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ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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December 1, 2010

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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

Starting in August of this year, Communications, Technology, and the Internet Subcommittee Chairman Rick Boucher and I worked together to reach bipartisan agreement on legislation that would protect and promote the open Internet.

Although our proposal received support from carriers, network operators, edge companies, and consumer groups, we did not introduce a bill because our initiative was predicated on going forward only if we had full bipartisan support in the House Energy and Commerce Committee. Unfortunately, Republican leadership in the House of Representatives opposed our effort to move forward with a compromise that had both industry and public interest community support.

At the time that our effort was derailed, there were at least two unauthorized versions of the draft legislation in circulation, including an inaccurate version posted on the website of a Capitol Hill newspaper. In order to ensure that the FCC and the public have access to an accurate version of our proposed compromise, I am attaching an authorized copy for your information.

Please associate this letter and the attached draft bill with the appropriate docket.

Sincerely,



Henry A. Waxman
Chairman

Attachment

.....
(Original Signature of Member)

111TH CONGRESS
2D SESSION

H. R.

To amend title I of the Communications Act of 1934 to provide for Internet openness, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title I of the Communications Act of 1934 to provide for Internet openness, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Open Internet Act of
5 2010”.

6 **SEC. 2. INTERNET OPENNESS.**

7 Title I of the Communications Act of 1934 (47
8 U.S.C. 151 et seq.) is amended by adding at the end the
9 following new section:

1 **“SEC. 12. INTERNET OPENNESS.**

2 “(a) DUTIES OF WIRELINE PROVIDERS.—

3 “(1) IN GENERAL.—To the extent that a person
4 is engaged in the provision of broadband Internet
5 access service by wire, such person—

6 “(A) shall not block lawful content, appli-
7 cations, or services, or prohibit the use of non-
8 harmful devices, subject to reasonable network
9 management;

10 “(B) shall not unjustly or unreasonably
11 discriminate in transmitting lawful traffic over
12 a consumer’s wireline broadband Internet ac-
13 cess service; and

14 “(C) shall disclose accurate and relevant
15 information in plain language regarding the
16 price, performance, and network management
17 practices of such person’s broadband Internet
18 access service sufficient—

19 “(i) for consumers to make informed
20 choices regarding use of such service; and

21 “(ii) for content, application, service,
22 and device providers to develop and market
23 new Internet offerings.

24 “(2) COMMISSION REQUIREMENTS.—The Com-
25 mission may promulgate rules to implement para-
26 graph (1)(C). Any such rules—

1 “(A) shall require, at a minimum, such
2 person to display or provide links to the re-
3 quired information on an Internet website and
4 to update such information in a timely fashion
5 to reflect material changes in the information
6 subject to such paragraph; and

7 “(B) shall not require public disclosure
8 of—

9 “(i) competitively sensitive informa-
10 tion;

11 “(ii) information that would com-
12 promise network security; or

13 “(iii) information that would under-
14 mine the efficacy of reasonable network
15 management practices.

16 “(3) RULE OF CONSTRUCTION.—For purposes
17 of paragraph (1)(B), reasonable network manage-
18 ment shall not be construed to be unjustly or unrea-
19 sonably discriminatory.

20 “(b) DUTIES OF WIRELESS PROVIDERS.—

21 “(1) IN GENERAL.—To the extent that a person
22 is engaged in the provision of broadband Internet
23 access service by radio, such person—

1 “(A) shall not block consumers from ac-
2 cessing lawful Internet websites, subject to rea-
3 sonable network management;

4 “(B) shall not block lawful applications
5 that compete with such person’s voice or video
6 telephony services, subject to reasonable net-
7 work management; and

8 “(C) shall disclose with regard to such per-
9 son’s broadband Internet access service the
10 same information required by subsection
11 (a)(1)(C) (including rules promulgated pursu-
12 ant to such subsection).

13 “(2) APPLICATIONS.—Paragraph (1)(B) shall
14 not apply to a person who is providing broadband
15 Internet access service by radio to the extent that
16 such person is engaged in the operation of an appli-
17 cation store or its functional equivalent.

18 “(c) FIXED WIRELESS AND SATELLITE.—The Com-
19 mission shall determine whether fixed wireless and sat-
20 ellite broadband Internet access services shall be regulated
21 as broadband Internet access services by wire or radio for
22 purposes of this section.

23 “(d) ENFORCEMENT.—

24 “(1) COMMISSION AUTHORITY.—The Commis-
25 sion shall enforce the duties established in sub-

1 sections (a)(1)(A), (a)(1)(B), (b)(1)(A), and
2 (b)(1)(B) through adjudication of a complaint alleg-
3 ing that a service violates one or more of such du-
4 ties. Nothing in this section limits the Commission's
5 authority to adopt procedures for the adjudication of
6 a complaint, to adopt an order requiring compliance
7 from an entity subject to a complaint, to initiate an
8 enforcement action, or to issue a declaratory ruling
9 or guidance.

10 “(2) INJUNCTIVE RELIEF AND PENALTIES.—If
11 the Commission finds that a provider of broadband
12 Internet access service has violated any provision of
13 subsection (a) or (b), the Commission may issue an
14 order enjoining such violation, including interim in-
15 junctive relief. If the Commission finds that a pro-
16 vider of broadband Internet access service has en-
17 gaged in a willful and knowing violation of sub-
18 section (a) or (b), the Commission may issue a fine
19 or forfeiture of no more than \$2,000,000 for any
20 practice found to violate subsection (a) or (b), con-
21 sistent with the procedures in section 503. The Com-
22 mission may not order the payment of damages for
23 any violation of subsection (a) or (b).

