To promote open broadband networks and innovation, foster electronic commerce, and safeguard consumer access to online content and services.

IN THE HOUSE OF REPRESENTATIVES

Mr. Markey introduced the following bill; which was referred to the Committee on ______________________

A BILL

To promote open broadband networks and innovation, foster electronic commerce, and safeguard consumer access to online content and services.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Network Neutrality Act of 2006”.

SEC. 2. FINDINGS.

The Congress finds the following:
(1) Our Nation’s economy, education, and society are increasingly dependent upon broadband telecommunications networks.

(2) These networks also hold the promise of advancing economic growth, job creation, and technological innovation.

(3) As America becomes ever more reliant upon such broadband networks, unfettered access to broadband networks to offer content and services and run software applications over the Internet is vital.

(4) The global leadership in high technology the United States provides today stems directly from historic policies that have ensured that telecommunications networks are open to all lawful uses and to all users.

(5) The Internet was enabled by those historic policies and provides an open architecture medium for world-wide communications, providing low barriers to entry for web-based content, applications, and services.

(6) Due to recent Federal Communications Commission interpretations and court decisions, these features of the Internet are no longer certain, and erosion of these historic policies permits
broadband network owners to claim they can control
who can and who cannot offer content and services
over the Internet utilizing their broadband networks.

(7) The high technology economy would be se-
verely harmed if Internet content providers cannot
reach consumers without interference from
broadband network operators.

(8) The overwhelming majority of residential
consumers take broadband service from one of only
two wireline providers, namely, from the cable oper-
ator or the local telephone company.

(9) Broadband network operators have an eco-
monic interest to discriminate in favor of their own
services and against other online providers.

(10) A network neutrality policy based upon the
principle of nondiscrimination is essential to ensure
that broadband telecommunications networks, in-
cluding the Internet, remain open to independent
service and content providers.

(11) A network neutrality policy is also essen-
tial to give certainty to entrepreneurs, innovators,
investors, and others who rely upon the Internet for
commercial reasons.

(12) A network neutrality policy can also per-
mit broadband network operators to take action to
protect network reliability, prevent spam, and thwart illegal uses in the same way that network operators have historically done so.

(13) Because of the vital role that broadband networks and the Internet play for America’s economic growth and our First Amendment rights to speak, the United States should adopt a clear policy endorsing the open nature of Internet communications and freely accessible broadband networks.

SEC. 3. POLICY.

It is the policy of the United States—

(1) to maintain the freedom to use broadband telecommunications networks, including the Internet, without interference from network operators, as has been the policy for Internet commerce and the basis for user expectations since its inception;

(2) to ensure that the Internet, and its successors, remain a vital force in the United States economy, thereby enabling the country to preserve its global leadership in online commerce and technological innovation;

(3) to preserve and promote the open and interconnected nature of broadband networks that enable consumers to reach, and service providers to offer, lawful content, applications, and services of their
choosing, using their selection of devices that do not harm the network;

(4) to encourage escalating broadband transmission speeds and capabilities that reflect the evolving nature of the broadband networks, including the Internet, and improvements in access technology, which enables consumers to use and enjoy, and service providers to offer, a growing array of content, applications, and services;

(5) to provide for disclosure by broadband network operators of prices, terms, and conditions, and other relevant information, including information about the technical capabilities of broadband access provided to users, to inform their choices about services they rely on to communicate and to detect problems; and

(6) to ensure vigorous and prompt enforcement of this Act’s requirements to safeguard and promote competition, innovation, market certainty, and consumer empowerment.

SEC. 4. NET NEUTRALITY SAFEGUARDS.

