

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5273

To promote open broadband networks and innovation, foster electronic commerce, and safeguard consumer access to online content and services.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2006

Mr. MARKEY (for himself, Ms. ESHOO, Mr. BOUCHER, and Mr. INSLEE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To promote open broadband networks and innovation, foster electronic commerce, and safeguard consumer access to online content and services.

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 “Network Neutrality  
5        Act of 2006”.

6        **SEC. 2. FINDINGS.**

7        The Congress finds the following:

1           (1) Our Nation’s economy, education, and soci-  
2           ety are increasingly dependent upon broadband tele-  
3           communications networks.

4           (2) These networks also hold the promise of ad-  
5           vancing economic growth, job creation, and techno-  
6           logical innovation.

7           (3) As America becomes ever more reliant upon  
8           such broadband networks, unfettered access to  
9           broadband networks to offer content and services  
10          and run software applications over the Internet is  
11          vital.

12          (4) The global leadership in high technology the  
13          United States provides today stems directly from  
14          historic policies that have ensured that telecommuni-  
15          cations networks are open to all lawful uses and to  
16          all users.

17          (5) The Internet was enabled by those historic  
18          policies and provides an open architecture medium  
19          for world-wide communications, providing low bar-  
20          riers to entry for web-based content, applications,  
21          and services.

22          (6) Due to recent Federal Communications  
23          Commission interpretations and court decisions,  
24          these features of the Internet are no longer certain,  
25          and erosion of these historic policies permits

1 broadband network owners to claim they can control  
2 who can and who cannot offer content and services  
3 over the Internet utilizing their broadband networks.

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

8 (8) The overwhelming majority of residential  
9 consumers take broadband service from one of only  
10 two wireline providers, namely, from the cable oper-  
11 ator or the local telephone company.

12 (9) Broadband network operators have an eco-  
13 nomic interest to discriminate in favor of their own  
14 services and against other online providers.

15 (10) A network neutrality policy based upon the  
16 principle of nondiscrimination is essential to ensure  
17 that broadband telecommunications networks, in-  
18 cluding the Internet, remain open to independent  
19 service and content providers.

20 (11) A network neutrality policy is also essen-  
21 tial to give certainty to entrepreneurs, innovators,  
22 investors, and others who rely upon the Internet for  
23 commercial reasons.

24 (12) A network neutrality policy can also per-  
25 mit broadband network operators to take action to

1 protect network reliability, prevent spam, and thwart  
2 illegal uses in the same way that network operators  
3 have historically done so.

4 (13) Because of the vital role that broadband  
5 networks and the Internet play for America's eco-  
6 nomic growth and our First Amendment rights to  
7 speak, the United States should adopt a clear policy  
8 endorsing the open nature of Internet communica-  
9 tions and freely accessible broadband networks.

10 **SEC. 3. POLICY.**

11 It is the policy of the United States—

12 (1) to maintain the freedom to use broadband  
13 telecommunications networks, including the Internet,  
14 without interference from network operators, as has  
15 been the policy for Internet commerce and the basis  
16 for user expectations since its inception;

17 (2) to ensure that the Internet, and its succes-  
18 sors, remain a vital force in the United States econ-  
19 omy, thereby enabling the country to preserve its  
20 global leadership in online commerce and techno-  
21 logical innovation;

22 (3) to preserve and promote the open and inter-  
23 connected nature of broadband networks that enable  
24 consumers to reach, and service providers to offer,  
25 lawful content, applications, and services of their

1 choosing, using their selection of devices that do not  
2 harm the network;

3 (4) to encourage escalating broadband trans-  
4 mission speeds and capabilities that reflect the evol-  
5 ving nature of the broadband networks, including the  
6 Internet, and improvements in access technology,  
7 which enables consumers to use and enjoy, and serv-  
8 ice providers to offer, a growing array of content,  
9 applications, and services;

10 (5) to provide for disclosure by broadband net-  
11 work operators of prices, terms, and conditions, and  
12 other relevant information, including information  
13 about the technical capabilities of broadband access  
14 provided to users, to inform their choices about serv-  
15 ices they rely on to communicate and to detect prob-  
16 lems; and

17 (6) to ensure vigorous and prompt enforcement  
18 of this Act's requirements to safeguard and promote  
19 competition, innovation, market certainty, and con-  
20 sumer empowerment.

