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SENATE

REPORT
110–204

BROADBAND DATA IMPROVEMENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1492

OCTOBER 24, 2007.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1492]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1492) to improve the quality of Federal and State data regarding the availability and quality of broadband services and to promote the deployment of affordable broadband services to all parts of the Nation, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1492 is to improve the quality of data collected at State and Federal levels regarding the availability and robustness of broadband services and to promote the deployment of affordable broadband services to all parts of the Nation.

BACKGROUND AND NEEDS

The Nation's success in the information age increasingly depends on a strong, advanced communications infrastructure that is accessible to all Americans. These capabilities not only allow individuals to communicate and exchange information but also serve as the platform on which much of entertainment, commerce, and communication will take place.

For too many Americans, robust broadband technology is either not available or too expensive. Since 2001, the United States has slipped from fourth to fifteenth in per capita broadband use, according to statistics kept by the Organization for Economic Cooperation and Development (OECD). According to another metric, from the International Telecommunications Union (ITU), known as the Digital Opportunity Index, which includes 11 different vari-

ables of technology development, including the cost of connectivity relative to per capita income, the United States now ranks twenty-first.

Although the U.S. Department of Defense Advanced Research Projects Agency developed the Internet and provided the Nation with a platform for leading the world in Internet technology, the next generation of Internet applications may not be developed here without the right policies. Nations with more substantial broadband infrastructures may be home to the next wave of digital research and development because they could be better positioned to reap the economic benefits of the broadband era. Some experts estimate that universal broadband adoption would add $500 billion to the Nation's economy and create 1.2 million new jobs.

The lack of comprehensive data regarding the availability and penetration of broadband in the United States has hampered the development of effective policies to promote widespread access to affordable broadband service. As the General Accountability Office (GAO) noted in May 2006:

> [O]ne of the difficulties of assessing the gaps in deployment and where to target any federal support is that it is hard to know exactly where broadband infrastructure has not been deployed. FCC does collect data on the geographic extent of providers' service, but these data are not structured in a way that accurately illustrates the extent of deployment to residential users. Without accurate, reliable data to aid in analysis of the existing deployment gaps, it will be difficult to develop policy responses toward gaps in broadband availability. This could hinder our country's attainment of universally available broadband. And as the industry moves quickly to even higher bandwidth broadband technologies, we risk leaving some of the most rural places in America behind.[1]

Current broadband data collection efforts

Efforts by the Federal Communications Commission (FCC) to measure the speed and quality of broadband deployment across the United States originated after Congress enacted of the Telecommunications Act of 1996. Under section 706 of that Act, the FCC is required to conduct regular inquiries concerning the availability of advanced telecommunications capability and to determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If such determination is negative, the statute further requires the FCC to "take immediate action to accelerate deployment" by "removing barriers to infrastructure investment" and "promoting competition."

Pursuant to this direction, the FCC generally has defined broadband services as "those services that deliver an information carrying capacity in excess of 200 kbps in at least one direction."[2]

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[1] United States Government Accountability Office, *Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas,* p. 38, GAO–06–426 (May 2006) (*GAO Broadband Deployment Report*).

[2] *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, Notice of Proposed Rulemaking at ¶ 1, n. 2, WC Docket No. 07–38, FCC 07–17 (rel. April 16, 2007) (noting that services with an information capacity of 200 kbps *in one*

Upon adopting a 200 kilobits per second (kbps) standard, the FCC concluded that such speed was "enough to provide the most popular forms of broadband—to change web pages as fast as one can flip through the pages of a book and to transmit full-motion video" and further noted that "as technologies evolve, the concept of broadband will evolve with it: we may consider today's 'broadband' to be narrowband when tomorrow's technologies are deployed and consumer demand for higher bandwidth appears on a larger scale."[3]

Following adoption of a technical standard for broadband, the FCC followed up in 2000 with an order establishing rules to facilitate the collection of basic information from providers regarding the deployment of broadband services and to create a standardized form (FCC Form 477).[4] In establishing a regular and consistent survey of broadband deployment, the FCC emphasized the value of its approach noting that "only a comprehensively imposed, mandatory data collection effort will provide us with a set of data of uniform quality and reliability." In 2004, the Commission extended its data collection efforts for another 5 years and made certain improvements to the FCC Form 477 requirements which included collecting information about higher speed broadband connections offered by providers.[5]