(a) IN GENERAL.—Each broadband network provider has the duty to—

(1) enable users to utilize their broadband service to access all lawful content, applications, and
services available over broadband networks, including the Internet;

(2) not block, impair, degrade, discriminate against, or interfere with the ability of any person to utilize their broadband service to—

   (A) access, use, send, receive, or offer lawful content, applications, or services over broadband networks, including the Internet; or

   (B) attach any device to the provider’s network and utilize such device in connection with broadband service, provided that any such device does not physically damage, or materially degrade other subscribers’ use of, the network;

(3) clearly and conspicuously disclose to users, in plain language, accurate information about the speed, nature, and limitations of their broadband service;

(4) offer, upon reasonable request to any person, a broadband service for use by such person to offer or access unaffiliated content, applications, and services;

(5) not discriminate in favor of itself in the allocation, use, or quality of broadband services or interconnection with other broadband networks;
(6) offer a service such that content, applications, or service providers can offer unaffiliated content, applications, or services in a manner that is at least equal to the speed and quality of service that the operator’s content, applications, or service is accessed and offered, and without interference or surcharges on the basis of such content, applications, or services;

(7) if the broadband network provider prioritizes or offers enhanced quality of service to data of a particular type, prioritize or offer enhanced quality of service to all data of that type (regardless of the origin of such data) without imposing a surcharge or other consideration for such prioritization or quality of service; and

(8) not install network features, functions, or capabilities that thwart or frustrate compliance with the requirements or objectives of this section.

(b) EXCEPTIONS.—Nothing in this section shall prohibit a broadband network provider from implementing reasonable and nondiscriminatory measures to—

(1) manage the functioning of its network, on a systemwide basis, provided that any such management function does not result in discrimination be-
tween content, applications, or services offered by
the provider and unaffiliated providers;

(2) offer varying levels of transmission speed or
bandwith;

(3) protect network security or the security of
a user’s computer on the network;

(4) offer consumer protection services (such as
parental controls), provided that a user may refuse
or disable such services;

(5) carry or offer a cable service that requires
management of the network to provide enhanced
quality of service, provided that—

(A) a broadband service subscriber may
refuse to subscribe to, and avoid charges for,
such cable service while obtaining broadband
services from such operator; and

(B) such carrying or offering does not vio-
late any of the duties set forth in subsection
(a); or

(6) where otherwise required by law, prevent
any violation of Federal or State law.

(c) IMPLEMENTATION.—Within 180 days after the
date of enactment of this Act, the Commission shall adopt
rules that—
(1) permit any person to complain to the Commission of anything done or omitted to be done in violation of any duty, obligation, or requirement under this section;

(2) provide that any complaint filed at the Commission that alleges a violation of this section shall be deemed granted unless acted upon by the Commission within 90 days after its filing;

(3) require the Commission, upon prima facie showing by a complainant of a violation of this section, to issue within 48 hours of the filing of any such complaint, a cease-and-desist or other appropriate order against the violator until the complaint is fully resolved, and, if in the public interest, such order may affect classes of persons similarly situated to the complainant or the violator, and any such order shall be in effect until the Commission resolves the complaint with an order dismissing the complaint or imposing appropriate remedies to resolve such complaint; and

(4) enable the Commission to use mediation or arbitration or other means to resolve the dispute.

(d) ENFORCEMENT.—This section shall be enforced under titles IV and V of the Communications Act of 1934 (47 U.S.C. 401, 501 et seq.). A violation of any provision
of this section shall be treated as a violation of the Com-
munications Act of 1934, except that the warning require-
ments of section 503(b) shall not apply. In addition to
imposing fines under its title V authority, the Commission
also is authorized to issue any order, including an order
directing a broadband network operator to pay damages
to a complaining party.

(e) DEFINITIONS.—For purposes of this section:

(1) BROADBAND NETWORK PROVIDER.—The
term “broadband network provider” means a person
or entity that owns, controls, or resells, facilities
used in the transmission of a broadband service and
includes any affiliate, joint venture partner, or agent
of such provider.

(2) BROADBAND SERVICE.—The term
“broadband service” means a two-way transmission
capability that—

(A) enables the user to access content, ap-
plications, and services;

(B) is delivered with or without a fee to
the physical location of the user, regardless of
the facilities used;

(C) includes a transport speed of at least
200 kilobits per second on average in at least
one direction; and
(D) permits a user to transmit or receive information of their own design or choosing.

(3) AFFILIATE.—The term “affiliate” includes—

(A) a person that directly or indirectly owns, controls, is owned or controlled by, or is under common ownership or control with, another person; or

(B) a person that has a contract or other arrangement with a content or service provider concerning access to, or distribution of, such content or services.