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S. 3703

To improve the ability of consumers to control their digital data usage,
promote Internet use, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20, 2012

Mr. WYDEN introduced the following bill; which was read twice and referred
to the Committee on Commerce, Science, and Transportation

A BILL

To improve the ability of consumers to control their digital
data usage, promote Internet use, and for other purposes.

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 “Data Cap Integrity
5 Act of 2012”.

6 **SEC. 2. TRUTH-IN-LABELING REQUIREMENTS.**

7 It is the sense of Congress that the Federal Commu-
8 nications Commission should continue its work to ensure
9 that consumers of Internet services are clearly and con-

1 sistently provided information that describes the services
2 they are purchasing, including—

3 (1) the cost of the services they are purchasing;

4 (2) the rate of the upload and download speed
5 that the consumer is paying for;

6 (3) service limits the Internet service provider
7 establishes for purposes of network management, in-
8 cluding bandwidth throttling or rate limiting;

9 (4) contract term; and

10 (5) legal and privacy policies.

11 **SEC. 3. MANAGING BROADBAND CONGESTION.**

12 (a) DEFINITIONS.—In this section—

13 (1) the term “Commission” means the Federal
14 Communications Commission;

15 (2) the term “covered Internet service provider”
16 means an Internet service provider that imposes a
17 data cap on consumers of the provider; and

18 (3) the term “data cap” means—

19 (A) a limit on the amount of bits a con-
20 sumer of an Internet service provider may
21 download or upload during a period of time
22 specified by the Internet service provider; or

23 (B) a fee-based structure with the purpose
24 of limiting the bits a consumer of an Internet
25 service provider may download or upload during

1 a period of time specified by the Internet serv-
2 ice provider.

3 (b) CERTIFICATION OF INTERNET SERVICE PRO-
4 VIDERS.—

5 (1) IN GENERAL.—An Internet service provider
6 may not impose a data cap on the consumers of the
7 provider unless the provider is certified by the Com-
8 mission under paragraph (2).

9 (2) CERTIFICATION BY COMMISSION.—

10 (A) ACCURACY IN MEASUREMENT.—

11 (i) IN GENERAL.—The Commission
12 shall consult with the National Institute of
13 Standards and Technology and other ex-
14 perts, including those in the private sector,
15 to establish standards to which an Internet
16 service provider shall adhere in order to ac-
17 curately measure household data usage of
18 consumers of the provider and such stand-
19 ards must apply to the—

20 (I) hardware devices used in
21 homes of consumers and throughout
22 the network of the Internet service
23 provider to measure data usage; and

24 (II) the mechanism, including
25 firmware and software, used by the

1 Internet service provider to measure
2 data usage.

3 (ii) PUBLIC COMMENT.—Prior to fi-
4 nalizing the standards required under
5 clause (i), the Commission shall allow for,
6 and take into consideration, public com-
7 ment on proposed standards.

8 (B) SMART DATA CAPS INSTEAD OF DUMB
9 ONES.—The Commission shall evaluate a data
10 cap proposed by an Internet service provider to
11 determine whether the data cap functions to
12 reasonably limit network congestion in a man-
13 ner that does not unnecessarily discourage use
14 of the Internet.

15 (C) CERTIFICATION.—The Commission
16 shall provide certification to an Internet service
17 provider, if the Commission determines that—

18 (i) the Internet service provider is ac-
19 curately measuring household data usage
20 consistent with the standards established
21 under subparagraph (A); and

22 (ii) the data cap proposed by the
23 Internet service provider functions to rea-
24 sonably limit network congestion without
25 unnecessarily restricting Internet use.

1 (c) DISCRIMINATION OF CONTENT.—A covered Inter-
2 net service provider may not, for purposes of measuring
3 data usage or otherwise, provide preferential treatment of
4 data that is based on the source or the content of the data.

5 (d) CONSUMER CONTROL OF DATA USAGE.—

6 (1) IN GENERAL.—A covered Internet service
7 provider shall, upon the first day of Internet service
8 provided to a consumer, identify commercially avail-
9 able tools that allow the consumer to—

10 (A) monitor, in real time to the extent fea-
11 sible, the amount of bits that the consumer has
12 uploaded or downloaded, and the relationship
13 such information has to the terms of the data
14 cap of the Internet service provider; and

15 (B) control uploads and downloads on all
16 wireline and wireless devices that have access to
17 the Internet service network of the consumer.

18 (2) PROVISION OF TOOLS.—If any of the tools
19 described in paragraph (1) are not commercially
20 available, the Internet service provider shall provide
21 such tools to the consumer on the first day that
22 Internet service is provided to the consumer.

23 (e) ENFORCEMENT.—

24 (1) IN GENERAL.—The Commission shall—

1 (A) establish a procedure to enable individ-
2 uals to file a complaint with the Commission re-
3 lating to an Internet service provider and
4 whether the provider is accurately measuring
5 data use in relation to a data cap; and

6 (B) promptly investigate any complaint
7 filed in accordance with the procedure estab-
8 lished under subparagraph (A).

9 (2) AUTHORITY TO IMPOSE CIVIL PENALTY.—

10 (A) IN GENERAL.—The Commission may
11 impose a civil penalty on an Internet service
12 provider that inaccurately measures data use in
13 relation to a data cap that is inconsistent with
14 the standards established under subsection
15 (b)(2)(A).

16 (B) ESTABLISHMENT OF FUND.—There is
17 established in the Treasury of the United
18 States a fund to be known as the “Data Cap
19 Integrity Fund” (referred to in this paragraph
20 as the “Fund”).

21 (C) DEPOSITS.—Notwithstanding section
22 3302 of title 31, United States Code, or any
23 other law regarding the crediting of money re-
24 ceived for the Government, there shall be depos-

1 ited in the Fund any civil penalty collected by
2 the Commission under subparagraph (A).

3 (D) EXPENDITURES FROM FUND.—
4 Amounts in the Fund shall be available to the
5 Commission to make payments to any indi-
6 vidual who has filed a complaint in accordance
7 with the procedure established under paragraph
8 (1)(A) in order to make the individual finan-
9 cially whole as a result of an inaccurate meas-
10 urement of data use by an Internet service pro-
11 vider.

12 (E) EXCESS AMOUNTS.—Effective on Sep-
13 tember 30, 2013, and each year thereafter, all
14 unobligated balances in excess of \$5,000,000
15 shall be transferred to the General Fund of the
16 Treasury for the purpose of deficit reduction.

17 (f) REGULATIONS.—Not later than 1 year after the
18 date of enactment of this Act, the Commission shall pro-
19 mulgate regulations to implement this section.

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