

115TH CONGRESS
2D SESSION

S. 2853

To amend the Communications Act of 1934 to ensure Internet openness, to prohibit blocking lawful content and non-harmful devices, to prohibit throttling data, to prohibit paid prioritization, to require transparency of network management practices, to provide that broadband shall be considered to be an information service, and to prohibit the Commission or a State commission from relying on section 706 of the Telecommunications Act of 1996 as a grant of authority.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2018

Mr. THUNE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to ensure Internet openness, to prohibit blocking lawful content and non-harmful devices, to prohibit throttling data, to prohibit paid prioritization, to require transparency of network management practices, to provide that broadband shall be considered to be an information service, and to prohibit the Commission or a State commission from relying on section 706 of the Telecommunications Act of 1996 as a grant of authority.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. INTERNET OPENNESS.**

2 Title I of the Communications Act of 1934 (47
3 U.S.C. 151 et seq.) is amended by adding at the end the
4 following:

5 **“SEC. 13. INTERNET OPENNESS.**

6 “(a) OBLIGATIONS OF BROADBAND INTERNET AC-
7 CESS SERVICE PROVIDERS.—A person engaged in the pro-
8 vision of broadband Internet access service, insofar as
9 such person is so engaged—

10 “(1) may not block lawful content, applications,
11 or services, subject to reasonable network manage-
12 ment;

13 “(2) may not prohibit the use of non-harmful
14 devices, subject to reasonable network management;

15 “(3) may not throttle lawful traffic by selec-
16 tively slowing, speeding, degrading, or enhancing
17 Internet traffic based on source, destination, or con-
18 tent, subject to reasonable network management;

19 “(4) may not engage in paid prioritization; and

20 “(5) shall publicly disclose accurate and rel-
21 evant information in plain language regarding the
22 network management practices, performance, and
23 commercial terms of its broadband Internet access
24 services sufficient for consumers to make informed
25 choices regarding use of such services and for con-
26 tent, application, service, and device providers to de-

1 velop, market, and maintain Internet offerings, ex-
2 cept that a provider is not required to publicly dis-
3 close competitively sensitive information or informa-
4 tion that could compromise network security or un-
5 dermine the efficacy of reasonable network manage-
6 ment practices.

7 “(b) COMMISSION AUTHORITY.—

8 “(1) IN GENERAL.—The Commission shall en-
9 force the obligations established in subsection (a)
10 through adjudication of complaints alleging viola-
11 tions of such subsection but may not expand the
12 Internet openness obligations for provision of
13 broadband Internet access service beyond the obliga-
14 tions established in such subsection, whether by
15 rulemaking or otherwise.

16 “(2) FORMAL COMPLAINT PROCEDURES.—Not
17 later than 60 days after the date of the enactment
18 of this section, the Commission shall adopt formal
19 complaint procedures to address alleged violations of
20 subsection (a).

21 “(c) OTHER LAWS AND CONSIDERATIONS.—Nothing
22 in this section—

23 “(1) supersedes any obligation or authorization
24 a provider of broadband Internet access service may
25 have to address the needs of emergency communica-

1 tions or law enforcement, public safety, or national
2 security authorities, consistent with or as permitted
3 by applicable law, or limits the provider’s ability to
4 do so; or

5 “(2) prohibits reasonable efforts by a provider
6 of broadband Internet access service to address
7 copyright infringement or other unlawful activity.

8 “(d) CONSUMER CHOICE.—

9 “(1) IN GENERAL.—Nothing in this section
10 shall be construed to limit consumers’ choice of serv-
11 ice plans or consumers’ control over their chosen
12 broadband Internet access service or, except as pro-
13 vided in paragraph (2), the ability of broadband
14 Internet access service providers to offer specialized
15 services.

16 “(2) PROHIBITION ON CERTAIN PRACTICES RE-
17 GARDING SPECIALIZED SERVICES.—Specialized serv-
18 ices may not be offered or provided in ways that
19 threaten the meaningful availability of broadband
20 Internet access service or that have been devised or
21 promoted in a manner designed to evade the pur-
22 poses of this section.

23 “(e) BROADBAND TO BE CONSIDERED INFORMATION
24 SERVICE.—Notwithstanding any other provision of law,
25 the provision of broadband Internet access service or any

1 other mass market retail service providing advanced tele-
2 communications capability (as defined in section 706 of
3 the Telecommunications Act of 1996 (47 U.S.C. 1302))
4 shall be considered to be an information service.

5 “(f) REASONABLE NETWORK MANAGEMENT.—For
6 purposes of subsection (a), a network management prac-
7 tice is reasonable if it is appropriate and tailored to achiev-
8 ing a legitimate network management purpose, taking into
9 account the particular network architecture and any tech-
10 nology and operational limitations of the broadband Inter-
11 net access service provider.

12 “(g) DEFINITIONS.—In this section:

13 “(1) BROADBAND INTERNET ACCESS SERV-
14 ICE.—The term ‘broadband Internet access service’
15 means a mass market retail service by wire or radio
16 that provides the capability to transmit data to and
17 receive data from all or substantially all Internet
18 endpoints, including any capabilities that are inci-
19 dental to and enable the operation of the commu-
20 nications service, but excluding dial-up Internet ac-
21 cess. Such term also encompasses any service that
22 the Commission finds to be providing a functional
23 equivalent of the service described in the previous
24 sentence, or that is used to evade the obligations set
25 forth in subsection (a).

1 “(2) PAID PRIORITIZATION.—The term ‘paid
2 prioritization’ means the speeding up or slowing
3 down of some Internet traffic in relation to other
4 Internet traffic over the consumer’s broadband
5 Internet access service by prioritizing or deprioritiz-
6 ing packets based on compensation or lack thereof
7 by the sender to the broadband Internet access serv-
8 ice provider.

9 “(3) SPECIALIZED SERVICES.—The term ‘spe-
10 cialized services’ means services other than
11 broadband Internet access service that are offered
12 over the same network as, and that may share net-
13 work capacity with, broadband Internet access serv-
14 ice.”.

15 **SEC. 2. AUTHORITY UNDER SECTION 706 OF THE TELE-**
16 **COMMUNICATIONS ACT OF 1996.**

17 (a) IN GENERAL.—Section 706 of the Telecommuni-
18 cations Act of 1996 (47 U.S.C. 1302) is amended—

19 (1) by redesignating subsection (d) as sub-
20 section (e); and

21 (2) by inserting after subsection (c) the fol-
22 lowing:

23 “(d) NO GRANT OF AUTHORITY.—The Commission
24 or a State commission with regulatory jurisdiction over

1 telecommunications services may not rely on this section
2 as a grant of authority.”.

3 (b) TECHNICAL CORRECTIONS.—Section 706 of the
4 Telecommunications Act of 1996 (47 U.S.C. 1302) is fur-
5 ther amended—

6 (1) in subsection (c), by striking “(as defined”
7 and all that follows through “note))”; and

8 (2) in subsection (e), as redesignated, in the
9 matter preceding paragraph (1), by striking “sub-
10 section” and inserting “section”.

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