

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3458

To amend the Communications Act of 1934 to establish a national broadband policy, safeguard consumer rights, spur investment and innovation, and for related purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

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

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## A BILL

To amend the Communications Act of 1934 to establish a national broadband policy, safeguard consumer rights, spur investment and innovation, and for related 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 “Internet Freedom  
5       Preservation Act of 2009”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) Our Nation’s economy and society are in-  
2           creasingly dependent on Internet services.

3           (2) The Internet is an essential infrastructure  
4           that is comparable to roads and electricity in its  
5           support for a diverse array of economic, social, and  
6           political activity.

7           (3) Internet technologies and services hold the  
8           promise of advancing economic growth, fostering in-  
9           vestment, creating jobs, and spurring technological  
10          innovation.

11          (4) As the Nation becomes more reliant upon  
12          such Internet technologies and services, unfettered  
13          access to the Internet to offer, access, and utilize  
14          content, services, and applications is vital.

15          (5) The global leadership in high technology  
16          that the United States provides today stems directly  
17          from historic policies that embraced competition and  
18          openness and that have ensured that telecommuni-  
19          cations networks are open to all lawful uses by all  
20          users.

21          (6) The Internet was enabled by those historic  
22          policies and provides an open architecture medium  
23          for worldwide communications, providing a low bar-  
24          rier to entry for Internet-based content, applications,  
25          and services.

1           (7) Due to legal and marketplace changes,  
2 these features of the Internet are no longer certain,  
3 and erosion of these historic policies permits tele-  
4 communications network operators to control who  
5 can and who cannot offer content, services, and ap-  
6 plications over the Internet utilizing such networks.

7           (8) The national economy would be severely  
8 harmed if the ability of Internet content, service,  
9 and application providers to reach consumers was  
10 frustrated by interference from broadband tele-  
11 communications network operators.

12           (9) The overwhelming majority of residential  
13 consumers subscribe to Internet access service from  
14 1 of only 2 wireline providers: the cable operator or  
15 the telephone company.

16           (10) Internet access service providers have an  
17 economic interest to discriminate in favor of their  
18 own services, content, and applications and against  
19 other providers.

20           (11) A network neutrality policy based upon the  
21 principle of nondiscrimination and consistent with  
22 the history of the Internet's development is essential  
23 to ensure that Internet services remain open to all  
24 consumers, entrepreneurs, innovators, and providers  
25 of lawful content, services, and applications.

1           (12) A network neutrality policy is also essen-  
2           tial to give certainty to small businesses, leading  
3           global companies, investors, and others who rely  
4           upon the Internet for commercial reasons.

5           (13) A network neutrality policy can also per-  
6           mit Internet service providers to take action to pro-  
7           tect network reliability, prevent unwanted electronic  
8           mail, and thwart illegal uses in the same way that  
9           telecommunications network operators have histori-  
10          cally done consistent with the overarching principle  
11          of non-discrimination.

12          (14) Because of the essential role of Internet  
13          services to the economic growth of the United  
14          States, to meet other national priorities, and to our  
15          right to free speech under the First Amendment of  
16          the Constitution of the United States, the United  
17          States should adopt a clear policy preserving the  
18          open nature of Internet communications and net-  
19          works.

20 **SEC. 3. INTERNET FREEDOM.**

21          Title I of the Communications Act of 1934 (47  
22          U.S.C. 151 et seq.) is amended by adding at the end the  
23          following:

1 **“SEC. 12. INTERNET FREEDOM.**

2 “(a) INTERNET FREEDOM POLICY.—It is the policy  
3 of the United States—

4 “(1) to protect the right of consumers to access  
5 lawful content, run lawful applications, and use law-  
6 ful services of their choice on the Internet;

7 “(2) to preserve and promote the open and  
8 interconnected nature of broadband networks and to  
9 enable consumers to connect to such networks their  
10 choice of lawful devices, as long as such devices do  
11 not harm the network;

12 “(3) to promote consumer choice and competi-  
13 tion among providers of lawful content, applications,  
14 and services;

15 “(4) to ensure that consumers receive meaning-  
16 ful information regarding their communications serv-  
17 ices;

18 “(5) to ensure the ability to use or offer lawful  
19 broadband content, applications, and services for  
20 lawful purposes, as has been the policy and history  
21 of the Internet and the basis of user expectations  
22 since its inception;

23 “(6) to guard against discriminatory favoritism  
24 for, or degradation of, lawful content, applications,  
25 or services by network operators based upon their  
26 source, ownership, or destination on the Internet;

1           “(7) to preserve the freedom of independent  
2 Internet content, application, and service providers  
3 to compete and innovate;

4           “(8) to foster an evolving level of capacity avail-  
5 able throughout communications networks to sup-  
6 port competition and innovation for lawful Internet  
7 content, applications, and services, including applica-  
8 tions and services that require substantial down-  
9 stream and upstream bandwidth; and

10           “(9) to ensure that the Internet remains an in-  
11 dispensable platform for innovation in the United  
12 States economy, thereby enabling the Nation to pro-  
13 vide global leadership in online commerce and tech-  
14 nological progress.

