To amend the Clayton Act with respect to competitive and nondiscriminatory access to the Internet.

IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBERGER (for himself and ) introduced the following bill; which was referred to the Committee on ____________________

A BILL

To amend the Clayton Act with respect to competitive and nondiscriminatory access to the Internet.

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 “Internet Freedom and
5 Nondiscrimination Act of 2006”.
SEC. 2. PURPOSES.

The purposes of this Act are to promote competition,
to facilitate trade, and to ensure competitive and non-
discriminatory access to the Internet.

SEC. 3. AMENDMENTS TO THE CLAYTON ACT.

The Clayton Act (15 U.S.C. 12 et seq.) is amended—

(1) by redesignating section 28 as section 29,

(2) by inserting after section 27 the following:

“DISCRIMINATION BY BROADBAND NETWORK PROVIDERS

“Sec. 28. (a) It shall be unlawful for any broadband

network provider—

“(1) to fail to provide its broadband network

services on reasonable and nondiscriminatory terms

and conditions such that any person can offer or

provide content, applications, or services to or over

the network in a manner that is at least equal to the

manner in which the provider or its affiliates offer

content, applications, and services, free of any sur-

charge on the basis of the content, application, or

service;

“(2) to refuse to interconnect its facilities with

the facilities of another provider of broadband net-

work services on reasonable and nondiscriminatory

terms or conditions;

“(3)(A) to block, to impair, to discriminate

against, or to interfere with the ability of any person
to use a broadband network service to access, to use,
to send, to receive, or to offer lawful content, applica-
tions or services over the Internet; or

“(B) to impose an additional charge to avoid
any conduct that is prohibited by this subsection;

“(4) to prohibit a user from attaching or using
a device on the provider’s network that does not
physically damage or materially degrade other users’
utilization of the network; or

“(5) to fail to clearly and conspicuously disclose
to users, in plain language, accurate information
concerning any terms, conditions, or limitations on
the broadband network service.

“(b) If a broadband network provider prioritizes or
offers enhanced quality of service to data of a particular
type, it must prioritize or offer enhanced quality of service
to all data of that type (regardless of the origin or owner-
ship of such data) without imposing a surcharge or other
consideration for such prioritization or enhanced quality
of service.

“(c) Nothing in this section shall be construed to pre-
vent a broadband network provider from taking reasonable
and nondiscriminatory measures—

“(1) to manage the functioning of its network
to protect the security of such network and
broadband network services if such management does not result in discrimination among the content, applications, or services on the network;

“(2) to give priority to emergency communications; or

“(3) to prevent a violation of a Federal or State law, or to comply with an order of a court to enforce such law.

“(d) For purposes of this section—

“(1) the term ‘affiliate’ means—

“(A) a person that directly or indirectly owns, controls, is owned or controlled by, or is under the 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 such service;

“(2) the term ‘broadband network provider’ means a person engaged in commerce that owns, controls, operates, or resells any facility used to provide broadband network service to the public, by whatever technology and without regard to whether provided for a fee, in exchange for an explicit benefit, or for free;
“(3) the term ‘broadband network service’ means a 2-way transmission service that connects to the Internet and transmits information at an average rate of at least 200 kilobits per second in at least one direction, irrespective of whether such transmission is provided separately or as a component of another service; and

“(4) the term ‘user’ means a person who takes and uses broadband network service, whether provided for a fee, in exchange for an explicit benefit, or for free.”, and

(3) by amending subsection (a) and the 1st sentence of subsection (b) of section 11 by striking “and 8” and inserting “8, and 29”.