

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 1644
OFFERED BY M . _____**

Strike section 2 and insert the following:

1 **SEC. 2. INTERNET OPENNESS.**

2 (a) OBLIGATIONS OF BROADBAND INTERNET ACCESS
3 SERVICE PROVIDERS.—A person engaged in the provision
4 of broadband internet access service, insofar as such per-
5 son is so engaged—

6 (1) may not block lawful content, applications,
7 or services, subject to reasonable network manage-
8 ment;

9 (2) may not prohibit the use of non-harmful de-
10 vices, subject to reasonable network management;

11 (3) may not throttle lawful traffic by selectively
12 slowing, speeding, degrading, or enhancing internet
13 traffic based on source, destination, or content, sub-
14 ject to reasonable network management;

15 (4) may not engage in paid prioritization; and

16 (5) shall publicly disclose accurate and relevant
17 information in plain language regarding the network
18 management practices, performance, and commercial
19 terms of its broadband internet access services suffi-

1 cient for consumers to make informed choices re-
2 garding use of such services and for content, appli-
3 cation, service, and device providers to develop, mar-
4 ket, and maintain internet offerings, except that a
5 provider is not required to publicly disclose competi-
6 tively sensitive information or information that could
7 compromise network security or undermine the effi-
8 cacy of reasonable network management practices.

9 (b) COMMISSION AUTHORITY.—

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

18 (2) FORMAL COMPLAINT PROCEDURES.—Not
19 later than 60 days after the date of the enactment
20 of this Act, the Commission shall adopt formal com-
21 plaint procedures to address alleged violations of
22 subsection (a).

23 (3) ENFORCEMENT.—Except as provided in
24 paragraph (1), the Commission shall implement and
25 enforce this section as if this section is a part of the

1 Communications Act of 1934 (47 U.S.C. 151 et
2 seq.). A violation of this section, or a regulation pro-
3 mulgated under this section, shall be considered to
4 be a violation of the Communications Act of 1934,
5 or a regulation promulgated under such Act, respec-
6 tively.

7 (c) OTHER LAWS AND CONSIDERATIONS.—Nothing
8 in this section—

9 (1) supersedes any obligation or authorization a
10 provider of broadband internet access service may
11 have to address the needs of emergency communica-
12 tions or law enforcement, public safety, or national
13 security authorities, consistent with or as permitted
14 by applicable law, or limits the provider’s ability to
15 do so; or

16 (2) prohibits reasonable efforts by a provider of
17 broadband internet access service to address copy-
18 right infringement or other unlawful activity.

19 (d) CONSUMER CHOICE.—

20 (1) IN GENERAL.—Nothing in this section shall
21 be construed to limit consumers’ choice of service
22 plans or consumers’ control over their chosen
23 broadband internet access service or, except as pro-
24 vided in paragraph (2), the ability of broadband

1 internet access service providers to offer specialized
2 services.

3 (2) PROHIBITION ON CERTAIN PRACTICES RE-
4 GARDING SPECIALIZED SERVICES.—Specialized serv-
5 ices may not be offered or provided in ways that
6 threaten the meaningful availability of broadband
7 internet access service or that have been devised or
8 promoted in a manner designed to evade the pur-
9 poses of this section.

10 (e) BROADBAND TO BE CONSIDERED INFORMATION
11 SERVICE.—Notwithstanding any other provision of law,
12 the provision of broadband internet access service or any
13 other mass-market retail service providing advanced tele-
14 communications capability (as defined in section 706 of
15 the Telecommunications Act of 1996 (47 U.S.C. 1302))
16 shall be considered to be an information service (as de-
17 fined in section 3 of the Communications Act of 1934 (47
18 U.S.C. 153)).

19 (f) REASONABLE NETWORK MANAGEMENT.—For
20 purposes of subsection (a), a network management prac-
21 tice is reasonable if it is appropriate and tailored to achiev-
22 ing a legitimate network management purpose, taking into
23 account the particular network architecture and any tech-
24 nology and operational limitations of the broadband inter-
25 net access service provider.

1 (g) DEFINITIONS.—In this section:

2 (1) BROADBAND INTERNET ACCESS SERVICE.—

3 (A) IN GENERAL.—The term “broadband
4 internet access service” means a mass-market
5 retail service by wire or radio that provides the
6 capability to transmit data to and receive data
7 from all or substantially all internet endpoints,
8 including any capabilities that are incidental to
9 and enable the operation of the communications
10 service, but excluding dial-up internet access
11 service.

12 (B) FUNCTIONAL EQUIVALENT; EVA-
13 SION.—The term includes any service that—

14 (i) the Commission finds to be pro-
15 viding a functional equivalent of the service
16 described in subparagraph (A); or

17 (ii) is used to evade the protections
18 set forth in subsection (a).

19 (2) COMMISSION.—The term “Commission”
20 means the Federal Communications Commission.

21 (3) PAID PRIORITIZATION.—The term “paid
22 prioritization” means the speeding up or slowing
23 down of some internet traffic in relation to other
24 internet traffic over the consumer’s broadband inter-
25 net access service by prioritizing or deprioritizing

1 packets based on compensation or lack thereof by
2 the sender to the broadband internet access service
3 provider.

4 (4) SPECIALIZED SERVICES.—The term “spe-
5 cialized services” means services other than
6 broadband internet access service that are offered
7 over the same network as, and that may share net-
8 work capacity with, broadband internet access serv-
9 ice.

10 **SEC. 3. AUTHORITY UNDER SECTION 706 OF THE TELE-**
11 **COMMUNICATIONS ACT OF 1996.**

12 (a) NO GRANT OF AUTHORITY.—The Federal Com-
13 munications Commission or a State commission with regu-
14 latory jurisdiction over telecommunications services may
15 not rely on section 706 of the Telecommunications Act of
16 1996 (47 U.S.C. 1302) as a grant of authority.

17 (b) STATE COMMISSION DEFINED.—In this section,
18 the term “State commission” has the meaning given such
19 term in section 3 of the Communications Act of 1934 (47
20 U.S.C. 153).

