

115TH CONGRESS  
1ST SESSION

# H. R. 4682

To amend the Communications Act of 1934 to ensure internet openness, to prohibit blocking of lawful content, applications, services, and non-harmful devices, to prohibit impairment or degradation of lawful internet traffic, to limit the authority of the Federal Communications Commission and to preempt State law with respect to internet openness obligations, to provide that broadband internet access service shall be considered to be an information service, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2017

Mrs. BLACKBURN (for herself, Mr. STIVERS, Mr. JOHNSON of Ohio, Mr. HUDSON, Mr. LANCE, Mr. COLLINS of New York, Mr. MOONEY of West Virginia, Mr. FLORES, Mr. CURTIS, Mr. NORMAN, Mr. BILIRAKIS, Mr. DUNCAN of South Carolina, Mr. CARTER of Georgia, Mr. CRAMER, Mr. GUTHRIE, and Mr. KNIGHT) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Communications Act of 1934 to ensure internet openness, to prohibit blocking of lawful content, applications, services, and non-harmful devices, to prohibit impairment or degradation of lawful internet traffic, to limit the authority of the Federal Communications Commission and to preempt State law with respect to internet openness obligations, to provide that broadband internet access service shall be considered to be an information service, 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 “Open Internet Preser-  
5 vation Act”.

6 **SEC. 2. INTERNET OPENNESS.**

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

10 **“SEC. 13. INTERNET OPENNESS.**

11       “(a) OBLIGATIONS OF BROADBAND INTERNET AC-  
12 CESS SERVICE PROVIDERS.—A person engaged in the pro-  
13 vision of broadband internet access service, insofar as such  
14 person is so engaged—

15               “(1) may not block lawful content, applications,  
16 services, or non-harmful devices, subject to reason-  
17 able network management; and

18               “(2) may not impair or degrade lawful internet  
19 traffic on the basis of internet content, application,  
20 or service, or use of a non-harmful device, subject to  
21 reasonable network management.

22       “(b) COMMISSION AUTHORITY.—

23               “(1) IN GENERAL.—The Commission shall en-  
24 force the obligations established in subsection (a)  
25 and the obligations established in subsection (e)(2)

1 through adjudication of complaints alleging viola-  
2 tions of such respective subsection but may not,  
3 under any provision of law, whether by rulemaking  
4 or otherwise—

5 “(A) expand the internet openness obliga-  
6 tions for provision of broadband internet access  
7 service beyond the obligations established in  
8 subsection (a); or

9 “(B) expand the internet openness obliga-  
10 tions for the offering or provision of specialized  
11 services beyond the obligations established in  
12 subsection (e)(2).

13 “(2) FORMAL COMPLAINT PROCEDURES.—Not  
14 later than 60 days after the date of the enactment  
15 of this section, the Commission shall adopt formal  
16 complaint procedures to address alleged violations of  
17 subsection (a) and alleged violations of subsection  
18 (e)(2). Such procedures shall include a deadline (rel-  
19 ative to the date of filing of a complaint under such  
20 procedures) for the disposition of such complaint.

21 “(c) PREEMPTION OF STATE LAW.—No State or po-  
22 litical subdivision of a State shall adopt, maintain, enforce,  
23 or impose or continue in effect any law, rule, regulation,  
24 duty, requirement, standard, or other provision having the  
25 force and effect of law relating to or with respect to inter-

1 net openness obligations for provision of broadband inter-  
2 net access service.

3 “(d) OTHER LAWS AND CONSIDERATIONS.—Nothing  
4 in this section—

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

12 “(2) prohibits reasonable efforts by a provider  
13 of broadband internet access service to address copy-  
14 right infringement or other unlawful activity.

15 “(e) SPECIALIZED SERVICES.—

16 “(1) IN GENERAL.—Except as provided in para-  
17 graph (2), nothing in this section shall be construed  
18 to limit the ability of broadband internet access serv-  
19 ice providers to offer specialized services.

20 “(2) PROHIBITION ON CERTAIN PRACTICES.—  
21 Specialized services may not be offered or provided  
22 in ways that threaten the meaningful availability of  
23 broadband internet access service or that have been  
24 devised or promoted in a manner designed to evade  
25 the purposes of this section.

1       “(f) BROADBAND TO BE CONSIDERED INFORMATION  
2 SERVICE.—Notwithstanding any other provision of law,  
3 the provision of broadband internet access service or any  
4 other mass-market retail service providing advanced tele-  
5 communications capability (as defined in section 706 of  
6 the Telecommunications Act of 1996 (47 U.S.C. 1302))  
7 shall be considered to be an information service.

8       “(g) REASONABLE NETWORK MANAGEMENT.—For  
9 purposes of subsection (a), a network management prac-  
10 tice is reasonable if it is primarily used for and tailored  
11 to achieving a legitimate network management purpose,  
12 taking into account the particular network architecture  
13 and technology of the broadband internet access service.

14       “(h) DEFINITIONS.—In this section:

15               “(1) BROADBAND INTERNET ACCESS SERV-  
16 ICE.—

17                       “(A) IN GENERAL.—The term ‘broadband  
18 internet access service’ means a mass-market  
19 retail service by wire or radio that provides the  
20 capability to transmit data to and receive data  
21 from all or substantially all internet endpoints,  
22 including any capabilities that are incidental to  
23 and enable the operation of the communications  
24 service, but excluding dial-up internet access  
25 service.

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

3                   “(i) the Commission finds to be pro-  
4                   viding a functional equivalent of the service  
5                   described in subparagraph (A); or

6                   “(ii) is used to evade the obligations  
7                   set forth in subsection (a).

8                   “(2) NETWORK MANAGEMENT PRACTICE.—The  
9                   term ‘network management practice’ means a prac-  
10                  tice that has a primarily technical network manage-  
11                  ment justification. Such term does not include other  
12                  business practices.

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

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

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

23                  (1) in subsection (c), by adding at the end the  
24                  following:

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

6           (2) in subsection (e)—

7           (A) in the first sentence, by inserting “or  
8           a provider of broadband internet access service  
9           (as defined in section 13)” after “section  
10          214(e)”;

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

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