

Center for Public Integrity Spearheads Efforts to Disclose Broadband Data Telco Deployment by ZIP Code at Issue in Legislation

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By [Drew Clark](#)

WASHINGTON, June 27, 2007 — The Center for Public Integrity's efforts to shed light on local Internet availability are having an impact in the legislative and regulatory debate over broadband.

For example, Senate Commerce Committee Chairman Daniel Inouye, D-Hawaii, last month introduced S. 1492, the Broadband Data Improvement Act. The bill would require the [FCC](#) to supplement the information it currently collects about broadband deployment with more localized data, including ZIP code plus four digits. It calls for the creation of online maps showing the availability of high-speed Internet services at the census-block level.

The chairman of the House Energy and Commerce Subcommittee on Telecommunications and the Internet, Rep. Ed Markey, D-Mass., released similar draft legislation in May. It would require the Commerce Department's National Telecommunications and Information Administration to create and publicize a nationwide map in which a broadband provider's service locations could be searched in detail.

The debate around this topic has led other government, non-profit and business-led efforts to take notice. The FCC is currently reconsidering its data-collection policies for broadband. Agencies including the NTIA and the Federal Trade Commission are also considering getting involved.

For almost a year, the Center for Public Integrity's "Well Connected" Project on telecommunications and media has been at the forefront of efforts to ensure that government information about broadband deployment is available to the public.

The "Well Connected" Project seeks public identification of where companies provide broadband service to enable citizens a more complete understanding of who they can turn to for high-speed access. The spread of broadband is important for economic development, for sharing knowledge, for entertainment and for civic participation.

Public disclosure would also allow Internet users to better gauge the accuracy of existing FCC statistics. And it would highlight the areas in which competitive broadband service is lacking – and why.

On September 25, 2006, the Center [filed a lawsuit](#) under the Freedom of Information Act to obtain an FCC database about the companies that provide high-speed Internet, and the ZIP codes in which they offer service.

The Center wants to make data about these companies publicly available through Well Connected's [Media Tracker](#), a free, Internet-based database of the television, radio, newspaper and cable companies that is searchable by ZIP code. Media Tracker was first released in 2003, and was updated and expanded in October 2006.

On June 12, the Center filed its final reply brief addressing the FCC's rebuttal arguments. The lawsuit, and other issues pertaining to broadband data, will be discussed at a [June 28 conference](#) at the National Academy of Sciences.

The [June 28 event](#) will run from 9:30 a.m. to noon. It is free and open to the public. It will bring together many of the industry and non-profit players in these discussions, including [AT&T](#), [Comcast](#), [Verizon Communications](#) and the Center for Public Integrity, as well as leading academics and experts from the non-profit world.

The Center's engagement in the broadband issue began last August, when the "Well Connected" Project was upgrading its Media Tracker.

Individuals using the [Media Tracker](#) can type in a ZIP code, or a city and state, and find the names of the companies that provide television, radio, cable and newspapers. The information about television, radio and cable companies comes from FCC data.

But because the FCC has refused to release the names of broadband providers, the [Media Tracker](#) does not currently include the names of those companies on a ZIP code-by-ZIP code basis. Instead, [Media Tracker](#) presents the number of providers that the FCC says offer service within that area.

The highest number of broadband providers within a ZIP code, according to the FCC, is 25. Three ZIP codes in mid-town Manhattan – [10001](#), [10011](#) and [10022](#) – have 25 such providers.

Less than 18 miles away, still within New York City, is ZIP code [11005](#), or Floral Park, Queens. This ZIP code has either one, two or three broadband providers, according to the FCC. In the semi-annual report that the FCC releases publicly, the agency declined to identify the exact number.

Desiring more detailed information about the names of the companies and the ZIP codes in which they offer service, the Center hand-delivered a FOIA request seeking the entire Form 477 database on August 24, 2006. In its request, the Center said it was "willing to negotiate to narrow the scope of this request."

