

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3919
OFFERED BY MR. MARKEY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Broadband Census of
3 America Act of 2007”.

4 SEC. 2. CENSUS OF BROADBAND SERVICE DEPLOYMENT.

5 (a) DUTY TO COLLECT AND REPORT.—

6 (1) ANNUAL ASSESSMENT AND REPORT.—The
7 Commission shall, on an annual basis, conduct an
8 assessment and publish a report on the nature and
9 deployment of, and subscription to, broadband serv-
10 ice capability throughout the States.

11 (2) BANDWIDTH SERVICE TIERS.—The Com-
12 mission shall designate bandwidth service tiers by
13 identifying tiers of increasing data transmission
14 speeds of broadband service capability that will pro-
15 vide useful information about the nature and extent
16 of deployment of broadband service capability. At a
17 minimum, the tiers in the aggregate shall encompass
18 all data transmission speeds deployed, and shall con-

1 sist of multiple combinations of upstream and down-
2 stream data transmission speeds. Each tier shall be
3 designated, to the extent possible, to correspond to
4 the ability to support qualitatively different applica-
5 tions and services, which the Commission shall also
6 identify.

7 (3) INFORMATION COLLECTION.—The Commis-
8 sion shall collect, or provide for the collection of, in-
9 formation from all commercial and public providers
10 of broadband service capability under its jurisdiction
11 in each State. Such information shall include—

12 (A) for each area encompassed by a United
13 States postal zip code of the 5 digit level—

14 (i) information concerning the types
15 of technology used to provide broadband
16 service capability in such area;

17 (ii) the tiers designated under para-
18 graph (2) used to provide such capability
19 in such area; and

20 (iii) the actual number of residential
21 subscribers and the actual number of busi-
22 ness subscribers in such area; and

23 (B) for each State, the actual number of
24 residential subscribers and the actual number of

1 business subscribers for each tier of service des-
2 igned under paragraph (2).

3 (4) INFORMATION REPORTED.—In the annual
4 report required by paragraph (1), the Commission
5 shall provide to the public—

6 (A) for each area encompassed by a United
7 States postal zip code of the 5 digit level—

8 (i) a list of the types of technology
9 used to provide such capability in such
10 area; and

11 (ii) the actual number of residential
12 subscribers and the actual number of busi-
13 ness subscribers to broadband service ca-
14 pability in such area, each in the aggre-
15 gate; and

16 (B) for each State, the actual number of
17 residential subscribers and the actual number of
18 business subscribers for each tier of service des-
19 igned under paragraph (2), each in the aggre-
20 gate.

21 (b) EVOLUTION OF ASSESSMENT.—The Commission
22 shall periodically review both the bandwidth service tiers
23 and the types of technology utilized in its assessment
24 under subsection (a) to take into account changes in tech-
25 nology and marketplace conditions.

1 (c) INTERNATIONAL COMPARISON.—

2 (1) INTERNATIONAL COMPARISON.—As part of
3 the assessment and report required by this section,
4 the Commission shall include information comparing
5 the extent of broadband service capability (including
6 data transmission speeds and price for broadband
7 service capability) in a total of 75 communities in at
8 least 25 countries abroad for each of the tiers des-
9 ignated pursuant to subsection (a)(2).

10 (2) CONTENTS.—The Commission shall choose
11 communities for the comparison under this sub-
12 section in a manner that will offer, to the extent
13 possible, communities of a population size, popu-
14 lation density, topography, and demographic profile
15 that are comparable to the population size, popu-
16 lation density, topography, and demographic profile
17 of various communities within the United States.
18 The Commission shall include in the comparison
19 under this subsection—

20 (A) a geographically diverse selection of
21 countries; and

22 (B) communities including the capital cit-
23 ies of such countries.

24 (3) SIMILARITIES AND DIFFERENCES.—The
25 Commission shall identify relevant similarities and

1 differences in each community, including their mar-
2 ket structures, the number of competitors, the num-
3 ber of facilities-based providers, the types of tech-
4 nologies deployed by such providers, the applications
5 and services those technologies enable, and the regu-
6 latory model under which broadband service capa-
7 bility is provided.

8 (d) PROTECTION OF INFORMATION.—Except for the
9 information provided to the public by the Commission in
10 its annual report pursuant to subsection (a)(4), nothing
11 in this section shall reduce or remove any obligation the
12 Commission has to protect proprietary information, nor
13 shall this section be construed to compel the Commission
14 to make publicly available any proprietary information.
15 Any information collected by the Commission pursuant to
16 subsection (a)(3) that reveals any competitively sensitive
17 information of an individual provider of broadband service
18 capability shall not be disclosed by the Commission under
19 subsection (a)(4) or otherwise.

