



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 7, 2006

H.R. 5417

Internet Freedom and Nondiscrimination Act of 2006

As ordered reported by the House Committee on the Judiciary on May 25, 2006

SUMMARY

H.R. 5417 would prohibit providers of Internet service from discriminating between different types of content, applications, or services when providing Internet access to their customers. Under the bill, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) would enforce the bill's provisions by filing antitrust actions in federal court in the event of violations. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 5417 would cost about \$10 million over the 2007-2011 period. Enacting the bill would not affect direct spending or revenues.

H.R. 5417 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs to state, local, and tribal governments, if any, would be small and would not exceed the threshold established in that act.

H.R. 5417 would impose private-sector mandates as defined in UMRA on broadband service providers. Because of uncertainty about how the mandates would affect certain business practices, CBO cannot estimate whether the aggregate costs of all of the mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5417 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice). For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2007. Based on information provided by the FTC and DOJ, CBO estimates that implementing the bill would cost those agencies about \$10 million over the

2007-2011 period for the FTC and DOJ to enforce the bill’s provisions regarding access to Internet services.

	By Fiscal Year, In Millions of Dollars				
	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	2	2	2	2	2
Estimated Outlays	2	2	2	2	2

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 5417 contains an intergovernmental mandate as defined in UMRA because it would prohibit providers of Internet services, some of which are intergovernmental entities, from charging additional fees for providing certain services and content. In general, state and local governments that provide services to access the Internet do not currently charge such fees nor do they have plans to do so in the future. Therefore, CBO estimates that the costs to intergovernmental entities, if any, would be small and would not exceed the threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation.)

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 5417 would impose private-sector mandates as defined in UMRA on broadband service providers. The bill defines broadband network service as a two-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. The bill would impose mandates by amending the Clayton Act to make it unlawful for broadband service providers to:

- Provide broadband network services to any provider of content, network applications, or services in a discriminatory manner;
- Prevent users from attaching any device to the network that does no harm to or otherwise degrades the network;
- Interconnect with other broadband network service providers on discriminatory terms or conditions; or
- Use surcharges for enhanced quality of service or prioritization.

Because of uncertainty about how the mandates would affect certain business practices, CBO cannot estimate whether the aggregate costs of all of the mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

Prohibition on the Sale of Broadband Network Services on Discriminatory Terms

H.R. 5417 would amend the Clayton Act to make it illegal for broadband service providers “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 surcharge on the basis of the content, application, or service....”

Currently, cellular telephone providers offer proprietary content, such as ring-tones, music, and video clips. Most cellular networks do not yet meet the legislation's definition of broadband (a transmission of 200,000 kilobits per second in either direction), but the industry is investing in technology and facilities to reach that goal. It is unclear, however, how much of the proprietary content was delivered over the Internet. As cellular providers achieve broadband speeds, they would have to allow other content or service providers increased access to their networks and, consequently, to their subscribers under the bill.

The costs of the mandate would include the expenditures necessary for converting systems to allow other providers to offer alternatives to the cellular phone company Internet-based proprietary services and products. CBO has no information about the future market size of the Internet-based proprietary content and services or the cost of allowing providers access to such a network. Consequently, CBO cannot estimate the cost of complying with this mandate.

Prohibition on Restricting Users from Attaching Devices to the Network

H.R. 5417 would amend the Clayton Act would make it unlawful for a broadband service provider “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....”

At present, cellular networks control which telephone handsets can attach to their networks. Telephone handsets are typically manufactured by large electronics companies and customized for each cellular network. The most important aspect of customization provides for the efficient use of the spectrum and the network for each cellular provider. Some aspects

of customization, however, have nothing to do with the efficient operation of the cellular network but allow cellular providers to choose which features of the cellular telephone to make available to subscribers depending on their commercial strategy. This bill would limit the control of cellular service providers over the types of handsets that have access to their networks.

According to Telecommunications Industry Association data, roughly 200 million handsets are attached to cellular networks in the United States. Not all handsets are broadband capable, but at least 170 million are capable of transmitting on the proprietary data networks and many provide access to the Internet. Industry experts project that many more such handsets will become broadband capable in the near term. Cellular companies providing such broadband services would be affected by this mandate.

The direct costs of the mandate would include the expenditures necessary for operating the cellular telephone system using a wider array of handsets than are currently used by each network. According to engineering sources, the data are not currently available to determine the costs of complying with the mandate.

Prohibition on the Interconnection with Broadband Providers on Discriminatory Terms

The bill would make it illegal “to refuse to interconnect its facilities with the facilities of another provider of broadband network services on reasonable and nondiscriminatory terms or conditions....” Currently, the Internet service industry operates on a tiered charge system. Large providers of Internet services carry each other’s traffic at no charge but charge the smaller companies for carrying their traffic. If H.R. 5417 were enacted, the large companies would no longer be allowed to charge small firms differently than larger firms for carriage. The contracts for carriage are currently negotiated by the firms individually and the terms of exchange are confidential. Consequently, CBO has no basis to estimate the cost of this mandate.

Prohibition on Surcharges for Enhanced Quality of Service

The bill also would require a broadband network provider, if it offers enhanced quality of service for any type of data, to offer enhanced quality of service for all data of that type, regardless of the ownership of the data, without imposing a surcharge.

At present, few if any broadband network providers offer enhanced quality of service on open networks. Enhanced quality of service is offered regularly on smaller private networks,

but rarely, if ever, on public networks, most notably the Internet. The principal reason is that thousands of networks have connected to the Internet and no single provider controls more than a fraction of the Internet traffic routes worldwide. The delivery of messages and packets on the Internet depends on the coordination of many providers with different operating conditions on their own networks and on the interconnections between networks. For this reason, most Internet service providers do not currently offer such priority services. The cost of the mandate would be the loss in net income from not being able to use a surcharge for certain services. CBO has no basis to estimate the cost of this mandate.

PREVIOUS CBO ESTIMATE

On May 3, 2006, CBO transmitted a cost estimate for H.R. 5252, the Communications Opportunity, Promotion, and Enhancement Act of 2006, as ordered reported by the House Committee on Energy and Commerce on April 27, 2006. Title II of that bill contains provisions related to access to Internet service. Difference between these bills are reflected in CBO's cost estimates.

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