

PUBLIC LAW 110-385—OCT. 10, 2008

BROADBAND DATA SERVICES IMPROVEMENT

Public Law 110–385
110th Congress

An Act

Oct. 10, 2008
[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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Broadband Data
Improvement
Act.

**TITLE I—BROADBAND DATA
IMPROVEMENT**

47 USC 1301
note.

SEC. 101. SHORT TITLE.

This title may be cited as the “Broadband Data Improvement Act”.

47 USC 1301.

SEC. 102 FINDINGS.

The Congress finds the following:

(1) The deployment and adoption of broadband technology has resulted in enhanced economic development and public safety for communities across the Nation, improved health care and educational opportunities, and a better quality of life for all Americans.

(2) Continued progress in the deployment and adoption of broadband technology is vital to ensuring that our Nation remains competitive and continues to create business and job growth.

(3) Improving Federal data on the deployment and adoption of broadband service will assist in the development of broadband technology across all regions of the Nation.

(4) The Federal Government should also recognize and encourage complementary State efforts to improve the quality and usefulness of broadband data and should encourage and support the partnership of the public and private sectors in the continued growth of broadband services and information technology for the residents and businesses of the Nation.

47 USC 1303.

SEC. 103 IMPROVING FEDERAL DATA ON BROADBAND.

(a) IMPROVING SECTION 706 INQUIRY.—Section 706 of the Telecommunications Act of 1996 (47 U.S.C. 157 note) is amended—

(1) by striking “regularly” in subsection (b) and inserting “annually”;

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following:

Lists.

“(c) 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 note)) 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.”.

(b) INTERNATIONAL COMPARISON.—

(1) IN GENERAL.—As part of the assessment and report required by section 706 of the Telecommunications Act of 1996 (47 U.S.C. 157 note), the Federal Communications 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 data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers.

(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 market structures, the number of competitors, the number of facilities-based providers, the types of technologies deployed by such providers, the applications and services those technologies enable, the regulatory model under which broadband service capability is provided, the types of applications and services used, business and residential use of such services, and other media available to consumers.

(c) CONSUMER SURVEY OF BROADBAND SERVICE CAPABILITY.—

(1) IN GENERAL.—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—

- (A) the types of technology used to provide the broadband service capability to which consumers subscribe;
- (B) the amounts consumers pay per month for such capability;
- (C) the actual data transmission speeds of such capability;
- (D) the types of applications and services consumers most frequently use in conjunction with such capability;
- (E) for consumers who have declined to subscribe to broadband service capability, the reasons given by such consumers for declining such capability;

Public
information.

(F) other sources of broadband service capability which consumers regularly use or on which they rely; and

(G) any other information the Commission deems appropriate for such purpose.

(2) PUBLIC AVAILABILITY.—The Commission shall make publicly available the results of surveys conducted under this subsection at least once per year.

(d) IMPROVING CENSUS DATA ON BROADBAND.—The Secretary of Commerce, in consultation with the Federal Communications Commission, shall expand the American Community Survey conducted by the Bureau of the Census to elicit information for residential households, including those located on native lands, to determine whether persons at such households own or use a computer at that address, whether persons at that address subscribe to Internet service and, if so, whether such persons subscribe to dial-up or broadband Internet service at that address.

(e) PROPRIETARY INFORMATION.—Nothing in this title shall reduce or remove any obligation the Commission has to protect proprietary information, nor shall this title be construed to compel the Commission to make publicly available any proprietary information.

SEC. 104. STUDY ON ADDITIONAL BROADBAND METRICS AND STANDARDS.

(a) IN GENERAL.—The Comptroller General shall conduct a study to consider and evaluate additional broadband metrics or standards that may be used by industry and the Federal Government to provide users with more accurate information about the cost and capability of their broadband connection, and to better compare the deployment and penetration of broadband in the United States with other countries. At a minimum, such study shall consider potential standards or metrics that may be used—

(1) to calculate the average price per megabit per second of broadband offerings;

(2) to reflect the average actual speed of broadband offerings compared to advertised potential speeds and to consider factors affecting speed that may be outside the control of a broadband provider;

(3) to compare, using comparable metrics and standards, the availability and quality of broadband offerings in the United States with the availability and quality of broadband offerings in other industrialized nations, including countries that are members of the Organization for Economic Cooperation and Development; and

(4) to distinguish between complementary and substitutable broadband offerings in evaluating deployment and penetration.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on the results of the study, with recommendations for how industry and the Federal Communications Commission can use such metrics and comparisons to improve the quality of broadband data and to better evaluate the deployment and penetration of comparable broadband service at comparable rates across all regions of the Nation.