20 (e) REGULATIONS.—The Commission shall, within
21 180 days after the date of the enactment of this Act, pro-
22 mulgate regulations to implement this section.

23 (f) ENFORCEMENT AUTHORITY.—The Commission
24 shall enforce this section as if such section was a part of
25 the Communications Act of 1934. For the purpose of this

1 section, any violations of this section, or any regulations
2 promulgated under this section, shall be considered to be
3 a violation of the Communications Act of 1934 or a regu-
4 lation promulgated under that Act, respectively.

5 **SEC. 3. BROADBAND INVENTORY MAP.**

6 (a) ESTABLISHMENT.—To provide a comprehensive
7 nationwide inventory of existing broadband service capa-
8 bility and availability, the NTIA shall develop and main-
9 tain a broadband inventory map of the United States that
10 identifies and depicts the geographic extent to which
11 broadband service capability is deployed and available
12 from a commercial provider or public provider throughout
13 each State.

14 (b) INFORMATION SHOWN.—The broadband inven-
15 tory map developed and maintained pursuant to this sec-
16 tion shall be capable of identifying and depicting, nation-
17 wide, for each State, and for each county or parish of each
18 State—

19 (1) each area encompassed by a United States
20 postal zip code of 9 digit level, census tract level, or
21 functional equivalent in which broadband service ca-
22 pability is deployed at that time, including—

23 (A) each commercial or public provider of
24 broadband service capability within such area;
25 and

1 (B) subject to subsection (f)(5)—

2 (i) each type of technology used to
3 provide broadband service capability within
4 such area; and

5 (ii) which bandwidth service tiers des-
6 ignated pursuant to section 2(a)(2) are
7 available within such area for each pro-
8 vider of broadband service capability; and

9 (2) each area encompassed by a United States
10 postal zip code of 9 digit level, census tract level, or
11 functional equivalent in which broadband service ca-
12 pability is not deployed at that time.

13 (c) DATA USE ENCOURAGED.—The NTIA shall—

14 (1) seek to overlay demographic data obtained
15 from other sources in the Department of Commerce
16 and elsewhere for use with such broadband inventory
17 map; and

18 (2) make available such map, and the informa-
19 tion on which it is based, to such other sources in
20 the Department for demographic purposes, subject
21 to section 7.

22 (d) PUBLIC AVAILABILITY AND INTERACTIVITY.—
23 Not later than 2 years after the date of the enactment
24 of this Act, the NTIA shall make the broadband inventory
25 map developed and maintained pursuant to this section

1 accessible by the public on a World Wide Web site of the
2 NTIA in a form that is interactive and searchable.

3 (e) UPDATING.—The NTIA shall update the
4 broadband inventory map developed and maintained pur-
5 suant to this section to ensure that the information pro-
6 vided by the broadband inventory map is timely and accu-
7 rate.

8 (f) OBTAINING INFORMATION.—

9 (1) IN GENERAL.—The NTIA shall request and
10 obtain such information as may be necessary to
11 carry out this section from the following:

12 (A) eligible entities under section 4;

13 (B) the Commission; and

14 (C) commercial and public providers of
15 broadband service capability.

16 (2) PRIORITY OF INFORMATION REQUESTS.—If
17 the NTIA has not otherwise obtained such informa-
18 tion pursuant to paragraph (3), the NTIA shall—

19 (A) first request and try to obtain such in-
20 formation from such eligible entities before re-
21 questing and obtaining such information from
22 the Commission; and

23 (B) only request such information from
24 commercial and public providers of broadband
25 service capability if such information cannot be

1 obtained in a timely fashion from such eligible
2 entities or the Commission.

3 (3) COMPATIBLE FORMAT.—Such entities or
4 such providers may elect to provide the NTIA with
5 the information necessary for displaying a statewide
6 map, provided that such map meets, at a minimum,
7 the requirements of subsection (b) for that State
8 and such information is in a format that NTIA is
9 able to incorporate into the broadband inventory
10 map required under this section. Nothing in this
11 paragraph precludes such providers or any such en-
12 tity, with agreement of the providers concerned,
13 from providing to the NTIA, or using for its own
14 purposes, more geographically-specific information
15 than required by subsection (b).

16 (4) ADDITIONAL INFORMATION, INCLUDING
17 WIFI HOTSPOTS.—The NTIA shall also try to obtain
18 accurate information from reliable publicly available
19 sources about broadband service capability that is
20 offered to the public but that is not provided by ei-
21 ther a commercial provider or a public provider di-
22 rectly to the public.