The Form 477 database is named after the number of an FCC document. Twice annually since 2000, communications companies have been required to submit a form providing the agency with data about their broadband service.

In addition to ZIP codes, the FCC's Form 477 requires broadband and telephone companies to specify the number of customers and the types of broadband technology they provide in each ZIP code.

The FCC failed to respond to the Center's FOIA request within the required 20-day period (excluding weekends and holidays), allowing the Center to seek relief in the federal district court in Washington, D.C.

When the FCC finally responded, on September 26, 2006, the agency maintained that the release of the requested Form 477 data would cause "competitive harm" to broadband providers.

Hence the legal dispute between the Center and the FCC is about whether any of the information in the existing Form 477 database can be released without harming commercial interests.

The Center contends that much of the information in the database could be released without such harm. The FCC and industry players note that the database contains detailed subscriber counts by ZIP code. The release of detailed subscriber information would harm incumbents and new entrants, the FCC has argued. The agency also seeks to withhold the numbers of the ZIP codes in which a company offers service, again on the grounds of competitive harm.

"New entrants could be harmed if competitors learned of the number of lines and customers that they had in a particular market," Kirk Burgee, associate bureau chief of the FCC's Wireline Competition Bureau, said in the agency's September 26 [rejection letter](#). "The Commission thus agreed to aggregate filed data in its published reports in a way that does not identify company-specific data."

The Center's core interest in the Form 477 database is and remains the names of the companies and the ZIP codes in which they offer services. Such data would yield important information – not competitively sensitive – about the true availability of broadband. In its June 12 filing, the Center argued that subscriber counts and technology types could easily be redacted from the database.

The submitted case is currently before Judge Ellen Huvelle, who is likely to rule within the next several months.

If the Center's FOIA lawsuit is successful, the project plans to include the names of each of these broadband companies in the [Media Tracker](#) alongside the names of those companies that provide television, radio, cable and newspapers.

In addition to providing information about the media and telecommunications that serve a particular area, the [Media Tracker](#) allows users to track the corporate earnings, the communications facilities and the political influence of these companies. The [Media Tracker](#) does this by monitoring the campaign contributions, lobbying expenditures and policy agendas of these companies.

Meanwhile, the Center's lawsuit was creating considerable interest in the industry and at the FCC. In a [December 15 public notice](#), the agency notified "all filers who sought confidential treatment of their Form 477 information that the public release of this information is being sought."

Soon, the trade associations of all the major telecommunications industry players got involved in the lawsuit, *Center for Public Integrity v. Federal Communications Commission*.

[AT&T Inc.](#), [Verizon Communications](#), the [U.S. Telecom Association](#) (of which AT&T and Verizon are the biggest members) and the Wireless Communications Association International sought to formally intervene in the lawsuit.

Their involvement means that any settlement between the FCC and the Center for Public Integrity would require industry assent.

Intervention by the Bell companies also occasioned a recusal by Judge Rosemary Collyer, who had been assigned to the case, because the judge "owns stock in AT&T, said Collyer's law clerk, Kristin Dighe. Collyer's 2005 financial disclosure statement revealed that she owned \$15,000 to \$50,000 of stock in the company.

The case was reassigned to Judge Huvelle. Collyer is an appointee of President George W. Bush, and Huvelle is an appointee of President Bill Clinton.

The National Cable and Telecommunications Association and the wireless association CTIA, formerly the Cellular Telecommunications and Internet Association, sought to file "friend of the court" briefs on behalf of the FCC. The Center for Public Integrity did not object to the intervention, nor to the additional briefs.

Judge Huvelle established a briefing schedule throughout the spring. The FCC, and the interveners, sought to dismiss the case with their January 8 filings. The Center for Public Integrity in turn sought summary judgment in a cross-motion filed on April 3. The FCC replied on May 15, followed by the interveners' reply on May 22. The legal papers culminated in the Center's final reply on June 12.

