

115TH CONGRESS
2D SESSION

H. R. 6393

To amend the Communications Act of 1934 to provide for internet openness requirements for broadband internet access service providers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2018

Mr. COFFMAN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to provide for internet openness requirements for broadband internet access service providers, and for other purposes.

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 “21st Century Internet
5 Act”.

6 **SEC. 2. BROADBAND INTERNET ACCESS SERVICE.**

7 The Communications Act of 1934 (47 U.S.C. 151 et
8 seq.) is amended by adding at the end the following:

1 **“TITLE VIII—BROADBAND**
2 **INTERNET ACCESS SERVICE**

3 **“SEC. 801. INTERNET OPENNESS.**

4 “(a) NO BLOCKING.—A broadband internet access
5 service provider may not—

6 “(1) block lawful content, applications, or serv-
7 ices, subject to reasonable network management;

8 “(2) charge an edge provider a fee to avoid
9 blocking of the content, applications, or services pro-
10 vided by the edge provider; or

11 “(3) prohibit, restrict, or penalize the use of
12 non-harmful devices on the network of the broad-
13 band internet access service provider, subject to rea-
14 sonable network management.

15 “(b) NO THROTTLING.—A broadband internet access
16 service provider may not—

17 “(1) impair, degrade, slow down, speed up, or
18 enhance lawful internet traffic on the basis of inter-
19 net content, application, source, destination, service,
20 or use of a non-harmful device, or any particular
21 class of content, application, source, destination,
22 service, or non-harmful device, subject to reasonable
23 network management; or

24 “(2) charge an edge provider a fee to avoid the
25 impairment, degradation, or slowing down of inter-

1 net traffic of the edge provider, or for the speeding
2 up or enhancement of such traffic, on the basis of
3 internet content, application, source, destination,
4 service, or use of a non-harmful device, or any par-
5 ticular class of content, application, source, destina-
6 tion, service, or non-harmful device.

7 “(c) NO PAID PREFERENTIAL TREATMENT.—A
8 broadband internet access service provider may not engage
9 in paid preferential treatment.

10 “(d) NO UNREASONABLE INTERFERENCE OR DIS-
11 ADVANTAGE STANDARD FOR INTERNET CONDUCT.—

12 “(1) IN GENERAL.—A broadband internet ac-
13 cess service provider may not unreasonably interfere
14 with or disadvantage—

15 “(A) the ability of end users to select, ac-
16 cess, and use broadband internet access service
17 or the lawful content, applications, services, or
18 devices chosen by such end users, including any
19 particular class of content, application, service,
20 or device; or

21 “(B) the ability of edge providers to make
22 available to end users lawful content, applica-
23 tions, services, or devices, including any par-
24 ticular class of content, application, service, or
25 device.

1 “(2) REASONABLE NETWORK MANAGEMENT.—
2 Reasonable network management shall not be con-
3 sidered a violation of this subsection.

4 “(e) TRANSPARENCY.—

5 “(1) DISCLOSURES REQUIRED.—A broadband
6 internet access service provider shall publicly disclose
7 accurate and relevant information regarding the net-
8 work management practices, performance (including
9 speed, latency, and packet loss), and commercial
10 terms of the broadband internet access services of
11 such provider sufficient for consumers to make in-
12 formed choices regarding use of such services and
13 for edge providers to develop, market, and maintain
14 internet offerings.

15 “(2) FORM AND MANNER OF DISCLOSURES.—
16 The disclosures required by paragraph (1) shall be—

17 “(A) made on a timely basis;

18 “(B) made prominently and in plain lan-
19 guage; and

20 “(C) accessible to current and prospective
21 end users and edge providers, the Commission,
22 and third parties who wish to monitor network
23 management practices.

24 “(3) EXCEPTIONS.—

1 “(A) IN GENERAL.—Paragraph (1) does
2 not require a broadband internet access service
3 provider to publicly disclose information that—

4 “(i) is competitively sensitive;

5 “(ii) could compromise network secu-
6 rity; or

7 “(iii) could undermine the efficacy of
8 reasonable network management practices.

9 “(B) REDACTED AND UNREDACTED
10 VERSIONS OF DISCLOSURE.—A broadband
11 internet access service provider that withholds
12 information under subparagraph (A) from any
13 public disclosure made to comply with para-
14 graph (1) shall—

15 “(i) submit to the Commission an
16 unredacted version of such disclosure that
17 contains the information withheld; and

18 “(ii) indicate in the public version of
19 such disclosure that information has been
20 redacted from such disclosure under sub-
21 paragraph (A).

