

112TH CONGRESS
1ST SESSION

S. 1695

To require accurate disclosures to consumers of the terms and conditions of 4G service and other advanced wireless mobile broadband service.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12, 2011

Mr. BLUMENTHAL (for himself, Ms. KLOBUCHAR, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require accurate disclosures to consumers of the terms and conditions of 4G service and other advanced wireless mobile broadband service.

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 “Next Generation Wire-
5 less Disclosure Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In 2011, the President set a goal of bring-
9 ing next generation wireless broadband Internet ac-

1 cess service to not less than 98 percent of people in
2 the United States within 5 years.

3 (2) The Federal Communications Commission's
4 National Broadband Plan sets a minimum target of
5 delivering universal, affordable broadband Internet
6 access service with actual download speeds of not
7 less than 4 megabits per second and actual upload
8 speeds of not less than 1 megabit per second.

9 (3) The 4 largest wireless service providers ad-
10 vertise 4G service using different wireless mobile
11 broadband technologies.

12 (4) Although the International Telecommuni-
13 cation Union has expanded its definition of 4G serv-
14 ice to include these technologies, theoretical peak
15 speeds and actual speeds experienced by consumers
16 vary widely across technologies and service pro-
17 viders.

18 (5) In 2010, the United States wireless indus-
19 try generated almost \$160,000,000,000 in revenue,
20 with approximately \$50,000,000,000 of this total de-
21 rived from wireless data.

22 (6) Consumers need accurate information be-
23 fore selecting a provider of wireless mobile
24 broadband service.

1 (7) Providers and other sellers of advanced
2 wireless mobile broadband service should be required
3 to make accurate and reasonable disclosures of the
4 terms and conditions of such service in order to give
5 consumers the necessary information to make in-
6 formed decisions about such service and to promote
7 greater transparency in the market.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) 4G SERVICE.—The term “4G service” in-
11 cludes wireless mobile broadband service that utilizes
12 technologies that fulfill the requirements set forth in
13 the International Mobile Telecommunications Ad-
14 vanced standard promulgated by the International
15 Telecommunication Union, any forerunner tech-
16 nologies for which the designation “4G” has been
17 approved by the International Telecommunication
18 Union, and any technologies that are broadly mar-
19 keted as “4G” service.

20 (2) ADVANCED WIRELESS MOBILE BROADBAND
21 SERVICE.—The term “advanced wireless mobile
22 broadband service” means 4G service or any wireless
23 mobile broadband service that utilizes a successor
24 technology to 4G technology.

1 (3) BEST-EFFORT DELIVERY.—The term “best-
2 effort delivery” means the common Internet protocol
3 network model in which a network service routes
4 Internet protocol packets on a first-in, first-out basis
5 and does not distinguish based on the source, type,
6 or other unique characteristics of the Internet pro-
7 tocol packets for the purpose of establishing dif-
8 ferent levels of delivery priority.

9 (4) COMMISSION.—The term “Commission”
10 means the Federal Communications Commission.

11 (5) ON-NETWORK HOST.—The term “on-net-
12 work host” means any networking routing equip-
13 ment owned, operated, or within the control of a
14 wireless mobile broadband service provider that
15 transmits or receives Internet protocol packets or
16 any points in a network before a subscriber’s data
17 traffic travels to a centralized routing facility that
18 interconnects at an exchange point with broadband
19 service providers that are not affiliated with such
20 wireless mobile broadband service provider.

21 (6) POSTPAID.—The term “postpaid” means,
22 with respect to advanced wireless mobile broadband
23 service, that the service is not prepaid.

24 (7) PREPAID.—The term “prepaid” means,
25 with respect to advanced wireless mobile broadband

1 service, that the consumer of such service pays for
2 a specified quantity of service (whether measured by
3 volume of data transferred, amount of time the serv-
4 ice is in use, or otherwise) before gaining access to
5 such service and must affirmatively purchase any
6 additional quantities of service before gaining access
7 to such additional quantities.

8 **SEC. 4. REQUIRED DISCLOSURES OF TERMS AND CONDI-**
9 **TIONS OF ADVANCED WIRELESS MOBILE**
10 **BROADBAND SERVICE.**

11 (a) SALE TO CONSUMERS.—

12 (1) IN GENERAL.—A person who sells advanced
13 wireless mobile broadband service directly to a con-
14 sumer shall accurately disclose the terms and condi-
15 tions of such service by displaying such terms and
16 conditions consistently, clearly, and prominently in
17 all marketing materials for such service, at the point
18 of sale of such service, and (in the case of postpaid
19 advanced wireless mobile broadband service) in all
20 bills for such service. The terms and conditions dis-
21 closed shall include the information described in sub-
22 section (c).

23 (2) SPECIAL RULES FOR PREPAID SERVICE.—

1 (A) OFF-THE-SHELF TRANSACTIONS.—

2 Paragraph (1) does not apply in the case of a
3 transaction in which both—

4 (i) the consumer receives a device that
5 allows the consumer to access a specified
6 quantity of prepaid advanced wireless mo-
7 bile broadband service; and

8 (ii) the consumer's interaction with
9 the agents of the person from whom the
10 consumer makes the purchase is such that
11 the average consumer would not expect
12 such agents to have expertise regarding the
13 terms and conditions of such service.