24 “(3) NO ADDITIONAL PRIVATE RIGHTS AU-
25 THORIZED.—Nothing in this section shall be con-

1 strued to authorize any private right of action in
2 court.

3 “(e) RELATIONSHIP TO OTHER TITLES AND LAWS.—

4 “(1) THE COMMISSION.—The Commission may
5 not impose regulations on broadband Internet access
6 service or any component thereof under title II, ex-
7 cept in the event that a provider of broadband Inter-
8 net access service elects to provide the transmission
9 component of such service as a telecommunications
10 service under such title. Except as expressly pro-
11 vided in this section, nothing in this section shall in-
12 crease, reduce, or otherwise alter the Commission’s
13 authority.

14 “(2) PROVIDERS.—Nothing in this section shall
15 supersede any obligation or authorization a provider
16 of broadband Internet access service may have, or
17 limit the provider’s ability, to address the needs of
18 emergency communications, law enforcement, public
19 safety, or national security, consistent with applica-
20 ble law. Nothing in this section shall prohibit reason-
21 able efforts by a provider of broadband Internet ac-
22 cess service to address copyright infringement or
23 other unlawful activity.

24 “(3) SAVINGS CLAUSE.—Nothing in this section
25 shall increase, reduce, or otherwise alter the anti-

1 trust or other authorities of the Department of Jus-
2 tice or the Federal Trade Commission.

3 “(f) REPORT TO CONGRESS.—Not later than Decem-
4 ber 31, 2011, the Commission shall transmit to the Com-
5 mittee on Energy and Commerce of the House of Rep-
6 resentatives and the Committee on Commerce, Science,
7 and Transportation of the Senate recommendations with
8 regard to additional authority needed by the Commission
9 to implement the National Broadband Plan, to ensure fur-
10 ther the protection of consumers in their use of Internet
11 services, and to promote online innovation.

12 “(g) TERM OF AUTHORITY.—

13 “(1) SUNSET.—Except as provided in para-
14 graph (2), this section shall expire on December 31,
15 2012.

16 “(2) ADJUDICATION AUTHORITY.—The Com-
17 mission may continue to adjudicate cases regarding
18 violations of this section that occurred prior to Jan-
19 uary 1, 2013, and that are filed at the Commission
20 no later than March 1, 2013.

21 “(h) DEFINITIONS.—For purposes of this section:

22 “(1) BROADBAND INTERNET ACCESS SERV-
23 ICE.—

24 “(A) IN GENERAL.—The term ‘broadband
25 Internet access service’ means—

1 “(i) a consumer retail service, by wire
2 or radio, that provides high-speed capa-
3 bility to transmit data to and receive data
4 from all or substantially all Internet
5 endpoints, including any associated infor-
6 mation-processing capabilities; or

7 “(ii) a service that the Commission
8 finds to be providing a functional equiva-
9 lent for the service described in clause (i)
10 or that is intended to evade the consumer
11 protections set forth in this section.

12 “(B) EXCLUSIONS.—The term does not in-
13 clude virtual private network services, content
14 delivery network services, multichannel video
15 programming services, hosting or data storage
16 services, or Internet backbone services, if sepa-
17 rately available.

18 “(2) HIGH-SPEED.—The term ‘high-speed’ has
19 the meaning given such term in the Commission’s
20 Fifth Report on the Deployment of Advanced Tele-
21 communications Capability to All Americans, FCC
22 08-88 (June 12, 2008).

23 “(3) REASONABLE NETWORK MANAGEMENT.—

24 “(A) IN GENERAL.—The term “reasonable
25 network management” means a network man-

1 agement practice that is appropriate and tai-
2 lored to achieving a legitimate network manage-
3 ment function, taking into account the par-
4 ticular network architecture or technology of
5 the provider.

6 “(B) INCLUSIONS.—The term includes ap-
7 propriate and tailored practices—

8 “(i) to reduce or mitigate the effects
9 of congestion on a broadband Internet ac-
10 cess service provider’s network;

11 “(ii) to ensure network security or in-
12 tegrity;

13 “(iii) to address traffic that is harm-
14 ful to or unwanted by—

15 “(I) users, including premises op-
16 erators;

17 “(II) the provider’s network; or

18 “(III) the Internet;

19 “(iv) to meet the needs of public safe-
20 ty; and

21 “(v) to provide services or capabilities
22 consistent with a consumer’s choices re-
23 garding parental control or security capa-
24 bilities.

25 “(C) CONSIDERATIONS.—

1 “(i) IN GENERAL.—In determining
2 whether a network management practice is
3 reasonable, the Commission shall consider
4 technical requirements, standards, or best
5 practices adopted by one or more inde-
6 pendent, widely-recognized Internet com-
7 munity governance initiatives or standard-
8 setting organizations.

9 “(ii) WIRELESS PROVIDERS.—In de-
10 termining whether a network management
11 practice for broadband Internet access
12 service provided by radio is reasonable, the
13 Commission shall also consider technical,
14 operational, or other differences between
15 radio and other broadband Internet access
16 service platforms, including differences re-
17 lating to the efficient use of spectrum.”.