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To preserve the free and open nature of the Internet, expand the benefits of broadband, and promote universally available and affordable broadband service.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Ms. CANTWELL (for herself and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To preserve the free and open nature of the Internet, expand the benefits of broadband, and promote universally available and affordable broadband service.

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 “Internet Freedom,
5 Broadband Promotion, and Consumer Protection Act of
6 2011”.

7 **SEC. 2. FINDINGS.**

8 The Congress finds the following:

1 (1) Two-way communications networks con-
2 stitute basic infrastructure that is as essential to our
3 national economy as roads and electricity.

4 (2) The broadband Internet constitutes the
5 most important two-way communications infrastruc-
6 ture of our time.

7 (3) Access to the broadband Internet is critical
8 for job creation, economic growth, and technological
9 innovation.

10 (4) Access to the broadband Internet creates
11 opportunity for more direct civic engagement, in-
12 creased educational attainment, and enables free
13 speech.

14 (5) The network design principles fostering the
15 development of the broadband Internet to date, an
16 end-to-end design, layered architecture, and open
17 standards, promotes innovation at the edge of the
18 network and gives end users choice and control of
19 their online activities.

20 (6) These network design principles have led to
21 the network neutrality of the Internet, where there
22 are no paid for premium fast lanes and best effort
23 slow lanes.

24 (7) According to the Federal Communications
25 Commission in 2009, technologies now allow network

1 operators to distinguish different classes of Internet
2 traffic, to offer different qualities-of-service, and to
3 charge different prices to each class of Internet traf-
4 fic.

5 (8) Broadband Internet access service providers
6 have an economic interest to discriminate in favor of
7 their own or affiliated services, content, and applica-
8 tions and against other providers of such services,
9 content, and applications.

10 (9) Broadband Internet access service providers
11 have an economic interest in, and the ability to
12 adopt, pay-for-priority schemes to the detriment of
13 job creation, economic growth, innovation, and con-
14 sumer protections.

15 (10) The market for broadband today dem-
16 onstrates substantial obstacles to effective competi-
17 tion, to the protection of users, and to the continued
18 viability of a free and open Internet.

19 (11) These obstacles impede the universal de-
20 ployment and adoption of broadband, impede meet-
21 ing the goals set forth in the National Broadband
22 Plan, and perpetuate a digital divide.

23 (12) The United States needs clear Federal pol-
24 icy that preserves the historically free and open na-
25 ture of the Internet, expands the benefits of

1 broadband, and promotes universally available and
2 affordable broadband service that does not chill in-
3 novation or speech within the content, applications,
4 and services available online.

5 (13) The Federal policy to ensure that the
6 Internet remains free and open must apply equally
7 to all broadband Internet access services, regardless
8 of whether those services use wire, radio, or some
9 combination of those means to reach the end user.

10 **SEC. 3. INTERNET FREEDOM.**

11 Title II of the Communications Act of 1934 (47
12 U.S.C. 201 et seq.) is amended by adding at the end the
13 following:

14 **“SEC. 280. INTERNET FREEDOM AND BROADBAND PRO-**
15 **MOTION.**

16 “(a) PURPOSES.—The purposes of this section are—

17 “(1) to promote increased availability and adop-
18 tion of broadband for all Americans;

19 “(2) to promote consumer choice and competi-
20 tion among broadband Internet access service pro-
21 viders and among providers of lawful content, appli-
22 cations, and services; and

23 “(3) to protect consumers, innovators and en-
24 trepreneurs from harmful, discriminatory, or anti-

1 competitive behavior by providers of broadband
2 Internet access service.

3 “(b) BROADBAND INTERNET ACCESS SERVICE AND
4 CHARGES.—

5 “(1) It shall be the duty of every broadband
6 Internet access service provider to furnish such
7 broadband Internet access service to end users upon
8 reasonable request.

9 “(2) Broadband Internet access service pro-
10 viders shall not require end users to purchase voice
11 grade telephone service, commercial mobile radio
12 voice services, or multichannel-video programming
13 distribution services or other specialized services as
14 a condition on the purchase of any broadband Inter-
15 net access service.

16 “(3) All charges, practices, classifications, and
17 regulations for and in connection with broadband
18 Internet access service shall be just and reasonable.

19 “(4) If a broadband Internet access service pro-
20 vider allows its end users to request quality-of-serv-
21 ice assurances for the transmission of Internet pro-
22 tocol packets associated with its own applications,
23 services, or content or that of its affiliates, then—

24 “(A) the broadband Internet access service
25 provider shall permit such assurances for all

1 Internet Protocol packets chosen by the end
2 user, without regard to the content, applica-
3 tions, or services involved; and

4 “(B) any quality-of-service assurance shall
5 not block, interfere with, or degrade, any other
6 end user’s access to the content, applications,
7 and services of their choice.

