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(Original Signature of Member)

110TH 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. CONYERS (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 2008”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to promote competition,
8 to facilitate trade, and to ensure competitive and non-
9 discriminatory access to the Internet.

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

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

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

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

5 “DISCRIMINATION BY BROADBAND NETWORK PROVIDERS

6 “SEC. 28. (a) It shall be unlawful for any broadband

7 network provider—

8 “(1) to fail to provide its broadband network

9 services on reasonable and nondiscriminatory terms

10 and conditions such that any person can offer or

11 provide content, applications, or services to or over

12 the network in a manner that is at least equal to the

13 manner in which the provider or its affiliates offer

14 content, applications, and services, free of any sur-

15 charge on the basis of the content, application, or

16 service;

17 “(2) to refuse to interconnect its facilities with

18 the facilities of another provider of broadband net-

19 work services on reasonable and nondiscriminatory

20 terms or conditions;

21 “(3)(A) to block, to impair, to discriminate

22 against, or to interfere with the ability of any person

23 to use a broadband network service to access, to use,

24 to send, to receive, or to offer lawful content, appli-

25 cations or services over the Internet; or

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

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

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

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

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

21 “(1) to manage the functioning of its network,
22 on a systemwide basis, provided that any such man-
23 agement function does not result in discrimination
24 between content, applications, or services offered by
25 the provider and unaffiliated provider;

1 “(2) to give priority to emergency communica-
2 tions;

3 “(3) to prevent a violation of a Federal or State
4 law, or to comply with an order of a court to enforce
5 such law;

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

9 “(5) to offer special promotional pricing or
10 other marketing initiatives; or

11 “(6) to prioritize or offer enhanced quality of
12 service to all data of a particular type (regardless of
13 the origin or ownership of such data) without impos-
14 ing a surcharge or other consideration for such
15 prioritization or quality of service.

16 “(d) For purposes of this section—

17 “(1) the term ‘affiliate’ means—

18 “(A) a person that directly or indirectly
19 owns, controls, is owned or controlled by, or is
20 under the common ownership or control with
21 another person; or

22 “(B) a person that has a contract or other
23 arrangement with a content or service provider
24 concerning access to, or distribution of, such
25 content or such service;

1 “(2) the term ‘broadband network provider’
2 means a person engaged in commerce that owns,
3 controls, operates, or resells any facility used to pro-
4 vide broadband network service to the public, by
5 whatever technology and without regard to whether
6 provided for a fee, in exchange for an explicit ben-
7 efit, or for free;

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

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

19 (3) by amending subsection (a) and the 1st sen-
20 tence of subsection (b) of section 11 by striking
21 “and 8” and inserting “8, and 28”.