

Union Calendar No. 303

109TH CONGRESS
2^D SESSION

H. R. 5417

[Report No. 109-541]

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

JUNE 29, 2006

Additional sponsors: Mr. ANDREWS and Mr. VISCLOSKY

JUNE 29, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on May 18, 2006]

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Internet Freedom and*
3 *Nondiscrimination Act of 2006”.*

4 **SEC. 2. PURPOSES.**

5 *The purposes of this Act are to promote competition,*
6 *to facilitate trade, and to ensure competitive and non-*
7 *discriminatory access to the Internet.*

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

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

10 *(1) by redesignating section 28 as section 29,*

11 *(2) by inserting after section 27 the following:*

12 *“DISCRIMINATION BY BROADBAND NETWORK PROVIDERS*

13 *“SEC. 28. (a) It shall be unlawful for any broadband*
14 *network provider—*

15 *“(1) to fail to provide its broadband network*
16 *services on reasonable and nondiscriminatory terms*
17 *and conditions such that any person can offer or pro-*
18 *vide content, applications, or services to or over the*
19 *network in a manner that is at least equal to the*
20 *manner in which the provider or its affiliates offer*
21 *content, applications, and services, free of any sur-*
22 *charge on the basis of the content, application, or*
23 *service;*

24 *“(2) to refuse to interconnect its facilities with*
25 *the facilities of another provider of broadband net-*

1 *work services on reasonable and nondiscriminatory*
2 *terms or conditions;*

3 “(3)(A) *to block, to impair, to discriminate*
4 *against, or to interfere with the ability of any person*
5 *to use a broadband network service to access, to use,*
6 *to send, to receive, or to offer lawful content, applica-*
7 *tions or services over the Internet; or*

8 “(B) *to impose an additional charge to avoid*
9 *any conduct that is prohibited by this subsection;*

10 “(4) *to prohibit a user from attaching or using*
11 *a device on the provider’s network that does not phys-*
12 *ically damage or materially degrade other users’ utili-*
13 *zation of the network; or*

14 “(5) *to fail to clearly and conspicuously disclose*
15 *to users, in plain language, accurate information con-*
16 *cerning any terms, conditions, or limitations on the*
17 *broadband network service.*

18 “(b) *If a broadband network provider prioritizes or of-*
19 *fers enhanced quality of service to data of a particular type,*
20 *it must prioritize or offer enhanced quality of service to*
21 *all data of that type (regardless of the origin or ownership*
22 *of such data) without imposing a surcharge or other consid-*
23 *eration for such prioritization or enhanced quality of serv-*
24 *ice.*

1 “(c) *Nothing in this section shall be construed to pre-*
2 *vent a broadband network provider from taking reasonable*
3 *and nondiscriminatory measures—*

4 “(1) *to manage the functioning of its network, on*
5 *a systemwide basis, provided that any such manage-*
6 *ment function does not result in discrimination be-*
7 *tween content, applications, or services offered by the*
8 *provider and unaffiliated provider;*

9 “(2) *to give priority to emergency communica-*
10 *tions;*

11 “(3) *to prevent a violation of a Federal or State*
12 *law, or to comply with an order of a court to enforce*
13 *such law;*

14 “(4) *to offer consumer protection services (such*
15 *as parental controls), provided that a user may refuse*
16 *or disable such services;*

17 “(5) *to offer special promotional pricing or other*
18 *marketing initiatives; or*

19 “(6) *to prioritize or offer enhanced quality of*
20 *service to all data of a particular type (regardless of*
21 *the origin or ownership of such data) without impos-*
22 *ing a surcharge or other consideration for such*
23 *prioritization or quality of service.*

24 “(d) *For purposes of this section—*

25 “(1) *the term ‘affiliate’ means—*

1 “(A) a person that directly or indirectly
2 owns, controls, is owned or controlled by, or is
3 under the common ownership or control with an-
4 other person; or

5 “(B) a person that has a contract or other
6 arrangement with a content or service provider
7 concerning access to, or distribution of, such con-
8 tent or such service;

9 “(2) the term ‘broadband network provider’
10 means a person engaged in commerce that owns, con-
11 trols, operates, or resells any facility used to provide
12 broadband network service to the public, by whatever
13 technology and without regard to whether provided
14 for a fee, in exchange for an explicit benefit, or for
15 free;

16 “(3) the term ‘broadband network service’ means
17 a 2-way transmission service that connects to the
18 Internet and transmits information at an average
19 rate of at least 200 kilobits per second in at least one
20 direction, irrespective of whether such transmission is
21 provided separately or as a component of another
22 service; and

23 “(4) the term ‘user’ means a person who takes
24 and uses broadband network service, whether provided

1 *for a fee, in exchange for an explicit benefit, or for*
2 *free.”, and*

3 *(3) by amending subsection (a) and the 1st sen-*
4 *tence of subsection (b) of section 11 by striking “and*
5 *8” and inserting “8, and 28”.*

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