23 (5) OPT-OUT BY PROVIDERS.—Notwithstanding
24 subsection (b)(1)(B), if a provider of broadband
25 service capability requests that the map developed

1 and maintained pursuant to this section shall not
2 depict the information in clause (i) or (ii), or both,
3 of such subsection for a particular area or areas, the
4 NTIA shall comply with such request.

5 (g) PROTECTION OF INFORMATION.—Except for the
6 information provided to the public by the NTIA in sub-
7 section (d), nothing in this section shall reduce or remove
8 any obligation the NTIA has to protect proprietary infor-
9 mation, nor shall this section be construed to compel the
10 NTIA to make publicly available any proprietary informa-
11 tion. Notwithstanding any other provision of this section,
12 any information obtained by NTIA pursuant to subsection
13 (f) that reveals competitively sensitive information of an
14 individual provider of broadband service capability shall
15 not be disclosed by NTIA.

16 **SEC. 4. GRANTS TO STATES FOR BROADBAND MAP DEVELOP-**
17 **MENT.**

18 (a) IN GENERAL.—The NTIA may, to the extent
19 amounts are made available pursuant to section 10(b) for
20 use under this section, make grants to an eligible entity
21 to assist in providing the NTIA with information to facili-
22 tate the development of the broadband inventory map re-
23 quired under section 3.

24 (b) STATE ENTITY APPLICATION AND DESIGNA-
25 TION.—An eligible entity in any State that seeks to obtain

1 a grant under this section shall submit an application to
2 the NTIA at such time, in such form, and containing such
3 information and assurances as the NTIA may require.

4 (c) USE.—Amounts from a grant under this section
5 may be used only for costs involved in developing and ob-
6 taining information for the broadband inventory map re-
7 quired under section 3.

8 (d) CONDITIONS.—

9 (1) INFORMATION SHARING.—As a condition of
10 receipt of a grant under this section, the eligible en-
11 tity shall agree to provide to the NTIA the informa-
12 tion developed or obtained using such grant amounts
13 and necessary for the broadband inventory map re-
14 quired under section 3.

15 (2) MATCHING REQUIREMENT.—An eligible en-
16 tity may not obtain a grant under this section to
17 carry out the activities under this section unless
18 such entity agrees to provide, from non-Federal
19 funds, an amount equal to not less than 20 percent
20 of the amount of the grant toward the costs of car-
21 rying out such activities.

22 (e) GRANT CRITERIA.—The NTIA shall select an eli-
23 gible entity to receive a grant under this section based
24 upon criteria that shall include—

1 (1) whether such entity requesting a grant is
2 organized on a statewide basis and prepared to de-
3 velop information for use by NTIA on a timely basis;

4 (2) the need of such entity for financial sup-
5 port, taking into account the financial support from
6 State or other sources, to fulfill the objectives of this
7 Act; and

8 (3) whether the denial of such entity's grant re-
9 quest would—

10 (A) result in the inability of such entity to
11 develop information on a timely or comprehen-
12 sive basis; and

13 (B) result in a gap in the information for
14 that State or otherwise thwart the objectives of
15 this Act.

16 (f) REGULATIONS.—The NTIA shall issue such regu-
17 lations as may be necessary to carry out the functions as-
18 signed under this section.

19 (g) ELIGIBLE ENTITY.—For the purposes of this sec-
20 tion, the term “eligible entity” for any State means—

21 (1) an entity that is either—

22 (A) an agency or instrumentality of that
23 State, or a municipality or other subdivision (or
24 agency or instrumentality of a municipality or
25 other subdivision) of that State; or

1 (B) a nonprofit organization that is de-
2 scribed in section 501(c)(3) of the Internal Rev-
3 enue Code of 1986 and that is exempt from
4 taxation under section 501(a) of such Code;
5 and

6 (2) the entity is the single eligible entity in such
7 State that has been designated by the State to re-
8 ceive a grant under this section.

9 **SEC. 5. GRANTS FOR DEMAND-SIDE BROADBAND SERVICE**
10 **IDENTIFICATION AND ASSESSMENTS.**

11 (a) GRANT AUTHORITY.—From the amounts appro-
12 priated under section 10(e), the NTIA shall establish a
13 grant program to create and facilitate the work of local
14 technology planning entities that represent a broad cross-
15 section of their community, including representatives of
16 business, telecommunications labor organizations, con-
17 sumer organizations, elementary and secondary education,
18 health care providers, libraries, higher education, commu-
19 nity-based organizations, tribal organizations, and local
20 government.

