

116TH CONGRESS
1ST SESSION

H. R. 2136

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2019

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

A BILL

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Open Internet Preser-
3 vation Act”.

4 **SEC. 2. INTERNET OPENNESS.**

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

8 **“SEC. 14. INTERNET OPENNESS.**

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

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

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

20 “(b) COMMISSION AUTHORITY.—

21 “(1) IN GENERAL.—The Commission shall en-
22 force the obligations established in subsection (a)
23 and the obligations established in subsection (e)(2)
24 through adjudication of complaints alleging viola-
25 tions of such respective subsection but may not,

1 under any provision of law, whether by rulemaking
2 or otherwise—

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

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

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

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

1 “(d) OTHER LAWS AND CONSIDERATIONS.—Nothing
2 in this section—

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

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

13 “(e) SPECIALIZED SERVICES.—

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

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

24 “(f) BROADBAND TO BE CONSIDERED INFORMATION
25 SERVICE.—Notwithstanding any other provision of law,

1 the provision of broadband internet access service or any
 2 other mass-market retail service providing advanced tele-
 3 communications capability (as defined in section 706 of
 4 the Telecommunications Act of 1996 (47 U.S.C. 1302))
 5 shall be considered to be an information service.

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

12 “(h) DEFINITIONS.—In this section:

13 “(1) BROADBAND INTERNET ACCESS SERV-
 14 ICE.—

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

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

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

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

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

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

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

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

21 (1) in subsection (c), by adding at the end the
 22 following:

23 “(4) BROADBAND INTERNET ACCESS SERV-
 24 ICES.—Broadband internet access services (as de-
 25 fined in section 14) shall be eligible to receive fund-

1 ing from Federal universal service support mecha-
2 nisms authorized by this section.”; and

3 (2) in subsection (e)—

4 (A) in the first sentence, by inserting “or
5 a provider of broadband internet access service
6 (as defined in section 14)” after “section
7 214(e)”;

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

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