8 “(c) ENSURING OPEN ACCESS TO THE BROADBAND
9 INTERNET.—A broadband Internet access service provider
10 may not unjustly or unreasonably—

11 “(1) block, interfere with, or degrade an end
12 user’s ability to access, use, send, post, receive, or
13 offer lawful content (including fair use), applica-
14 tions, or services of the user’s choice;

15 “(2) block, interfere with, or degrade an end
16 user’s ability to connect and use the end user’s
17 choice of legal devices that do not harm the network;

18 “(3) prevent or interfere with competition
19 among network, applications, service or content pro-
20 viders;

21 “(4) engage in discrimination against any law-
22 ful Internet content, application, service, or service
23 provider with respect to network management prac-
24 tices, network performance characteristics, or com-
25 mercial terms and conditions;

1 “(5) give preference to affiliated content, appli-
2 cations, or services with respect to network manage-
3 ment practices, network performance characteristics,
4 or commercial terms and conditions;

5 “(6) charge a content, application, or service
6 provider for access to the broadband Internet access
7 service providers’ end users based on differing levels
8 of quality of service or prioritized delivery of Inter-
9 net protocol packets;

10 “(7) prioritize among or between content, appli-
11 cations, and services, or among or between different
12 types of content, applications, and services unless
13 the end user requests to have such prioritization;

14 “(8) install or utilize network features, func-
15 tions, or capabilities that prevent or interfere with
16 compliance with the requirements of this section; or

17 “(9) refuse to interconnect on just and reason-
18 able terms and conditions.

19 “(d) REASONABLE NETWORK MANAGEMENT.—

20 “(1) IN GENERAL.—Nothing in this section
21 shall prohibit a broadband Internet access service
22 provider from engaging in reasonable network man-
23 agement.

24 “(2) REASONABLENESS PRESUMPTION.—For
25 purposes of this section, a network management

1 practice is presumed to be reasonable for a
2 broadband Internet access service provider only if it
3 is—

4 “(A) essential for a legitimate network
5 management purpose assuring the operation of
6 the network;

7 “(B) appropriate for achieving the stated
8 purpose;

9 “(C) narrowly tailored; and

10 “(D) among the least restrictive, least dis-
11 criminatory, and least constricting of consumer
12 choice available.

13 “(3) FACTORS TO BE CONSIDERED.—In deter-
14 mining whether a network management practice is
15 reasonable, the Commission shall take into account
16 the particular network architecture and any tech-
17 nology and operational limitations of the broadband
18 Internet access service provider.

19 “(4) LIMITATION.—A network management
20 practice may not be considered to be a reasonable
21 network management if the broadband Internet ac-
22 cess service provider charges content, applications,
23 or other online service providers for differing levels
24 of quality of service or prioritized delivery of Inter-
25 net Protocol packets.

1 “(e) OTHER REGULATED SERVICES.—This section
2 shall not be construed to prevent broadband Internet ac-
3 cess service providers from offering interconnected Voice
4 over Internet Protocol (VoIP) services or multichannel-
5 video programming distribution services regulated under
6 title VI of this Act on transmission capacity also used by
7 broadband Internet access services.

8 “(f) TRANSPARENCY.—

9 “(1) IN GENERAL.—A provider of broadband
10 Internet access service—

11 “(A) shall disclose publicly on its external
12 Web site and at the point of sale accurate infor-
13 mation regarding the network management
14 practices, network performance, and commercial
15 terms of its broadband Internet access service
16 in plain language sufficient for end users to
17 make informed choices regarding use of such
18 services, and for content, application, service,
19 and device providers to develop, market, and
20 maintain Internet offerings; and

21 “(B) shall disclose publicly on its external
22 Web site and at the point of sale any other
23 practices that affect communications between a
24 user and a content, application, or service pro-

1 vider in the ordinary, routine use of such
2 broadband service.

3 “(2) EXEMPTIONS.—The Commission may ex-
4 empt certain kinds of information from disclosure on
5 the grounds that it is competitively sensitive or could
6 compromise network security. Within 90 days after
7 the date of enactment of the Internet Freedom,
8 Broadband Promotion, and Consumer Protection
9 Act of 2011, the Commission shall conclude a rule-
10 making proceeding to implement this subsection.

11 “(g) STAND-ALONE INTERNET ACCESS SERVICE.—

12 “(1) IN GENERAL.—Within 180 days after the
13 date of enactment of the Internet Freedom,
14 Broadband Promotion, and Consumer Protection
15 Act of 2011, the Commission shall promulgate rules
16 to ensure that broadband Internet access providers
17 do not require the purchase of voice grade telephone
18 service, commercial mobile radio voice services, or
19 multichannel-video programming distribution serv-
20 ices as a condition of purchasing any broadband
21 Internet access service, and that the rates, terms,
22 and conditions for providing such service are just
23 and reasonable.

