

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE
Miguel Santiago, Chair
SB 822 (Wiener) – As Amended June 11, 2018

SENATE VOTE: 23-12

SUBJECT: Communications: broadband Internet access service

SUMMARY: Establishes net neutrality rules by prohibiting Internet Service providers (ISPs) from engaging in activities that interfere with a user's ability to access content on the internet. Specifically, **this bill:**

- 1) Specifies that it shall be unlawful for an ISP, insofar as the provider is engaged in providing broadband Internet access service (BIAS), to engage in any of the following activities:
 - a) Blocking lawful content, applications, services, or nonharmful devices, subject to reasonable network management practices;
 - b) Speeding up, slowing down, altering, restricting, interfering with, or otherwise directly or indirectly favoring, disadvantaging, or discriminating between lawful Internet traffic on the basis of source, destination, Internet content, application, or service, or use of a nonharmful device, or of class of Internet content, application, service, or nonharmful device, subject to reasonable network management practices;
 - c) Requiring consideration from edge providers, monetary or otherwise, in exchange for access to the ISP's end users, including, but not limited to, requiring consideration for either of the following:
 - i) Transmitting Internet traffic to and from the ISP's end users; or,
 - ii) Refraining from the activities prohibited, as specified.
 - d) Engaging in third-party paid prioritization;
 - e) Engaging in application-specific differential pricing or zero-rating in exchange for consideration, monetary or otherwise, by third parties;
 - f) Zero-rating some Internet content, applications, services, or devices in a category of Internet content, applications, services, or devices, but not the entire category;
 - g) Engaging in application-specific differential pricing;
 - h) Unreasonably interfering with, or unreasonably disadvantaging, either an end user's ability to select, access, and use BIAS or lawful Internet content, applications, services, or devices of the end user's choice, or an edge provider's ability to make lawful content, applications, services, or devices available to an end user, subject to reasonable network management practices;

- i) Engaging in practices with respect to, related to, or in connection with, ISP traffic exchange that have the purpose or effect of circumventing or undermining the effectiveness, as specified;
 - j) Engaging in deceptive or misleading marketing practices that misrepresent the treatment of Internet traffic, content, applications, services, or devices by the ISP, or that misrepresent the performance characteristics or commercial terms of the BIAS to its customers;
 - k) Advertising, offering for sale, or selling BIAS without prominently disclosing with specificity all aspects of the service advertised, offered for sale, or sold; and,
 - l) Failing to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its BIAS sufficient for consumers to make informed choices regarding use of those services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.
- 2) Specifies that it shall be unlawful for an ISP to offer or provide services other than BIAS that are delivered over the same last-mile connection as the BIAS, if those services satisfy any of the following conditions:
- a) They are marketed, provide, or can be used as a functional equivalent of BIAS;
 - b) They have the purpose or effect of circumventing or undermining the effectiveness of the specified net neutrality requirements; or,
 - c) They negatively affect the performance of BIAS.
- 3) Authorizes an ISP to offer different levels of quality of service to end users as part of its BIAS, without violating specified net neutrality requirements, only if all of the following conditions exist:
- a) The different levels of quality of service are equally available to all Internet content, applications, services, and devices, and all classes of Internet content, applications, services, and devices, and the ISP does not discriminate in the provision of the different levels of quality of service on the basis of Internet content, application, service, or device, or class of Internet content, application, service, or device;
 - b) The ISP's end users are able to choose whether, when, and for which Internet content, applications, services, or devices, or classes of Internet content, applications, services, or devices, to use each type of technical treatment;
 - c) The ISP charges only its own BIAS customers for the use of the different level of quality of service; and,
 - d) The provision of the different levels of quality of service does not degrade the quality of the basic default service that Internet traffic receives if the customer does not choose another level of quality of service.

