

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

# S. 2360

To ensure and promote a free and open Internet for all Americans.

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IN THE SENATE OF THE UNITED STATES

MARCH 2, 2006

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

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## A BILL

To ensure and promote a free and open Internet for all  
Americans.

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 Non-Discrimi-  
5       nation Act of 2006”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) Since passage of the Telecommunications  
9       Act of 1996, the Internet has grown robustly.  
10       Today, Americans are changing how they access the  
11       Internet, moving from dial-up to broadband for their

1 home connections. According to the Pew Internet  
2 and American Life Project, 72 percent of Americans  
3 use the Internet and 59 percent of Americans with  
4 home Internet have a high-speed Internet connec-  
5 tion.

6 (2) Americans use the Internet for many daily  
7 activities. Over 17 percent of Americans have sold  
8 something over the Internet. Everyday, approxi-  
9 mately 60,000,000 Americans use search engines to  
10 get access to information. 80 percent of Americans  
11 have looked online for health care information. In  
12 growing numbers, Americans are using the Internet  
13 to place phone calls, watch their favorite televisions  
14 shows or movies, and play games.

15 (3) The growth of the Internet and its success  
16 are due in large part to the freedom that has always  
17 existed on the content and applications layer of the  
18 Internet. Innovation has thrived on this layer, as  
19 anyone with a good idea has the ability to access  
20 consumers. The continuation of this freedom is es-  
21 sential for future innovation.

22 (4) Freedom on the content and applications  
23 layer has also led to robust competition for retail  
24 goods for consumers. Consumers can shop at thou-  
25 sands upon thousands of retailers from their home

1 computers, including small businesses located miles  
2 away in other towns, States, and even countries.

3 (5) Such freedom is leading to the development  
4 of important new entertainment offerings, on-de-  
5 mand video and movie purchases, Internet Protocol  
6 television, and enhanced gaming options. The enter-  
7 tainment options available in the future will only be  
8 limited by the bandwidth that can be used and the  
9 innovation of people all over the world.

10 (6) Despite the growth of the Internet and in-  
11 creased access to the Internet for Americans, there  
12 is very little choice in who provides them high-speed  
13 Internet access. According to an April 2005 White  
14 Paper by Harold Feld and Gregory Rose, et. al., en-  
15 titled, “Connecting the Public: The Truth About  
16 Municipal Broadband” only 2 percent of Americans  
17 get high-speed Internet access from someone other  
18 than their local phone company or cable provider.  
19 According to the Federal Communications Commis-  
20 sion, approximately 20 percent of Americans do not  
21 have a high-speed Internet access provider that of-  
22 fers them service.

23 (7) As more and more Americans get high-  
24 speed access to the Internet without having much  
25 choice of who their provider will be, it is important

1 that Congress protect the freedom on the Internet to  
2 ensure its continued success.

3 **SEC. 3. DEFINITIONS.**

4 In this Act, the following definitions shall apply:

5 (1) APPLICATION OR SERVICE.—The term “ap-  
6 plication or service” means any information or serv-  
7 ice—

8 (A) by which an end-user through software  
9 or a device engages in an exchange of data or  
10 information; and

11 (B) conveyed over communications.

12 (2) BITS.—The term “bits” or “binary digits”  
13 means the smallest unit of information in which  
14 form data is transported on the Internet as a single  
15 digit number in base-2.

16 (3) COMMISSION.—The term “Commission”  
17 means the Federal Communications Commission.

18 (4) COMMUNICATIONS.—The term “communica-  
19 tions”—

20 (A) means any voice, video, or data appli-  
21 cation or service, regardless of the facilities or  
22 technology used, that—

23 (i) is a transmission to subscribers by  
24 use of—

25 (I) the public rights-of-way;

1 (II) spectrum;

2 (III) numbering or addressing re-  
3 sources; or

4 (IV) other inputs licensed or  
5 managed by a unit of local govern-  
6 ment, or a private entity working in  
7 concert with such unit of local govern-  
8 ment, for the benefit of the public;

9 (ii) is offered to the public, or as to  
10 such classes of subscribers as to be effec-  
11 tively available directly to the public, with  
12 or without a fee; and

13 (iii) enables an end user, as part of  
14 such service, to transmit content of their  
15 own design or choosing between or among  
16 points specified by such user;

17 (B) includes interactive on-demand serv-  
18 ices, as such term is defined in section 602(12)  
19 of the Communications Act of 1934 (47 U.S.C.  
20 522(12)); and

21 (C) does not include cable service, as such  
22 term is defined in section 602(6) of the Com-  
23 munications Act of 1934 (47 U.S.C. 522(6)).

24 (5) CONTENT.—The term “content” means in-  
25 formation—

1 (A) in the form of writing, signs, signals,  
2 pictures, and sounds of all kinds, including  
3 stored information requested by an end user;  
4 and

5 (B) that is generated based on the input or  
6 request of such user.

