SEC. 104. ACCESS TO BITS. [pages 14-16 of PDF document]

(a) DUTIES OF PROVIDERS.—Subject to subsection

(b), each BITS provider has the duty—

(1) not to block, impair, or interfere with the offering of, access to, or the use of any lawful content, application, or service provided over the Internet;

(2) to permit subscribers to connect and use devices of their choosing in connection with BITS, including computers, home-networking equipment, and televisions; and

(3) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 106 of this Act.

(b) PRESERVED AUTHORITIES.—Notwithstanding paragraphs (1) and (2) of subsection (a), a BITS provider is permitted to—

(1) offer service plans to subscribers—

(A) that involve varied and reasonable bandwidth or network capacity limitations, so long as subscribers are provided clear and accurate advance notice of the maximum and minimum levels of bandwidth or network capacity; or

(B) that include value-added consumer protection services (including software for the prevention of unsolicited commercial electronic messages, parental controls, or other similar capabilities), so long as subscribers are provided clear and accurate advance notice of the subscriber’s ability to refuse or disable any such value-added consumer protection capabilities;

(2) take reasonable measures to—

(A) protect the security and reliability of its network and broadband Internet transmission services; or

(B) prevent theft of BITS or other unlawful conduct; or

(3) carry or offer a broadband video service or any other service that provides enhanced quality of service to subscribers through the BITS provider’s utilization of network and routing management or customized hardware, except that such carrying or offering of such services—
(A) may not block, or unreasonably impair or interfere with, the offering of, access to, or the use of any lawful content, application, or service provided over the Internet; and (B) may not unreasonably restrict the right of subscribers under subsection (a)(2) to connect and use devices.

S. 1504 To establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services. IN THE SENATE OF THE UNITED STATES July 27, 2005 Mr. ENSIGN (for himself and Mr. MCCAIN)

SEC. 7. CONSUMER ACCESS TO CONTENT AND APPLICATIONS.

(a) Access-
   (1) IN GENERAL- A consumer may not be denied access to any content provided over facilities used to provide broadband communications service and a broadband service provider shall not willfully and knowingly block access to such content by a subscriber, unless--
      (A) such content is determined to be illegal;
      (B) such denial is expressly authorized by Federal or State law; or
      (C) such access is inconsistent with the terms of the service plan of such consumer including applicable bandwidth capacity or quality of service constraints.
   (2) CUSTOMIZED CONTENT- A broadband communications service provider may offer to a consumer a customized plan developed through such service providers network or commercial arrangements with providers of content, applications, and other service components to differentiate--
      (A) access to content;
      (B) the availability of applications; and
      (C) the character of service components available.
   (3) NON-CUSTOMIZED CONTENT- Nothing in subsection (a) shall adversely affect the performance of non-customized consumer access to content, services, and applications offered by the competitors of a broadband service provider.

(b) Enforcement of Access Violations-
   (1) IN GENERAL- The Commission may take such enforcement action as it may prescribe by rule, if the Commission determines that a broadband communications service provider intentionally restricted access to any content described in subsection (a)(1).
   (2) EXCEPTION- A broadband communications service provider may not be in violation of subsection (a), if such service provider does not interrupt or block access to any content described in subsection (a)(1) when--
      (A) performing network--
         (i) optimization or management;
         (ii) security; or
         (iii) prioritization;
(B) performing other measures to ensure network security and integrity; or
(C) attempting to prevent unlawful conduct.

(c) Parental Controls- Nothing in this section shall be construed to prohibit--
   (1) any communications service provider from offering a service that
       allows a consumer to block display of programs with a common rating;
       and
   (2) a provider of mobile services from offering or providing access only to
       a family friendly service to a subscriber.

(d) Connectivity of Devices- Except as provided in this section, a broadband
service provider shall not prevent any person from utilizing equipment and
devices in connection with lawful content or applications.

(e) Access to VoIP Applications- Nothing in subsection (a) shall permit a
broadband service provider to prevent a customer from using voice over Internet
Protocol applications offered by a competitor.

S. 2113: To promote the widespread availability of communications services and the
integrity of communication facilities, and to encourage investment in
communication networks.

IN THE SENATE OF THE UNITED STATES. December 15, 2005. Mr. DEMINT

SEC. 102. PROHIBITION OF UNFAIR METHODS OF COMPETITION.

(a) In General- It shall be unlawful for any provider of electronic communications
service, including any State, or any general purpose political subdivision of a
State, to engage or participate, or to attempt to engage or participate, in--
   (1) unfair methods of competition in or affecting electronic
       communications networks and electronic communications services; or
   (2) unfair or deceptive practices in or affecting electronic communications
       networks and electronic communications services.

(b) Rulemaking Authority-
   (1) IN GENERAL- The Commission may, by rule, define with specificity,
       the acts or practices that shall constitute unfair methods of competition or
       unfair or deceptive acts or practices as described in subsection (a).
   (2) CONTENT OF RULES- Rules promulgated under paragraph (1) may
       include such requirements as the Commission determines necessary to
       prevent any methods, acts, or practices prohibited by this section.
   (3) LIMITATION-
       (A) IN GENERAL- Notwithstanding paragraph (1) and except as
           provided in subparagraph (B), the Commission shall have no
           authority to issue rules that declare unlawful an act or practice on
           the grounds that such act or practice is an unfair method of
           competition or unfair or deceptive act or practice.
       (B) EXCEPTION- The Commission may declare an act or practice
           unlawful if the Commission determines, based on a showing of
clear and convincing evidence presented in a rulemaking proceeding, that--

(i) marketplace competition is not sufficient to adequately protect consumer welfare; and

(ii) such act or practice--

(I) causes or is likely to cause substantial injury to consumers; and

(II) is not--

(aa) avoidable by consumers themselves; and

(bb) outweighed by countervailing benefits to consumers or to competition.

