

112TH CONGRESS  
1ST SESSION

# H. R. 2281

To require accurate disclosures to consumers of the terms and conditions of 4G service and other advanced wireless mobile broadband service.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2011

Ms. ESHOO introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To require accurate disclosures to consumers of the terms and conditions of 4G service and other advanced wireless mobile broadband 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. SHORT TITLE.**

4 This Act may be cited as the “Next Generation Wire-  
5 less Disclosure Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2011, the President set a goal of bring-  
9 ing next generation wireless broadband Internet ac-

1       cess service to at least 98 percent of Americans  
2       within 5 years.

3               (2) The Federal Communications Commission's  
4       National Broadband Plan sets a minimum target of  
5       delivering universal, affordable broadband Internet  
6       access service with actual download speeds of at  
7       least 4 megabits per second and actual upload  
8       speeds of at least 1 megabit per second.

9               (3) The 4 largest wireless service providers ad-  
10      vertise 4G service using different wireless mobile  
11      broadband technologies, including LTE (Long Term  
12      Evolution), WiMAX (Worldwide Interoperability for  
13      Microwave Access), and HSPA+ (Evolved High  
14      Speed Packet Access).

15              (4) Although the International Telecommuni-  
16      cation Union has expanded its definition of 4G serv-  
17      ice to include these technologies, theoretical peak  
18      speeds and actual speeds experienced by consumers  
19      vary widely across technologies and service pro-  
20      viders.

21              (5) In 2010, the United States wireless indus-  
22      try generated almost \$160 billion in revenue, with  
23      approximately \$50 billion of this total derived from  
24      wireless data.

1           (6) Consumers need accurate information be-  
2 fore selecting a provider of wireless mobile  
3 broadband service.

4           (7) Providers and other sellers of advanced  
5 wireless mobile broadband service should be required  
6 to make accurate and reasonable disclosures of the  
7 terms and conditions of such service in order to give  
8 consumers the necessary information to make in-  
9 formed decisions about such service and to promote  
10 greater transparency in the market.

11 **SEC. 3. REQUIRED DISCLOSURES OF TERMS AND CONDI-**  
12 **TIONS OF ADVANCED WIRELESS MOBILE**  
13 **BROADBAND SERVICE.**

14 (a) SALE TO CONSUMERS.—

15           (1) IN GENERAL.—A person who sells advanced  
16 wireless mobile broadband service directly to a con-  
17 sumer shall accurately disclose the terms and condi-  
18 tions of such service by displaying such terms and  
19 conditions consistently, clearly, and prominently in  
20 all marketing materials for such service, at the point  
21 of sale of such service, and (in the case of postpaid  
22 advanced wireless mobile broadband service) in all  
23 bills for such service. The terms and conditions dis-  
24 closed shall include the information described in sub-  
25 section (c).

1 (2) SPECIAL RULES FOR PREPAID SERVICE.—

2 (A) OFF-THE-SHELF TRANSACTIONS.—

3 Paragraph (1) does not apply in the case of a  
4 transaction in which both—

5 (i) the consumer receives a device that  
6 allows the consumer to access a specified  
7 quantity of prepaid advanced wireless mo-  
8 bile broadband service; and

9 (ii) the consumer's interaction with  
10 the agents of the person from whom the  
11 consumer makes the purchase is such that  
12 the average consumer would not expect  
13 such agents to have expertise regarding the  
14 terms and conditions of such service.

15 (B) PACKAGERS OF PREPAID SERVICE.—A  
16 person who packages prepaid advanced wireless  
17 mobile broadband service for ultimate sale to a  
18 consumer in a transaction described in subpara-  
19 graph (A) shall accurately disclose the terms  
20 and conditions of such service by displaying  
21 such terms and conditions consistently, clearly,  
22 and prominently in all marketing materials for  
23 such service and on the packaging of the device  
24 described in clause (i) of such subparagraph.

1           The terms and conditions disclosed shall include  
2           the information described in subsection (c).

3           (b) SALE TO RESELLERS.—A person who sells ad-  
4 vanced wireless mobile broadband service wholesale to an-  
5 other person for ultimate sale to consumers shall disclose  
6 to such other person the information necessary to permit  
7 such other person to comply with subsection (a).

8           (c) INFORMATION DESCRIBED.—The information de-  
9 scribed in this subsection is the following:

10           (1) The guaranteed minimum transmit and re-  
11 ceive data rates for Internet protocol packets to and  
12 from on-network hosts for the service, expressed in  
13 megabits per second. For purposes of the preceding  
14 sentence, a minimum data rate is not guaranteed  
15 unless it is available for a percentage of the time in  
16 a calendar month to be established by the Commis-  
17 sion.

18           (2) The reliability rating of the service. The  
19 Commission shall establish a standard method that  
20 shall be used to calculate the reliability rating of the  
21 service, which shall be based on the data session  
22 start success percentage (network accessibility) and  
23 the data session completion success percentage (net-  
24 work retainability) of the service.

25           (3) The price of the service stated in terms of—

1 (A) in the case of service that is priced  
2 based on the volume of data sent or received,  
3 the price per unit of data sent or received; or

4 (B) in the case of service for which a flat  
5 rate is charged for service over a given time pe-  
6 riod—

7 (i) the flat rate; and

8 (ii) a detailed description of any limits  
9 on the use of such service over such time  
10 period, by volume of data sent or received  
11 or otherwise.

12 (4) Any other charges that the consumer of the  
13 service will incur that are not included in the price  
14 as stated pursuant to paragraph (3).