22 “(C) EVALUATION BY COMMISSION.—

23 “(i) IN GENERAL.—Not later than 14
24 days after the Commission receives an
25 unredacted version of a disclosure under

1 subparagraph (B)(i), the Commission shall
2 review such disclosure to determine if the
3 information withheld from the public
4 version of such disclosure meets the re-
5 quirements for an exception under sub-
6 paragraph (A).

7 “(ii) DEADLINE FOR DISCLOSURE.—If
8 the Commission determines under clause
9 (i) that the information withheld from the
10 public version of the disclosure does not
11 meet the requirements for an exception
12 under subparagraph (A), the broadband
13 internet access service provider shall pub-
14 licly disclose such information not later
15 than 30 days after the date of the deter-
16 mination of the Commission. The running
17 of the time period specified in the pre-
18 ceding sentence shall be tolled during the
19 pendency of any petition for reconsider-
20 ation of the determination under section
21 405, application for review of the deter-
22 mination under section 5(c) (in the case of
23 a determination made under authority del-
24 egated under such section), or civil action

1 seeking judicial review of the determina-
2 tion.

3 **“SEC. 802. TRAFFIC EXCHANGE.**

4 “(a) DUTY TO INTERCONNECT AND EXCHANGE
5 INTERNET PROTOCOL TRAFFIC.—A broadband internet
6 access service provider shall have the duty to interconnect
7 and exchange Internet Protocol traffic on a settlement-
8 free basis with any person (including an edge provider or
9 other internet service provider) seeking to exchange Inter-
10 net Protocol traffic with such broadband internet access
11 service provider, if the traffic exchange arrangement pro-
12 posed by such person provides for the exchange of—

13 “(1) Internet Protocol traffic with such broad-
14 band internet access service provider on a reasonably
15 localized basis; and

16 “(2) at least a reasonable minimum amount of
17 Internet Protocol traffic with such broadband inter-
18 net access service provider, except that the propor-
19 tion of traffic sent and received between the person
20 seeking to exchange traffic and the provider shall
21 not be a factor in determining what is a reasonable
22 minimum amount for purposes of this paragraph.

23 “(b) INDIRECT INTERCONNECTION.—A broadband
24 internet access service provider may satisfy the duty of
25 such provider under subsection (a) by interconnecting in-

1 directly with any person requesting interconnection under
2 such subsection, if—

3 “(1) as of the date of the enactment of this
4 title, such broadband internet access service provider
5 relies primarily on indirect interconnection for the
6 exchange of all of the Internet Protocol traffic of
7 such provider with other persons (including edge
8 providers and other internet service providers); and

9 “(2) the entity through which Internet Protocol
10 traffic will be exchanged with such provider offers
11 settlement-free interconnection for the purpose of ex-
12 changing Internet Protocol traffic with such provider
13 on terms that are at least as favorable to persons re-
14 questing interconnection as those required under
15 subsection (a).

16 “(c) UNREASONABLE DISCRIMINATION PROHIB-
17 ITED.—A broadband internet access service provider may
18 not unreasonably discriminate when entering into traffic
19 exchange arrangements under subsection (a) or complying
20 with the duty of such provider under such subsection
21 through indirect interconnection in accordance with sub-
22 section (b).

23 “(d) OTHER TRAFFIC EXCHANGE ARRANGE-
24 MENTS.—Any broadband internet access service provider
25 traffic exchange arrangement other than an arrangement

1 described in subsection (a) shall be made on a commer-
2 cially reasonable basis.

3 “(e) PROHIBITION ON EVASION OF INTERNET OPEN-
4 NESS OBLIGATIONS.—A broadband internet access service
5 provider may not engage in practices related to or in con-
6 nection with Internet Protocol traffic exchange, or enter
7 into traffic exchange arrangements, that are designed or
8 intended to evade the obligations set forth in section 801.

9 **“SEC. 803. OTHER LAWS AND CONSIDERATIONS.**

10 “(a) EMERGENCY COMMUNICATIONS, LAW EN-
11 FORCEMENT, AND RELATED MATTERS.—Nothing in this
12 title supercedes any obligation or authorization a broad-
13 band internet access service provider may have to address
14 the needs of emergency communications or law enforce-
15 ment, public safety, or national security authorities, con-
16 sistent with or as permitted by applicable law, or limits
17 the ability of the provider to do so.

18 “(b) COPYRIGHT INFRINGEMENT AND OTHER UN-
19 LAWFUL ACTIVITY.—Nothing in this title prohibits rea-
20 sonable efforts by a broadband internet access service pro-
21 vider to address copyright infringement or other unlawful
22 activity.