- 4) Authorizes an ISP to zero-rate Internet traffic in application-agnostic ways, without violating specified net neutrality requirements, provided that no consideration, monetary or otherwise, is provided by any third party in exchange for the provider's decision to zero-rate or to not zero-rate traffic.
- 5) Specifies that a specified violation shall be subject to the remedies and procedures established under the Consumer Legal Remedies Act.
- 6) Prohibits a public entity from purchasing any fixed or mobile BIAS from an ISP that is in violation of specified net neutrality requirements.
- 7) Prohibits a public entity from provide funding for the purchase of any fixed or mobile BIAS from an ISP that is in violation of specified net neutrality requirements.
- 8) Requires every contract between a public entity and an ISP for BIAS to require that the service be rendered consistent with specified net neutrality requirements.
- 9) Specifies that if, after execution of a contract for BIAS, a governmental entity determines that the ISP has violated specified net neutrality requirements in providing service to the public entity, the public entity may declare the contract void from the time it was entered into and require repayment of any payments made to the ISP pursuant to the contract, as specified.
- 10) Specifies that it shall not be a violation for a public entity to purchase or fund fixed or mobile BIAS in a geographical area where Internet access services are only available from a single BIAS provider, as specified.
- 11) Requires an ISP that provides fixed or mobile BIAS purchased or funded by a public entity to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its BIAS that is sufficient to enable end users of those purchased or funded services, including a public entity, to fully and accurately ascertain if the service is conducted in a lawful manner, as specified.
- 12) Defines "Application-agnostic" to mean not differentiating on the basis of source, destination, Internet content, application, service, or device, or class of Internet content, application, service, or device.
- 13) Defines "Application-specific differential pricing" to mean charging different prices for Internet traffic to customers on the basis of Internet content, application, service, or device, or class of Internet content, application, service, or device, but does not include zero-rating.
- 14) Defines "Broadband Internet access service" to mean a mass-market retail service by wire or radio provided to customers in California that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. "Broadband Internet access service" also encompasses any service provided to customers in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this chapter.

- 15) Defines “Class of Internet content, application, service, or device” to mean Internet content, or a group of Internet applications, services, or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service, or device, using the same application- or transport-layer protocol, or having similar technical characteristics, including, but not limited to, the size, sequencing, or timing of packets, or sensitivity to delay.
- 16) Defines “Content, applications, or services” to mean all Internet traffic transmitted to or from end users of a BIAS, including traffic that may not fit clearly into any of these categories.
- 17) Defines “Edge provider” to mean any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.
- 18) Defines “End user” to mean any individual or entity that uses a BIAS.
- 19) Defines “Enterprise service offering” to mean an offering to larger organizations through customized or individually negotiated arrangements or special access services.
- 20) Defines “Internet service provider” to mean a business that provides BIAS to an individual, corporation, government, or other customer in California.
- 21) Defines “ISP traffic exchange” to mean the exchange of Internet traffic destined for, or originating from, an ISP’s end users between the ISP’s network and another individual or entity, including, but not limited to, an edge provider, content delivery network, or other network operator.
- 22) Defines “Mass market” to mean a service marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers, including, but not limited to, schools, institutions of higher learning, and libraries. “Mass market” also includes BIAS purchased with support of the E-rate and Rural Health Care programs and similar programs at the federal and state level, regardless of whether they are customized or individually negotiated, as well as any BIAS offered using networks supported by the Connect America Fund or similar programs at the federal and state level. “Mass market” does not include enterprise service offerings.
- 23) Defines “Network management practice” to mean a practice that has a primarily technical network management justification, but does not include other business practices.
- 24) Defines “Reasonable network management practice” to mean a network management practice that is primarily used for, and tailored to, achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the BIAS, and that is as application-agnostic as possible.
- 25) Defines “Third-party paid prioritization” to mean the management of an ISP’s network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration, monetary or otherwise, from a third party, or (2) to benefit an affiliated entity.

26) Defines “Zero-rating” to mean exempting some Internet traffic from a customer’s data limitation.

