109TH CONGRESS
2D SESSION

H. R. 5273

To promote open broadband networks and innovation, foster electronic commerce, and safeguard consumer access to online content and services.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2006

Mr. MARKEY (for himself, Ms. ESHOO, Mr. BOUCHER, and Mr. INSLEE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To promote open broadband networks and innovation, foster electronic commerce, and safeguard consumer access to online content and services.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Network Neutrality Act of 2006".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Our Nation's economy, education, and society are increasingly dependent upon broadband telecommunications networks.

(2) These networks also hold the promise of advancing economic growth, job creation, and technological innovation.

(3) As America becomes ever more reliant upon such broadband networks, unfettered access to broadband networks to offer content and services and run software applications over the Internet is vital.

(4) The global leadership in high technology the United States provides today stems directly from historic policies that have ensured that telecommunications networks are open to all lawful uses and to all users.

(5) The Internet was enabled by those historic policies and provides an open architecture medium for world-wide communications, providing low barriers to entry for web-based content, applications, and services.

(6) Due to recent Federal Communications Commission interpretations and court decisions, these features of the Internet are no longer certain, and erosion of these historic policies permits

broadband network owners to claim they can control who can and who cannot offer content and services over the Internet utilizing their broadband networks.

(7) The high technology economy would be severely harmed if Internet content providers cannot reach consumers without interference from broadband network operators.

(8) The overwhelming majority of residential consumers take broadband service from one of only two wireline providers, namely, from the cable operator or the local telephone company.

(9) Broadband network operators have an economic interest to discriminate in favor of their own services and against other online providers.

(10) A network neutrality policy based upon the principle of nondiscrimination is essential to ensure that broadband telecommunications networks, including the Internet, remain open to independent service and content providers.

(11) A network neutrality policy is also essential to give certainty to entrepreneurs, innovators, investors, and others who rely upon the Internet for commercial reasons.

(12) A network neutrality policy can also permit broadband network operators to take action to

1 protect network reliability, prevent spam, and thwart
2 illegal uses in the same way that network operators
3 have historically done so.

4 (13) Because of the vital role that broadband
5 networks and the Internet play for America's eco-
6 nomic growth and our First Amendment rights to
7 speak, the United States should adopt a clear policy
8 endorsing the open nature of Internet communica-
9 tions and freely accessible broadband networks.

10 **SEC. 3. POLICY.**

11 It is the policy of the United States—

12 (1) to maintain the freedom to use broadband
13 telecommunications networks, including the Internet,
14 without interference from network operators, as has
15 been the policy for Internet commerce and the basis
16 for user expectations since its inception;

17 (2) to ensure that the Internet, and its succes-
18 sors, remain a vital force in the United States econ-
19 omy, thereby enabling the country to preserve its
20 global leadership in online commerce and techno-
21 logical innovation;

22 (3) to preserve and promote the open and inter-
23 connected nature of broadband networks that enable
24 consumers to reach, and service providers to offer,
25 lawful content, applications, and services of their

1 choosing, using their selection of devices that do not
2 harm the network;
3 (4) to encourage escalating broadband trans-
4 mission speeds and capabilities that reflect the evolv-
5 ing nature of the broadband networks, including the
6 Internet, and improvements in access technology,
7 which enables consumers to use and enjoy, and serv-
8 ice providers to offer, a growing array of content,
9 applications, and services;
10 (5) to provide for disclosure by broadband net-
11 work operators of prices, terms, and conditions, and
12 other relevant information, including information
13 about the technical capabilities of broadband access
14 provided to users, to inform their choices about serv-
15 ices they rely on to communicate and to detect prob-
16 lems; and
17 (6) to ensure vigorous and prompt enforcement
18 of this Act's requirements to safeguard and promote
19 competition, innovation, market certainty, and con-
20 sumer empowerment.
21 **SEC. 4. NET NEUTRALITY SAFEGUARDS.**
22 (a) IN GENERAL.—Each broadband network provider
23 has the duty to—
24 (1) enable users to utilize their broadband serv-
25 ice to access all lawful content, applications, and

1 services available over broadband networks, includ-
2 ing the Internet;
3 (2) not block, impair, degrade, discriminate
4 against, or interfere with the ability of any person
5 to utilize their broadband service to—
6 (A) access, use, send, receive, or offer law-
7 ful content, applications, or services over
8 broadband networks, including the Internet; or
9 (B) attach any device to the provider's net-
10 work and utilize such device in connection with
11 broadband service, provided that any such de-
12 vice does not physically damage, or materially
13 degrade other subscribers' use of, the network;
14 (3) clearly and conspicuously disclose to users,
15 in plain language, accurate information about the
16 speed, nature, and limitations of their broadband
17 service;
18 (4) offer, upon reasonable request to any per-
19 son, a broadband service for use by such person to
20 offer or access unaffiliated content, applications, and
21 services;
22 (5) not discriminate in favor of itself in the al-
23 location, use, or quality of broadband services or
24 interconnection with other broadband networks;

