

[STAFF WORKING DRAFT]

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S. _____

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 —, 2011

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Internet Freedom,
3 Broadband Promotion, and Consumer Protection Act of
4 2011”.

5 **SEC. 2. FINDINGS.**

6 The Congress finds the following:

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

10 (2) The broadband Internet constitutes the
11 most important two-way communications infrastruc-
12 ture of our time.

13 (3) Access to the broadband Internet is critical
14 for job creation, economic growth, and technological
15 innovation.

16 (4) Access to the broadband Internet creates
17 opportunity for more direct civic engagement, in-
18 creased educational attainment, and enables free
19 speech.

20 (5) The network design principles fostering the
21 development of the broadband Internet to date, an
22 end-to-end design, layered architecture, and open
23 standards, promotes innovation at the edge of the
24 network and gives end users choice and control of
25 their online activities.

1 (6) These network design principles have led to
2 the network neutrality of the Internet, where there
3 are no paid for premium fast lanes and best effort
4 slow lanes.

5 (7) According to the Federal Communications
6 Commission in 2009, technologies now allow network
7 operators to distinguish different classes of Internet
8 traffic, to offer different qualities-of-service, and to
9 charge different prices to each class of Internet traf-
10 fic.

11 (8) Broadband Internet access service providers
12 have an economic interest to discriminate in favor of
13 their own or affiliated services, content, and applica-
14 tions and against other providers of such services,
15 content, and applications.

16 (9) Broadband Internet access service providers
17 have an economic interest in, and the ability to
18 adopt, pay-for-priority schemes to the detriment of
19 job creation, economic growth, innovation, and con-
20 sumer protections.

21 (10) The market for broadband today dem-
22 onstrates substantial obstacles to effective competi-
23 tion, to the protection of users, and to the continued
24 viability of a free and open Internet.

1 (11) These obstacles impede the universal de-
2 ployment and adoption of broadband, impede meet-
3 ing the goals set forth in the National Broadband
4 Plan, and perpetuate a digital divide.

5 (12) The United States needs clear Federal pol-
6 icy that preserves the historically free and open na-
7 ture of the Internet, expands the benefits of
8 broadband, and promotes universally available and
9 affordable broadband service that does not chill in-
10 novation or speech within the content, applications,
11 and services available online.

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

17 **SEC. 3. INTERNET FREEDOM.**

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

21 **“SEC. 280. INTERNET FREEDOM AND BROADBAND PRO-**
22 **MOTION.**

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

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

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

5 “(3) to protect consumers, innovators and en-
6 trepreneurs from harmful, discriminatory, or anti-
7 competitive behavior by providers of broadband
8 Internet access service.

9 “(b) BROADBAND INTERNET ACCESS SERVICE AND
10 CHARGES.—

11 “(1) It shall be the duty of every broadband
12 Internet access service provider to furnish such
13 broadband Internet access service to end users upon
14 reasonable request.

15 “(2) Broadband Internet access service pro-
16 viders shall not require end users to purchase voice
17 grade telephone service, commercial mobile radio
18 voice services, or multichannel-video programming
19 distribution services or other specialized services as
20 a condition on the purchase of any broadband Inter-
21 net access service.

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

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

6 “(A) the broadband Internet access service
7 provider shall permit such assurances for all
8 Internet Protocol packets chosen by the end
9 user, without regard to the content, applica-
10 tions, or services involved; and

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

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

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

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

1 “(3) prevent or interfere with competition
2 among network, applications, service or content pro-
3 viders;

4 “(4) engage in discrimination against any law-
5 ful Internet content, application, service, or service
6 provider with respect to network management prac-
7 tices, network performance characteristics, or com-
8 mercial terms and conditions;

9 “(5) give preference to affiliated content, appli-
10 cations, or services with respect to network manage-
11 ment practices, network performance characteristics,
12 or commercial terms and conditions;

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

18 “(7) prioritize among or between content, appli-
19 cations, and services, or among or between different
20 types of content, applications, and services unless
21 the end user requests to have such prioritization;

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

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

3 “(d) REASONABLE NETWORK MANAGEMENT.—

4 “(1) IN GENERAL.—Nothing in this section
5 shall prohibit a broadband Internet access service
6 provider from engaging in reasonable network man-
7 agement.