15 (5) The network management policies of the  
16 service with respect to Internet protocol packets to  
17 and from on-network hosts, including the following:

18 (A) Any business practices or technical  
19 mechanisms employed by the service provider,  
20 other than standard best-effort delivery, that al-  
21 locate capacity or prioritize traffic differently on  
22 the basis of the source of the applications, con-  
23 tent, or services.

24 (B) Any limits or prohibitions on the use  
25 of certain applications or services.

1 (C) Any traffic shaping or throttling mech-  
2 anisms that affect the service as a result of ex-  
3 ceeding certain usage limits.

4 (6) The technology used to provide the service,  
5 such as LTE (Long Term Evolution), WiMAX  
6 (Worldwide Interoperability for Microwave Access),  
7 or HSPA+ (Evolved High Speed Packet Access).

8 (7) The uniform resource locator of a website  
9 (together with a brief description of the contents of  
10 the website) on which is located the following:

11 (A) The complete terms of service, accept-  
12 able use policy, and any other documentation  
13 related to the network management policies of  
14 the service provider.

15 (B) A map of the coverage area of the  
16 service. If different technologies are used to  
17 provide the service in different geographic  
18 areas, the map shall indicate the technology  
19 used in each area.

20 (d) MANNER AND FORM OF DISCLOSURES.—The  
21 Commission may prescribe the manner and form of the  
22 disclosures required by this section.

23 (e) REGULATIONS.—Not later than 180 days after  
24 the date of the enactment of this Act, the Commission  
25 shall promulgate regulations implementing this section.

1 (f) ENFORCEMENT.—The Commission shall enforce  
2 this section as if this section were a part of the Commu-  
3 nications Act of 1934 (47 U.S.C. 151 et seq.). A violation  
4 of this section or a regulation promulgated under this sec-  
5 tion shall be considered to be a violation of such Act or  
6 a regulation promulgated under such Act, respectively.

7 (g) COVERAGE AREA DEFINED.—In this section, the  
8 term “coverage area” shall have the meaning given such  
9 term by the Commission. The Commission shall set min-  
10 imum signal strength and data rate requirements in order  
11 for a location to be considered to be within the coverage  
12 area of an advanced wireless mobile broadband service.

13 **SEC. 4. STUDY BY FEDERAL COMMUNICATIONS COMMIS-**  
14 **SION.**

15 (a) STUDY.—Not later than 1 year after the date of  
16 the enactment of this Act, and annually thereafter, the  
17 Commission shall complete a study evaluating the speed  
18 and pricing of advanced wireless mobile broadband service  
19 offered in the United States by the 10 largest providers  
20 of such service, as measured by the number of consumers  
21 to whom a provider provides such service in coverage areas  
22 that include any part of the United States.

23 (b) INITIAL REPORT TO CONGRESS.—Not later than  
24 10 days after completing the initial study required by sub-



1 section (a), the Commission shall submit to Congress a  
2 report on the results of such study.

3 (c) INCLUSION IN ANNUAL CMRS COMPETITION RE-  
4 PORTS.—The Commission shall include the results of each  
5 study conducted under subsection (a) in the next report  
6 on the findings of the review required by section  
7 332(c)(1)(C) of the Communications Act of 1934 (47  
8 U.S.C. 332(c)(1)(C)) that is adopted after the completion  
9 of such study.

10 **SEC. 5. DEFINITIONS.**

11 In this Act:

12 (1) 4G SERVICE.—The term “4G service” in-  
13 cludes wireless mobile broadband service that utilizes  
14 technologies that fulfill the requirements set forth in  
15 the International Mobile Telecommunications Ad-  
16 vanced standard promulgated by the International  
17 Telecommunication Union, any forerunner tech-  
18 nologies for which the designation “4G” has been  
19 approved by the International Telecommunication  
20 Union, and any technologies that are broadly mar-  
21 keted as “4G” service.

22 (2) ADVANCED WIRELESS MOBILE BROADBAND  
23 SERVICE.—The term “advanced wireless mobile  
24 broadband service” means 4G service or any wireless

1 mobile broadband service that utilizes a successor  
2 technology to 4G technology.

3 (3) BEST-EFFORT DELIVERY.—The term “best-  
4 effort delivery” means the common Internet protocol  
5 network model in which a network service routes  
6 Internet protocol packets on a first-in, first-out basis  
7 and does not distinguish based on the source, type,  
8 or other unique characteristics of the Internet pro-  
9 tocol packets for the purpose of establishing dif-  
10 ferent levels of delivery priority.

11 (4) COMMISSION.—The term “Commission”  
12 means the Federal Communications Commission.

13 (5) ON-NETWORK HOST.—The term “on-net-  
14 work host” means any networking routing equip-  
15 ment owned, operated, or within the control of a  
16 wireless mobile broadband service provider that  
17 transmits or receives Internet protocol packets or  
18 any points in a network before a subscriber’s data  
19 traffic travels to a centralized routing facility that  
20 interconnects at an exchange point with broadband  
21 service providers that are not affiliated with such  
22 wireless mobile broadband service provider.

23 (6) POSTPAID.—The term “postpaid” means,  
24 with respect to advanced wireless mobile broadband  
25 service, that the service is not prepaid.

1           (7) PREPAID.—The term “prepaid” means,  
2           with respect to advanced wireless mobile broadband  
3           service, that the consumer of such service pays for  
4           a specified quantity of service (whether measured by  
5           volume of data transferred, amount of time the serv-  
6           ice is in use, or otherwise) before gaining access to  
7           such service and must affirmatively purchase any  
8           additional quantities of service before gaining access  
9           to such additional quantities.

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