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More Broadband User Data Demanded

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On October 10, 2008, the President signed into law the Broadband Data Improvement Act (Public Law No: 110-385). The Broadband Data Improvement Act predominantly mandates information gathering by several governmental entities including the Federal Communications Commission but also alters some of the reporting requirements imposed on broadband companies.

The legislation requires that within 120 days after enactment of the Act, the FCC must issue an order in WC Docket No. 07-38 (Broadband Data Collection) which shall at least: (1) revise the definitions of advanced telecommunications capability, or broadband; (2) identify tiers of broadband service in which most connections can reliably transmit full-motion, high definition video; and (3) revise certain provider reporting requirements to enable the FCC to identify actual numbers of broadband connections by customer type and geographic area. The FCC Form 477 reporting requirements are to be revised to require filing entities to report actual numbers of broadband connections and second generation broadband connections by customer type and by geographic area using 5-digit postal zip code plus 4-digit location. The Act allows the FCC to revise the definition of broadband capability as it deems necessary and does not provide further guidance as to how it should be defined.

There are also provisions of the Act to improve information on broadband usage. In order to improve census data on broadband services, the Secretary of Commerce, in consultation with the FCC, shall expand the American Community Survey conducted by the Bureau of the Census to collect information for residential households to determine the use of computers at residential addresses, subscription to Internet services and whether Internet services are dial-up or broadband. The Comptroller General is required to conduct a study to evaluate additional broadband standards that may be used to provide users more accurate information about the cost and capability of their broadband connections and to compare the broadband use with other countries. The Small Business Administration Office of Advocacy is required to conduct a study on the impact of broadband speed and price on small businesses. Last but certainly not least, the Act provides for grants to develop and implement statewide initiatives to identify and track the availability of broadband services within each state.

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The passage of the Act is intended to respond to criticism leveled against the FCC's data-gathering and accuracy of measurements of broadband use. For example, previously if a single subscriber in a zip code had broadband Internet access, the entire region was considered covered. Also, previously the FCC set its minimum standard for broadband from 200 kbps. However, the FCC announced in June that it was revising its data collection systems, including the minimum standard for broadband, to 768 kbps, the average speed of a slow DSL connection.

It is unclear what degree of information the various public agencies may decide they need to gather and use. The Act is largely silent on the types and extent of information that will be needed to assess broadband service deployments. While the professed purpose of the new law is simply to encourage deployment and adoption of broadband technology, there is a "Big Brotherish" aspect to this type of well-meaning "information gathering" that troubles our civil libertarian instincts. If, as the old saying goes, "knowledge is power," where is all this information going and who will have the power?