27) Makes the following findings and declarations:

- a) This bill is adopted pursuant to the police power inherent in the State of California to protect and promote the safety, life, public health, public convenience, general prosperity, and well-being of society, and the welfare of the state’s population and economy, that are increasingly dependent on an open and neutral Internet.
- b) Almost every sector of California’s economy, democracy, and society is dependent on the open and neutral Internet that supports vital functions regulated under the police power of the state, including, but not limited to, each of the following:
 - i) Police and emergency services.
 - ii) Health and safety services and infrastructure.
 - iii) Utility services and infrastructure.
 - iv) Transportation infrastructure and services, and the expansion of zero- and low-emission transportation options.
 - v) Government services, voting, and democratic decisionmaking processes.
 - vi) Education.
 - vii) Business and economic activity.
 - viii) Environmental monitoring and protection, and achievement of state environmental goals.
 - ix) Land use regulation.

EXISTING LAW:

- 1) Specifies policies for telecommunications in California including; to promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct; to remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice; and to encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems. (Public Utilities Code (PUC) Section 709)
- 2) Prohibits the California Public Utilities Commission (CPUC) from exercising regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled

services except as required or expressly delegated by federal law or expressly directed to do so by statute, as specified. (PUC Section 710)

- 3) Establishes the Digital Infrastructure and Video Competition Act of 2006 which specifies that the CPUC is the sole franchising authority for a state franchise to provide video service, as specified. (PUC Section 5800 et seq.)
- 4) Defines unfair competition to mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited, as specified. (Business and Professions Code (BPC) Section 17200)
- 5) Specifies that any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction, as specified. (BPC Section 17203)
- 6) Authorizes actions for relief provisions to be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney or by a county, as specified, as a result of the unfair completion. (BPC Section 17204)
- 7) Prohibits the use of untrue or misleading advertisements by any person, firm, corporation or association selling a product or service, as specified. (BPC Section 17500)
- 8) Establishes the Consumers Legal Remedies Act to protect consumers against unfair and deceptive business practices and provides procedures to secure such protections. (Civil Code Section 1750 et seq.)
- 9) Requires specified State department to require from all prospective bidders the completion, under penalty of perjury, of a standard form of questionnaire inquiring whether such prospective bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, has ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation, and if so to explain the circumstances. (Public Contract Code (PCC) Section 10162)
- 10) Specifies that a specified bid may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local project because of a violation of law or a safety regulation. (PCC Section 10162)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Authors Statement:** According to the author, “As of June 11th, 2018 the federal government under Donald Trump’s FCC has abandoned net neutrality protections and abdicated it’s responsibility to protect all Americans. When the federal government decides to walk away from this duty and its authority to regulate this industry, it is up to the states to protect their residents. Senate Bill 822 steps in and puts California at the national forefront of ensuring an

open internet. It establishes comprehensive and enforceable net neutrality standards to ensure that all California residents have the right to choose whether, when, and for what purpose they use the internet. SB 822 stands for the basic proposition that the role of internet service providers is to provide neutral access to the internet, not to pick winners and losers by deciding (based on financial payments or otherwise) which websites or applications will be easy or hard to access, which will have fast or slow access, and which will be blocked entirely.”

- 2) **Background:** There are a number of federal and state agencies that play a role in the regulation and enforcement of communications-related services including the FCC, the Federal Trade Commission (FTC), and the CPUC. The FCC is an independent federal agency overseen by Congress to regulate interstate and international communications by radio, television, wire, satellite and cable in the United States. The agency is directed by five commissioners who are appointed by the President of the United States and confirmed by the United State Senate. The FCC is tasked with promoting the development of competitive networks, as well as ensuring universal service, consumer protection, public safety, and national security.

In addition, the FTC is an independent federal agency tasked with promoting consumer protection and preventing anticompetitive business practices. The FTC enforces antitrust laws, and protects consumers by stopping unfair, deceptive or fraudulent practices in the marketplace. In California, the CPUC regulates the telecommunications industry by developing and implementing policies to ensure fair, affordable universal access to necessary services, developing rules and regulatory tools, removing barriers that prevent a competitive market, and reducing or eliminating burdensome regulations. Furthermore, the Attorney General and local district attorneys can take enforcement actions against corporations for deceptive and misleading advertisement and other unfair business competition violations.