21 (b) STATE ENTITY APPLICATION AND DESIGNA-
22 TION.—Each eligible planning entity in any State that
23 seeks to obtain a grant under this section shall submit
24 an application to the NTIA at such time, in such form,
25 and containing such information and assurances as the

1 NTIA may require. Such application shall contain a dem-
2 onstration that—

3 (1) the entity is an eligible planning entity; and

4 (2) the eligible planning entity—

5 (A) is the single eligible planning entity in
6 such State that has been designated by the
7 State for an exclusive geographic area within
8 the State to receive a grant under this section;

9 or

10 (B) is the single eligible planning entity
11 that is designated by the governing body of an
12 Indian tribe to receive a grant under this sec-
13 tion.

14 (c) USE OF FUNDS.—Amounts from a grant under
15 this section shall be used to assist an eligible planning en-
16 tity to—

17 (1) assess the current use of broadband service
18 capability across relevant community sectors;

19 (2) set goals for improving or maximizing such
20 use within each sector;

21 (3) develop a plan for achieving the eligible
22 planning entity's goals, with specific recommenda-
23 tions for identifying and spurring demand for such
24 capability;

1 (4) collaborate with providers of broadband
2 service capability and other high technology compa-
3 nies to encourage the deployment and use of
4 broadband service capability in unserved and under-
5 served areas;

6 (5) identify local demand for broadband service
7 capability and aggregate such demand;

8 (6) establish programs, but not acquire equip-
9 ment or facilities, to improve computer ownership
10 and Internet access for unserved and underserved
11 populations; and

12 (7) facilitate the exchange of information re-
13 garding the use and demand for broadband service
14 capability between the public and private sectors.

15 (d) PROHIBITION.—Funds made available by a grant
16 under this section shall not be used for the provision of
17 broadband service capability or the acquisition of equip-
18 ment or facilities for such capability, except that this pro-
19 hibition shall not prohibit an eligible planning entity's use
20 of such funds to acquire broadband service capability or
21 equipment or facilities for such capability for use by such
22 entity in its own conduct of planning activities.

23 (e) REGULATIONS.—The NTIA shall issue such regu-
24 lations as may be necessary to carry out the functions as-
25 signed under this section.

1 (f) ELIGIBLE PLANNING ENTITY.—For the purposes
2 of this section, the term “eligible planning entity” for any
3 State means—

4 (1) an agency or instrumentality of that State,
5 a municipality or other subdivision (or agency or in-
6 strumentality of a municipality or other subdivision)
7 of that State, or an Indian tribe; or

8 (2) a nonprofit organization that is described in
9 section 501(c)(3) of the Internal Revenue Code of
10 1986 and that is exempt from taxation under section
11 501(a) of such Code.

12 **SEC. 6. CONSUMER SURVEY OF BROADBAND SERVICE CA-**
13 **PABILITY.**

14 (a) AUTHORITY.—For the purpose of evaluating, on
15 a statistically significant basis, the national characteristics
16 of the use of broadband service capability, the Commission
17 shall conduct and make public periodic surveys of con-
18 sumers in urban, suburban, and rural areas in the large
19 business, small business, and residential consumer mar-
20 kets to determine the following:

21 (1) The types of technology used to provide the
22 broadband service capability to which consumers
23 subscribe.

24 (2) The amounts consumers pay per month for
25 such capability.

1 (3) The actual data transmission speeds of such
2 capability.

3 (4) The types of applications and services con-
4 sumers most frequently use in conjunction with such
5 capability.

6 (5) For consumers who have declined to sub-
7 scribe to broadband service capability, the reasons
8 given by such consumers for declining such capa-
9 bility.

10 (6) Other sources of broadband service capa-
11 bility which consumers regularly use or on which
12 they rely.

13 (7) Any other information the Commission
14 deems appropriate for such purpose.

15 (b) PUBLIC AVAILABILITY.—The Commission shall
16 make publicly available the results of surveys conducted
17 under this section at least once per year.

18 **SEC. 7. CONFIDENTIALITY OF CONSUMER INFORMATION.**

19 (a) IN GENERAL.—The Commission shall, within 180
20 days after the date of the enactment of this Act, promul-
21 gate regulations—

22 (1) to protect the confidentiality of personal
23 consumer information collected for the purposes of
24 this Act;

1 (2) to require the Commission, the NTIA, and
2 each other entity that collects or controls such infor-
3 mation for the purposes of this Act (including any
4 eligible entity under section 4, eligible planning enti-
5 ty designated under section 5(b)(2), and commercial
6 and public provider of broadband service capability)
7 to protect the confidentiality of such information;
8 and

9 (3) to permit such information to be disclosed
10 by such entities only to the extent consistent with
11 the provisions and for the purposes of this Act, or
12 with the prior express authorization of the consumer
13 to whom it pertains.