In the nine months since the lawsuit was filed, the telecommunications policy landscape has been dramatically reconfigured by two major events: the collapse of the telecommunications overhaul legislation of 2006, and the Democratic takeover of Congress.

The death of the telecom bill – which foundered over concerns that broadband providers might create disincentives to competition on the Internet – was a major defeat for the Bell companies. [AT&T](#), [BellSouth](#) (since merged with AT&T), [Verizon](#) and [Qwest Communications International](#) and their lobbying arm, the [U.S. Telecom Association](#), had made passage of the bill a key legislative priority. It would have allowed the Bell companies to string cable television wires without having to get approval by local governments.

The bill, H.R. 5252 in the 109th Congress, enjoyed bipartisan support and passed the House by a 321-101 vote. It died in the Senate after an amendment to require "network neutrality" – barring broadband providers from offering speedier Internet delivery for selected businesses – tied 11-11 in committee. The telecom bill had been driven by House Republican leaders, and its passage is not expected in Democratic-controlled chambers.

Instead, telecommunications-oriented legislators have shifted their attention to a different focus: is the U.S. lagging in broadband penetration? In global surveys by the International Telecommunications Union, an arm of the United Nations, the U.S. currently ranks number 15 in per-capita broadband usage. The U.S. currently ranks number 12 among the smaller group of developed countries that constitute the Organization for Economic Cooperation and Development.

In its initial September 26 [complaint](#), the Center highlighted President Bush's statement on April 26, 2004, that broadband deployment was a national priority: "I'm talking about broadband technology to every corner of our country by the year 2007 with competition shortly thereafter," he said.

Since 2004, legislators involved with telecommunications issues, particularly Democrats, have repeatedly returned to the U.S. drop in the ITU and OECD rankings. In the ITU ranking, the U.S. fell from 12th in 2004 to 16th in 2005, before rising to 15th in 2006. Some criticize the Bush administration, and also FCC Chairman Kevin Martin, over what they see as the lack of a national broadband plan. Martin, who was appointed FCC commissioner by President Bush in 2001 and became agency chairman in 2005, has repeatedly said that broadband is his number-one priority.

"The reality is that America currently suffers from the lack of an overarching broadband plan, a low speed threshold, poor data and threats to the openness of the Internet," Rep. Ed Markey, Chairman of the House Energy and Commerce Subcommittee on Telecommunications and the Internet, said at a hearing on March 14, 2007.

Markey immediately began to focus on the role that accurate data plays in such a policy. "An important step the commission could also soon take to advance our broadband goals would be to revamp its data collection and analysis," Markey said. "We simply need a better and more accurate picture of broadband service in America. This will help policymakers identify solutions and fine-tune remedies for overcoming obstacles in achieving our national goals."

Some FCC commissioners echoed this view. "Perhaps the first step in developing a national broadband strategy is to develop more granular broadband data to identify where the problems lie and how best to craft solutions," Commissioner Michael Copps, a Democrat, told Markey's subcommittee.

"We can start by improving our data collection to better ascertain our current problems and develop better responses," said Commissioner Jonathan Adelstein, also a Democrat.

"The FCC doesn't even have a good measure for which areas of the country have broadband," added Rep. Lois Capps, D-Calif. Questioning Martin, she asked: "Why hasn't the FCC done more to make sure it knows which areas need service? Does the fact that there is one broadband subscriber within an entire ZIP code mean that that ZIP code is being served?"

"No, it doesn't mean — the fact that one subscriber in an entire ZIP code being served doesn't mean that they're all being served," Martin replied. "And actually, I agree with many of the concerns and have when I was a commissioner spoken out about the concerns I have with the way we collect data on ZIP codes and the fact that the speed of only 200 kilobits being counted as broadband is insufficient with the technology changes."

The FCC currently defines broadband as service offering data speeds of at least 200 kilobits per second (kbps) in at least one direction.

