Dear Chairman Genachowski:

Starting in August of this year, Communications, Technology, and the Internet Subcommittee Chairman Rick Boucher and I worked together to reach bipartisan agreement on legislation that would protect and promote the open Internet.

Although our proposal received support from carriers, network operators, edge companies, and consumer groups, we did not introduce a bill because our initiative was predicated on going forward only if we had full bipartisan support in the House Energy and Commerce Committee. Unfortunately, Republican leadership in the House of Representatives opposed our effort to move forward with a compromise that had both industry and public interest community support.

At the time that our effort was derailed, there were at least two unauthorized versions of the draft legislation in circulation, including an inaccurate version posted on the website of a Capitol Hill newspaper. In order to ensure that the FCC and the public have access to an accurate version of our proposed compromise, I am attaching an authorized copy for your information.

Please associate this letter and the attached draft bill with the appropriate docket.

Sincerely,

Henry A. Waxman
Chairman

Attachment

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List ABCDE
111th CONGRESS
2d Session

H. R.

To amend title I of the Communications Act of 1934 to provide for Internet openness, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend title I of the Communications Act of 1934 to provide for Internet openness, and for other purposes.

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 “Open Internet Act of 2010”.

SEC. 2. INTERNET OPENNESS.

Title I of the Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding at the end the following new section:
"SEC. 12. INTERNET OPENNESS.

“(a) DUTIES OF WIRELINE PROVIDERS.—

“(1) IN GENERAL.—To the extent that a person is engaged in the provision of broadband Internet access service by wire, such person—

“(A) shall not block lawful content, applications, or services, or prohibit the use of non-harmful devices, subject to reasonable network management;

“(B) shall not unjustly or unreasonably discriminate in transmitting lawful traffic over a consumer's wireline broadband Internet access service; and

“(C) shall disclose accurate and relevant information in plain language regarding the price, performance, and network management practices of such person's broadband Internet access service sufficient—

“(i) for consumers to make informed choices regarding use of such service; and

“(ii) for content, application, service, and device providers to develop and market new Internet offerings.

“(2) COMMISSION REQUIREMENTS.—The Commission may promulgate rules to implement paragraph (1)(C). Any such rules—
"(A) shall require, at a minimum, such person to display or provide links to the required information on an Internet website and to update such information in a timely fashion to reflect material changes in the information subject to such paragraph; and

"(B) shall not require public disclosure of—

"(i) competitively sensitive information;

"(ii) information that would compromise network security; or

"(iii) information that would undermine the efficacy of reasonable network management practices.

"(3) RULE OF CONSTRUCTION.—For purposes of paragraph (1)(B), reasonable network management shall not be construed to be unjustly or unreasonably discriminatory.

"(b) DUTIES OF WIRELESS PROVIDERS.—

"(1) IN GENERAL.—To the extent that a person is engaged in the provision of broadband Internet access service by radio, such person—
“(A) shall not block consumers from accessing lawful Internet websites, subject to reasonable network management;

“(B) shall not block lawful applications that compete with such person’s voice or video telephony services, subject to reasonable network management; and

“(C) shall disclose with regard to such person’s broadband Internet access service the same information required by subsection (a)(1)(C) (including rules promulgated pursuant to such subsection).

“(2) APPLICATIONS.—Paragraph (1)(B) shall not apply to a person who is providing broadband Internet access service by radio to the extent that such person is engaged in the operation of an application store or its functional equivalent.

“(c) FIXED WIRELESS AND SATELLITE.—The Commission shall determine whether fixed wireless and satellite broadband Internet access services shall be regulated as broadband Internet access services by wire or radio for purposes of this section.

“(d) ENFORCEMENT.—

“(1) COMMISSION AUTHORITY.—The Commission shall enforce the duties established in sub-
sections (a)(1)(A), (a)(1)(B), (b)(1)(A), and (b)(1)(B) through adjudication of a complaint alleging that a service violates one or more of such duties. Nothing in this section limits the Commission's authority to adopt procedures for the adjudication of a complaint, to adopt an order requiring compliance from an entity subject to a complaint, to initiate an enforcement action, or to issue a declaratory ruling or guidance.

