

114TH CONGRESS
1ST SESSION

S. 40

To direct the Federal Communications Commission to promulgate regulations that prohibit certain preferential treatment or prioritization of Internet traffic.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2015

Mr. LEAHY (for himself, Mr. FRANKEN, Mr. SANDERS, Mr. WHITEHOUSE, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To direct the Federal Communications Commission to promulgate regulations that prohibit certain preferential treatment or prioritization of Internet traffic.

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 “Online Competition
5 and Consumer Choice Act of 2015”.

1 **SEC. 2. FCC REGULATIONS PROHIBITING CERTAIN PREF-**
2 **ERENTIAL TREATMENT OR PRIORITIZATION**
3 **OF INTERNET TRAFFIC.**

4 (a) IN GENERAL.—Not later than 90 days after the
5 date of the enactment of this Act, the Commission shall
6 promulgate regulations that—

7 (1) prohibit a broadband provider from entering
8 into an agreement with an edge provider under
9 which the broadband provider agrees, for consider-
10 ation, in transmitting network traffic over the
11 broadband Internet access service of an end user, to
12 give preferential treatment or priority to the traffic
13 of such edge provider over the traffic of other edge
14 providers; and

15 (2) prohibit a broadband provider, in transmit-
16 ting network traffic over the broadband Internet ac-
17 cess service of an end user, from giving preferential
18 treatment or priority to the traffic of content, appli-
19 cations, services, or devices that are provided or op-
20 erated by such broadband provider, or an affiliate of
21 such broadband provider, over the traffic of other
22 content, applications, services, or devices.

23 (b) RULES OF CONSTRUCTION.—

24 (1) CERTAIN TRAFFIC NOT AFFECTED.—Noth-
25 ing in this section shall be construed as superseding
26 any obligation or authorization a broadband provider

1 may have to address the needs of emergency commu-
2 nications or law enforcement, public safety, or na-
3 tional security authorities, consistent with or as per-
4 mitted by applicable law, or as limiting the ability of
5 the provider to do so.

6 (2) CLARIFICATION OF AUTHORITY.—Nothing
7 in this section shall be construed as limiting the au-
8 thority of the Commission under any other provision
9 of law, including the authority to promulgate regula-
10 tions prohibiting or limiting preferential treatment
11 or prioritization of the traffic of an edge provider by
12 a broadband provider under GN Docket No. 14–28
13 (relating to the matter of protecting and promoting
14 the open Internet).

15 (c) ENFORCEMENT.—For purposes of sections
16 503(b) and 504 of the Communications Act of 1934 (47
17 U.S.C. 503(b); 504), this section shall be considered to
18 be a part of such Act. With respect to enforcement under
19 this section only, the following modifications of such sec-
20 tion 503(b) shall apply:

21 (1) Paragraph (5) shall not apply.

22 (2) Paragraph (6) shall be applied by sub-
23 stituting the following: “No forfeiture penalty shall
24 be determined or imposed against any person under
25 this subsection if the violation charged occurred

1 more than 3 years prior to the date of issuance of
2 the required notice or notice of apparent liability.”.

3 (d) DEFINITIONS.—In this section:

4 (1) AFFILIATE.—The term “affiliate” has the
5 meaning given such term in section 3 of the Commu-
6 nications Act of 1934 (47 U.S.C. 153).

7 (2) BROADBAND INTERNET ACCESS SERVICE.—
8 The term “broadband Internet access service” has
9 the meaning given such term in section 8.11 of title
10 47, Code of Federal Regulations.

11 (3) BROADBAND PROVIDER.—The term
12 “broadband provider” means a provider of
13 broadband Internet access service.

14 (4) COMMISSION.—The term “Commission”
15 means the Federal Communications Commission.

16 (5) EDGE PROVIDER.—The term “edge pro-
17 vider” means an individual, institution, or other en-
18 tity that provides—

19 (A) any content, application, or service
20 over the Internet; or

21 (B) a device used for accessing any con-
22 tent, application, or service over the Internet.

1 (6) END USER.—The term “end user” means
2 an individual, institution, or other entity that uses a
3 broadband Internet access service.

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