- 3) **Net Neutrality & the Internet:** There are several major players in the operation of the Internet for information and data to be delivered from one point to another. Edge providers, such as Amazon, Google, and Facebook, develop and provide content, services and applications over the Internet. End users are internet customers that consume content from edge providers. In order for products to be delivered from an edge provider to an end user, the product travels through backbone networks which are capable of transmitting vast amounts of data. End users and edge providers typically connect to these backbone networks through local ISPs, such as AT&T, Comcast, or Verizon. Such ISPs serve as the gatekeepers and provide the “on-ramp” to the internet.

Net neutrality is the principle that ISPs should not discriminate against legal content and applications, by charging edge providers different delivery speeds to deliver their content. Hence, ISPs cannot block, throttle, or create special “fast lanes” for certain content. Net neutrality rules serve the purpose of maintaining open access to the internet and limited the degree to which ISPs can interfere with a customer’s ability to access legal content on the internet. It can also serve to promote greater competition between content providers by limiting the degree in which better resourced companies can pay to have their content prioritized and distributed to consumers at optimal speeds. Maintaining competition in the internet marketplace provides greater choices and reduced cost to consumers and new services entering the marketplace.

4) **Bright-line Rules and the 2015 Open Internet Order:** After a series of court cases in which the FCC attempted to enforce net neutrality rules but were overturned, in May 2014 the FCC began a rulemaking to respond to the lack of conduct-based rules to protect and promote an open internet. After receiving over 3 million comments, in February 2015, the FCC adopted the Open Internet Order which established three “bright-line” rules banning certain practices that the FCC considers to harm open access to the Internet. The bright-line rules include:

- a) No Block: ISPs may not block access to legal content, applications, services, or non-harmful devices;
- b) No Throttling: ISPs may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices; and,
- c) No Paid Prioritization: ISPs may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration of any kind.

In addition, recognizing that there may exist other current or future practices that cause the type of harms the bright-line rules are intended to address, the 2015 Open Internet Order also included a no unreasonable interference or unreasonable disadvantage Standard for Internet Conduct rule. The Internet Conduct Standard serves as a catch-all for consumers and edge providers by prohibiting practices that would unreasonably interfere with or unreasonably disadvantage access or deliver products over the internet. Furthermore, the Order also reaffirmed the importance of ensuring transparency and adopted enhanced transparency rules so that consumers would have accurate information sufficient for them to make informed choices of available services.

Within the FCC’s 2015 Open Internet rules included provisions to reclassify ISPs from an “information service” under Title I of the Telecommunications Act of 1996 (the Act), to a “telecommunications service” under Title II of the Act. This would allow FCC to regulate ISPs similar to traditional public utilities, which may include rate of return regulation. However, when the FCC adopted the 2015 Open Internet rules it specified that certain provisions of Title II would not apply to broadband services. Proponents of net neutrality argue that FCC needs to reclassify ISPs as common carriers (e.g. a private company that is required to sell their services to everyone under the same terms) under Title II of the Act, in order to prevent anticompetitive behaviors. While opponents argue that the FTC already has the authority to prevent anticompetitive business practices and that Title II is an archaic provision created to regulate telecommunications services long before the Internet existed.

5) **2017 Restoring Internet Freedom Order & State Response:** In December 2017, following the election of President Trump, the FCC voted to repeal the 2015 Open Internet Order. The new FCC argued that net neutrality rules were unnecessary because ISPs have publicly stated their opposition to violating such principles, and if an ISP were to engage in such activities, consumer expectations, market incentives, and the deterrent threat of enforcement actions by antitrust and consumer protection agencies, such as the FTC, will constrain such practices ex ante. To enact such changes the FCC reclassified ISPs under Title I of the Act and asserted significant preemption over state and local regulations, and laws. In June 2018, the repeal took effect.

