109TH CONGRESS
2D SESSION

H. R. 5417

To amend the Clayton Act with respect to competitive and nondiscriminatory access to the Internet.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2006

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. BOUCHER, and Ms. ZOE LOFGREN of California) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Clayton Act with respect to competitive and nondiscriminatory access to the Internet.

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 "Internet Freedom and Nondiscrimination Act of 2006".

SEC. 2. PURPOSES.

The purposes of this Act are to promote competition, to facilitate trade, and to ensure competitive and nondiscriminatory access to the Internet.

1 **SEC. 3. AMENDMENTS TO THE CLAYTON ACT.**

2 The Clayton Act (15 U.S.C. 12 et seq.) is amended—

3 (1) by redesignating section 28 as section 29,

4 (2) by inserting after section 27 the following:

5 "DISCRIMINATION BY BROADBAND NETWORK PROVIDERS

6 "SEC. 28. (a) It shall be unlawful for any broadband

7 network provider—

8 "(1) to fail to provide its broadband network

9 services on reasonable and nondiscriminatory terms

10 and conditions such that any person can offer or

11 provide content, applications, or services to or over

12 the network in a manner that is at least equal to the

13 manner in which the provider or its affiliates offer

14 content, applications, and services, free of any sur-

15 charge on the basis of the content, application, or

16 service;

17 "(2) to refuse to interconnect its facilities with

18 the facilities of another provider of broadband net-

19 work services on reasonable and nondiscriminatory

20 terms or conditions;

21 "(3)(A) to block, to impair, to discriminate

22 against, or to interfere with the ability of any person

23 to use a broadband network service to access, to use,

24 to send, to receive, or to offer lawful content, appli-

25 cations or services over the Internet; or

"(B) to impose an additional charge to avoid any conduct that is prohibited by this subsection;

"(4) to prohibit a user from attaching or using a device on the provider's network that does not physically damage or materially degrade other users' utilization of the network; or

"(5) to fail to clearly and conspicuously disclose to users, in plain language, accurate information concerning any terms, conditions, or limitations on the broadband network service.

"(b) If a broadband network provider prioritizes or offers enhanced quality of service to data of a particular type, it must prioritize or offer enhanced quality of service to all data of that type (regardless of the origin or ownership of such data) without imposing a surcharge or other consideration for such prioritization or enhanced quality of service.

"(c) Nothing in this section shall be construed to prevent a broadband network provider from taking reasonable and nondiscriminatory measures—

"(1) to manage the functioning of its network to protect the security of such network and broadband network services if such management does not result in discrimination among the content, applications, or services on the network;

"(2) to give priority to emergency communications; or

"(3) to prevent a violation of a Federal or State law, or to comply with an order of a court to enforce such law.

"(d) For purposes of this section—

"(1) the term 'affiliate' means—

"(A) a person that directly or indirectly owns, controls, is owned or controlled by, or is under the 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 such service;

"(2) the term 'broadband network provider' means a person engaged in commerce that owns, controls, operates, or resells any facility used to provide broadband network service to the public, by whatever technology and without regard to whether provided for a fee, in exchange for an explicit benefit, or for free;

"(3) the term 'broadband network service' means a 2-way transmission service that connects to the Internet and transmits information at an aver-

age rate of at least 200 kilobits per second in at least one direction, irrespective of whether such transmission is provided separately or as a component of another service; and

"(4) the term 'user' means a person who takes and uses broadband network service, whether provided for a fee, in exchange for an explicit benefit, or for free.", and

(3) by amending subsection (a) and the 1st sentence of subsection (b) of section 11 by striking "and 8" and inserting "8, and 29".

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