8 “(2) REASONABLENESS PRESUMPTION.—For
9 purposes of this section, a network management
10 practice is presumed to be reasonable for a
11 broadband Internet access service provider only if it
12 is—

13 “(A) essential for a legitimate network
14 management purpose assuring the operation of
15 the network;

16 “(B) appropriate for achieving the stated
17 purpose;

18 “(C) narrowly tailored; and

19 “(D) among the least restrictive, least dis-
20 criminatory, and least constricting of consumer
21 choice available.

22 “(3) FACTORS TO BE CONSIDERED.—In deter-
23 mining whether a network management practice is
24 reasonable, the Commission shall take into account
25 the particular network architecture and any tech-

1 nology and operational limitations of the broadband
2 Internet access service provider.

3 “(4) LIMITATION.—A network management
4 practice may not be considered to be a reasonable
5 network management if the broadband Internet ac-
6 cess service provider charges content, applications,
7 or other online service providers for differing levels
8 of quality of service or prioritized delivery of Inter-
9 net Protocol packets.

10 “(e) OTHER REGULATED SERVICES.—This section
11 shall not be construed to prevent broadband Internet ac-
12 cess service providers from offering interconnected Voice
13 over Internet Protocol (VoIP) services or multichannel-
14 video programming distribution services regulated under
15 title VI of this Act on transmission capacity also used by
16 broadband Internet access services.

17 “(f) TRANSPARENCY.—

18 “(1) IN GENERAL.—A provider of broadband
19 Internet access service—

20 “(A) shall disclose publicly on its external
21 website and at the point of sale accurate infor-
22 mation regarding the network management
23 practices, network performance, and commercial
24 terms of its broadband Internet access service
25 in plain language sufficient for end users to

1 make informed choices regarding use of such
2 services, and for content, application, service,
3 and device providers to develop, market, and
4 maintain Internet offerings; and

5 “(B) shall disclose publicly on its external
6 website and at the point of sale any other prac-
7 tices that affect communications between a user
8 and a content, application, or service provider
9 in the ordinary, routine use of such broadband
10 service.

11 “(2) EXEMPTIONS.—The Commission may ex-
12 empt certain kinds of information from disclosure on
13 the grounds that it is competitively sensitive or could
14 compromise network security. Within 90 days after
15 the date of enactment of the Internet Freedom,
16 Broadband Promotion, and Consumer Protection
17 Act of 2011, the Commission shall conclude a rule-
18 making proceeding to implement this subsection.

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

20 “(1) IN GENERAL.—Within 180 days after the
21 date of enactment of the Internet Freedom,
22 Broadband Promotion, and Consumer Protection
23 Act of 2011, the Commission shall promulgate rules
24 to ensure that broadband Internet access providers
25 do not require the purchase of voice grade telephone

1 service, commercial mobile radio voice services, or
2 multichannel-video programming distribution serv-
3 ices as a condition of purchasing any broadband
4 Internet access service, and that the rates, terms,
5 and conditions for providing such service are just
6 and reasonable.

7 “(2) REPORT.—In the report required by sec-
8 tion 706 of the Telecommunications Act of 1996 (47
9 U.S.C. 1302), the Commission shall collect informa-
10 tion on the availability, promotion, average speed,
11 and average pricing of stand-alone broadband Inter-
12 net access service offered by broadband Internet ac-
13 cess providers.

14 “(3) ELIGIBILITY TO ACCESS ANY UNIVERSAL
15 SERVICE FUND FOR BROADBAND.—If the Commis-
16 sion establishes a universal service fund for
17 broadband Internet services, only broadband Inter-
18 net access service providers that offer stand-alone
19 broadband service shall be eligible to participate in
20 the fund.

21 “(h) ENFORCEMENT, LIABILITY, AND RECOVERY OF
22 DAMAGES.—

23 “(1) EXPEDITED COMPLAINT PROCESS.—With-
24 in 180 days after the date of enactment of the Inter-
25 net Freedom, Broadband Promotion, and Consumer

1 Protection Act of 2011, the Commission shall pre-
2 scribe rules to permit any aggrieved person to file a
3 complaint with the Commission concerning a viola-
4 tion of subsections (b), (c), or (g) of this section,
5 and establish enforcement and expedited adjudica-
6 tory review procedures including the resolution of
7 complaints not later than 90 days after such com-
8 plaint was filed, except for good cause shown.

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

21 “(3) VENUE.—Any person claiming to be dam-
22 aged by any broadband Internet access provider sub-
23 ject to the provisions of this section may either make
24 a complaint to the Commission as provided for in
25 paragraph (1), or may bring suit for the recovery of

1 the damages in a district court of the United States
2 that meets applicable requirements relating to venue
3 under section 1391 of title 28, United States Code.
4 A claimant may not bring an action in a Federal
5 district court if the claimant has filed a complaint
6 with the Commission under paragraph (1) with re-
7 spect to the same violation.