(6) offer a service such that content, applications, or service providers can offer unaffiliated content, applications, or services in a manner that is at least equal to the speed and quality of service that the operator's content, applications, or service is accessed and offered, and without interference or surcharges on the basis of such content, applications, or services;

(7) if the broadband network provider prioritizes or offers enhanced quality of service to data of a particular type, prioritize or offer enhanced quality of service to all data of that type (regardless of the origin of such data) without imposing a surcharge or other consideration for such prioritization or quality of service; and

(8) not install network features, functions, or capabilities that thwart or frustrate compliance with the requirements or objectives of this section.

(b) EXCEPTIONS.—Nothing in this section shall prohibit a broadband network provider from implementing reasonable and nondiscriminatory measures to—

(1) manage the functioning of its network, on a systemwide basis, provided that any such management function does not result in discrimination be-

1 tween content, applications, or services offered by
2 the provider and unaffiliated providers;
3 (2) offer varying levels of transmission speed or
4 bandwith;
5 (3) protect network security or the security of
6 a user's computer on the network;
7 (4) offer consumer protection services (such as
8 parental controls), provided that a user may refuse
9 or disable such services;
10 (5) carry or offer a cable service that requires
11 management of the network to provide enhanced
12 quality of service, provided that—
13 (A) a broadband service subscriber may
14 refuse to subscribe to, and avoid charges for,
15 such cable service while obtaining broadband
16 services from such operator; and
17 (B) such carrying or offering does not vio-
18 late any of the duties set forth in subsection
19 (a); or
20 (6) where otherwise required by law, prevent
21 any violation of Federal or State law.
22 (c) IMPLEMENTATION.—Within 180 days after the
23 date of enactment of this Act, the Commission shall adopt
24 rules that—

1 (1) permit any person to complain to the Com-
2 mission of anything done or omitted to be done in
3 violation of any duty, obligation, or requirement
4 under this section;
5 (2) provide that any complaint filed at the
6 Commission that alleges a violation of this section
7 shall be deemed granted unless acted upon by the
8 Commission within 90 days after its filing;
9 (3) require the Commission, upon prima facie
10 showing by a complainant of a violation of this sec-
11 tion, to issue within 48 hours of the filing of any
12 such complaint, a cease-and-desist or other appro-
13 priate order against the violator until the complaint
14 is fully resolved, and, if in the public interest, such
15 order may affect classes of persons similarly situated
16 to the complainant or the violator, and any such
17 order shall be in effect until the Commission resolves
18 the complaint with an order dismissing the com-
19 plaint or imposing appropriate remedies to resolve
20 such complaint; and
21 (4) enable the Commission to use mediation or
22 arbitration or other means to resolve the dispute.
23 (d) ENFORCEMENT.—This section shall be enforced
24 under titles IV and V of the Communications Act of 1934
25 (47 U.S.C. 401, 501 et seq.). A violation of any provision

1 of this section shall be treated as a violation of the Com-
2 munications Act of 1934, except that the warning require-
3 ments of section 503(b) shall not apply. In addition to
4 imposing fines under its title V authority, the Commission
5 also is authorized to issue any order, including an order
6 directing a broadband network operator to pay damages
7 to a complaining party.

8 (e) DEFINITIONS.—For purposes of this section:

9 (1) BROADBAND NETWORK PROVIDER.—The
10 term "broadband network provider" means a person
11 or entity that owns, controls, or resells, facilities
12 used in the transmission of a broadband service and
13 includes any affiliate, joint venture partner, or agent
14 of such provider.

15 (2) BROADBAND SERVICE.—The term
16 "broadband service" means a two-way transmission
17 capability that—

18 (A) enables the user to access content, ap-
19 plications, and services;

20 (B) is delivered with or without a fee to
21 the physical location of the user, regardless of
22 the facilities used;

23 (C) includes a transport speed of at least
24 200 kilobits per second on average in at least
25 one direction; and

(D) permits a user to transmit or receive information of their own design or choosing.

(3) AFFILIATE.—The term "affiliate" includes—

(A) a person that directly or indirectly owns, controls, is owned or controlled by, or is under common ownership or control with, another person; or

(B) a person that has a contract or other arrangement with a content or service provider concerning access to, or distribution of, such content or services.

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