

[STAFF WORKING DRAFT]

APRIL 4, 2006

109TH CONGRESS
2ND SESSION

S. _____

To amend the Communications Act of 1934 to ensure net neutrality.

IN THE SENATE OF THE UNITED STATES

APRIL —, 2006

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

A BILL

To amend the Communications Act of 1934 to ensure net neutrality.

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 Neutrality
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Our nation's economy, education, and soci-
2 ety are increasingly dependent on broadband tele-
3 communications networks.

4 (2) Over 40 million Americans now subscribe to
5 broadband services, which represents more than one-
6 third of all American homes.

7 (3) The nation's high-technology industry,
8 which accounts for hundreds of billions in annual
9 sales revenues and contributes tremendously to our
10 nation's gross domestic product, depends upon un-
11 fettered Internet access to offer services and run
12 software applications over the Internet.

13 (4) The United States' tremendous leadership
14 in high-technology industries stems directly from a
15 United States communications network that required
16 network operators to keep their networks open to all
17 users and uses that did not harm the network.

18 (5) The Internet provides a world-wide medium
19 of communications that operates under a model that
20 has low barriers to entry to web-based content, ap-
21 plications, or services.

22 (6) Because of recent Commission and court
23 decisions, these features of the Internet are no
24 longer certain, since network owners could claim

1 control over who can offer services over the Internet
2 using their broadband pipes.

3 (7) The high-technology economy would be se-
4 verely harmed if Internet content providers could not
5 reach consumers without interference from network
6 operators.

7 (8) The overwhelming majority of American
8 consumers, 94 percent according to a recent Com-
9 mission study, take a broadband connection from 1
10 of 2 companies: the local telephone company or the
11 cable company.

12 (9) Several economic studies explain that net-
13 work operators have strong profit-driven incentives
14 to discriminate against certain online providers in
15 order to reap additional profits in the upstream
16 markets.

17 (10) A basic non-discrimination policy to ensure
18 that the Internet remains open to independent, serv-
19 ice and content providers will give certainty to inves-
20 tors in technologies and services that rely on and use
21 the Internet, and those investment signals will pro-
22 mote the United States' global leadership in high-
23 technology industries.

24 (11) A basic non-discrimination policy will allow
25 network operators to manage their networks to pre-

1 vent congestion, ensure reliability, and prevent spam
2 or other illegal uses, just as they always have.

3 (12) Because of the tremendous importance of
4 broadband networks to our future economic growth,
5 our high-technology manufacturing sector, and our
6 First Amendment rights to information free of cen-
7 sorship or control, the United States should adopt a
8 policy to ensure that the Internet remains open and
9 accessible.

10 **SEC. 3. POLICY.**

11 It is the policy of the United States—

12 (1) to maintain the freedom to use the Internet
13 without interference from network operators, which
14 has been the basis for Internet commerce and user
15 expectations since its inception;

16 (2) to ensure the Internet remains a vital force
17 in the United States economy, thereby enabling the
18 country to preserve its global leadership in online
19 commerce and technological innovation;

20 (3) to preserve and promote the open and inter-
21 connected nature of the Internet that enables con-
22 sumers to reach, and service providers to offer, law-
23 ful content, applications, or services of their choos-
24 ing using their selection of non- harmful devices;

1 (4) to encourage escalating broadband trans-
2 mission speeds and capabilities that reflect the evol-
3 ving nature of the Internet and improvements in ac-
4 cess technology, which enables consumers to use and
5 enjoy, and service providers to offer, a growing array
6 of content, applications, or services available over
7 the Internet;

8 (5) to provide for disclosure of relevant infor-
9 mation about the technical capabilities of the Inter-
10 net access provided to users to inform their choices
11 about services they rely on to access and use the
12 Internet and detect problems; and

13 (6) to ensure vigorous and prompt enforcement
14 of this section’s requirements to safeguard and pro-
15 mote competition, innovation, market certainty, and
16 consumer empowerment.

