

110TH CONGRESS
2D SESSION

H. R. 5994

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

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2008

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

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Internet Freedom and
5 Nondiscrimination Act of 2008”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to promote competition,
8 to facilitate trade, and to ensure competitive and non-
9 discriminatory 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

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

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

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

11 “(b) If a broadband network provider prioritizes or
12 offers enhanced quality of service to data of a particular
13 type, it must prioritize or offer enhanced quality of service
14 to all data of that type (regardless of the origin or owner-
15 ship of such data) without imposing a surcharge or other
16 consideration for such prioritization or enhanced quality
17 of service.

18 “(c) Nothing in this section shall be construed to pre-
19 vent a broadband network provider from taking reasonable
20 and nondiscriminatory measures—

21 “(1) to manage the functioning of its network,
22 on a systemwide basis, provided that any such man-
23 agement function does not result in discrimination
24 between content, applications, or services offered by
25 the provider and unaffiliated provider;

1 “(2) to give priority to emergency communica-
2 tions;

3 “(3) to prevent a violation of a Federal or State
4 law, or to comply with an order of a court to enforce
5 such law;

6 “(4) to offer consumer protection services (such
7 as parental controls), provided that a user may
8 refuse or disable such services;

9 “(5) to offer special promotional pricing or
10 other marketing initiatives; or

11 “(6) to prioritize or offer enhanced quality of
12 service to all data of a particular type (regardless of
13 the origin or ownership of such data) without impos-
14 ing a surcharge or other consideration for such
15 prioritization or quality of service.

16 “(d) For purposes of this section—

17 “(1) the term ‘affiliate’ means—

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

22 “(B) a person that has a contract or other
23 arrangement with a content or service provider
24 concerning access to, or distribution of, such
25 content or such service;

1 “(2) the term ‘broadband network provider’
2 means a person engaged in commerce that owns,
3 controls, operates, or resells any facility used to pro-
4 vide broadband network service to the public, by
5 whatever technology and without regard to whether
6 provided for a fee, in exchange for an explicit ben-
7 efit, or for free;

8 “(3) the term ‘broadband network service’
9 means a 2-way transmission service that connects to
10 the Internet and transmits information at an aver-
11 age rate of at least 200 kilobits per second in at
12 least one direction, irrespective of whether such
13 transmission is provided separately or as a compo-
14 nent of another service; and

15 “(4) the term ‘user’ means a person who takes
16 and uses broadband network service, whether pro-
17 vided for a fee, in exchange for an explicit benefit,
18 or for free.”, and

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

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