23 “(c) END-USER CHOICE; SPECIALIZED SERVICES.—

24 “(1) IN GENERAL.—Nothing in this title shall
25 be construed to limit—

1 “(A) the ability of end users to choose
2 service plans or to exercise control over the
3 broadband internet access service chosen by the
4 user; or

5 “(B) except as provided in paragraph (2),
6 the ability of broadband internet access service
7 providers to offer specialized services.

8 “(2) SPECIALIZED SERVICES.—Specialized serv-
9 ices may not be—

10 “(A) offered or provided in ways that con-
11 stitute a functional equivalent of broadband
12 internet access service; or

13 “(B) otherwise designed or intended to
14 evade the obligations set forth in section 801 or
15 802.

16 **“SEC. 804. ACCESS BY PERSONS WITH DISABILITIES.**

17 “(a) MANUFACTURING.—A manufacturer of broad-
18 band equipment or broadband customer premises equip-
19 ment shall ensure that the equipment is designed, devel-
20 oped, and fabricated to be accessible to and usable by indi-
21 viduals with disabilities, if readily achievable.

22 “(b) BROADBAND INTERNET ACCESS SERVICE.—A
23 broadband internet access service provider shall ensure
24 that the service is accessible to and usable by individuals
25 with disabilities, if readily achievable.

1 “(c) COMPATIBILITY.—Whenever the requirements of
2 subsections (a) and (b) are not readily achievable, such
3 a manufacturer or provider shall ensure that the equip-
4 ment or service is compatible with existing peripheral de-
5 vices or specialized broadband customer premises equip-
6 ment commonly used by individuals with disabilities to
7 achieve access, if readily achievable.

8 “(d) GUIDELINES.—Not later than 6 months after
9 the date of the enactment of this title, the Architectural
10 and Transportation Barriers Compliance Board shall de-
11 velop guidelines for accessibility of broadband equipment
12 and broadband customer premises equipment in conjunc-
13 tion with the Commission. The Board shall review and up-
14 date the guidelines periodically.

15 “(e) NO ADDITIONAL PRIVATE RIGHTS AUTHOR-
16 IZED.—Nothing in this section shall be construed to au-
17 thorize any private right of action to enforce any require-
18 ment of this section or any regulation thereunder. The
19 Commission shall have exclusive jurisdiction with respect
20 to any complaint under this section.

21 “(f) DEFINITIONS.—In this section:

22 “(1) BROADBAND CUSTOMER PREMISES EQUIP-
23 MENT.—The term ‘broadband customer premises
24 equipment’ means equipment employed on the prem-
25 ises of a person (other than a broadband internet ac-

1 cess service provider) to originate, route, or termi-
2 nate broadband internet access services.

3 “(2) BROADBAND EQUIPMENT.—The term
4 ‘broadband equipment’ means equipment, other than
5 broadband customer premises equipment, used by a
6 broadband internet access service provider to provide
7 broadband internet access service, and includes soft-
8 ware integral to such equipment (including up-
9 grades).

10 “(3) DISABILITY.—The term ‘disability’ has the
11 meaning given such term in section 3(1)(A) of the
12 Americans with Disabilities Act of 1990 (42 U.S.C.
13 12102(1)(A)).

14 “(4) READILY ACHIEVABLE.—The term ‘readily
15 achievable’ has the meaning given such term in sec-
16 tion 301(9) of such Act (42 U.S.C. 12181(9)).

17 **“SEC. 805. COMMISSION AUTHORITY.**

18 “(a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
19 It shall be unlawful for a broadband internet access service
20 provider to engage in unfair or deceptive acts or practices.

21 “(b) GENERAL ENFORCEMENT AND IMPLEMENTA-
22 TION AUTHORITY.—In addition to the authority with re-
23 spect to complaints under subsection (c), the Commission
24 shall have the authority to initiate investigations, bring en-
25 forcement actions, issue declaratory rulings, conduct

1 rulemakings, and take such other actions consistent with
2 sections 4(i) and 403 as are necessary to implement the
3 requirements of this title. Nothing in this title shall alter
4 the power of the Commission to impose forfeitures under
5 title V.

6 “(c) COMPLAINTS.—

7 “(1) FORMAL COMPLAINTS.—The Commission
8 shall enforce the obligations established in this title
9 through adjudication of complaints, under existing
10 Commission complaint protocol.

11 “(2) INFORMAL COMPLAINTS.—The Commis-
12 sion may investigate informal complaints. Any such
13 complaint shall set forth clearly and concisely the
14 facts relied upon, the relief sought, the statutory or
15 regulatory provisions (if any) pursuant to which the
16 complaint is filed and under which relief is sought,
17 and the interest of the person submitting the com-
18 plaint.