Recommen-
dations.

SEC. 105. STUDY ON THE IMPACT OF BROADBAND SPEED AND PRICE ON SMALL BUSINESSES.

(a) **IN GENERAL.**—Subject to appropriations, the Small Business Administration Office of Advocacy shall conduct a study evaluating the impact of broadband speed and price on small businesses.

(b) **REPORT.**—Not later than 2 years after the date of enactment of this Act, the Office shall submit a report to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Small Business and Entrepreneurship, the House of Representatives Committee on Energy and Commerce, and the House of Representatives Committee on Small Business on the results of the study, including—

- (1) a survey of broadband speeds available to small businesses;
- (2) a survey of the cost of broadband speeds available to small businesses;
- (3) a survey of the type of broadband technology used by small businesses; and
- (4) any policy recommendations that may improve small businesses access to comparable broadband services at comparable rates in all regions of the Nation.

SEC. 106. ENCOURAGING STATE INITIATIVES TO IMPROVE BROADBAND. 47 USC 1304.

(a) **PURPOSES.**—The purposes of any grant under subsection (b) are—

- (1) to ensure that all citizens and businesses in a State have access to affordable and reliable broadband service;
- (2) to achieve improved technology literacy, increased computer ownership, and broadband use among such citizens and businesses;
- (3) to establish and empower local grassroots technology teams in each State to plan for improved technology use across multiple community sectors; and
- (4) to establish and sustain an environment ripe for broadband services and information technology investment.

(b) **ESTABLISHMENT OF STATE BROADBAND DATA AND DEVELOPMENT GRANT PROGRAM.**—

(1) **IN GENERAL.**—The Secretary of Commerce shall award grants, taking into account the results of the peer review process under subsection (d), to eligible entities for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each State.

(2) **COMPETITIVE BASIS.**—Any grant under subsection (b) shall be awarded on a competitive basis.

(c) **ELIGIBILITY.**—To be eligible to receive a grant under subsection (b), an eligible entity shall—

- (1) submit an application to the Secretary of Commerce, at such time, in such manner, and containing such information as the Secretary may require;
- (2) contribute matching non-Federal funds in an amount equal to not less than 20 percent of the total amount of the grant; and
- (3) agree to comply with confidentiality requirements in subsection (h)(2) of this section.

(d) **PEER REVIEW; NONDISCLOSURE.**—

- Regulations. (1) IN GENERAL.—The Secretary shall by regulation require appropriate technical and scientific peer review of applications made for grants under this section.
- (2) REVIEW PROCEDURES.—The regulations required under paragraph (1) shall require that any technical and scientific peer review group—
- (A) be provided a written description of the grant to be reviewed;
 - (B) provide the results of any review by such group to the Secretary of Commerce; and
 - (C) certify that such group will enter into voluntary nondisclosure agreements as necessary to prevent the unauthorized disclosure of confidential and proprietary information provided by broadband service providers in connection with projects funded by any such grant.
- Certification. (e) USE OF FUNDS.—A grant awarded to an eligible entity under subsection (b) shall be used—
- (1) to provide a baseline assessment of broadband service deployment in each State;
 - (2) to identify and track—
 - (A) areas in each State that have low levels of broadband service deployment;
 - (B) the rate at which residential and business users adopt broadband service and other related information technology services; and
 - (C) possible suppliers of such services;
 - (3) to identify barriers to the adoption by individuals and businesses of broadband service and related information technology services, including whether or not—
 - (A) the demand for such services is absent; and
 - (B) the supply for such services is capable of meeting the demand for such services;
 - (4) to identify the speeds of broadband connections made available to individuals and businesses within the State, and, at a minimum, to rely on the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers, to promote greater consistency of data among the States;
 - (5) to create and facilitate in each county or designated region in a State a local technology planning team—
 - (A) with members representing a cross section of the community, including representatives of business, telecommunications labor organizations, K-12 education, health care, libraries, higher education, community-based organizations, local government, tourism, parks and recreation, and agriculture; and
 - (B) which shall—
 - (i) benchmark technology use across relevant community sectors;
 - (ii) set goals for improved technology use within each sector; and
 - (iii) develop a tactical business plan for achieving its goals, with specific recommendations for online application development and demand creation;
 - (6) to work collaboratively with broadband service providers and information technology companies to encourage deployment and use, especially in unserved areas and areas in which
- Plans.
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dations.