In response to the 2017 Restoring Internet Freedom Order, Legislators in 29 states have introduced over 65 bills requiring ISPs to ensure various net neutrality principles. In 13 states and the District of Columbia, 23 resolutions have been introduced expressing opposition to the FCC's repeal of net neutrality rules and urging the U.S. Congress to reinstate and preserve net neutrality. In California, the Legislature passed AJR 7 (Mullin) Chapter 151, Statutes of 2017, which urged the President and Members of Congress to continue to protect net neutrality, open Internet access, the federal Lifeline program, and the E-rate program.

Currently, Governors in six states have signed executive orders and three states have enacted net neutrality legislation, including Oregon, Vermont, and Washington. Legislation introduced typically includes one or more of the following:

- Prohibiting blocking, throttling and paid prioritization of internet traffic, usually by invoking state consumer protection laws;
- Requiring that ISPs are transparent about their network management practices; or,
- Requiring state contractors for ISP service to abide by net neutrality principles.

This bill seeks to follow a similar approach by establishing net neutrality rules prohibiting ISPs from engaging in activities that interfere with a user's ability to access content on the internet. The bill prohibits a public entity from purchasing any ISP services from a provider that is in violation of the specified net neutrality requirements.

- 6) **2015 Open Internet Final Rules vs. Order:** There are always inherent difficulties when trying to implement a federal regulation into state law. The 2015 Open Internet Order included with it prescribed final rules, as well as the attached larger report which includes debates on specific issues, guidance and elaborations, and the FCC assertions and expectations. The mere assertion of jurisdiction over such matters was enough to serve as a deterrent for ISPs to avoid violations of the final prescribed rules.

As such, this bill seeks to include additional prohibitions that were not prescribed in the final rules. Although such issues were debated within the Order, the FCC recognized competing narratives on such issues and decided not to prescribe specific rules. Instead it decided to take a case-by-case approach and stipulated that violations in such areas would fall under one of the prescribed bright-line rules or the Internet Conduct Standard.

Interconnection: The connection points between and among the various groups that allows for the flow of information through the internet have many names: peering, transit, proxy services, interconnection, or traffic exchange. On the one hand some edge and transit providers assert that large ISPs are creating artificial congestion by refusing to upgrade interconnection capacity at their network entrance points, thus forcing edge providers to agree to paid peering arrangements. On the other hand, large ISPs assert that edge providers are imposing a cost on ISPs who must constantly upgrade their infrastructure to keep up with the demand, especially as the demand for products that require large quantity of data such as online streaming services continue to increase. The Order states:

“As discussed, Internet traffic exchange agreements have historically been and will continue to be commercially negotiated. We do not believe that it is appropriate or necessary to subject arrangements for Internet traffic exchange (which are

subsumed within broadband Internet access service) to the rules we adopt today. We conclude that it would be premature to adopt prescriptive rules to address any problems that have arisen or may arise. It is also premature to draw policy conclusions concerning new paid Internet traffic exchange arrangements between broadband Internet access service providers and edge providers, CDNs, or backbone services. While the substantial experience the Commission has had over the last decade with “last-mile” conduct gives us the understanding necessary to craft specific rules based on assessments of potential harms, we lack that background in practices addressing Internet traffic exchange. For this reason, we adopt a case-by-case approach, which will provide the Commission with greater experience. Thus, we will continue to monitor traffic exchange and developments in this market.”

This bill prohibits an ISP from engaging in practices with respect to ISP traffic exchange that have the purpose or effect of circumventing or undermining the effectiveness of this bill.

