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

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

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

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

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

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

(B) for each State, the actual number of
residential subscribers and the actual number of
business subscribers for each tier of service designated under paragraph (2).

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

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

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

(ii) the actual number of residential subscribers and the actual number of business subscribers to broadband service capability in such area, each in the aggregate; and

(B) for each State, the actual number of residential subscribers and the actual number of business subscribers for each tier of service designated under paragraph (2), each in the aggregate.

(b) EVOLUTION OF ASSESSMENT.—The Commission shall periodically review both the bandwidth service tiers and the types of technology utilized in its assessment under subsection (a) to take into account changes in technology and marketplace conditions.
(c) **INTERNATIONAL COMPARISON.**—

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

(2) **CONTENTS.**—The Commission shall choose communities for the comparison under this subsection in a manner that will offer, to the extent possible, communities of a population size, population density, topography, and demographic profile that are comparable to the population size, population density, topography, and demographic profile of various communities within the United States. The Commission shall include in the comparison under this subsection—

(A) a geographically diverse selection of countries; and

(B) communities including the capital cities of such countries.

(3) **SIMILARITIES AND DIFFERENCES.**—The Commission shall identify relevant similarities and
differences in each community, including their mar-
ket structures, the number of competitors, the num-
ber of facilities-based providers, the types of tech-
nologies deployed by such providers, the applications
and services those technologies enable, and the regu-
latory model under which broadband service capa-
bility is provided.

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

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

(f) ENFORCEMENT AUTHORITY.—The Commission
shall enforce this section as if such section was a part of
the Communications Act of 1934. For the purpose of this
section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively.

SEC. 3. BROADBAND INVENTORY MAP.

(a) Establishment.—To provide a comprehensive nationwide inventory of existing broadband service capability and availability, the NTIA shall develop and maintain a broadband inventory map of the United States that identifies and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

(b) Information Shown.—The broadband inventory map developed and maintained pursuant to this section shall be capable of identifying and depicting, nationwide, for each State, and for each county or parish of each State—

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

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

and
(B) subject to subsection (f)(5)—

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

(ii) which bandwidth service tiers designated pursuant to section 2(a)(2) are available within such area for each provider of broadband service capability; and

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

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

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

(2) make available such map, and the information on which it is based, to such other sources in the Department for demographic purposes, subject to section 7.

(d) PUBLIC AVAILABILITY AND INTERACTIVITY.—Not later than 2 years after the date of the enactment of this Act, the NTIA shall make the broadband inventory map developed and maintained pursuant to this section
accessible by the public on a World Wide Web site of the NTIA in a form that is interactive and searchable.

(e) UPDATING.—The NTIA shall update the broadband inventory map developed and maintained pursuant to this section to ensure that the information provided by the broadband inventory map is timely and accurate.

(f) OBTAINING INFORMATION.—

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

(A) eligible entities under section 4;

(B) the Commission; and

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

(2) PRIORITY OF INFORMATION REQUESTS.—If the NTIA has not otherwise obtained such information pursuant to paragraph (3), the NTIA shall—

(A) first request and try to obtain such information from such eligible entities before requesting and obtaining such information from the Commission; and

(B) only request such information from commercial and public providers of broadband service capability if such information cannot be
obtained in a timely fashion from such eligible entities or the Commission.

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

(4) ADDITIONAL INFORMATION, INCLUDING WIFI HOTSPOTS.—The NTIA shall also try to obtain accurate information from reliable publicly available sources about broadband service capability that is offered to the public but that is not provided by either a commercial provider or a public provider directly to the public.

(5) OPT-OUT BY PROVIDERS.—Notwithstanding subsection (b)(1)(B), if a provider of broadband service capability requests that the map developed
and maintained pursuant to this section shall not
depict the information in clause (i) or (ii), or both,
of such subsection for a particular area or areas, the
NTIA shall comply with such request.

(g) **Protection of Information.**—Except for the
information provided to the public by the NTIA in sub-
section (d), nothing in this section shall reduce or remove
any obligation the NTIA has to protect proprietary infor-
mation, nor shall this section be construed to compel the
NTIA to make publicly available any proprietary informa-
tion. Notwithstanding any other provision of this section,
yany information obtained by NTIA pursuant to subsection
(f) that reveals competitively sensitive information of an
individual provider of broadband service capability shall
not be disclosed by NTIA.

**SEC. 4. GRANTS TO STATES FOR BROADBAND MAP DEVELOPMENT.**

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

(b) **State Entity Application and Designation.**—An eligible entity in any State that seeks to obtain
a grant under this section shall submit an application to
the NTIA at such time, in such form, and containing such
information and assurances as the NTIA may require.

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

(d) Conditions.—

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

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

(e) Grant criteria.—The NTIA shall select an eli-
gible entity to receive a grant under this section based
upon criteria that shall include—
(1) whether such entity requesting a grant is organized on a statewide basis and prepared to develop information for use by NTIA on a timely basis;

(2) the need of such entity for financial support, taking into account the financial support from State or other sources, to fulfill the objectives of this Act; and

(3) whether the denial of such entity’s grant request would—

(A) result in the inability of such entity to develop information on a timely or comprehensive basis; and

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

(f) REGULATIONS.—The NTIA shall issue such regulations as may be necessary to carry out the functions assigned under this section.