15           “(b) DUTIES OF INTERNET ACCESS SERVICE PRO-  
16 VIDERS.—With respect to any Internet access service of-  
17 fered to the public, each Internet access service provider  
18 shall have the duty to—

19           “(1) not block, interfere with, discriminate  
20 against, impair, or degrade the ability of any person  
21 to use an Internet access service to access, use,  
22 send, post, receive, or offer any lawful content, ap-  
23 plication, or service through the Internet;

24           “(2) not impose a charge on any Internet con-  
25 tent, service, or application provider to enable any

1 lawful Internet content, application, or service to be  
2 offered, provided, or used through the provider’s  
3 service, beyond the end user charges associated with  
4 providing the service to such provider;

5 “(3) not prevent or obstruct a user from at-  
6 taching any lawful device to or utilizing any such de-  
7 vice in conjunction with such service, provided such  
8 device does not harm the provider’s network;

9 “(4) offer Internet access service to any person  
10 upon reasonable request therefor;

11 “(5) not provide or sell to any content, applica-  
12 tion, or service provider, including any affiliate pro-  
13 vider or joint venture, any offering that prioritizes  
14 traffic over that of other such providers on an Inter-  
15 net access service; and

16 “(6) not install or utilize network features,  
17 functions, or capabilities that impede or hinder com-  
18 pliance with this section.

19 “(c) COMMISSION ACTION.—Not later than 90 days  
20 after the date of enactment of the Internet Freedom Pres-  
21 ervation Act of 2009, the Commission shall promulgate  
22 rules to ensure that providers of Internet access service—

23 “(1) fulfill the duties described in subsection  
24 (b);

1           “(2) disclose meaningful information to con-  
2           sumers about a provider’s Internet access service in  
3           a clear, uniform, and conspicuous manner and in  
4           conformity with the duties described in subsection  
5           (e);

6           “(3) generally, to the extent feasible, make  
7           available sufficient network capacity to users to en-  
8           able the provision, availability, and use of an Inter-  
9           net access service to support lawful content, applica-  
10          tions, and services that require high bandwidth com-  
11          munications to and from an end user; and

12          “(4) not operate Internet access services in an  
13          anticompetitive, unreasonable, unfair, discrimina-  
14          tory, or deceptive manner.

15          “(d) REASONABLE NETWORK MANAGEMENT.—Noth-  
16          ing in this section shall be construed to prohibit an Inter-  
17          net access provider from engaging in reasonable network  
18          management consistent with the policies and duties of  
19          nondiscrimination and openness set forth in this Act. For  
20          purposes of subsections (b)(1) and (b)(5), a network man-  
21          agement practice is a reasonable practice only if it fur-  
22          thers a critically important interest, is narrowly tailored  
23          to further that interest, and is the means of furthering  
24          that interest that is the least restrictive, least discrimina-  
25          tory, and least constricting of consumer choice available.

1 In determining whether a network management practice  
2 is reasonable, the Commission shall consider, among other  
3 factors, the particular network architecture or technology  
4 limitations of the provider.

5 “(e) TRANSPARENCY FOR CONSUMERS.—With re-  
6 spect to any Internet access service or private trans-  
7 mission capacity offered to the public, each Internet access  
8 service provider shall provide to consumers and make pub-  
9 licly available detailed information about such services, in-  
10 cluding information about the speed, nature, and limita-  
11 tions of such services. Each Internet access service pro-  
12 vider must publicly disclose, at a minimum, network man-  
13 agement practices that affect communications between a  
14 user and a content, application, or service provider in the  
15 ordinary, routine use of such broadband service.

16 “(f) STAND-ALONE INTERNET ACCESS SERVICE.—  
17 Within 180 days after the date of enactment of the Inter-  
18 net Freedom Preservation Act of 2009, the Commission  
19 shall promulgate rules to ensure that an Internet access  
20 service provider does not require a consumer, as a condi-  
21 tion on the purchase of any Internet access service offered  
22 by such provider, to purchase any other service or offering.  
23 The Commission shall adopt any other rules it determines  
24 necessary to make such requirement effective and mean-  
25 ingful for consumers.