Specifically, the FCC modified its Form 477 to require filers to determine what percentage of their broadband or high-speed connections are faster than 200 kbps in both directions, and to categorize these connections into five "speed tiers" based on the information transfer rate in the connection's faster direction: (1) greater than 200 kbps and less than 2.5 megabits per second (mbps); (2) greater than or equal to 2.5 mbps and less than 10 mbps; (3) greater than or equal to 10 mbps and less than 25 mbps; (4) greater than or equal to 25 mbps and less than 100 mbps; and (5) greater than or equal to 100 mbps. At the same time, the FCC also declined requests of some commenters to require reporting of information reflecting the actual number of broadband connections in a zip code or some other Census boundary and reporting about the price of broadband service offerings.[6]

Since FCC Form 477 was adopted in 2000, broadband service providers have submitted data 14 times. These data have been relied upon by the FCC not only in its twice yearly reports on the availability of high-speed Internet access services but also as part of its statutorily-required Section 706 Report which assesses whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. To date, the FCC has issued four Section 706 Reports and has concluded in

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direction also are described as "high speed services" in the FCC's Section 706 Reports, while services supporting an information capacity of 200 kbps *in both directions* are called "advanced services").

[3] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, 14 FCC 2d 2398 at ¶¶ 20, 25, CC Docket No. 98–146, FCC 99–5 (rel. Feb. 2, 1999).

[4] Local Competition and Broadband Reporting, Report and Order, WC Docket No. 04–141, 19 FCC Rcd 7717, 7724, ¶¶ 11 *et seq.* (2000). In addition to broadband, the data collection order also required providers to submit data relevant to assessing the status of competition in the market for local telecommunications services.

[5] Local Telephone Competition and Broadband Reporting, Report and Order, WC Docket No. 04–141, 19 FCC Rcd 22340 (2004).

[6] *Id.* at ¶ 28, 29.

each report that broadband is being deployed in a reasonable and timely basis to all Americans. Without additional information, however, it is difficult to understand the conflict between the FCC's data and data from the OECD and the ITU.

Some critics have questioned the FCC's findings and have focused on the lack of granularity afforded by the FCC's reliance on information that merely requires providers to list those 5-digit zip codes where they have at least one broadband subscriber. As a result, under the FCC's current methodology, if one subscriber in a zip code receives broadband, the FCC assumes that broadband service is available from that provider throughout the 5-digit zip code area. While this methodology has led the FCC to report that 99 percent of the U.S. population lives in the 99 percent of zip codes where broadband is available, these figures have been criticized as overstating actual levels of broadband deployment and actual levels of competition among providers, particularly in rural and other hard-to-serve areas. In May 2006, a report from the GAO highlighted these concerns by comparing FCC data to comprehensive data collected in Kentucky by a public-private alliance known as ConnectKentucky. As the GAO noted:

> Based on our analysis, we believe that the use of subscriber indicators at the zip-code level to imply availability, or deployment, may overstate terrestrially based deployment. We were able to check these findings for one state—Kentucky—where ConnectKentucky, a state alliance on broadband, had done an extensive analysis of its broadband deployment. ConnectKentucky officials shared data with us indicating that approximately 77 percent of households in the state had broadband access available as of mid-2005. In contrast, we used population data within all zip codes in Kentucky, along with FCC's 477 zip-code data for that State, and determined that, according to FCC's data, 96 percent of households in Kentucky live in zip codes with broadband service at the end of 2004. Thus, based on the experience in Kentucky, it appears that FCC's data may overstate the availability and competitive deployment of nonsatellite broadband.[7]

In addition to changes that would improve the granularity of deployment data, some critics of current data gathering practices also have called for revisions to the FCC's current 200 kbps definition for broadband. In their view, continuing to assess the pace of broadband deployment against a technical standard created in 1999 ignores the significant changes that have occurred over the past eight years and contributes to our failure to keep up with other industrialized economies like Japan and Korea, where consumer broadband connections of 100 mbps are not uncommon. At a minimum, such a consideration should include changes to current speed tier data to better measure deployment against the quality of broadband connections—including our ability to keep pace with

[7] GAO Broadband Deployment Report at 17; see also United States Government Accountability Office, *Telecommunications: Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, GAO–06–189 (Jan. 2006) (noting that the 477 data do not provide a full description of broadband services for certain segments of the population, such as Native Americans residing on tribal lands).

other industrialized nations vis a vis the speed and prices of consumer broadband connections—and that also provide consumers with more meaningful information about the capabilities of higher-speed broadband connections, such as the connection speeds required to reliably transmit high-definition video and the actual average throughput received by subscribers.