(g) ELIGIBLE ENTITY.—For the purposes of this section, the term “eligible entity” for any State means—

(1) an entity that is either—

(A) an agency or instrumentality of that State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of that State; or
(B) a nonprofit organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code;
and

(2) the entity is the single eligible entity in such State that has been designated by the State to receive a grant under this section.

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

(a) Grant Authority.—From the amounts appropriated under section 10(c), the NTIA shall establish a grant program to create and facilitate the work of local technology planning entities that represent a broad cross-section of their community, including representatives of business, telecommunications labor organizations, consumer organizations, elementary and secondary education, health care providers, libraries, higher education, community-based organizations, tribal organizations, and local government.

(b) State Entity Application and Designation.—Each eligible planning entity in any State that seeks to obtain a grant under this section shall submit an application to the NTIA at such time, in such form, and containing such information and assurances as the
NTIA may require. Such application shall contain a demonstration that—

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

(2) the eligible planning entity—

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

(B) is the single eligible planning entity that is designated by the governing body of an Indian tribe to receive a grant under this section.

(e) USE OF FUNDS.—Amounts from a grant under this section shall be used to assist an eligible planning entity to—

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

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

(3) develop a plan for achieving the eligible planning entity’s goals, with specific recommendations for identifying and spurring demand for such capability;
(4) collaborate with providers of broadband service capability and other high technology companies to encourage the deployment and use of broadband service capability in unserved and underserved areas;

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

(6) establish programs, but not acquire equipment or facilities, to improve computer ownership and Internet access for unserved and underserved populations; and

(7) facilitate the exchange of information regarding the use and demand for broadband service capability between the public and private sectors.

(d) PROHIBITION.—Funds made available by a grant under this section shall not be used for the provision of broadband service capability or the acquisition of equipment or facilities for such capability, except that this prohibition shall not prohibit an eligible planning entity’s use of such funds to acquire broadband service capability or equipment or facilities for such capability for use by such entity in its own conduct of planning activities.

(e) REGULATIONS.—The NTIA shall issue such regulations as may be necessary to carry out the functions assigned under this section.
(f) Eligible Planning Entity.—For the purposes of this section, the term “eligible planning entity” for any State means—

(1) an agency or instrumentality of that State, a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of that State, or an Indian tribe; or

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

SEC. 6. CONSUMER SURVEY OF BROADBAND SERVICE CAPABILITY.

(a) Authority.—For the purpose of evaluating, on a statistically significant basis, the national characteristics of the use of broadband service capability, the Commission shall conduct and make public periodic surveys of consumers in urban, suburban, and rural areas in the large business, small business, and residential consumer markets to determine the following:

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

(2) The amounts consumers pay per month for such capability.
(3) The actual data transmission speeds of such capability.

(4) The types of applications and services consumers most frequently use in conjunction with such capability.

(5) For consumers who have declined to subscribe to broadband service capability, the reasons given by such consumers for declining such capability.

(6) Other sources of broadband service capability which consumers regularly use or on which they rely.

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

(b) Public Availability.—The Commission shall make publicly available the results of surveys conducted under this section at least once per year.

SEC. 7. CONFIDENTIALITY OF CONSUMER INFORMATION.

(a) In General.—The Commission shall, within 180 days after the date of the enactment of this Act, promulgate regulations—

(1) to protect the confidentiality of personal consumer information collected for the purposes of this Act;
(2) to require the Commission, the NTIA, and each other entity that collects or controls such information for the purposes of this Act (including any eligible entity under section 4, eligible planning entity designated under section 5(b)(2), and commercial and public provider of broadband service capability) to protect the confidentiality of such information; and

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

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

SEC. 8. STATE OR LOCAL AUTHORITY.

Except as provided in section 7, nothing in this Act shall be construed to expand or limit the authority of States, Indian tribes, or units of local government to compel the collection of information.
SEC. 9. SUNSET PROVISIONS.

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

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

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out sections 3, 4, and 6 of this Act—

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

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

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

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

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

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

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

(3) $125,000,000 for fiscal year 2010.
SEC. 11. DEFINITIONS.

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

(1) BROADBAND SERVICE CAPABILITY.—The term “broadband service capability” means an Internet Protocol-based transmission service that is offered to end users to enable such end users to send and receive voice, video, data, graphics, or a combination, to or from the Internet without regard to any transmission media or technology.

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

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

(4) NTIA.—The term “NTIA” means the National Telecommunications and Information Administration of the Department of Commerce.

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

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

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

(i) the first and last name;
(ii) a home or physical address;

(iii) a date or place of birth;

(iv) an email address or a telephone number;

(v) a Social Security account number, tax identification number, birth certificate number, passport number, driver’s license number, or any other any government-issued identification number; or

(vi) a credit card number or bank account or card number; and

(C) does not include any record of aggregate information that does not permit the identification of particular individuals.

(6) PROVIDER.—

(A) PUBLIC PROVIDER.—The term “public” when used with respect to a provider of broadband service capability means a provider that is an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State, regardless of the facilities used.

(B) COMMERCIAL PROVIDER.—The term “commercial” when used with respect to a pro-
provider of broadband service capability means a provider that offers broadband service capability for a fee, or on an advertising-supported basis, directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used.

(7) State.—The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory and possession of the United States.