Zero-Rating: Sponsored data plans, sometimes called zero-rating, allows ISPs to exclude certain edge provider content from end user’s data usage allowances. The Order states that on the one hand, evidence in the record suggests that these business models may in some instances provide benefits to consumers, with particular reference to their use in the provision of mobile service. On the other hand, some commenters strongly oppose sponsored data plans, arguing that the power to exempt selective services from data caps seriously distort competition, favors companies with deepest pockets, and prevents consumers from exercising control over what they are able to access on the Internet, again with specific reference to mobile services. The Order states:

“We are mindful of the concerns raised in the record that sponsored data plans have the potential to distort competition by allowing service providers to pick and choose among content and application providers to feature on different service plans. At the same time, new service offerings, depending on how they are structured, could benefit consumers and competition. Accordingly, we will look at and assess such practices under the no-unreasonable interference/disadvantage standard, based on the facts of each individual case, and take action as necessary.”

This bill prohibits an ISP from zero-rating some internet content, applications, services or devices in a category of, but not the entire category. The bill allows an ISP to zero-rate in application-agnostic ways, provide that no consideration, monetary or otherwise, is provide by any third party in exchange for the provider’s decision to zero-rate or to not zero-rate traffic.

In addition, this bill includes additional language that does not mirror the FCC’s final rules. When such language is rewritten to capture the intent of the Order, it is unclear what impact that would have on how stakeholders would interpret such changes as compared to the prescribed rules from the FCC. Such actions may naturally result in the State reopening and debating an issue that has numerous competing narratives and has been vetted by the FCC after years of stakeholder workshops and meetings. It is unclear if this Committee or the Legislature should be the appropriate forum to debate such issues absent guidance and expertise provided by various stakeholders. Absent placing such rules under a comparable state agency that has the expertise to prescribe regulations to conform to the Order, the final

prescribed rules serves as the clearest guidance the state has in replicating federal regulations and serves as a foundation for the state to build upon its own net neutrality principles.

The author may wish to consider an amendment to better maintain consistency with the 2015 Open Internet Order's Final Rules.

- 7) **Arguments in Support:** According to ACLU California, “Strong enforceable net neutrality provisions ensure an open Internet for all Californians, free from interference by ISPs that would otherwise be empowered to hinder competition and limit choices. Net neutrality is the simple principle that ISP customers, not the ISP itself, should choose what apps, services, and websites they want to use. It enables competition by ensuring that small start-ups have a level playing field with incumbent services with deep pockets. It prevents ISPs from choosing winners and losers online based on their own interests. And it allows marginalized voices, who often have the fewest resources to ‘play to play,’ to leverage the Internet to build communities and create societal change [...] With the federal government abdicating its responsibility, it falls to states like California to take the lead in protecting access to the entirety of the Internet.”
- 8) **Arguments in Opposition:** According to a coalition of industry groups, “SB 822 will result in numerous unintended consequences and establishes requirements that go well beyond those net neutrality principles and the 2015 FCC order to which the bill purports but fails to return. Instead, this bill creates a set of regulations that will have negative impacts on both investment and consumers [...] Our commitment to preserve an open Internet has not changed, as it is vital to the success of California’s economy, and to ensuring all consumers can access any legal content they want on whatever device they choose. SB 822 threatens to undermine the many benefits an open Internet provides.”
- 9) **Suggested Amendments:**

SECTION 1. The Legislature finds and declares all of the following:

(a) This bill is adopted pursuant to the police power inherent in the State of California to protect and promote the safety, life, public health, public convenience, general prosperity, and well-being of society, and the welfare of the state’s population and economy, that are increasingly dependent on an open and neutral Internet.

(b) Almost every sector of California’s economy, democracy, and society is dependent on the open and neutral Internet that supports vital functions regulated under the police power of the state, including, but not limited to, each of the following:

- (1) Police and emergency services.
- (2) Health and safety services and infrastructure.
- (3) Utility services and infrastructure.
- (4) Transportation infrastructure and services, and the expansion of zero- and low-emission transportation options.
- (5) Government services, voting, and democratic decisionmaking processes.
- (6) Education.
- (7) Business and economic activity.
- (8) Environmental monitoring and protection, and achievement of state environmental goals.

(9) Land use regulation.