21 **SEC. 4. NET NEUTRALITY SAFEGUARDS.**

22 (a) IN GENERAL.—Each broadband network provider  
23 has the duty to—

24 (1) enable users to utilize their broadband serv-  
25 ice to access all lawful content, applications, and

1 services available over broadband networks, includ-  
2 ing the Internet;

3 (2) not block, impair, degrade, discriminate  
4 against, or interfere with the ability of any person  
5 to utilize their broadband service to—

6 (A) access, use, send, receive, or offer law-  
7 ful content, applications, or services over  
8 broadband networks, including the Internet; or

9 (B) attach any device to the provider's net-  
10 work and utilize such device in connection with  
11 broadband service, provided that any such de-  
12 vice does not physically damage, or materially  
13 degrade other subscribers' use of, the network;

14 (3) clearly and conspicuously disclose to users,  
15 in plain language, accurate information about the  
16 speed, nature, and limitations of their broadband  
17 service;

18 (4) offer, upon reasonable request to any per-  
19 son, a broadband service for use by such person to  
20 offer or access unaffiliated content, applications, and  
21 services;

22 (5) not discriminate in favor of itself in the al-  
23 location, use, or quality of broadband services or  
24 interconnection with other broadband networks;

1           (6) offer a service such that content, applica-  
2           tions, or service providers can offer unaffiliated con-  
3           tent, applications, or services in a manner that is at  
4           least equal to the speed and quality of service that  
5           the operator's content, applications, or service is  
6           accessed and offered, and without interference or  
7           surcharges on the basis of such content, applica-  
8           tions, or services;

9           (7) if the broadband network provider  
10          prioritizes or offers enhanced quality of service to  
11          data of a particular type, prioritize or offer en-  
12          hanced quality of service to all data of that type (re-  
13          gardless of the origin of such data) without imposing  
14          a surcharge or other consideration for such  
15          prioritization or quality of service; and

16          (8) not install network features, functions, or  
17          capabilities that thwart or frustrate compliance with  
18          the requirements or objectives of this section.

19          (b) EXCEPTIONS.—Nothing in this section shall pro-  
20          hibit a broadband network provider from implementing  
21          reasonable and nondiscriminatory measures to—

22                 (1) manage the functioning of its network, on  
23                 a systemwide basis, provided that any such manage-  
24                 ment function does not result in discrimination be-

1       tween content, applications, or services offered by  
2       the provider and unaffiliated providers;

3           (2) offer varying levels of transmission speed or  
4       bandwidth;

5           (3) protect network security or the security of  
6       a user's computer on the network;

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

10          (5) carry or offer a cable service that requires  
11       management of the network to provide enhanced  
12       quality of service, provided that—

13           (A) a broadband service subscriber may  
14       refuse to subscribe to, and avoid charges for,  
15       such cable service while obtaining broadband  
16       services from such operator; and

17           (B) such carrying or offering does not vio-  
18       late any of the duties set forth in subsection  
19       (a); or

20          (6) where otherwise required by law, prevent  
21       any violation of Federal or State law.

22       (c) IMPLEMENTATION.—Within 180 days after the  
23       date of enactment of this Act, the Commission shall adopt  
24       rules that—



1           (1) permit any person to complain to the Com-  
2 mission of anything done or omitted to be done in  
3 violation of any duty, obligation, or requirement  
4 under this section;

5           (2) provide that any complaint filed at the  
6 Commission that alleges a violation of this section  
7 shall be deemed granted unless acted upon by the  
8 Commission within 90 days after its filing;

9           (3) require the Commission, upon prima facie  
10 showing by a complainant of a violation of this sec-  
11 tion, to issue within 48 hours of the filing of any  
12 such complaint, a cease-and-desist or other appro-  
13 priate order against the violator until the complaint  
14 is fully resolved, and, if in the public interest, such  
15 order may affect classes of persons similarly situated  
16 to the complainant or the violator, and any such  
17 order shall be in effect until the Commission resolves  
18 the complaint with an order dismissing the com-  
19 plaint or imposing appropriate remedies to resolve  
20 such complaint; and

21           (4) enable the Commission to use mediation or  
22 arbitration or other means to resolve the dispute.

23           (d) ENFORCEMENT.—This section shall be enforced  
24 under titles IV and V of the Communications Act of 1934  
25 (47 U.S.C. 401, 501 et seq.). A violation of any provision

1 of this section shall be treated as a violation of the Com-  
2 munications Act of 1934, except that the warning require-  
3 ments of section 503(b) shall not apply. In addition to  
4 imposing fines under its title V authority, the Commission  
5 also is authorized to issue any order, including an order  
6 directing a broadband network operator to pay damages  
7 to a complaining party.

8 (e) DEFINITIONS.—For purposes of this section:

9 (1) BROADBAND NETWORK PROVIDER.—The  
10 term “broadband network provider” means a person  
11 or entity that owns, controls, or resells, facilities  
12 used in the transmission of a broadband service and  
13 includes any affiliate, joint venture partner, or agent  
14 of such provider.

15 (2) BROADBAND SERVICE.—The term  
16 “broadband service” means a two-way transmission  
17 capability that—

18 (A) enables the user to access content, ap-  
19 plications, and services;

20 (B) is delivered with or without a fee to  
21 the physical location of the user, regardless of  
22 the facilities used;

23 (C) includes a transport speed of at least  
24 200 kilobits per second on average in at least  
25 one direction; and

1 (D) permits a user to transmit or receive  
2 information of their own design or choosing.

3 (3) AFFILIATE.—The term “affiliate” in-  
4 cludes—

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

9 (B) a person that has a contract or other  
10 arrangement with a content or service provider  
11 concerning access to, or distribution of, such  
12 content or services.

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