Even as major telecommunications industry associations coalesced against the Center's FOIA lawsuit for the release of ZIP code-based broadband information, lobbyists for the major Bell companies began to focus on how more detailed information was needed about broadband availability.

In a technology conference panel discussion in San Jose, in February, AT&T Senior Vice President Jim Ciconni urged policymakers to obtain more information about deployment so as to develop a national broadband policy. "We don't have a national broadband policy, we have never had a broadband policy, and, given the importance of competitiveness, we should have one," [Ciconni said](#) at the Technology Policy Summit.

Verizon Communications Executive Vice President Tom Tauke did not agree on the need for a national policy *per se*. But [Tauke did refer positively](#) to [ConnectKentucky](#), an effort to compile statistics about regional broadband deployment. The government could provide subsidies and loans for deploying broadband in rural areas that enjoy a lesser degree of broadband deployment, he said.

In fact, lawmakers on Capitol Hill have [increasingly focused in on](#) this Kentucky-based nonprofit project that says it has expanded broadband access to underserved areas in the state.

Through a partnership with broadband providers – Bell companies, independent telecommunications companies and cable operators – ConnectKentucky has obtained coverage information in order to identify gaps and demands in underserved areas. It has created a detailed map of such broadband availability, believed to be the first of its kind in the nation.

ConnectKentucky deals with commercial sensitivities by declining to disclose which companies provide broadband service within a particular geographic area, said Mark McElroy, [senior vice president](#) for communications and operations for ConnectKentucky. The non-profit group also offers Internet marketing advice to broadband providers.

McElroy and others affiliated with ConnectKentucky want to bring their project to the national stage. They have already incorporated Connected Nation as a new 501(c)(3) organization. "Broadband has become electricity of the 21st century," McElroy said. "We would support the power of the government to enable a local- and state-based response."

Officials from ConnectKentucky will also participate in the [June 28 conference on broadband statistics](#) at the National Academy of Sciences, along with officials from industry, the Center for Public Integrity and other non-profit groups and academics.

Broadband data legislation on Capitol Hill, as well as the industry-wide push for more detailed broadband mapping, have in turn spurred the FCC to consider revising its Form 477 collection data. In a "notice of proposed rulemaking" adopted on February 26, but released to the public on April 16, the FCC suggested a number of revisions to its data-collection policies.

It urged collecting more details about wireless broadband services and about voice-over-Internet-protocol services. It also asked whether the agency should add a second broadband speed tier threshold (above 200 kbps) and also whether it should collect pricing information. The current 200 kbps tier is regarded by many, including House subcommittee chairman Markey, as inadequate. Markey's draft legislation would specifically require the FCC to define broadband services as offering a download speed

of not less than 2 megabits per second (Mbps), and an upload speed of not less than 1 Mbps.

Although the FCC's regulatory proposal does not take a concrete position on many of the questions it raised, it did express skepticism about the value of collecting data on a ZIP+4 level. Industry groups that have filed comments in the FCC proceedings have generally opposed the collection of information at a ZIP+4 level. Non-profit groups, including Free Press, which advocates for more media competition, generally support ZIP+4 data. One notable exception to the industry opposition was [Time Warner](#). But Latham & Watkins attorney Matthew Brill, writing for the company, noted: "To the extent that the Commission requires reporting of customer counts by Zip Code or related information, it must continue to preserve the confidentiality of this data." Specifically citing the Center for Public Integrity's FOIA lawsuit, Time Warner added: "Maintaining strict confidentiality will be all the more vital if the Commission requires submission of customer counts and related information on an even more granular basis."

Finer broadband detail seems to be exactly what congressional leaders are seeking. Referring to America's position in international rankings, Senate Commerce Committee Chairman Inouye said, "With too many of our industrial counterparts ahead of us, we sorely need the kind of granular data that will inform our policies and propel us to the front of the broadband ranks."