17 **SEC. 4. INTERNET NEUTRALITY.**

18 Title I of the Communications Act of 1934 (47
19 U.S.C. et seq.) is amended by adding at the end the fol-
20 lowing:

21 **“SEC. 12. INTERNET NEUTRALITY.**

22 “(a) DUTY OF BROADBAND NETWORK OPERA-
23 TORS.—With respect to any broadband connection offered
24 to the public, each broadband network operator has the
25 duty, on a reasonable and nondiscriminatory basis—

1 “(1) not to block, interfere with, discriminate
2 against, impair, or degrade the ability of any person
3 to use a broadband connection to access, use, send,
4 post, receive, or offer any lawful content, applica-
5 tion, or service made available via the Internet;

6 “(2) to enable a user to attach and use any de-
7 vice to the operator’s network that does not phys-
8 ically damage, make unauthorized use of, or materi-
9 ally degrade other subscribers’ use of the network;

10 “(3) to provide and make available to users in-
11 formation about their Internet access and the speed,
12 nature, and limitations of their broadband connec-
13 tion;

14 “(4) to provide on a reasonable and nondiscrim-
15 inatory basis the ability to offer, provide or post con-
16 tent, applications, or services into the operator’s net-
17 work in a manner that is at least equal to the speed
18 and quality of service that the broadband network
19 operator offers to affiliated content, applications, or
20 services, and not to impose a charge on the basis of
21 such content, applications, or services;

22 “(5) to prioritize content, applications, or serv-
23 ices within the operator’s networks based only on the
24 type of content, applications, or services and the

1 level of service purchased by the user, without
2 charge for such prioritization;

3 “(6) to make available the same bandwidth the
4 operator uses to provide affiliated content, applica-
5 tions, or services in a way that permits a user to ac-
6 cess and enjoy similar content, applications, or serv-
7 ices offered by other persons; and

8 “(7) not to install or utilize network features,
9 functions, or capabilities that impede or hinder com-
10 pliance with this section.

11 “(b) CERTAIN MANAGEMENT AND BUSINESS-RE-
12 LATED PRACTICES.—Subsection (a) shall not be construed
13 to prohibit a broadband network operator from taking rea-
14 sonable and nondiscriminatory measures—

15 “(1) to manage its network and protect network
16 security or the security of a user’s computer on the
17 network;

18 “(2) to offer a broadband connection to persons
19 at defined levels of bandwidth and different prices;

20 “(3) to offer consumer protection services (in-
21 cluding parental controls for indecency or unwanted
22 content, software for the prevention of unsolicited
23 commercial electronic messages, or other similar ca-
24 pabilities), if users are provided clear and accurate
25 advance notice of a user’s ability to refuse or disable

1 individually provided consumer protection capabilities;
2

3 “(4) to offer to users a broadband video service
4 or other service that requires prioritization of content,
5 applications or services, if offering does not
6 cause the broadband network operator to violate any
7 duty under subsection (a); or

8 “(E) where otherwise required by law, to prevent
9 any violation of Federal or State law.

10 “(c) IMPLEMENTATION.—

11 “(1) IN GENERAL.—Within 180 days after the
12 date of enactment of the Internet Neutrality Act,
13 the Commission shall prescribe rules to implement
14 this section that—

15 “(A) permit any aggrieved party, including
16 any content, application or service provider, or
17 device manufacturer on behalf of itself or any
18 user of its content, application, service or device,
19 to file a complaint with the Commission
20 concerning any violation of this section; and

21 “(B) establish enforcement procedures and
22 mechanisms consistent with the requirements of
23 this subsection.

24 “(2) 90-DAY RULING REQUIRED.—The Commission
25 shall rule on any complaint filed under para-

1 graph (1) within 90 days after it is received by the
2 Commission. If the Commission does not issue a rul-
3 ing before the end of that 90-day period, the com-
4 plaint, and any relief requested therein, shall be
5 deemed granted.

6 “(3) ORDERS BASED ON PRIMA FACIE SHOW-
7 ING.—Within 5 days after receiving a complaint
8 under paragraph (1) that includes a prima facie
9 showing of a violation of this section, the Commis-
10 sion shall issue a cease-and-desist or other appro-
11 priate order against the person alleged to have com-
12 mitted the violation and the order shall remain in ef-
13 fect until the Commission rules on the complaint.
14 The Commission may extend the order to other per-
15 sons not named in the complaint on the basis of
16 practices common to those of the alleged violator if
17 the Commission determines that it is in the public
18 interest.

