

**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) DUTIES OF BROADBAND INTERNET ACCESS  
3 SERVICE PROVIDERS.—

4 (1) IN GENERAL.—To the extent that a person  
5 is engaged in the provision of broadband internet ac-  
6 cess service, such person—

7 (A) shall not block lawful content, applica-  
8 tions, or services, or prohibit the use of non-  
9 harmful devices, subject to reasonable network  
10 management;

11 (B) shall not unjustly or unreasonably dis-  
12 criminate in transmitting lawful traffic over a  
13 consumer's broadband internet access service;  
14 and

15 (C) shall disclose accurate and relevant in-  
16 formation in plain language regarding the price,  
17 performance, and network management prac-  
18 tices of such person's broadband internet access  
19 service sufficient—

1 (i) for consumers to make informed  
2 choices regarding use of such service; and

3 (ii) for content, application, service,  
4 and device providers to develop and market  
5 new internet offerings.

6 (2) COMMISSION REQUIREMENTS.—The Com-  
7 mission may promulgate rules to implement para-  
8 graph (1)(C). Any such rules—

9 (A) shall require, at a minimum, such per-  
10 son to display or provide links to the required  
11 information on an internet website and to up-  
12 date such information in a timely fashion to re-  
13 flect material changes in the information sub-  
14 ject to such paragraph; and

15 (B) shall not require public disclosure of—

16 (i) competitively sensitive information;

17 (ii) information that would com-  
18 promise network security; or

19 (iii) information that would under-  
20 mine the efficacy of reasonable network  
21 management practices.

22 (3) RULE OF CONSTRUCTION.—For purposes of  
23 paragraph (1)(B), reasonable network management  
24 shall not be construed to be unjustly or unreason-  
25 ably discriminatory.

1 (b) ENFORCEMENT.—

2 (1) COMMISSION AUTHORITY.—The Commission  
3 shall enforce the duties established in subsections  
4 (a)(1)(A) and (a)(1)(B) through adjudication of a  
5 complaint alleging that a service violates one or  
6 more of such duties. Nothing in this section limits  
7 the Commission’s authority to adopt procedures for  
8 the adjudication of a complaint, to adopt an order  
9 requiring compliance from an entity subject to a  
10 complaint, to initiate an enforcement action, or to  
11 issue a declaratory ruling or guidance.

12 (2) INJUNCTIVE RELIEF AND PENALTIES.—If  
13 the Commission finds that a provider of broadband  
14 internet access service has violated any provision of  
15 subsection (a), the Commission may issue an order  
16 enjoining such violation, including interim injunctive  
17 relief. If the Commission finds that a provider of  
18 broadband internet access service has engaged in a  
19 willful and knowing violation of such subsection, the  
20 Commission may issue a fine or forfeiture of no  
21 more than \$2,000,000 for any practice found to vio-  
22 late such subsection, consistent with the procedures  
23 in section 503 of the Communications Act of 1934  
24 (47 U.S.C. 503). The Commission may not order the

1 payment of damages for any violation of such sub-  
2 section.

3 (3) NO ADDITIONAL PRIVATE RIGHTS AUTHOR-  
4 IZED.—Nothing in this section shall be construed to  
5 authorize any private right of action in court.

6 (c) RELATIONSHIP TO OTHER LAW.—

7 (1) THE COMMISSION.—The Commission may  
8 not impose regulations on broadband internet access  
9 service or any component thereof under title II of  
10 the Communications Act of 1934 (47 U.S.C. 201 et  
11 seq.), except in the event that a provider of  
12 broadband internet access service elects to provide  
13 the transmission component of such service as a  
14 telecommunications service under such title. Except  
15 as expressly provided in this section, nothing in this  
16 section shall increase, reduce, or otherwise alter the  
17 Commission's authority.

18 (2) PROVIDERS.—Nothing in this section shall  
19 supersede any obligation or authorization a provider  
20 of broadband internet access service may have, or  
21 limit the provider's ability, to address the needs of  
22 emergency communications, law enforcement, public  
23 safety, or national security, consistent with applica-  
24 ble law. Nothing in this section shall prohibit reason-  
25 able efforts by a provider of broadband internet ac-

1       cess service to address copyright infringement or  
2       other unlawful activity.

3           (3) SAVINGS CLAUSE.—Nothing in this section  
4       shall increase, reduce, or otherwise alter the anti-  
5       trust or other authorities of the Department of Jus-  
6       tice or the Federal Trade Commission.

7       (d) DEFINITIONS.—For purposes of this section:

8           (1) BROADBAND INTERNET ACCESS SERVICE.—

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

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

20           (i) the Commission finds to be pro-  
21       viding a functional equivalent of the service  
22       described in subparagraph (A); or

23           (ii) is used to evade the protections  
24       set forth in this section.

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

3           (3) REASONABLE NETWORK MANAGEMENT.—

4                 (A) IN GENERAL.—The term “reasonable  
5 network management” means a network man-  
6 agement practice that is appropriate and tai-  
7 lored to achieving a legitimate network manage-  
8 ment function, taking into account the par-  
9 ticular network architecture or technology of  
10 the provider.

11                 (B) INCLUSIONS.—The term includes ap-  
12 propriate and tailored practices—

13                         (i) to reduce or mitigate the effects of  
14 congestion on a broadband internet access  
15 service provider’s network;

16                         (ii) to ensure network security or in-  
17 tegrity;

18                         (iii) to address traffic that is harmful  
19 to or unwanted by—

20                                 (I) users, including premises op-  
21 erators;

22                                 (II) the provider’s network; or

23                                 (III) the internet;

24                                 (iv) to meet the needs of public safety;

25                                 and

1 (v) to provide services or capabilities  
2 consistent with a consumer's choices re-  
3 garding parental control or security capa-  
4 bilities.

5 (C) CONSIDERATIONS.—In determining  
6 whether a network management practice is rea-  
7 sonable, the Commission shall consider tech-  
8 nical requirements, standards, or best practices  
9 adopted by one or more independent, widely  
10 recognized internet community governance ini-  
11 tiatives or standard-setting organizations.