"The first step in an improved broadband policy is ensuring that we have better data on which to build our efforts," Inouye said. "It is imperative that we get our broadband house in order and our communications policy right. But we cannot manage what we do not measure."

Irrespective of the position that Congress or the FCC takes on the addition ZIP+4 or census block data, the "Well Connected" Project seeks the release of the names of the providers in existing five-digit ZIP codes, on the ground that it would not cause them competitive harm. The Center has presented evidence of this claim in its June 12 filing.

In its original [complaint](#) filed September 26, 2006, the Center noted a [May 2006 report](#) by the Government Accountability Office. That report discussed "information [received from the FCC] on the companies providing broadband service in ZIP codes throughout the United States." The GAO had access to the entire FCC Form 477 database.

In the complaint, the Center wrote that "the GAO's analysis of this FCC Form 477 data allowed them to conclude that the median number of broadband providers within a ZIP code was two, rather than eight, as was found by the FCC's own analysis of its data."

As a non-profit publisher of investigative journalism committed to transparent and comprehensive reporting both in the U.S. and around the world, the Center for Public Integrity believes that making data about the names of the broadband provider on a ZIP

code-by-ZIP code basis would allow consumers to "truth-check" the FCC data in a manner similar to that accomplished by the GAO. Adding citizen-provided information about the speed, quality and price of such connections would, in turn, create a robust collection of information further informing telecommunications-related public policy debates.

In its other legal filings on the matter, the Center has noted that all of the major communications companies – including cable, wireless and telecom players – already provide ZIP code lookup of service availability on their Web sites.

Further, the Center noted, the agency already provides similar information about the service locations of cable, television and radio companies without competitive harm.

The FCC and the interveners' arguments have focused primarily on the subscriber numbers in the Form 477. In its [January 8](#) filing, the FCC highlighted the fact that the cover sheet of the Form 477 includes a box which telecommunications companies may check to indicate that they view the information as commercially sensitive. About 74 percent check that box, according to a [declaration](#) filed by Alan Feldman, acting chief of the Industry Analysis and Technology Division in the FCC's Wireline Competition Bureau.

In its April 8 filing, the Center countered with a section-by-section analysis of the Form 477. Each section should be evaluated and released to the public unless the data sought under the Freedom of Information Act request would cause competitive harm. The Center suggested that the subscriber totals could be grouped into ranges of subscribers to avoid competitive harm. The FCC's May 15 reply said that releasing subscriber numbers in ranges would cause as much competitive harm as the exact total. It also said that the release of ZIP code numbers would cause competitive harm because that section of the form included the technology types of the broadband services offered by each company on a ZIP code-by-ZIP code basis. The Center's June 12 filing said that redaction of technology type was feasible, and that ZIP code information with technology type redacted was clearly subject to release under FOIA.

As the debate over broadband statistics and mapping continues on a variety of fronts, others in business and government also want to take broadband mapping a step further by adding information about Internet connection speeds or local broadband pricing. In addition to ConnectKentucky, a variety of other efforts are underway seeking data about broadband services and speeds by location. These include the online publication DSLReports.com and a pilot program at Virginia Tech University.

The National Telecommunications Information Agency is also encouraging consumer- and business-reporting of broadband speeds and availability. The Federal Trade Commission is considering measures to monitor broadband providers' claims about consumers' connection speeds.

NTIA Administrator and Assistant Secretary of Commerce John Kneuer downplayed the rankings of the ITU and the OECD. At a June telecommunications industry conference in Washington, Kneuer said that international statistics don't take into account tens of thousands of government employees using broadband in Washington.

But Kneuer also said that the Bush administration has been trying to encourage more consumer reporting, or a "bottom-up" approach that would allow them to gauge speed and location without infringing on commercial interests. "Part of the challenge is [that] coverage data is viewed as business proprietary information by the carriers. Getting them to publish that has been a challenge."

Reporters Stokely Baksh and Brendan McGarry contributed to this report.

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