In response to the criticism about current broadband data, the FCC released a notice of proposed rulemaking (NPRM) seeking ways to improve its overall data collection on April 16, 2007. Specifically, the FCC asks for comment regarding what it can do to ensure that it receives sufficient information about the availability and deployment of broadband services nationwide, particularly in rural and other hard-to-serve areas, including tribal lands. The FCC also requested information about how it can improve the data about wireless broadband Internet access services that it currently collects on FCC Form 477, whether it should modify the current 200 kbps standard for broadband, and how to collect information about subscribership to interconnected voice over Internet Protocol service. It is unclear when the Commission may act on these matters.

Other Federal and State sources also can help in improving our understanding of the pace and quality of broadband deployment. At the Federal level, data collected by the Census Bureau, which has been helpful in tracking levels of telephone subscribership, could be updated for an Internet age to better identify the pace of broadband deployment and remaining obstacles to residential adoption. Similarly, understanding patterns in computer ownership, broadband use, device attachment, termination fees, and bundling practices could improve understanding of demand for broadband services. Further understanding will come from studying the demographics of areas without broadband service and the usage patterns of distinct user communities, like small businesses.

In addition, a national broadband policy should support and assist State efforts to work cooperatively at a local level in identifying areas where deployment or adoption of broadband may be lagging and in tailoring solutions to meet the needs of local communities. Kentucky provides just one example of such an approach where a State broadband alliance (ConnectKentucky) was created to undertake a broadband deployment and adoption plan. As part of that initiative, ConnectKentucky created detailed broadband inventory maps using Geographic Information System mapping technology and grassroots data collection via community technology leadership teams and cooperating broadband providers. These community teams also worked to develop community-specific plans to increase demand for broadband technology, and thereby make the community more attractive to potential broadband providers. Throughout the process, ConnectKentucky worked closely with broadband providers and respected their concerns about proprietary and confidential information. Following successes in Kentucky, other States are initiating similar initiatives which should be supported and coordinated at the Federal level to encourage consistency.

Improved data at both the Federal and State level will provide support for policies that will expedite the deployment and adoption of broadband. Moreover, access to a more accurate picture of the state of broadband availability will be useful for providers seeking

to enter markets and consumers interested in taking advantage of broadband services.

At the Executive Session for S. 1492, Chairman Inouye offered an amendment in the nature of a substitute to clarify the broadband definitions used by the FCC and to prevent the disclosure of confidential information provided by broadband providers.

SUMMARY OF PROVISIONS

S. 1492, the Broadband Data Improvement Act, will improve the quality of Federal and State data regarding the availability and deployment of broadband services in order to promote the deployment of affordable broadband services to all parts of the Nation.

The bill finds that the deployment and adoption of broadband has enhanced economic development, public safety, health care and educational opportunities. Moreover, continued progress in the deployment and adoption of broadband is vital to ensuring that the United States remains competitive and continues to create business and job growth. Improving Federal data regarding the state of broadband deployment and adoption will assist in the development of broadband technology across all regions of the Nation. In addition, the Federal government should encourage complementary State efforts to improve broadband data and public and private sector partnerships to support the continued growth of broadband services.

The bill would require the FCC to reevaluate its current 200 kbps standard for broadband. It also would require the FCC to revise its existing broadband reporting requirements to identify service tiers which can be used by consumers to reliably receive high-definition video content. It would update section 706 of the Telecommunications Act of 1996 to require that the FCC annually inquire into the availability of broadband. As part of this effort, the FCC would be required to compile a list of unserved areas and, using Census Bureau data, study the population, population density, and average per capita income for each area.

To improve data regarding the demand for broadband, the bill would direct the Secretary of Commerce, in consultation with the FCC, to expand the American Community Survey conducted by the Bureau of the Census to elicit information about residential household computer use and subscription to dial-up or broadband Internet service.