14 (B) PACKAGERS OF PREPAID SERVICE.—A
15 person who packages prepaid advanced wireless
16 mobile broadband service for ultimate sale to a
17 consumer in a transaction described in subpara-
18 graph (A) shall accurately disclose the terms
19 and conditions of such service by displaying
20 such terms and conditions consistently, clearly,
21 and prominently in all marketing materials for
22 such service and on the packaging of the device
23 described in subparagraph (A)(i). The terms and
24 conditions disclosed shall include the informa-
25 tion described in subsection (c).

1 (b) SALE TO RESELLERS.—A person who sells ad-
2 vanced wireless mobile broadband service wholesale to an-
3 other person for ultimate sale to consumers shall disclose
4 to such other person the information necessary to permit
5 such other person to comply with subsection (a).

6 (c) INFORMATION DESCRIBED.—The information de-
7 scribed in this subsection is the following:

8 (1) The guaranteed minimum transmit and re-
9 ceive data rates for Internet protocol packets to and
10 from on-network hosts for the service, expressed in
11 megabits per second. For purposes of the preceding
12 sentence, a minimum data rate is not guaranteed
13 unless it is available for a percentage of the time in
14 a calendar month to be established by the Commis-
15 sion.

16 (2) The reliability rating of the service. The
17 Commission shall establish a standard method that
18 shall be used to calculate the reliability rating of the
19 service, which shall be based on the data session
20 start success percentage (network accessibility) and
21 the data session completion success percentage (net-
22 work retainability) of the service.

23 (3) The price of the service stated in terms of—

1 (A) in the case of service that is priced
2 based on the volume of data sent or received,
3 the price per unit of data sent or received; or

4 (B) in the case of service for which a flat
5 rate is charged for service over a given time pe-
6 riod—

7 (i) the flat rate; and

8 (ii) a detailed description of any limits
9 on the use of such service over such time
10 period, by volume of data sent or received
11 or otherwise.

12 (4) Any other charges that the consumer of the
13 service will incur that are not included in the price
14 as stated pursuant to paragraph (3).

15 (5) The network management policies of the
16 service with respect to Internet protocol packets to
17 and from on-network hosts, including the following:

18 (A) Any business practices or technical
19 mechanisms employed by the service provider,
20 other than standard best-effort delivery, that al-
21 locate capacity or prioritize traffic differently on
22 the basis of the source of the applications, con-
23 tent, or services.

24 (B) Any limits or prohibitions on the use
25 of certain applications or services.

1 (C) Any traffic shaping or throttling mech-
2 anisms that affect the service as a result of ex-
3 ceeding certain usage limits.

4 (6) The technology used to provide the service.

5 (7) The uniform resource locator of a website
6 (together with a brief description of the contents of
7 the website) on which is located the following:

8 (A) The complete terms of service, accept-
9 able use policy, and any other documentation
10 related to the network management policies of
11 the service provider.

12 (B) A map of the coverage area of the
13 service. If different technologies are used to
14 provide the service in different geographic
15 areas, the map shall indicate the technology
16 used in each area.

17 (d) MANNER AND FORM OF DISCLOSURES.—The
18 Commission may prescribe the manner and form of the
19 disclosures required by this section.

20 (e) REGULATIONS.—

21 (1) IN GENERAL.—Not later than 180 days
22 after the date of the enactment of this Act, the
23 Commission shall promulgate regulations imple-
24 menting this section.

1 (2) **COVERAGE AREA DEFINED.**—For purposes
2 of this section, the term “coverage area” shall have
3 the meaning given the term by the Commission. The
4 Commission shall set minimum signal strength and
5 data rate requirements in order for a location to be
6 considered to be within the coverage area of an ad-
7 vanced wireless mobile broadband service.

8 **SEC. 5. STUDY BY FEDERAL COMMUNICATIONS COMMIS-**
9 **SION.**

10 (a) **STUDY.**—Not later than 1 year after the date of
11 the enactment of this Act, and annually thereafter, the
12 Commission shall complete a study evaluating the speed
13 and pricing of advanced wireless mobile broadband service
14 offered in the United States by the 10 largest providers
15 of such service, as measured by the number of consumers
16 to whom a provider provides such service in coverage areas
17 that include any part of the United States.

18 (b) **INITIAL REPORT TO CONGRESS.**—Not later than
19 10 days after completing the initial study required by sub-
20 section (a), the Commission shall submit to Congress a
21 report on the results of such study.

22 (c) **INCLUSION IN ANNUAL CMRS COMPETITION RE-**
23 **PORTS.**—The Commission shall include the results of each
24 study conducted under subsection (a) in the next report
25 on the findings of the review required by section

1 332(c)(1)(C) of the Communications Act of 1934 (47
2 U.S.C. 332(c)(1)(C)) that is adopted after the completion
3 of such study.

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