con-  
21 sumers living throughout the jurisdiction the  
22 franchise in order to identify any differences in  
23 quality of service provided in different regions  
24 within the same franchise.

1           (3) COVERED PERIOD DEFINED.—In this sub-  
2           section, the term “covered period” means the 6-year  
3           period that—

4                   (A) begins on the date that is 3 years be-  
5                   fore the date on which the proceeding under  
6                   paragraph (1) is initiated; and

7                   (B) ends on the date that is 3 years after  
8                   the date on which the proceeding is initiated.

9           (b) REPORT TO CONGRESS.—Not later than 120 days  
10          after concluding the proceeding under subsection (a)(1),  
11          the Commission shall publish on its website and submit  
12          to the Committee on Commerce, Science, and Transpor-  
13          tation of the Senate and the Committee on Energy and  
14          Commerce of the House of Representatives a report on  
15          the findings of the proceeding.

16       **SEC. 9. NO FORBEARANCE OR WAIVER.**

17          Notwithstanding sections 10 or 332 of the Commu-  
18          nications Act of 1934 (47 U.S.C. 161, 332) or any other  
19          relevant provision of law, the Commission may not forbear  
20          from or waive any provision of this Act or forbear from  
21          or waive any rule issued pursuant to this Act.

22       **SEC. 10. NO PREEMPTION OF CONSISTENT STATE OR**  
23       **LOCAL AUTHORITY.**

24          Nothing in this Act may be construed to preempt any  
25          consistent provision of State law or local regulation. The

1 remedies provided for in this Act shall be in addition to  
2 any other remedy provided by common law, State law, or  
3 Federal law.

4 **SEC. 11. DEFINITIONS.**

5 In this Act:

6 (1) COMMISSION.—The term “Commission”  
7 means the Federal Communications Commission.

8 (2) ISP.—The term “ISP” or “internet service  
9 provider” means a provider of broadband internet  
10 access service (as defined by the Commission in sec-  
11 tion 8.1 of part 47, Code of Federal Regulations, or  
12 subsequent regulation).

13 (3) MULTI-DWELLING UNIT; MDU.—The term  
14 “multi-dwelling unit” or “MDU” has the meaning  
15 given the term “MDU” in section 76.800(a) of part  
16 47, Code of Federal Regulations, and any other enti-  
17 ty the Commission determines to be necessary to ef-  
18 fectuate the purposes of this Act.

19 (4) MVPD.—The term “MVPD” means has  
20 the meaning given the term “multichannel video pro-  
21 gramming distributor” in section 602 of the Com-  
22 munications Act of 1934 (47 U.S.C. 522).

23 (5) ROBUST BROADBAND.—The term “robust  
24 broadband” means broadband of a symmetric speed  
25 sufficient to allow households to engage in online ac-

1       tivities (including remote learning, remote telework,  
2       telehealth, and other services that consumers use  
3       broadband) for economic, educational, and other on-  
4       line activities, on multiple devices common to a fam-  
5       ily of four individuals living in a household.

○