The bill also would require the GAO to study and evaluate additional broadband metrics or standards to provide consumers with better information about the cost and capability of their broadband connection and to better compare the deployment and penetration of broadband. GAO would be required to issue a report to Congress within one year. The bill also would require the Office of Advocacy within the Small Business Administration to conduct a study evaluating the impact of broadband speed and price on small businesses. The Office of Advocacy would be required to issue a report to Congress within one year.

To develop more granular data regarding the availability of broadband at a local level, the bill would create a matching grant program to be administered by the Secretary of Commerce. This program would assist States in entering into public-private partnerships that would provide each State with a baseline assessment

of broadband deployment. These grants would be used to collect data and create a geographic inventory map of broadband service in each State in order to identify any gaps in service. The bill would authorize $40 million per year for five years for these grants.

LEGISLATIVE HISTORY

The Broadband Data Improvement Act was introduced by Senator Inouye on May 24, 2007. Senators Dorgan, Pryor, Cantwell, Klobuchar, and Kerry are original cosponsors. Senators Nelson (FL), Obama, Carper, Boxer, Rockefeller, and Clinton are also cosponsors. On April 24, 2007, the Committee held a hearing entitled "Communications, Broadband and Competitiveness: How Does the U.S. Measure Up?" On July 19, 2007, the Committee considered the bill in an open Executive Session. Chairman Inouye offered an amendment in the nature of a substitute. The substitute was adopted by voice vote. The Committee, without objection, ordered that S. 1492 be reported.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

AUGUST 27, 2007.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1492, the Broadband Data Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Tyler Kruzich.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1492—Broadband Data Improvement Act

Summary: S. 1492 would establish a federal grant program to support states' efforts to improve broadband communications service. It would require the Federal Communications Commission (FCC) to collect detailed data from broadband Internet companies. The bill would direct the Government Accountability Office to study broadband standards in the United States, as well as the availability and quality of broadband offerings in the United States and other countries. S. 1492 also would require the Small Business Administration to evaluate the impact of the speed and price of broadband service on small businesses.

Based on information from affected agencies and assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1492 would cost $202 million over the 2008–2012 period. Enacting S. 1492 would not affect direct spending or revenues.

S. 1492 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no cost on state, local, or tribal governments.

S. 1492 would impose a private-sector mandate, as defined in UMRA, on providers of broadband that currently submit broadband data reports to the FCC. Based on information from the FCC and industry sources, CBO estimates that the aggregate direct cost of complying with the mandate would fall below the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1492 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
State Broadband Data and Development Grant Program:					
Authorization Level	40	40	40	40	40
Estimated Outlays	25	40	50	45	40
Studies and Reports:					
Estimated Authorization Level	2	0	0	0	0
Estimated Outlays	1	1	0	0	0
Total:					
Estimated Authorization Level	42	40	40	40	40
Estimated Outlays	26	41	50	45	40

Basis of estimate: For this estimate, CBO assumes that S. 1492 will be enacted near the start of fiscal year 2008 and that the necessary amounts will be appropriated for each fiscal year.

State broadband data and development grant program

Section 6 would authorize the appropriation of $40 million annually over the 2008–2012 period for a grant program to support statewide initiatives to improve broadband service. Such grants would be used to measure, monitor, and expand the availability and use of broadband services. Based on historical spending patterns for similar activities, CBO estimates that the proposed grants would cost $25 million in 2008 and $200 million over the 2008–2012 period, assuming appropriation of the specified amounts.

Studies and reports

S. 1492 would require certain agencies to complete a variety of studies and reports related to broadband service. Based on information from the affected agencies, CBO estimates that fully funding those activities would cost $2 million over the next two years, assuming appropriation of the necessary funds.

Estimated impact on State, Local, and Tribal Governments: S. 1492 contains no intergovernmental mandates as defined in UMRA and would impose no cost on State, Local, or Tribal Governments.

Estimated impact on the private sector: S. 1492 would impose a private-sector mandate, as defined in UMRA, because it would direct the FCC to revise its rule that requires providers of broadband services to report certain data. Under the bill, broadband providers would likely have to submit data on broadband availability and connections within nine-digit zip-code areas, instead of by five-digit

zip codes as is currently required. According to the FCC, broadband providers currently transmit data electronically, and CBO assumes that the method of transmission would not change. Providers may incur additional costs, however, to organize their data based on the nine-digit zip code. According to industry sources, a large portion of broadband providers, maintaining data for roughly 58 million subscribers, already record information in this way. Consequently, CBO estimates that the incremental costs incurred by the industry to comply with the mandate would fall below the annual threshold for private-sector mandates. Depending on how the bill's requirements are implemented, however, the costs to the private sector could vary substantially.