8 “(i) ENFORCEMENT BY STATES.—

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

21 “(2) NOTICE.—The chief legal officer or other
22 State officer shall serve written notice on the Com-
23 mission of any civil action under paragraph (1) prior
24 to initiating such civil action. The notice shall in-
25 clude a copy of the complaint to be filed to initiate

1 such civil action, except that if it is not feasible for
2 the State to provide such prior notice, the State
3 shall provide such notice immediately upon insti-
4 tuting such civil action.

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

8 “(A) to intervene in the action;

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

11 “(C) to file petitions for appeal.

12 “(4) RULE OF CONSTRUCTION.—For purposes
13 of bringing any civil action under paragraph (1),
14 nothing in this subsection shall prevent the chief
15 legal officer or other State officer from exercising
16 the powers conferred on that officer by the laws of
17 such State to conduct investigations or to administer
18 oaths or affirmations or to compel the attendance of
19 witnesses or the production of documentary and
20 other evidence

21 “(5) VENUE; SERVICE OF PROCESS.—

22 “(A) VENUE.—An action brought under
23 paragraph (1) shall be brought in a district
24 court of the United States that meets applicable

1 requirements relating to venue under section
2 1391 of title 28, United States Code.

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

5 “(i) process may be served without re-
6 gard to the territorial limits of the district
7 or of the State in which the action is insti-
8 tuted; and

9 “(ii) a person who participated in an
10 alleged violation that is being litigated in
11 the civil action may be joined in the civil
12 action without regard to the residence of
13 the person.

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

19 “(k) OTHER LAWS AND CONSIDERATIONS.—

20 “(1) Nothing in this section supersedes any ob-
21 ligation or authorization a provider or broadband
22 Internet access service may have to address the
23 needs of emergency communications or law enforce-
24 ment, public safety, or national security authorities,

1 consistent with or as permitted by applicable law, or
2 limits the provider's ability to do so.

3 “(2) Nothing in this section authorizes a pro-
4 vider of broadband Internet access service to address
5 copyright infringement or other unlawful activity of
6 providers, subscribers, or users, beyond its obliga-
7 tions under the Digital Millennium Copyright Act
8 (17 U.S.C. 101 note), the amendments made by that
9 Act, and consistent other applicable laws.

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

24 “(m) DEFINITIONS.—In this section:

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

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

7 “(B) a person that has a contract or other
8 arrangement with a content, application, or
9 service provider relating to access to or dis-
10 tribution of such content, application or services
11 over the Internet.

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

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

19 “(B) does not include dial-up access re-
20 quiring an end user to initiate a call across the
21 public switched telephone network to establish a
22 connection.

23 “(3) BROADBAND INTERNET ACCESS SERV-
24 ICE.—The term ‘broadband Internet access service’
25 means any communications service by wire or radio

1 that provides broadband Internet access directly to
2 the public, or to such classes of users as to be effec-
3 tively available directly to the public.

4 “(4) BROADBAND INTERNET ACCESS SERVICE
5 PROVIDER.—The term ‘broadband Internet access
6 service provider’ means a person or entity that oper-
7 ates or resells and controls any facility used to pro-
8 vide an Internet access service directly to the public,
9 whether provided for a fee or for free, and whether
10 provided via wire or radio, except when such service
11 is offered as an incidental component of a non-
12 communications contractual relationship.

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

18 “(6) INTERNET.—The term ‘Internet’ means a
19 system of interconnected networks that use the
20 Internet Protocol for communications with resources
21 or endpoints reachable, directly or through a proxy,
22 via a globally unique Internet address assigned by
23 the Internet Assigned Numbers Authority or any
24 successor or designee; or any technology the Com-
25 mission shall find to be functionally equivalent.

1 “(7) INTERCONNECTED VOICE OVER INTERNET
2 PROTOCOL (VoIP) SERVICE.—The term ‘Inter-
3 connected VoIP service’ means a service that enables
4 real-time, two-way voice communications; requires a
5 broadband connection from the user’s location; re-
6 quires Internet protocol compatible customer prem-
7 ises equipment; and permits users generally to re-
8 ceive calls that originate on the public switched tele-
9 phone network and to terminate calls to the public
10 switched telephone network subject to section 9.3 of
11 the Commission’s regulations (47 C.F.R. 9.3).

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