broadband penetration is significantly below the national average, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers to deploy;

(7) to establish programs to improve computer ownership and Internet access for unserved areas and areas in which broadband penetration is significantly below the national average;

(8) to collect and analyze detailed market data concerning the use and demand for broadband service and related information technology services;

(9) to facilitate information exchange regarding the use and demand for broadband services between public and private sectors; and

(10) to create within each State a geographic inventory map of broadband service, including the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers, which shall—

(A) identify gaps in such service through a method of geographic information system mapping of service availability based on the geographic boundaries of where service is available or unavailable among residential or business customers; and

(B) provide a baseline assessment of statewide broadband deployment in terms of households with high-speed availability.

(f) PARTICIPATION LIMIT.—For each State, an eligible entity may not receive a new grant under this section to fund the activities described in subsection (d) within such State if such organization obtained prior grant awards under this section to fund the same activities in that State in each of the previous 4 consecutive years.

(g) REPORTING; BROADBAND INVENTORY MAP.—The Secretary of Commerce shall—

(1) require each recipient of a grant under subsection (b) to submit a report on the use of the funds provided by the grant; and

(2) create a web page on the Department of Commerce website that aggregates relevant information made available to the public by grant recipients, including, where appropriate, hypertext links to any geographic inventory maps created by grant recipients under subsection (e)(10).

Web site.

(h) ACCESS TO AGGREGATE DATA.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall provide eligible entities access, in electronic form, to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.

(2) LIMITATION.—Notwithstanding any provision of Federal or State law to the contrary, an eligible entity shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity. This paragraph applies only to information submitted by the Commission or a broadband provider to carry out the provisions of this title and shall not otherwise limit or affect the rules

Applicability.

governing public disclosure of information collected by any Federal or State entity under any other Federal or State law or regulation.

(i) DEFINITIONS.—In this section:

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

(2) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) an entity that is either—

(i) 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;

(ii) 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; or

(iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and

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

(j) NO REGULATORY AUTHORITY.—Nothing in this section shall be construed as giving any public or private entity established or affected by this title any regulatory jurisdiction or oversight authority over providers of broadband services or information technology.

TITLE II—PROTECTING CHILDREN

SEC. 201. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the “Protecting Children in the 21st Century Act”.

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

Sec. 201. Short title; table of contents.

SUBTITLE A—PROMOTING A SAFE INTERNET FOR CHILDREN

Sec. 211. Internet safety.

Sec. 212. Public awareness campaign.

Sec. 213. Annual reports.

Sec. 214. Online safety and technology working group.

Sec. 215. Promoting online safety in schools.

Sec. 216. Definitions.

SUBTITLE B—ENHANCING CHILD PORNOGRAPHY ENFORCEMENT

Sec. 221. Child pornography prevention; forfeitures related to child pornography violations.

SUBTITLE A—PROMOTING A SAFE INTERNET FOR CHILDREN

Protecting
Children
in the 21st
Century Act.
15 USC 6551
note.

15 USC 6551.

SEC. 211. INTERNET SAFETY.

For the purposes of this title, the issue of Internet safety includes issues regarding the use of the Internet in a manner that promotes safe online activity for children, protects children

from cybercrimes, including crimes by online predators, and helps parents shield their children from material that is inappropriate for minors.

SEC. 212. PUBLIC AWARENESS CAMPAIGN.