Estimate prepared by: Federal Costs: Tyler Kruzich; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Patrice Gordon.

Estimate approved by: Theresa A. Gullo, Chief, State and Local Government Cost Estimates Unit, Budget Analysis Division.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1492 is intended to improve the quality of Federal and State data regarding the availability and deployment of broadband services. The bill affects providers of broadband services already subject to FCC broadband reporting obligations. As such, there is not a significant increase in the number of persons subject to FCC reporting requirements.

ECONOMIC IMPACT

S. 1492 would not have an adverse economic impact on the Nation's economy.

PRIVACY

The reported bill would have no significant impact on the personal privacy of United States citizens.

PAPERWORK

The reported bill should not significantly increase paperwork requirements for individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would establish the short title as the "Broadband Data Improvement Act".

Section 2. Findings

Section 2 would make findings related to the bill.

Section 3. Improving federal data on broadband

Section 3(a) would require the FCC to issue an order in 120 days which would: revise or update, if necessary, the existing definitions of advanced telecommunications capability, or broadband; identify tiers of broadband service that would provide a substantial majority of consumers with the ability to reliably transmit full-motion, high definition video; and revise reporting requirements.

Section 3(b) would direct the FCC to exempt an entity from the reporting requirements established in subsection 3(a) if it finds that compliance is cost prohibitive.

Section 3(c) would amend section 706(b) of the Telecommunications Act of 1996 (47 U.S.C. 157 nt) by requiring the FCC to initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans on an annual, rather than a regular, basis. Subsection (c) also would redesignate existing section (c) as section (e) and add a new section (c) and (d).

New section 706(c) would direct the FCC, in inquiring whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion, to consider data collected through FCC broadband reporting requirements, as amended by subsection (a).

New section 706(d) would direct the FCC, as part of the annual inquiry described in amended section 706(b), to develop a list of geographical areas that are not served by any provider of advanced telecommunications capability and using Census Bureau data, determine the population, population density, and average per capita income for each such area.

Section 3(d) would require the Secretary of Commerce, in consultation with the FCC, to expand the American Community Survey conducted by the Bureau of the Census to determine computer use and subscription to dial-up and broadband Internet access in residential households.

Section 4. Study on additional broadband metrics and standards

Section 4(a) would require the Comptroller General to conduct a study to evaluate additional broadband metrics or standards to develop more accurate information about the cost and capability of broadband connections. At a minimum, this study would include an assessment of metrics that measure: the average price per megabits per second of broadband offerings; the actual speed compared to advertised speed of broadband offerings; the availability and quality of broadband offerings in the United States with the availability and quality of broadband offerings in other industrialized Nations using comparable metrics and standards; and the differences between complementary and substitutable broadband offerings.

Section 4(b) would require the Comptroller General to report to on the study described in subsection (a) one year after enactment of this bill.

Section 5. Study on the impact of broadband speed and price on small businesses

Section 5(a) would require the Small Business Administration Office of Advocacy to conduct a study evaluating the impact of broadband speed and price on small businesses.

Section 5(b) would require the Office of Advocacy to submit the report described in section 5(a) one year after enactment of this bill. This study would include: a survey of broadband speeds available to small businesses; a survey of the cost of broadband speeds available to small businesses; and a survey of the type of broadband technology used by small businesses. In addition, the study would include any policy recommendations that may improve small businesses' access to comparable broadband services at comparable rates in all regions of the Nation.

Section 6. Encouraging State initiatives to improve broadband

Section 6(a) would describe the purposes of the grant program established under section 6.

Section 6(b)(1) would direct the Secretary of Commerce to award grants to eligible entities for statewide initiatives to identify and track the availability of broadband services within each State.

Section 6(b)(2) would direct the grants to be awarded on a competitive basis.

Section 6(c) would define eligibility requirements for the grants, including requiring eligible entities seeking grants to submit applications for to the Secretary of Commerce, requiring eligible entities seeking grants to contribute matching non-Federal funds for at least 20 percent of the total amount of the grant, and requiring eligible entities seeking grants to comply with confidentiality requirements in section 6.

