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(Original Signature of Member)

113TH CONGRESS
2D SESSION

H. R. _____

To amend the Communications Act of 1934 to limit the authority of the Federal Communications Commission over providers of broadband Internet access service.

IN THE HOUSE OF REPRESENTATIVES

Mr. LATTA introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Communications Act of 1934 to limit the authority of the Federal Communications Commission over providers of broadband Internet access service.

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. FINDINGS.**

4 Congress finds the following:

5 (1) The Internet is a powerful engine for eco-
6 nomic growth that has remained open, free, and ac-
7 cessible without government regulation since its en-
8 trance into the public sphere.

1 (2) Title II of the Communications Act of 1934
2 was designed for the monopoly telephone system in
3 1934 and has its origins in 19th century shipping
4 regulations.

5 (3) Imposing the obligations and requirements
6 of title II of such Act on broadband Internet access
7 service would severely harm broadband investment
8 and create myriad negative unintended con-
9 sequences.

10 (4) The Federal Communications Commission
11 has consistently taken actions that classify
12 broadband Internet access service, even in different
13 forms, as an information service. Such actions in-
14 clude the following:

15 (A) In 1998, Chairman Bill Kennard
16 issued a Report to Congress finding that Inter-
17 net access is an information service with a tele-
18 communications component.

19 (B) In 2002, the Commission issued a De-
20 claratory Ruling (17 FCC Red 4798)
21 classifying cable modem broadband Internet ac-
22 cess service as an information service. In the
23 2005 case of National Cable & Telecommuni-
24 cations Association v. Brand X Internet Serv-
25 ices (545 U.S. 967), the Supreme Court of the

1 United States affirmed this determination that
2 such service is not a common carrier service
3 and is appropriately classified as an information
4 service.

5 (C) In 2005, the Commission issued a Re-
6 port and Order (20 FCC Red 14853) affirming
7 the classification of wireline broadband Internet
8 access service as an information service.

9 (D) In 2007, the Commission issued a De-
10 claratory Ruling (22 FCC Red 5901) affirming
11 the classification of wireless broadband Internet
12 access service as an information service.

13 (5) These Commission rulings unleashed tens of
14 billions of dollars of investment in the Nation's
15 broadband networks, investment that would not have
16 been made if broadband services were subject to
17 common carrier requirements.

18 **SEC. 2. LIMITATION ON AUTHORITY OF FCC.**

19 (a) IN GENERAL.—Section 3 of the Communications
20 Act of 1934 (47 U.S.C. 153) is amended as follows:

21 (1) COMMON CARRIER.—Paragraph (11) is
22 amended by adding at the end the following: “Such
23 term does not include a provider of an information
24 service or of advanced telecommunications capability
25 (as defined in section 706 of the Telecommuni-

1 cations Act of 1996 (47 U.S.C. 1302)) when en-
2 gaged in the provision of such service or capability.”.

3 (2) INFORMATION SERVICE.—Paragraph (24) is
4 amended to read as follows:

5 “(24) INFORMATION SERVICE.—The term ‘in-
6 formation service’ means the offering of a capability
7 for generating, acquiring, storing, transforming,
8 processing, retrieving, utilizing, or making available
9 information via telecommunications, and includes
10 electronic publishing, but does not include—

11 “(A) a telecommunications service; or

12 “(B) any use of any such capability for the
13 management, control, or operation of a tele-
14 communications system or the management of a
15 telecommunications service.

16 Such term includes broadband Internet access serv-
17 ice. A provider of an information service may not be
18 treated as a telecommunications carrier under this
19 Act when engaged in the provision of an information
20 service, and may not be required to offer such serv-
21 ice or any component of such service as a tele-
22 communications service.”.

23 (3) TELECOMMUNICATIONS CARRIER.—Para-
24 graph (51) is amended by adding at the end the fol-
25 lowing: “Such term does not include a provider of an

1 information service or of advanced telecommuni-
2 cations capability (as defined in section 706 of the
3 Telecommunications Act of 1996 (47 U.S.C. 1302))
4 when engaged in the provision of such service or ca-
5 pability.”.

6 (4) TELECOMMUNICATIONS SERVICE.—Para-
7 graph (53) is amended by adding at the end the fol-
8 lowing: “Such term does not include any service that
9 is an information service, any component of an in-
10 formation service, or advanced telecommunications
11 capability (as defined in section 706 of the Tele-
12 communications Act of 1996 (47 U.S.C. 1302)).”.

13 (b) BROADBAND INTERNET ACCESS SERVICE DE-
14 FINED.—Section 3 of the Communications Act of 1934 is
15 further amended—

16 (1) by redesignating paragraphs (6) through
17 (59) as paragraphs (7) through (60), respectively;
18 and

19 (2) by inserting after paragraph (5) the fol-
20 lowing:

21 “(6) BROADBAND INTERNET ACCESS SERV-
22 ICE.—The term ‘broadband Internet access service’
23 means a mass-market retail service by wire or radio
24 that provides the capability to transmit data to and
25 receive data from all or substantially all Internet

1 endpoints, including any capabilities that are inci-
2 dental to and enable the operation of the commu-
3 nications service, but excluding dial-up Internet ac-
4 cess service. Broadband Internet access service is an
5 information service, and includes a service utilizing
6 advanced telecommunications capability (as defined
7 in section 706 of the Telecommunications Act of
8 1996 (47 U.S.C. 1302)).”.