24 “(2) REPORT.—In the report required by sec-
25 tion 706 of the Telecommunications Act of 1996 (47

1 U.S.C. 1302), the Commission shall collect informa-
2 tion on the availability, promotion, average speed,
3 and average pricing of stand-alone broadband Inter-
4 net access service offered by broadband Internet ac-
5 cess providers.

6 “(3) ELIGIBILITY TO ACCESS ANY UNIVERSAL
7 SERVICE FUND FOR BROADBAND.—If the Commis-
8 sion establishes a universal service fund for
9 broadband Internet services, only broadband Inter-
10 net access service providers that offer stand-alone
11 broadband service shall be eligible to participate in
12 the fund.

13 “(h) ENFORCEMENT, LIABILITY, AND RECOVERY OF
14 DAMAGES.—

15 “(1) EXPEDITED COMPLAINT PROCESS.—With-
16 in 180 days after the date of enactment of the Inter-
17 net Freedom, Broadband Promotion, and Consumer
18 Protection Act of 2011, the Commission shall pre-
19 scribe rules to permit any aggrieved person to file a
20 complaint with the Commission concerning a viola-
21 tion of subsections (b), (c), or (g) of this section,
22 and establish enforcement and expedited adjudica-
23 tory review procedures including the resolution of
24 complaints not later than 90 days after such com-
25 plaint was filed, except for good cause shown.

1 “(2) LIABILITY OF BROADBAND INTERNET AC-
2 CESS SERVICE PROVIDERS FOR DAMAGES.—If a
3 broadband Internet access service provider does, or
4 causes or permits to be done, any act, matter, or
5 thing that is prohibited under this section, or fails
6 to do any act, matter, or thing required by this sec-
7 tion to be done, the provider shall be liable to the
8 person or persons injured thereby for the full
9 amount of damages sustained in consequence of any
10 such violation of the provisions of this section, to-
11 gether with a reasonable counsel or attorney’s fee, as
12 determined by the Commission.

13 “(3) VENUE.—Any person claiming to be dam-
14 aged by any broadband Internet access provider sub-
15 ject to the provisions of this section may either make
16 a complaint to the Commission as provided for in
17 paragraph (1), or may bring suit for the recovery of
18 the damages in a district court of the United States
19 that meets applicable requirements relating to venue
20 under section 1391 of title 28, United States Code.
21 A claimant may not bring an action in a Federal
22 district court if the claimant has filed a complaint
23 with the Commission under paragraph (1) with re-
24 spect to the same violation.

25 “(i) ENFORCEMENT BY STATES.—

1 “(1) IN GENERAL.—The chief legal officer of a
2 State, or any other State officer authorized by law
3 to bring actions on behalf of the residents of a
4 State, may bring a civil action, as *parens patriae*, on
5 behalf of the residents of that State in an appro-
6 priate district court of the United States to enforce
7 this section or to impose civil penalties for violation
8 of this section, whenever the chief legal officer or
9 other State officer has reason to believe that the in-
10 terests of the residents of the State have been or are
11 being threatened or adversely affected by a violation
12 of this section.

13 “(2) NOTICE.—The chief legal officer or other
14 State officer shall serve written notice on the Com-
15 mission of any civil action under paragraph (1) prior
16 to initiating such civil action. The notice shall in-
17 clude a copy of the complaint to be filed to initiate
18 such civil action, except that if it is not feasible for
19 the State to provide such prior notice, the State
20 shall provide such notice immediately upon insti-
21 tuting such civil action.

22 “(3) AUTHORITY TO INTERVENE.—Upon receiv-
23 ing the notice required by paragraph (2), the Com-
24 mission shall have the right—

25 “(A) to intervene in the action;

1 “(B) upon so intervening, to be heard on
2 all matters arising therein; and

3 “(C) to file petitions for appeal.

4 “(4) RULE OF CONSTRUCTION.—For purposes
5 of bringing any civil action under paragraph (1),
6 nothing in this subsection shall prevent the chief
7 legal officer or other State officer from exercising
8 the powers conferred on that officer by the laws of
9 such State to conduct investigations or to administer
10 oaths or affirmations or to compel the attendance of
11 witnesses or the production of documentary and
12 other evidence.

13 “(5) VENUE; SERVICE OF PROCESS.—

14 “(A) VENUE.—An action brought under
15 paragraph (1) shall be brought in a district
16 court of the United States that meets applicable
17 requirements relating to venue under section
18 1391 of title 28, United States Code.

