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(Original Signature of Member)

109TH CONGRESS
2D SESSION

H. R. _____

To amend the Clayton Act with respect to competitive and nondiscriminatory access to the Internet.

IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBRENNER (for himself and) introduced the following bill; which was referred to the Committee on _____

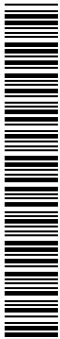
A BILL

To amend the Clayton Act with respect to competitive and nondiscriminatory access to the Internet.

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 Freedom and
5 Nondiscrimination Act of 2006”.



1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are to promote competition,
3 to facilitate trade, and to ensure competitive and non-
4 discriminatory access to the Internet.

5 **SEC. 3. AMENDMENTS TO THE CLAYTON ACT.**

6 The Clayton Act (15 U.S.C. 12 et seq.) is amended—

7 (1) by redesignating section 28 as section 29,

8 (2) by inserting after section 27 the following:

9 “DISCRIMINATION BY BROADBAND NETWORK PROVIDERS

10 “SEC. 28. (a) It shall be unlawful for any broadband
11 network provider—

12 “(1) to fail to provide its broadband network
13 services on reasonable and nondiscriminatory terms
14 and conditions such that any person can offer or
15 provide content, applications, or services to or over
16 the network in a manner that is at least equal to the
17 manner in which the provider or its affiliates offer
18 content, applications, and services, free of any sur-
19 charge on the basis of the content, application, or
20 service;

21 “(2) to refuse to interconnect its facilities with
22 the facilities of another provider of broadband net-
23 work services on reasonable and nondiscriminatory
24 terms or conditions;

25 “(3)(A) to block, to impair, to discriminate
26 against, or to interfere with the ability of any person



1 to use a broadband network service to access, to use,
2 to send, to receive, or to offer lawful content, appli-
3 cations or services over the Internet; or

4 “(B) to impose an additional charge to avoid
5 any conduct that is prohibited by this subsection;

6 “(4) to prohibit a user from attaching or using
7 a device on the provider’s network that does not
8 physically damage or materially degrade other users’
9 utilization of the network; or

10 “(5) to fail to clearly and conspicuously disclose
11 to users, in plain language, accurate information
12 concerning any terms, conditions, or limitations on
13 the broadband network service.

14 “(b) If a broadband network provider prioritizes or
15 offers enhanced quality of service to data of a particular
16 type, it must prioritize or offer enhanced quality of service
17 to all data of that type (regardless of the origin or owner-
18 ship of such data) without imposing a surcharge or other
19 consideration for such prioritization or enhanced quality
20 of service.

21 “(c) Nothing in this section shall be construed to pre-
22 vent a broadband network provider from taking reasonable
23 and nondiscriminatory measures—

24 “(1) to manage the functioning of its network
25 to protect the security of such network and



1 broadband network services if such management
2 does not result in discrimination among the content,
3 applications, or services on the network;

4 “(2) to give priority to emergency communica-
5 tions; or

6 “(3) to prevent a violation of a Federal or State
7 law, or to comply with an order of a court to enforce
8 such law.

9 “(d) For purposes of this section—

10 “(1) the term ‘affiliate’ means—

11 “(A) a person that directly or indirectly
12 owns, controls, is owned or controlled by, or is
13 under the common ownership or control with
14 another person; or

15 “(B) a person that has a contract or other
16 arrangement with a content or service provider
17 concerning access to, or distribution of, such
18 content or such service;

19 “(2) the term ‘broadband network provider’
20 means a person engaged in commerce that owns,
21 controls, operates, or resells any facility used to pro-
22 vide broadband network service to the public, by
23 whatever technology and without regard to whether
24 provided for a fee, in exchange for an explicit ben-
25 efit, or for free;



1 “(3) the term ‘broadband network service’
2 means a 2-way transmission service that connects to
3 the Internet and transmits information at an aver-
4 age rate of at least 200 kilobits per second in at
5 least one direction, irrespective of whether such
6 transmission is provided separately or as a compo-
7 nent of another service; and

8 “(4) the term ‘user’ means a person who takes
9 and uses broadband network service, whether pro-
10 vided for a fee, in exchange for an explicit benefit,
11 or for free.”, and

12 (3) by amending subsection (a) and the 1st sen-
13 tence of subsection (b) of section 11 by striking
14 “and 8” and inserting “8, and 29”.