1       “(g) OTHER SERVICES.—Not later than 180 days  
2 after the date of enactment of the Internet Freedom Pres-  
3 ervation Act of 2009, the Commission shall complete all  
4 actions necessary to—

5           “(1) promote an ever-increasing level of Inter-  
6 net access service to end users;

7           “(2) ensure that such evolving level of service  
8 provided to end users is capable of supporting lawful  
9 content, applications, and services and provides  
10 ample bandwidth for such traffic to and from an end  
11 user;

12           “(3) promote both facilities-based and nonfacili-  
13 ties-based competition to enable information service  
14 providers to have marketplace choices for trans-  
15 mission capacity to reach end users;

16           “(4) define the term ‘private transmission ca-  
17 pacity services’;

18           “(5) clarify whether private transmission capac-  
19 ity services may not be subject to the duties de-  
20 scribed in subsections (b)(5) and (b)(6);

21           “(6) ensure that private transmission capacity  
22 services do not undermine the purposes of this Act  
23 and do not diminish or degrade the level of Internet  
24 access service offered to the public by the same pro-  
25 vider; and

1           “(7) ensure that private transmission capacity  
2 services are not offered in an anticompetitive, unrea-  
3 sonable, discriminatory, or deceptive manner.

4           “(h) IMPLEMENTATION.—Not later than 180 days  
5 after the date of enactment of the Internet Freedom Pres-  
6 ervation Act of 2009, the Commission shall—

7           “(1) prescribe rules to permit any aggrieved  
8 person to file a complaint with the Commission con-  
9 cerning any violation of this section;

10           “(2) establish enforcement and expedited adju-  
11 dicatory review procedures consistent with the objec-  
12 tives of this section, including the resolution of any  
13 complaint described in paragraph (1) not later than  
14 90 days after such complaint was filed, except for  
15 good cause shown;

16           “(3) prescribe rules with respect to the reason-  
17 able network management practices described under  
18 subsection (d) for all Internet access services; and

19           “(4) prescribe rules with respect to the appro-  
20 priate disclosure obligations under subsection (e) for  
21 private transmission capacity services.

22           “(i) ENFORCEMENT.—

23           “(1) IN GENERAL.—The Commission shall en-  
24 force compliance with this section under title V, ex-  
25 cept that—

1           “(A) no forfeiture liability shall be deter-  
2           mined under section 503(b) against any person  
3           unless such person receives the notice required  
4           by section 503(b)(3) or section 503(b)(4); and

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

7           “(2) SPECIAL ORDERS.—In addition to any  
8           other remedy provided under this Act, the Commis-  
9           sion may issue any appropriate order, including an  
10          order—

11           “(A) directing an Internet access service  
12           provider to pay damages to a complaining party  
13           for a violation of this section or the regulations  
14           promulgated pursuant to this section; or

15           “(B) to enforce the provisions of this sec-  
16           tion.

17          “(j) ILLEGAL CONDUCT.—Nothing in this Act shall  
18          be construed or interpreted to affect any law or regulation  
19          addressing prohibited or unlawful activity, including any  
20          laws or regulations prohibiting theft of content.

21          “(k) DEFINITIONS.—For purposes of this section, the  
22          following definitions apply:

23           “(1) INTERNET ACCESS SERVICE.—The term  
24           ‘Internet access service’ means a 2-way transmission  
25           offered by an Internet access service provider that

1 transmits information between 2 or more points and  
2 that has as its primary, but not exclusive, purpose  
3 the enabling of data to be sent or received from the  
4 Internet.

5 “(2) INTERNET ACCESS SERVICE PROVIDER.—  
6 The term ‘Internet access service provider’ means a  
7 person or entity that operates or resells and controls  
8 any facility used to provide an Internet access serv-  
9 ice directly to the public, whether provided for a fee  
10 or for free, and whether provided via wire or radio,  
11 except when such service is offered as an incidental  
12 component of a noncommunications contractual rela-  
13 tionship.

14 “(3) USER.—The term ‘user’ means any resi-  
15 dential or business subscriber who, by way of an  
16 Internet access service, takes and utilizes Internet  
17 access services, whether provided for a fee, in ex-  
18 change for an explicit benefit, or for free.

19 “(4) REASONABLE NETWORK MANAGEMENT.—  
20 The term ‘reasonable network management’ shall be  
21 defined by the Commission through regulations.”.

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