(4) SUNSET OF RULES- Any rule promulgated under paragraph (1) shall terminate on the day that is 5 years after the date on which such rule became effective unless the Commission, in a proceeding in which the public is afforded notice and an opportunity to comment, makes an affirmative determination, based on a showing of clear and convincing evidence presented in such proceeding, that the rule continues to be necessary because marketplace competition is not sufficient to adequately protect consumers from substantial injury which is not--

(A) avoidable by consumers themselves; and

(B) outweighed by countervailing benefits to consumers or to competition.

SEC. 103. ACTIONS FOR COMPLAINTS.

The Commission shall have authority--

(1) to hear complaints from any party injured by a violation of the prohibitions established under section 102; and

(2) to award damages to such injured party if the Commission determines that a violation of that section has occurred.

FCC Under Chairman Martin

Aug. 5 2005 - The Federal Communications Commission today adopted a policy statement that outlines four principles to encourage broadband deployment and preserve and promote the open and interconnected nature of public Internet:

- consumers are entitled to access the lawful Internet content of their choice;
- consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
- consumers are entitled to connect their choice of legal devices that do not harm the network; and
- consumers are entitled to competition among network providers, application and service providers, and content providers.
Although the Commission did not adopt rules in this regard, it will incorporate these principles into its ongoing policymaking activities. All of these principles are subject to reasonable network management.


**FCC Chairman Powell**

1. “Freedom to Access Content: Consumers should have access to their choice of legal content;
2. Freedom to Use Applications: Consumers should be able to run applications of their choice;
3. Freedom to Attach Personal Devices: Consumers should be permitted to attach any devices they choose to the connection in their homes; and
4. Freedom to Obtain Service Plan Information: Consumers should receive meaningful information regarding their service plans. “


**Common Cause**

“Keep the Internet Free and Open! Take Action Now to Protect Network Neutrality”

**Definition**: “Network neutrality is the principle that Internet users should be able to access any web content they choose and use any applications they choose, without restrictions or limitations imposed by their Internet service provider.”

http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=1234951

**Letter Campaign**: “I support network neutrality, and I am dismayed by comments made by your executives recently indicating they want to see dramatic changes to the way the Internet operates.

Net neutrality is the reason this democratic medium has grown exponentially, fueled innovation and altered how we communicate. For-profit interests should not be allowed to destroy the democratic culture of the web.

I strongly urge you to oppose policies that permit network operators to block, impede or interfere with any lawful Internet traffic, now or in the future.”


**High Tech Broadband Coalition**

HTBC identified the following principles as essential to protecting the interests of consumers subscribing to broadband services:

1) Consumers should receive meaningful information regarding their broadband service plans,
2) Broadband consumers should have access to their choice of legal Internet content within the bandwidth limits and quality of service of their service plans;

3) Broadband consumers should be able to run applications of their choice, within the bandwidth limits and quality of service of their service plans, as long as they do not harm the provider’s network; and

4) Consumers should be permitted to attach any devices they choose to their broadband connection at the consumer’s premises, so long as they operate within the bandwidth limits and quality of service.


Lessig and Wu

Proposed legislative language:

§___ Forbidding Broadband Discrimination

(a) Broadband Users have the right reasonably to use their Internet connection in ways which are privately beneficial without being publicly detrimental. Accordingly, Broadband Operators shall impose no restrictions on the use of an Internet connection except as necessary to:

(1) Comply with any legal duty created by federal, state or local laws, or as necessary to comply with any executive order, warrant, legal injunction, subpoena, or other duly authorized governmental directive;

(2) Prevent physical harm to the local Broadband Network caused by any network attachment or network usage;

(3) Prevent Broadband users from interfering with other Broadband or Internet Users’ use of their Internet connections, including but not limited to neutral limits on bandwidth usage, limits on mass transmission of unsolicited email, and limits on the distribution of computer viruses, worms, and limits on denial-of service-or other attacks on others;

(4) Ensure the quality of the Broadband service, by eliminating delay, jitter or other technical aberrations;

(5) Prevent violations of the security of the Broadband network, including all efforts to gain unauthorized access to computers on the Broadband network or Internet;

(6) Serve any other purpose specifically authorized by the Federal Communications Commission, based on a weighing of the specific costs and benefit of the restriction.

(b) As used in this section,

(1) “Broadband Operators” means a service provider that provides high-speed connections to the Internet using whatever technology, including but not limited to cable networks, telephone networks, fiber optic connections, and wireless
transmission;

(2) “Broadband Users” means residential and business customers of a Broadband Operator;

(3) “Broadband Network” means the physical network owned and operated by the Broadband Operator;

(4) “Restrictions on the Use of an Internet Connection” means any contractual, technical, or other limits placed with or without notice on the Broadband user’s Internet Connection.

http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6514683885