106TH CONGRESS
1ST SESSION

H. R. 1686

To ensure that the Internet remains open to fair competition, free from government regulation, and accessible to American consumers.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1999

Mr. GOODLATTE (for himself and Mr. BOUCHER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To ensure that the Internet remains open to fair competition, free from government regulation, and accessible to American consumers.

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 Act".

TITLE I—ANTITRUST AND CRIMINAL PROVISIONS

SEC. 101. PROHIBITION ON ANTICOMPETITIVE BEHAVIOR BY INCUMBENT LOCAL EXCHANGE CARRIERS.

In any civil action based on a claim arising under section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2, 3), evidence that an incumbent local exchange carrier that has market power in the broadband service provider market has willfully and knowingly failed to provide conditioned unbundled local loops when economically reasonable and technically feasible under section 715(a) of the Communications Act of 1934, or restrains unreasonably the ability of a carrier to compete in its provision of broadband services over a local loop, shall be sufficient to establish a presumption of a violation of such section 1, 2, or 3 of the Sherman Act.

SEC. 102. PROHIBITION ON ANTICOMPETITIVE CONTRACTS BY BROADBAND ACCESS TRANSPORT PROVIDERS.

In any civil action based on a claim arising under section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2, 3), evidence that a broadband access transport provider that has market power in the broadband service provider market has offered access to a service provider on terms

1 and conditions, other than terms justified by demonstrable

2 cost differentials, that are less favorable than those offered

3 by such operator to itself, to an affiliated service provider,

4 or to another service provider, or restrains unreasonably

5 the ability of a service provider from competing in its pro-

6 vision of broadband services, shall be sufficient to establish

7 a presumption of a violation of such section.

SEC. 103. PROHIBITION ON ANTICOMPETITIVE OR DIS-
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9 **CRIMINATORY BEHAVIOR BY BROADBAND**
10 **ACCESS TRANSPORT PROVIDERS.**

11 It shall be unlawful for a broadband access transport

12 provider to engage in unfair methods of competition or

13 unfair or deceptive acts or practices, the purpose or effect

14 of which is to discriminate in favor of a service provider

15 that is affiliated with a broadband access transport pro-

16 vider or to restrain unreasonably the ability of a service

17 provider that is not affiliated with a broadband access

18 transport provider from competing in its provision of any

19 of the services provided by a service provider as set forth

20 in section 105(3).

SEC. 104. PROTECTION FROM FRAUDULENT UNSOLICITED
21
22 **E-MAIL.**

23 Section 1030 of title 18, United States Code, is

24 amended—

25 (1) in subsection (a)(5)—

1   (A) by striking ''or'' at the end of subpara-

2   graph (B); and

3   (B) by inserting after subparagraph (C)

4   the following new subparagraphs:

5   ''(D) intentionally and without authorization

6 initiates the transmission of a bulk unsolicited elec-

7 tronic mail message to a protected computer with

8 knowledge that such message falsifies an Internet

9 domain, header information, date or time stamp,

10 originating e-mail address or other identifier; or

11   ''(E) intentionally sells or distributes any com-

12 puter program that—

13   ''(i) is designed or produced primarily for

14   the purpose of concealing the source or routing

15   information of bulk unsolicited electronic mail

16   messages in a manner prohibited by subpara-

17   graph (D) of this paragraph;

18   ''(ii) has only limited commercially signifi-

19   cant purpose or use other than to conceal such

20   source or routing information; or

21   ''(iii) is marketed by the violator or an-

22   other person acting in concert with the violator

23   and with the violator's knowledge for use in

24   concealing the source or routing information of

25   such messages;

1   (2) in subsection (c)(2)(A)—

2   (A) by inserting "(i)" after "in the case of

3   an offense"; and

4   (B) by inserting after "an offense punish-

5   able under this subparagraph;" the following: ";

6   or (ii) under subsection (a)(5)(D) or (a)(5)(E)

7   of this section which results in damage to a

8   protected computer";

9   (3) in subsection (c)(2), by adding at the end

10 the following new subparagraph:

11 "(D) in the case of a violation of subsection

12 (a)(5)(D) or (E), actual monetary loss and statutory

13 damages of $15,000 per violation or an amount of

14 up to $10 per message per violation whichever is

15 greater; and";

16 (4) in subsection (e)—

17   (A) by striking "and" at the end of para-

18 graph (8);

19   (B) by striking the period at the end of

20 paragraph (9); and

21   (C) by adding at the end the following new

22 paragraphs:

23 "(10) the term 'initiates the transmission'

24 means, in the case of an electronic mail message, to

25 originate the electronic mail message, and excludes

1   the actions of any interactive computer service whose

2   facilities or services are used by another person to

3   transmit, relay, or otherwise handle such message;

4   ''(11) the term 'Internet domain' means a spe-

5   cific computer system (commonly referred to as a

6   'host') or collection of computer systems attached to

7   or able to be referenced from the Internet which are

8   assigned a specific reference point on the Internet

9   (commonly referred to as an 'Internet domain

10   name') and registered with an organization recog-

11   nized by the Internet industry as a registrant of

12   Internet domains;

13   ''(12) the term 'unsolicited electronic mail mes-

14   sage' means any substantially identical electronic

15   mail message other than electronic mail initiated by

16   any person to others with whom such person has a

17   prior relationship, including prior business relation-

18   ship, or electronic mail sent by a source to recipients

19   where such recipients, or their designees, have at

20   any time affirmatively requested to receive commu-

21   nications from that source; and

22   ''(13) the term 'Internet' means all computer

23   and telecommunications facilities, including equip-

24   ment and operating software, which comprise the

25   interconnected network of networks that employ the

1 Transmission Control Protocol/Internet Protocol, or

2 any predecessor or successor protocols to such pro-

3 tocol, to communicate information of all kinds by

4 wire or radio.''.

5 (5) in subsection (g), by inserting ''and reason-

6 able attorneys' fees and other litigation costs reason-

7 ably incurred in connection with civil action'' after

8 ''injunctive relief or other equitable relief''.

SEC. 105. DEFINITIONS.

10 For purposes of this title:

11 (1) BROADBAND.—The term ''broadband'' re-

12 fers to a transmission capability in excess of 200

13 kilobits per second in at least one direction.

14 (2) BROADBAND ACCESS TRANSPORT PRO-

15 VIDER.—The term ''broadband access transport pro-

16 vider'' means one who engages in the broadband

17 transmission of data between a user and his service

18 provider's point of interconnection with the

19 broadband access transport provider's facilities.

20 Such term shall also include a service provider who

21 provides to itself, over facilities owned by it or under

22 its control, the broadband transport of services be-

23 tween itself and its users.

24 (3) SERVICE PROVIDER.—The term ''service

25 provider'' means a person who provides a service

1   that enables users to access content, information,

2   electronic mail, or other services. The term may also

3   include access to proprietary content, information,

4   and other services as part of a package of services

5   offered to consumers.

6   (4) INTERNET.—The term ''Internet'' means all

7   computer and telecommunications facilities, includ-

8   ing equipment and operating software, which com-

9   prise the interconnected network of networks that

10   employ the Transmission Control Protocol/Internet

11   Protocol, or any predecessor or successor protocols

12   to such protocol, to communicate information of all

13   kinds by wire or radio.

14   (5) BROADBAND SERVICE PROVIDER MAR-

15   KET.—The term ''broadband service provider mar-

16   ket'' includes the provision of broadband services

17   over a single broadband access transport provider's

18   facilities.

TITLE II—ADDITIONAL PROVISIONS

SEC. 201. ACCELERATED DEPLOYMENT OF BROADBAND SERVICES.