19 “(4) USE OF MEDIATION AND ARBITRATION.—
20 The Commission may use mediation, arbitration, or
21 other means to resolve any dispute arising out of a
22 complaint filed under paragraph (1).

23 “(d) ENFORCEMENT.—

1 “(1) IN GENERAL.—The Commission shall en-
2 force compliance with this section under title V of
3 this Act, except that—

4 “(A) no forfeiture liability shall be deter-
5 mined under section 503(b) against any person
6 unless such person receives the notice required
7 by section 503(b)(3) or section 503(b)(4) of
8 this Act; and

9 “(B) the provisions of section 503(b)(5)
10 shall not apply.

11 “(2) SPECIAL ORDERS.—In addition to other
12 remedies provided by this Act, the Commission may
13 issue any appropriate order, including an order di-
14 recting a broadband network operator to pay dam-
15 ages to a complaining party for a violation of this
16 section or the regulations hereunder, to enforce the
17 provisions of this section.

18 “(e) REPORTS.—Beginning 1 year after the date of
19 enactment of the Internet Neutrality Act, the Commission
20 shall report annually to the Senate Committee on Com-
21 merce, Science, and Transportation and the House of Rep-
22 resentatives Committee on Energy and Commerce on the
23 nature and number of complaints filed under subsection
24 (c)(1) and the Commission’s response to such complaints.

25 “(f) 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; or

7 “(B) a person that has a contract or other
8 arrangement with a content, applications or
9 service provider concerning access to or dis-
10 tribution of such content, applications or serv-
11 ice.

12 “(2) BROADBAND CONNECTION.—The term
13 ‘broadband connection’ means the entirety of a 2-
14 way, interactive, transport capability that, regardless
15 of the physical transmission facilities used (including
16 radiofrequency transmissions), connects to the Inter-
17 net and transports information at an average rate of
18 at least 200 kilobits per second in at least one direc-
19 tion, and that allows a user to access or view the
20 content and services widely offered on the Internet.
21 Beginning 2 years after the date of enactment of the
22 Internet Neutrality Act, the Commission shall revise
23 this definition biennially for the purpose of ensuring
24 that the term reflects broadband capability available
25 to users and reflects technological developments.

1 “(3) BROADBAND NETWORK OPERATOR.—The
2 term ‘broadband network operator’ means a person
3 that owns, controls, operates, or resells transmission
4 facilities used to provide a broadband connection and
5 offers a broadband connection to the public.

6 “(4) INTERNET ACCESS.—The term ‘Internet
7 access’ means offering the ability to access—

8 “(A) the interconnected world-wide net-
9 work of networks that comprise the Internet, or
10 the content, services or applications that reside
11 therein, that employ the Transmission Control
12 Protocol/Internet Protocol, or any predecessor
13 or successor protocols to such protocol, to com-
14 municate information of all kinds by wire or
15 radio to the public, or to such classes of users
16 as to be effectively available directly to the pub-
17 lic, with or without a fee; or

18 “(B) any network or content that is com-
19 parable to the content, services, or applications
20 widely available on the Internet.

21 “(5) USER.—The term ‘user’ means any person
22 who, by way of a broadband connection, takes and
23 utilizes Internet services, whether provided for a fee,
24 in exchange for an explicit benefit, or for free.”.

1 **SEC. 5. REPORT ON DELIVERY OF CONTENT, APPLICA-**
2 **TIONS, AND SERVICES.**

3 Within 270 days after the date of enactment of this
4 Act, the Federal Communications Commission shall trans-
5 mit a report to the Senate Committee on Commerce,
6 Science, and Transportation and the House of Represent-
7 atives Committee on Energy and Commerce on—

8 (1) the ability of providers of content, applica-
9 tions, or services to transmit and send such informa-
10 tion into and over broadband networks;

11 (2) the ability of competing providers of trans-
12 mission capability to transmit and send such infor-
13 mation into and over broadband networks;

14 (3) the price, terms, and conditions for trans-
15 mitting and sending such information into and over
16 broadband networks;

17 (4) the number of entities that transmit and
18 send information into and over broadband networks;
19 and

20 (5) the state of competition among those enti-
21 ties that transmit and send information into and
22 over broadband networks.

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