19 “(B) SERVICE OF PROCESS.—In an action
20 brought under paragraph (1)—

21 “(i) process may be served without re-
22 gard to the territorial limits of the district
23 or of the State in which the action is insti-
24 tuted; and

1 “(ii) a person who participated in an
2 alleged violation that is being litigated in
3 the civil action may be joined in the civil
4 action without regard to the residence of
5 the person.

6 “(j) COMMISSION AUTHORITY.—The Commission
7 may perform any and all acts, make such rules and regula-
8 tions and issue such orders, not inconsistent with this sec-
9 tion, as may be necessary to implement the purposes of
10 this section.

11 “(k) OTHER LAWS AND CONSIDERATIONS.—

12 “(1) Nothing in this section supersedes any ob-
13 ligation or authorization a provider or broadband
14 Internet access service may have to address the
15 needs of emergency communications or law enforce-
16 ment, public safety, or national security authorities,
17 consistent with or as permitted by applicable law, or
18 limits the provider’s ability to do so.

19 “(2) Nothing in this section authorizes a pro-
20 vider of broadband Internet access service to address
21 copyright infringement or other unlawful activity of
22 providers, subscribers, or users, beyond its obliga-
23 tions under the Digital Millennium Copyright Act
24 (17 U.S.C. 101 note), the amendments made by that
25 Act, and consistent other applicable laws.

1 “(l) STUDIES.—Within one year after the date of en-
2 actment of this Act the Government Accountability Office
3 shall complete and submit reports to the Senate Com-
4 mittee on Commerce, Science, and Transportation, and
5 the House Committee on Energy and Commerce, on the
6 evolution of commercial and other arrangements by which
7 broadband Internet access service providers interconnect
8 to Internet backbone providers and intermediary net-
9 works, and assess whether, as the volume and mix of
10 Internet Protocol traffic requested by and transported to
11 and from the customers of broadband Internet access serv-
12 ice providers has changed over time, there is a market fail-
13 ure with respect to the existing market mechanisms of
14 transit contracts and non-settlement peering agreements.

15 “(m) DEFINITIONS.—In this section:

16 “(1) AFFILIATED.—The term ‘affiliated’ in-
17 cludes—

18 “(A) a person that (directly or indirectly)
19 owns or controls, is owned or controlled by, or
20 is under common ownership or control with an-
21 other person; and

22 “(B) a person that has a contract or other
23 arrangement with a content, application, or
24 service provider relating to access to or dis-

1 tribution of such content, application or services
2 over the Internet.

3 “(2) BROADBAND INTERNET ACCESS.—The
4 term ‘broadband Internet access’—

5 “(A) means the ability for an end user to
6 transmit and receive data to the Internet using
7 Internet Protocol at peak download data trans-
8 fer rates in excess of 200 kilobits per second,
9 through an always-on connection; but

10 “(B) does not include dial-up access re-
11 quiring an end user to initiate a call across the
12 public switched telephone network to establish a
13 connection.

14 “(3) BROADBAND INTERNET ACCESS SERV-
15 ICE.—The term ‘broadband Internet access service’
16 means any communications service by wire or radio
17 that provides broadband Internet access directly to
18 the public, or to such classes of users as to be effec-
19 tively available directly to the public.

20 “(4) BROADBAND INTERNET ACCESS SERVICE
21 PROVIDER.—The term ‘broadband Internet access
22 service provider’ means a person or entity that oper-
23 ates or resells and controls any facility used to pro-
24 vide an Internet access service directly to the public,
25 whether provided for a fee or for free, and whether

1 provided via wire or radio, except when such service
2 is offered as an incidental component of a non-
3 communications contractual relationship.

4 “(5) END USER.—The term ‘end user’ means
5 any person who, by way of a broadband service,
6 takes and utilizes Internet services, whether provided
7 for a fee, in exchange for an explicit benefit, or for
8 free.”.

9 “(6) INTERNET.—The term ‘Internet’ means a
10 system of interconnected networks that use the
11 Internet Protocol for communications with resources
12 or endpoints reachable, directly or through a proxy,
13 via a globally unique Internet address assigned by
14 the Internet Assigned Numbers Authority or any
15 successor or designee; or any technology the Com-
16 mission shall find to be functionally equivalent.

17 “(7) INTERCONNECTED VOICE OVER INTERNET
18 PROTOCOL (VOIP) SERVICE.—The term ‘Inter-
19 connected VoIP service’ means a service that enables
20 real-time, two-way voice communications; requires a
21 broadband connection from the user’s location; re-
22 quires Internet protocol compatible customer prem-
23 ises equipment; and permits users generally to re-
24 ceive calls that originate on the public switched tele-
25 phone network and to terminate calls to the public

1 switched telephone network subject to section 9.3 of
2 the Commission's regulations (47 C.F.R. 9.3).

○