7 (6) PERSON.—The term “person” means any  
8 natural person, partnership, firm, association, cor-  
9 poration, limited liability company, or other legal en-  
10 tity.

11 (7) NETWORK OPERATOR.—

12 (A) IN GENERAL.—The term “network op-  
13 erator” means any person who owns, operates,  
14 controls, or resells and controls any facility that  
15 provides communications directly to a sub-  
16 scriber.

17 (B) OBLIGATIONS.—Any obligation im-  
18 posed on a network operator by the provisions  
19 of this Act shall apply only to the extent that  
20 such network operator is engaged in providing  
21 communications.

22 (8) SUBSCRIBER.—The term “subscriber”  
23 means any person who—

24 (A) is an end user of an application or  
25 service provided through communications; and

1 (B) consumes or provides goods provided  
2 through such application or service.

3 (9) TRANSMISSION COMPONENT.—The term  
4 “transmission component” means the portion of  
5 communications which enables an end user to trans-  
6 mit content of their own design and choosing be-  
7 tween or among points specified by such user.

8 **SEC. 4. OBLIGATIONS OF NETWORK OPERATORS.**

9 (a) IN GENERAL.—A network operator shall—

10 (1) not interfere with, block, degrade, alter,  
11 modify, impair, or change any bits, content, applica-  
12 tion or service transmitted over the network of such  
13 operator;

14 (2) not discriminate in favor of itself or any  
15 other person, including any affiliate or company with  
16 which such operator has a business relationship in—

17 (A) allocating bandwidth; and

18 (B) transmitting content or applications or  
19 services to or from a subscriber in the provision  
20 of a communications;

21 (3) not assess a charge to any application or  
22 service provider not on the network of such operator  
23 for the delivery of traffic to any subscriber to the  
24 network of such operator;

1           (4) offer communications such that a subscriber  
2           can access, and a content provider can offer, unaf-  
3           filiated content or applications or services in the  
4           same manner that content of the network operator  
5           is accessed and offered, without interference or sur-  
6           charges;

7           (5) allow the attachment of any device, if such  
8           device is in compliance with part 68 of title 47, Code  
9           of Federal Regulations, without restricting any ap-  
10          plication or service that may be offered or provided  
11          using such a device;

12          (6) treat all data traveling over or on commu-  
13          nications in a non-discriminatory way;

14          (7) offer just, reasonable, and non-discrimina-  
15          tory rates, terms, and conditions on the offering or  
16          provision of any service by another person using the  
17          transmission component of communications;

18          (8) provide non-discriminatory access and serv-  
19          ice to each subscriber; and

20          (9) post and make available for public inspec-  
21          tion, in electronic form and in a manner that is  
22          transparent and easily understandable, all rates,  
23          terms, and conditions for the provision of any com-  
24          munications.

1 (b) PRESERVED AUTHORITY OF NETWORK OPERA-  
2 TORS.—Notwithstanding the requirements described in  
3 subsection (a), a network operator—

4 (1) may—

5 (A) take reasonable and non-discriminatory  
6 measures to protect subscribers from adware,  
7 spyware, malware, viruses, spam, pornography,  
8 content deemed inappropriate for minors, or  
9 any other similarly nefarious application or  
10 service that harms the Internet experience of  
11 subscribers, if such subscribers—

12 (i) are informed of the application or  
13 service; and

14 (ii) are given the opportunity to refuse  
15 or disable any such preventative applica-  
16 tion or service;

17 (B) support an application or service in-  
18 tended to prevent adware, spyware, malware, vi-  
19 ruses, spam, pornography, content deemed in-  
20 appropriate for minors, or any other similarly  
21 nefarious application or service that harms the  
22 Internet experience of subscribers, if such sub-  
23 sscribers—

24 (i) are informed of the application or  
25 service; and

1 (ii) are given the opportunity to refuse  
2 or disable any such preventative applica-  
3 tion or service; and

4 (C) take reasonable and non-discriminatory  
5 measures to protect the security of the network  
6 of such operator, if such operator faces serious  
7 and irreparable harm; and

8 (2) shall—

9 (A) give priority to an emergency commu-  
10 nication;

11 (B) comply with any court-ordered law en-  
12 forcement directive; and

13 (C) prevent any activity that is unlawful or  
14 illegal under any Federal, State, or local law.

15 **SEC. 5. COMPLAINTS REGARDING VIOLATIONS.**

16 (a) COMPLAINT.—Any aggrieved party may submit a  
17 written complaint to the Commission seeking a ruling that  
18 a network operator has violated a requirement described  
19 in section 4(a).

20 (b) CONTENT OF COMPLAINT.—In any complaint  
21 submitted under subsection (a) an aggrieved party shall  
22 make a prima facie case that—

23 (1) a network operator violated a requirement  
24 of section 4(a);

1           (2) such violation was not a preserved authority  
2 described in subparagraph (A) or (B) of section  
3 4(b)(1); and

4           (3) such violation is harmful to such party.