"(2) INJUNCTIVE RELIEF AND PENALTIES.—If the Commission finds that a provider of broadband Internet access service has violated any provision of subsection (a) or (b), the Commission may issue an order enjoining such violation, including interim injunctive relief. If the Commission finds that a provider of broadband Internet access service has engaged in a willful and knowing violation of subsection (a) or (b), the Commission may issue a fine or forfeiture of no more than $2,000,000 for any practice found to violate subsection (a) or (b), consistent with the procedures in section 503. The Commission may not order the payment of damages for any violation of subsection (a) or (b).

"(3) NO ADDITIONAL PRIVATE RIGHTS AUTHORIZED.—Nothing in this section shall be con-
strued to authorize any private right of action in court.

“(c) RELATIONSHIP TO OTHER TITLES AND LAWS.—

“(1) THE COMMISSION.—The Commission may not impose regulations on broadband Internet access service or any component thereof under title II, except in the event that a provider of broadband Internet access service elects to provide the transmission component of such service as a telecommunications service under such title. Except as expressly provided in this section, nothing in this section shall increase, reduce, or otherwise alter the Commission’s authority.

“(2) PROVIDERS.—Nothing in this section shall supersede any obligation or authorization a provider of broadband Internet access service may have, or limit the provider’s ability, to address the needs of emergency communications, law enforcement, public safety, or national security, consistent with applicable law. Nothing in this section shall prohibit reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity.

“(3) SAVINGS CLAUSE.—Nothing in this section shall increase, reduce, or otherwise alter the anti-
trust or other authorities of the Department of Justice or the Federal Trade Commission.

“(f) REPORT TO CONGRESS.—Not later than December 31, 2011, the Commission shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate recommendations with regard to additional authority needed by the Commission to implement the National Broadband Plan, to ensure further the protection of consumers in their use of Internet services, and to promote online innovation.

“(g) TERM OF AUTHORITY.—

“(1) SUNSET.—Except as provided in paragraph (2), this section shall expire on December 31, 2012.

“(2) ADJUDICATION AUTHORITY.—The Commission may continue to adjudicate cases regarding violations of this section that occurred prior to January 1, 2013, and that are filed at the Commission no later than March 1, 2013.

“(h) DEFINITIONS.—For purposes of this section:

“(1) BROADBAND INTERNET ACCESS SERVICE.—

“(A) IN GENERAL.—The term ‘broadband Internet access service’ means—
“(i) a consumer retail service, by wire or radio, that provides high-speed capability to transmit data to and receive data from all or substantially all Internet endpoints, including any associated information-processing capabilities; or

“(ii) a service that the Commission finds to be providing a functional equivalent for the service described in clause (i) or that is intended to evade the consumer protections set forth in this section.

“(B) EXCLUSIONS.—The term does not include virtual private network services, content delivery network services, multichannel video programming services, hosting or data storage services, or Internet backbone services, if separately available.

“(2) HIGH-SPEED.—The term ‘high-speed’ has the meaning given such term in the Commission’s Fifth Report on the Deployment of Advanced Telecommunications Capability to All Americans, FCC 08-88 (June 12, 2008).

“(3) REASONABLE NETWORK MANAGEMENT.—

“(A) IN GENERAL.—The term “reasonable network management” means a network man-
agement practice that is appropriate and tailored to achieving a legitimate network management function, taking into account the particular network architecture or technology of the provider.

"(B) INCLUSIONS.—The term includes appropriate and tailored practices—

"(i) to reduce or mitigate the effects of congestion on a broadband Internet access service provider’s network;

"(ii) to ensure network security or integrity;

"(iii) to address traffic that is harmful to or unwanted by—

"(I) users, including premises operators;

"(II) the provider’s network; or

"(III) the Internet;

"(iv) to meet the needs of public safety; and

"(v) to provide services or capabilities consistent with a consumer’s choices regarding parental control or security capabilities.

"(C) CONSIDERATIONS.—
“(i) IN GENERAL.—In determining whether a network management practice is reasonable, the Commission shall consider technical requirements, standards, or best practices adopted by one or more independent, widely-recognized Internet community governance initiatives or standard-setting organizations.

“(ii) WIRELESS PROVIDERS.—In determining whether a network management practice for broadband Internet access service provided by radio is reasonable, the Commission shall also consider technical, operational, or other differences between radio and other broadband Internet access service platforms, including differences relating to the efficient use of spectrum.”.