15 USC 6552.

The Federal Trade Commission shall carry out a nationwide program to increase public awareness and provide education regarding strategies to promote the safe use of the Internet by children. The program shall utilize existing resources and efforts of the Federal Government, State and local governments, nonprofit organizations, private technology and financial companies, Internet service providers, World Wide Web-based resources, and other appropriate entities, that includes—

- (1) identifying, promoting, and encouraging best practices for Internet safety;
- (2) establishing and carrying out a national outreach and education campaign regarding Internet safety utilizing various media and Internet-based resources;
- (3) facilitating access to, and the exchange of, information regarding Internet safety to promote up-to-date knowledge regarding current issues; and
- (4) facilitating access to Internet safety education and public awareness efforts the Commission considers appropriate by States, units of local government, schools, police departments, nonprofit organizations, and other appropriate entities.

SEC. 213. ANNUAL REPORTS.

15 USC 6553.

The Commission shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives not later than March 31 of each year that describes the activities carried out under section 103 by the Commission during the preceding calendar year.

SEC. 214. ONLINE SAFETY AND TECHNOLOGY WORKING GROUP.

15 USC 6554.

(a) ESTABLISHMENT.—Within 90 days after the date of enactment of this Act, the Assistant Secretary of Commerce for Communications and Information shall establish an Online Safety and Technology working group comprised of representatives of relevant sectors of the business community, public interest groups, and other appropriate groups and Federal agencies to review and evaluate—

Deadline.

- (1) the status of industry efforts to promote online safety through educational efforts, parental control technology, blocking and filtering software, age-appropriate labels for content or other technologies or initiatives designed to promote a safe online environment for children;
- (2) the status of industry efforts to promote online safety among providers of electronic communications services and remote computing services by reporting apparent child pornography under section 13032 of title 42, United States Code, including any obstacles to such reporting;
- (3) the practices of electronic communications service providers and remote computing service providers related to record retention in connection with crimes against children; and
- (4) the development of technologies to help parents shield their children from inappropriate material on the Internet.

(b) **REPORT.**—Within 1 year after the working group is first convened, it shall submit a report to the Assistant Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Energy and Commerce of the House of Representatives that—

(1) describes in detail its findings, including any information related to the effectiveness of such strategies and technologies and any information about the prevalence within industry of educational campaigns, parental control technologies, blocking and filtering software, labeling, or other technologies to assist parents; and

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(2) includes recommendations as to what types of incentives could be used or developed to increase the effectiveness and implementation of such strategies and technologies.

(c) **FACA NOT TO APPLY TO WORKING GROUP.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group.

SEC. 215. PROMOTING ONLINE SAFETY IN SCHOOLS.

Section 254(h)(5)(B) of the Communications Act of 1934 (47 U.S.C. 254(h)(5)(b)) is amended—

(1) by striking “and” after the semicolon in clause (i);

(2) by striking “minors.” in clause (ii) and inserting “minors; and”; and

(3) by adding at the end the following:

“(iii) as part of its Internet safety policy is educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.”.

15 USC 6555.

SEC. 216. DEFINITIONS.

In this title:

(1) **COMMISSION.**—The term “Commission” means the Federal Trade Commission.

(2) **INTERNET.**—The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor successor protocols to such protocol, to communicate information of all kinds by wire or radio.

**SUBTITLE B—ENHANCING CHILD
PORNOGRAPHY ENFORCEMENT**

**SEC. 221. CHILD PORNOGRAPHY PREVENTION; FORFEITURES
RELATED TO CHILD PORNOGRAPHY VIOLATIONS.**

(a) **IN GENERAL.**—Section 503(b)(1) of the Communications Act of 1934 (47 U.S.C. 503(b)(1)) is amended by striking “or 1464” in subparagraph (D) and inserting “1464, or 2252”.

Approved October 10, 2008.

LEGISLATIVE HISTORY—S. 1492:

SENATE REPORTS: No. 110-204 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 154 (2008):

Sept. 26, considered and passed Senate.

Sept. 29, considered and passed House, amended.

Sept. 30, Senate concurred in House amendments.