19 “(d) FORBEARANCE AUTHORITY INAPPLICABLE.—
20 The authority of the Commission under section 10 shall
21 not apply to this title or a regulation promulgated under
22 this title.

23 **“SEC. 806. PRESCRIPTIVE RATE REGULATION.**

24 “Nothing in this title shall be construed to grant au-
25 thority to the Commission to prescribe the rate that a

1 broadband internet access service provider may charge for
2 such service in advance of the provision of such service.

3 **“SEC. 807. DEFINITIONS.**

4 “In this title:

5 “(1) BROADBAND INTERNET ACCESS SERV-
6 ICE.—

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

16 “(B) FUNCTIONAL EQUIVALENT; EVA-
17 SION.—Such term includes any service that—

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

21 “(ii) is used to evade the obligations
22 set forth in this title.

23 “(2) BROADBAND INTERNET ACCESS SERVICE
24 PROVIDER.—The term ‘broadband internet access
25 service provider’ means a person engaged in the pro-

1 vision of broadband internet access service, insofar
2 as such person is so engaged.

3 “(3) EDGE PROVIDER.—The term ‘edge pro-
4 vider’ means any person who provides—

5 “(A) any content, application, or service
6 over the internet; or

7 “(B) a device used for accessing any con-
8 tent, application, or service over the internet.

9 “(4) END USER.—The term ‘end user’ means
10 any person who uses a broadband internet access
11 service.

12 “(5) NETWORK MANAGEMENT PRACTICE.—The
13 term ‘network management practice’ means a prac-
14 tice that has an exclusively technical network man-
15 agement justification, but such term does not in-
16 clude other business practices.

17 “(6) PAID PREFERENTIAL TREATMENT.—The
18 term ‘paid preferential treatment’ means the man-
19 agement of the network of a broadband internet ac-
20 cess service provider to directly or indirectly favor
21 some internet traffic in relation to other internet
22 traffic, including through the use of techniques such
23 as traffic shaping, prioritization, resource reserva-
24 tion, or other forms of preferential traffic manage-
25 ment, either—

1 “(A) in exchange for consideration (mone-
2 etary or otherwise) from a third party; or

3 “(B) to benefit an affiliated entity

4 “(7) REASONABLE NETWORK MANAGEMENT.—

5 The term ‘reasonable network management’ means
6 the use of a network management practice exclu-
7 sively for, and tailored to achieving, a legitimate
8 technical network management purpose, taking into
9 account the particular network architecture and
10 technology of the broadband internet access service.

11 “(8) SPECIALIZED SERVICES.—The term ‘spe-
12 cialized services’ means services accessed by means
13 other than through broadband internet access serv-
14 ice and that are offered or delivered over the same
15 network as, and that may share network capacity
16 with, broadband internet access services.

17 “(9) TRAFFIC EXCHANGE.—The term ‘traffic
18 exchange’, and the term ‘exchange’ when used with
19 respect to Internet Protocol traffic, mean the ex-
20 change of Internet Protocol traffic between net-
21 works.

22 “(10) TRAFFIC EXCHANGE ARRANGEMENT.—

23 The term ‘traffic exchange arrangement’ means an
24 arrangement that determines which networks ex-

1 change Internet Protocol traffic and the destinations
2 to which such networks will deliver such traffic.”.

3 **SEC. 3. ELIGIBILITY OF BROADBAND INTERNET ACCESS**
4 **SERVICES FOR UNIVERSAL SERVICE FUNDS.**

5 Section 254 of the Communications Act of 1934 (47
6 U.S.C. 254) is amended—

7 (1) in subsection (c), by adding at the end the
8 following:

9 “(4) BROADBAND INTERNET ACCESS SERV-
10 ICES.—Broadband internet access services (as de-
11 fined in section 807) shall be eligible to receive fund-
12 ing from Federal universal service support mecha-
13 nisms authorized by this section.”;

14 (2) in the last sentence of subsection (d), by in-
15 serting “(including a broadband internet access serv-
16 ice provider (as defined in section 807))” after “tele-
17 communications”; and

18 (3) in subsection (e)—

19 (A) in the first sentence, by inserting “or
20 a broadband internet access service provider (as
21 defined in section 807)” after “section 214(e)”;
22 and

23 (B) in the second sentence, by inserting
24 “or provider” after “carrier”.

1 **SEC. 4. EFFECTIVE DATE.**

2 The amendments made by this Act shall apply with
3 respect to broadband internet access service that is pro-
4 vided after the date that is 30 days after the date of the
5 enactment of this Act.

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