Section 6(d)(1) would require the Secretary of Commerce to develop regulations to require technical and scientific peer review of applications made for grants under section 6.

Section 6(d)(2) would require that the regulations developed under section 6(d)(1) require that technical and scientific peer review groups: be provided a written description of the grant to be reviewed; provide the results of any review to the Secretary of Commerce; and certify that they will prevent the unauthorized disclosure of confidential and proprietary information provided by broadband service providers.

Section 6(e) would describe how grants under subsection (b) would be required to be used.

Section 6(e)(1) would require that the funds be used to provide a baseline assessment of broadband service deployment in each State.

Section 6(e)(2)(A) would require that the funds be used to identify and track areas in each State that have low levels of broadband service deployment. Section 6(e)(2)(B) would require that the funds be used to identify and track the rate at which residential and business users are adopting broadband. Section 6(e)(2)(C) would require that the funds be used to identify and track suppliers of such services.

Section 6(e)(3) would require that the funds be used to identify barriers to the adoption by individuals and business of broadband services, including an assessment of demand and supply.

Section 6(e)(4) would require that the funds be used to identify the speeds of broadband connections made available to individuals and businesses within the State, relying, at a minimum, on the data rate benchmarks for broadband service described in section 3.

Section 6(e)(5) would require that the funds be used to create and facilitate, in each county or designated region, a local technology planning team with members representing a cross section of the community, benchmarking technology use across community sectors, setting goals for improved technology use within each sector, and developing a tactical business plan for achieving its goals.

Section 6(e)(6) would require that the funds be used to work collaboratively with broadband service providers and information technology companies to encourage deployment and use, through local demand aggregation, mapping analysis and the creation of market intelligence to improve the business case for providers.

Section 6(e)(7) would require that the funds be used to establish programs to improve computer ownership and Internet access.

Section 6(e)(8) would require that the funds be used to collect and analyze detailed market data concerning demand for broadband service and related information technology services.

Section 6(e)(9) would require that the funds be used to facilitate information exchange regarding the use and demand for broadband services between the public and private sectors.

Section 6(e)(10) would require that the funds be used to create within each State a geographic inventory map of broadband service

Section 6(f) would limit an eligible entity to receive a new grant under section 6 if the same organization obtained prior grant awards to fund the same activities in that State in each of the previous four years.

Section 6(g) would require the Secretary of Commerce to have each recipient of a grant to submit a report on the use of funds provided by the grant and would require the Secretary of Commerce to create a web page on the Department of Commerce web site that aggregates relevant information made available to the public by grant recipients.

Section 6(h) would require the FCC to provide eligible entities electronic access to aggregated broadband reporting data and would specifically require eligible entities to treat trade secrets, commercial or financial information, or privileged or confidential information as records not subject to public disclosure.

Section 6(i) would define terms in the bill.

Section 6(j) authorizes $40 million per year for the State Broadband Data and Development Grant Program in each of fiscal years 2008 through 2012.

Section 6(k) clarifies that this section does not grant public or private entities established or affected by this Act any regulatory jurisdiction or oversight authority over providers of broadband services or information technology.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

[47 U.S.C. 157 note]

(a) IN GENERAL.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) INQUIRY.—The Commission shall, within 30 months after the date of enactment of this Act, and ⟦regularly⟧ *annually* thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) MEASUREMENT OF EXTENT OF DEPLOYMENT.—In determining under subsection (b) whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion, the Commission shall consider data collected through Form 477 reporting requirements.

(d) DEMOGRAPHIC INFORMATION FOR UNSERVED AREAS.—As part of the inquiry required by subsection (b), the Commission shall compile a list of geographical areas that are not served by any provider of advanced telecommunications capability (as defined by section 706(c)(1) of the Telecommunications Act of 1996 (47 U.S.C. 157 nt)) and to the extent that data from the Census Bureau is available, determine, for each such unserved area—

(1) the population;

(2) the population density; and

(3) the average per capita income.

⟦(c)⟧ *(e)* DEFINITIONS.—For purposes of this subsection:

(1) ADVANCED TELECOMMUNICATIONS CAPABILITY.—The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, as *an evolving level of* high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary school" means elementary and sec-

ondary schools, as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

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