23   Title VII of the Communications Act of 1934 is

24   amended by adding at the end thereof the following new

25   section:

1 **"SEC. 715. ACCELERATED DEPLOYMENT OF BROADBAND**

2   **SERVICES.**

3   "(a) BROADBAND SERVICES PLANS.—

4   "(1) PLAN REQUIRED.—Within 180 days after

5   the effective date of this section, each local exchange

6   carrier shall submit to the State commission in each

7   State in which such carrier does business a plan to

8   provide broadband telecommunications service in all

9   local exchange areas in which such carrier has tele-

10   phone exchange service customers as soon as such

11   broadband telecommunications service is economi-

12   cally reasonably and technically feasible. The plan

13   shall include all terms and conditions, including pric-

14   ing, under which the services shall be provided. The

15   test of economic reasonability and technical feasi-

16   bility shall be made separately by the local exchange

17   carrier for each local exchange, and the plan shall be

18   considered certified 45 days after submission unless

19   the State commission rejects the plan within such 45

20   days. Upon rejection of a plan, successive plans shall

21   be submitted until approval is obtained. The plan

22   shall be implemented within 180 days of the certifi-

23   cation of the plan in each local exchange in which

24   the provision of the service is both economically rea-

25   sonable and technically feasible. Upon certification

26   of its plan, the carrier shall be obligated by terms

1   of the plan (including any modifications that it re-

2   quests that are thereafter certified) but shall other-

3   wise provide such services free of Federal and State

4   price, rate, rate of return, and profit regulation.

5   Upon a determination by the State commission that

6   a local exchange is served by another provider of

7   broadband telecommunications services, or any

8   broadband Internet access transport provider, or

9   upon a determination by such State commission that

10 the local exchange carrier makes broadband tele-

11 communications services available to 70 percent of

12 the access lines in an exchange, a local exchange

13 carrier shall no longer be obligated by the terms of

14 any such plan in such local exchange.

15   "(2) STATE MODIFICATIONS PROHIBITED.—Ex-

16 cept upon request of the carrier, the State commis-

17 sion shall have no authority to modify any plan sub-

18 mitted pursuant to paragraph (1).

19   "(3) NO COMMISSION AUTHORITY.—The Com-

20 mission shall have no authority with respect to the

21 terms of any plan and shall have no authority with

22 respect to the approval or rejection of any such plan.

23 "(b) SUPERSESSION OF OTHER REQUIREMENTS.—

24 An incumbent local exchange carrier's provision of

25 broadband local telecommunications services shall not be

1 subject to the requirements of sections 251(c)(3) and
2 251(c)(4) of the Act in any State in which that carrier
3 certifies to the State commission that—

4   "(1) in central offices in which it provides local
5   loops that are conditioned for broadband services, it
6   provides such loops to other carriers at least as
7   quickly as it provides them for its own customers;

8   "(2) in central offices in which it does not cur-
9   rently provide local loops that are conditioned for
10   broadband services, but in which such service is eco-
11   nomically reasonable and technically feasible, it will
12   provide such loops within 120 days of a request for
13   such conditioning from another carrier; and

14   "(3) conditioned loops are provided upon such
15   prices and other terms and conditions as the parties
16   shall agree, or in any event of disagreements, as are
17   determined through commercial arbitration, in which
18   the commercial arbitrator shall establish the price
19   based upon the cost of the loops and the costs for
20   such conditioning that have been incurred by the
21   local exchange carrier plus a reasonable profit.".

SEC. 202. ACCELERATED DEPLOYMENT OF INTERNET BACKBONE.

24   (a) INTERLATA INTERNET SERVICES.—Paragraph
25 (21) of section 3 of the Communications Act of 1934 (47

1 U.S.C. 153(21)), relating to the definition of interLATA

2 service, is amended by inserting before the period the fol-

3 lowing: '', except that such term shall not include services

4 that consist of or include the transmission of any data or

5 information, including any writing, signs, signals, pictures,

6 or sounds related to the transmission of such data or in-

7 formation, by means of the Internet or any other network

8 that employs Internet Protocol-based or other packet-

9 switched technology''.

10   (b) VOICE INTERLATA INTERNET SERVICES.—Nei-

11 ther a Bell operating company, nor any affiliate of a Bell

12 operating company, may provide, by means of the Internet

13 or any other network that employs Internet Protocol-based

14 or other packet-switched technology, two-way voice-only

15 interLATA telecommunications services originating in any

16 of its in-region States until such time as the Federal Com-

17 munications Commission approves the application of such

18 company for such State pursuant to section 271(d) of the

19 Communications Act of 1934. The terms in this sub-

20 section shall have the same respective meanings given such

21 terms in sections 3 and 271 of such Act.

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