14 (b) **LIMITATION.**—The regulations promulgated
15 under subsection (a) shall not preclude the ability of any
16 consumer or other person or entity to search, by individual
17 street address, the broadband inventory map developed
18 and maintained pursuant to section 3, or any of the indi-
19 vidual State maps that may compose it.

20 **SEC. 8. STATE OR LOCAL AUTHORITY.**

21 Except as provided in section 7, nothing in this Act
22 shall be construed to expand or limit the authority of
23 States, Indian tribes, or units of local government to com-
24 pel the collection of information.

1 **SEC. 9. SUNSET PROVISIONS.**

2 (a) BROADBAND DEPLOYMENT INFORMATION &
3 CONSUMER SURVEY.—Sections 2 and 6 shall cease to be
4 effective after the end of the 6-year period beginning on
5 the date of the enactment of this Act.

6 (b) BROADBAND INVENTORY MAP.—Section 3 shall
7 cease to be effective after the end of the 7-year period
8 beginning on the date of enactment of this Act.

9 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) IN GENERAL.—There is authorized to be appro-
11 priated to carry out sections 3, 4, and 6 of this Act—

12 (1) \$20,000,000 for fiscal year 2008;

13 (2) \$20,000,000 for fiscal year 2009; and

14 (3) \$20,000,000 for fiscal year 2010.

15 (b) BROADBAND MAP INFORMATION DEVELOPMENT
16 GRANTS.—Of any amounts appropriated in each fiscal
17 year pursuant to subsection (a), not less than \$15,000,000
18 shall be available only for grants under section 4.

19 (c) LOCAL TECHNOLOGY PLANNING GRANTS.—In
20 addition to the amount appropriated under subsection (a),
21 there is authorized to be appropriated to make grants
22 under section 5—

23 (1) \$50,000,000 for fiscal year 2008;

24 (2) \$100,000,000 for fiscal year 2009; and

25 (3) \$125,000,000 for fiscal year 2010.

1 **SEC. 11. DEFINITIONS.**

2 For the purposes of this Act, the following definitions
3 shall apply:

4 (1) **BROADBAND SERVICE CAPABILITY.**—The
5 term “broadband service capability” means an Inter-
6 net Protocol-based transmission service that is of-
7 fered to end users to enable such end users to send
8 and receive voice, video, data, graphics, or a com-
9 bination, to or from the Internet without regard to
10 any transmission media or technology.

11 (2) **COMMISSION.**—The term “Commission”
12 means the Federal Communications Commission.

13 (3) **INDIAN TRIBE.**—The term “Indian tribe”
14 has the meaning given in section 4(e) of the Indian
15 Self-Determination and Education Assistance Act
16 (25 U.S.C. 450b(e)).

17 (4) **NTIA.**—The term “NTIA” means the Na-
18 tional Telecommunications and Information Admin-
19 istration of the Department of Commerce.

20 (5) **PERSONAL CONSUMER INFORMATION.**—The
21 term “personal consumer information”—

22 (A) means information that allows a
23 human being to be identified individually;

24 (B) includes the following information with
25 respect to an individual:

26 (i) the first and last name;

- 1 (ii) a home or physical address;
- 2 (iii) a date or place of birth;
- 3 (iv) an email address or a telephone
- 4 number;
- 5 (v) a Social Security account number,
- 6 tax identification number, birth certificate
- 7 number, passport number, driver's license
- 8 number, or any other any government-
- 9 issued identification number; or
- 10 (vi) a credit card number or bank ac-
- 11 count or card number; and

12 (C) does not include any record of aggre-

13 gate information that does not permit the iden-

14 tification of particular individuals.

15 (6) PROVIDER.—

16 (A) PUBLIC PROVIDER.—The term “pub-

17 lic” when used with respect to a provider of

18 broadband service capability means a provider

19 that is an agency or instrumentality of a State,

20 or a municipality or other subdivision (or agen-

21 cy or instrumentality of a municipality or other

22 subdivision) of a State, regardless of the facili-

23 ties used.

24 (B) COMMERCIAL PROVIDER.—The term

25 “commercial” when used with respect to a pro-

1 vider of broadband service capability means a
2 provider that offers broadband service capa-
3 bility for a fee, or on an advertising-supported
4 basis, directly to the public or to such classes
5 of users as to be effectively available to the
6 public, regardless of the facilities used.

7 (7) STATE.—The term “State” means the
8 States of the United States, the District of Colum-
9 bia, the Commonwealth of Puerto Rico, Guam, the
10 Virgin Islands, American Samoa, the Northern Mar-
11 iana Islands, and any other territory and possession
12 of the United States.