5           (c) 7-DAY ACCEPTANCE PERIOD.—Not later than 7  
6 days after the date of the submission of a complaint under  
7 subsection (a), the Commission shall issue a decision re-  
8 garding its acceptance or denial of the prima facie case  
9 made by an aggrieved party.

10          (d) CEASE AND DESIST.—

11           (1) IN GENERAL.—If the Commission accepts  
12 the prima facie case of an aggrieved party under  
13 subsection (c), a network operator shall be required  
14 to cease and desist the action that is the underlying  
15 basis of the complaint for the duration of the pro-  
16 ceeding on such complaint, until such time as the  
17 Commission may rule that a violation of a require-  
18 ment of section 4(a) has not occurred.

19           (2) AUTHORITY TO EXTEND CEASE AND DESIST  
20 ORDER.—The Commission shall have the authority  
21 to extend any cease and desist order to any similarly  
22 situated person as the Commission determines nec-  
23 essary and appropriate.

24           (e) BURDEN OF PROOF.—If the Commission accepts  
25 the prima facie case of an aggrieved party under sub-

1 section (c), a network operator shall bear the burden of  
2 proving that—

3 (1) no violation of section 4(a) occurred; or

4 (2) such violation was a preserved authority de-  
5 scribed in section 4(b).

6 (f) FINAL DECISION.—

7 (1) 90-DAY PERIOD.—Not later than 90 days  
8 after the date of the submission of a complaint  
9 under subsection (a), the Commission shall issue a  
10 final decision regarding the request for a ruling con-  
11 tained in such complaint.

12 (2) FAILURE TO ISSUE DECISION.—If the Com-  
13 mission fails to issue a decision at the expiration of  
14 the 90-day period described in paragraph (1), a vio-  
15 lation of a requirement of section 4(a) shall be  
16 deemed to have occurred.

17 (g) RULES OF CONSTRUCTION.—

18 (1) DELEGATION.—

19 (A) IN GENERAL.—Nothing in this section  
20 shall be construed—

21 (i) to prevent the Commission from  
22 delegating any authority granted to it  
23 under this section to a relevant office or  
24 bureau pursuant to the authority granted  
25 the Commission under section 5(c) of the

1           Communications Act of 1934 (47 U.S.C.  
2           155(e)); or

3           (ii) to limit the Commission from  
4           adopting any appropriate procedures pur-  
5           suant to any other provision of law.

6           (B) LIMITATION.—The rule established  
7           under subparagraph (A) shall only apply if at  
8           the expiration of the 90-day period described in  
9           subsection (f)(1)—

10           (i) the Commission issues a final deci-  
11           sion that is ripe for judicial review; or

12           (ii) a violation of a requirement of  
13           section 4(a) shall be deemed to have oc-  
14           curred under subsection (f)(2).

15           (2) PETITION FOR RECONSIDERATION.—

16           (A) IN GENERAL.—Nothing in this section  
17           shall be construed to affect the ability of any el-  
18           igible party to file a petition for reconsideration  
19           under section 405 of the Communications Act  
20           of 1934 (47 U.S.C. 405).

21           (B) TIMING.—

22           (i) 90-DAY PERIOD.—Not later than  
23           90 days after the date of the submission of  
24           a petition for reconsideration under section  
25           405 of the Communications Act of 1934

1 (47 U.S.C. 405), the Commission shall  
2 issue an order granting or denying such  
3 petition.

4 (ii) FAILURE TO ISSUE AN ORDER.—  
5 If the Commission fails to issue a decision  
6 at the expiration of the 90-day period de-  
7 scribed in clause (i), the previous decision  
8 of the Commission shall be considered af-  
9 firmed and final for purposes of judicial  
10 review.

11 (3) JUDICIAL REVIEW.—Notwithstanding sec-  
12 tion 402(b) of the Communications Act of 1934 (47  
13 U.S.C. 402(b)) and any other provision of law, any  
14 appeal of a decision of the Commission under this  
15 section shall be made to United States district court  
16 for the district in which the principle place of busi-  
17 ness of the aggrieved party is located.

18 (4) INTERVENTION BY THIRD PARTIES.—Noth-  
19 ing in this section shall be construed to prevent any  
20 interested person from intervening in any appeal of  
21 a decision of the Commission in accordance with sec-  
22 tion 402(e) of the Communications Act of 1934 (47  
23 U.S.C. 402(e)).

1 **SEC. 6. PENALTIES.**

2 (a) IN GENERAL.—If the Commission issues a ruling  
3 under section 5 that a network operator is in violation of  
4 a requirement of section 4(a), such network operator shall  
5 be subject to the penalties prescribed under section 501  
6 of the Communications Act of 1934 (47 U.S.C. 501).

7 (b) SEPARATE VIOLATIONS.—Each violation of a re-  
8 quirement of section 4(a) shall be treated as a separate  
9 incident for purposes of imposing penalties under sub-  
10 section (a).

○