

Proposed Net Neutrality Legislative Framework

SEC. 1 SHORT TITLE.—This Act may be cited as the “_____ Act of 2010.”

SEC. 2 INTERNET OPENNESS.

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

“SEC. 12 INTERNET OPENNESS.

“(a) **DUTIES OF WIRELINE PROVIDERS.**—A person engaged in the provision of broadband Internet access service by wire, insofar as such person is so engaged—

“(1) shall not block lawful content, applications, or services, or prohibit the use of non-harmful devices, subject to reasonable network management;

“(2) shall not unjustly or unreasonably discriminate in transmitting lawful traffic over a consumer’s wireline broadband Internet access service. For purposes of this subparagraph, reasonable network management practices shall not be construed to be unjustly or unreasonably discriminatory.

“(3) shall disclose accurate and relevant information in plain language regarding the price, performance, and network management practices of its wireline broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop and market new Internet offerings. The Commission shall not require public disclosure of competitively sensitive information or information that could compromise network security or undermine the efficacy of reasonable network management practices]. In promulgating rules implementing this subparagraph, the Commission shall at minimum require providers to display or provide links to the required information on an Internet website and to update such information in a timely fashion to reflect material changes in the information subject to this paragraph.

“(b) **DUTIES OF WIRELESS PROVIDERS.**— A person engaged in the provision of broadband Internet access service by radio, insofar as such person is so engaged—

“(1) shall not block consumers from accessing lawful Internet websites, subject to reasonable network management;

“(2) shall not block lawful applications that compete with the provider’s voice or video communications services in which the provider has an attributable interest, subject to reasonable network management; and

“(3) shall disclose with regard to its wireless broadband Internet access services the same information required of wireline broadband Internet access service by paragraph

12(a)(3).

“Paragraph (2) shall not apply to wireless broadband Internet access service providers to the extent they are engaged in the operation of application stores or their functional equivalent.

“(c) ENFORCEMENT—

“(1) COMMISSION AUTHORITY.—The Commission shall enforce the duties established in subparagraphs 12(a)(1), (a)(2), (b)(1) and (b)(2), through adjudication of complaints alleging a service or services violate such subparagraphs. Nothing in this section limits the Commission’s authority to adopt procedures for the adjudication of complaints, to adopt orders requiring compliance from an entity subject to a complaint or enforcement actions, or to issue declaratory rulings or guidance.

“(2) INJUNCTIVE RELIEF AND PENALTIES.— If the Commission finds that a provider of broadband Internet access service has violated paragraphs (a) or (b), the Commission may issue an order enjoining such violation, including interim injunctive relief. If the Commission finds that a provider of broadband Internet access service has engaged in a willful and knowing violation of paragraphs (a) or (b), the Commission may issue a fine or forfeiture of no more than \$2,000,000 for any practice found to violate paragraphs (a) or (b), consistent with the procedures in Section 503 of the Communications Act. The Commission may not order the payment of damages for any violation of paragraphs (a) or (b).

“(3) NO ADDITIONAL PRIVATE RIGHTS AUTHORIZED.—Nothing in this section shall be construed to authorize any private right of action.

“(d) RELATIONSHIP TO OTHER TITLES AND LAWS —

“(1) THE COMMISSION.— The Commission may not impose regulations on broadband Internet access service or any component thereof under Title II of the Communications Act, except in the event that a provider of broadband Internet access service elects to provide the transmission component of such service as a telecommunications service under Title II of the Communications Act. Except as expressly provided in this section, nothing in this section shall increase, reduce, or otherwise alter the Commission’s authority.

“(2) PROVIDERS.— Nothing in this section supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communication, law enforcement, public safety, or national security, consistent with applicable law, or limits the provider's ability to do so. Nothing in this section shall prohibit reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity.

“(e) REPORT TO CONGRESS—No later than December 31, 2011, the Commission shall deliver to the Committee on Energy and Commerce of the House of Representatives and U.S. Senate Committee on Commerce, Science, & Transportation recommendations with regard to

additional authority needed by the Commission to implement the National Broadband Plan and to ensure further the protection of consumers in their use of Internet services.

“(f) TERM OF AUTHORITY—This section shall expire on December 31, 2012, provided that the Commission may continue to adjudicate cases regarding violations that occurred prior to January 1, 2013, that are filed at the Commission no later than March 1, 2013.

“(g) DEFINITIONS—For purposes of this section:

“(1) BROADBAND INTERNET ACCESS SERVICE –The term ‘broadband Internet access service’ means:

“(A) A mass market retail service, by wire or radio, that provides high-speed capability to transmit data to and receive data from all or substantially all Internet endpoints, including any associated information-processing capabilities; or

“(B) A service that the Commission finds provides consumers a functional equivalent to the service described in subparagraph (A) or and evades the consumer protections set forth in this section.

“(2) HIGH-SPEED.—The term ‘high-speed’ shall have the meaning given to it in the Commission’s Fifth Report on the Deployment of Advanced Telecommunications Capability to All Americans, FCC 08-88 (rel. June 12, 2008).

“(3) REASONABLE NETWORK MANAGEMENT. – The term “reasonable network management” means a network management practice that is appropriate and tailored to achieving a legitimate network management function, taking into account the particular network architecture or technology of the provider. It includes appropriate and tailored practices to reduce or mitigate the effects of congestion on a broadband Internet access provider’s network; to ensure network security or integrity; to address traffic that is harmful to or unwanted by users, including premise operators, or to the provider’s network, or the Internet; to meet the needs of public safety; and to provide services or capabilities to effectuate a consumer’s choices, including parental controls or security capabilities. In determining whether a network management practice is reasonable, the Commission shall consider technical requirements, standards, or best practices adopted by one or more independent, widely-recognized Internet community governance initiative or standard-setting organization. In determining whether a network management practice for wireless broadband Internet access service is reasonable, the Commission shall also consider the technical, operational, and other differences between wireless and other broadband Internet access platforms, including the need to ensure the efficient use of spectrum.

The FCC shall determine the treatment of fixed wireless and satellite services for the purposes of this section.