(x) The Federal Communications Commission has repealed net neutrality rules intended to protect consumers and to ensure fair and reasonable access to the Internet.

(x) It is the intent of this act to ensure that corporations do not impede competition or engage in deceptive consumer practices, and that they offer service to residential broadband Internet customers on a nondiscriminatory basis.

(x) It is the intent of this act to protect and promote the Internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission, and thereby to encourage the deployment of advanced telecommunications capability and remove barriers to infrastructure investment.

(x) This act shall be known, and may be cited, as the California Internet Consumer Protection and Net Neutrality Act of 2018.

1775. For purposes of this chapter, the following definitions apply:

~~(a) “Application agnostic” means not differentiating on the basis of source, destination, Internet content, application, service, or device, or class of Internet content, application, service, or device.~~

~~(b) “Application specific differential pricing” means charging different prices for Internet traffic to customers on the basis of Internet content, application, service, or device, or class of Internet content, application, service, or device, but does not include zero rating.~~

(c) “Broadband Internet access service” means a mass-market retail service by wire or radio ~~provided to customers~~ in California that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. “Broadband Internet access service” also encompasses any service ~~provided to customers~~ in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this chapter.

~~(d) “Class of Internet content, application, service, or device” means Internet content, or a group of Internet applications, services, or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service, or device, using the same application or transport layer protocol, or having similar technical characteristics, including, but not limited to, the size, sequencing, or timing of packets, or sensitivity to delay.~~

~~(e) “Content, applications, or services” means all Internet traffic transmitted to or from end users of a broadband Internet access service, including traffic that may not fit clearly into any of these categories.~~

(f) “Edge provider” means any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.

(g) “End user” means any individual or entity that uses a broadband Internet access service.

~~(h) “Enterprise service offering” means an offering to larger organizations through customized or individually negotiated arrangements or special access services.~~

(i) “Internet service provider” means a business that provides broadband Internet access service to an individual, corporation, government, or other customer in California.

~~(j) “ISP traffic exchange” means the exchange of Internet traffic destined for, or originating from, an Internet service provider’s end users between the Internet service provider’s network and another individual or entity, including, but not limited to, an edge provider, content delivery network, or other network operator.~~

~~(k) “Mass market” means a service marketed and sold on a standardized basis to residential customers, small businesses, and other end user customers, including, but not limited to, schools, institutions of higher learning, and libraries. “Mass market” also includes broadband Internet access services purchased with support of the E-rate and Rural Health Care programs and similar programs at the federal and state level, regardless of whether they are customized or individually negotiated, as well as any broadband Internet access service offered using networks supported by the Connect America Fund or similar programs at the federal and state level. “Mass market” does not include enterprise service offerings.~~

~~(l) “Network management practice” means a practice that has a primarily technical network management justification, but does not include other business practices.~~

~~(m) “Reasonable network management practice” means a network management practice that is primarily used for, and tailored to, achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service, and that is as application agnostic as possible.~~

(x) Reasonable network management” means a network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

(n) “~~Third party~~ paid prioritization” means the management of an Internet service provider’s network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration, monetary or otherwise, from a third party, or (2) to benefit an affiliated entity.

~~(o) “Zero rating” means exempting some Internet traffic from a customer’s data limitation.~~

1776. It shall be unlawful for an Internet service provider, insofar as the provider is engaged in providing broadband Internet access service, to engage in any of the following activities:

(a) Blocking lawful content, applications, services, or non-harmful devices, subject to reasonable network management practices.

~~(x) Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management practices.~~

~~(b) Speeding up, slowing down, altering, restricting, interfering with, or otherwise directly or indirectly favoring, disadvantaging, or discriminating between lawful Internet traffic on the basis of source, destination, Internet content, application, or service, or use of a nonharmful device, or of class of Internet content, application, service, or nonharmful device, subject to reasonable network management practices.~~

~~(c) Requiring consideration from edge providers, monetary or otherwise, in exchange for access to the Internet service provider's end users, including, but not limited to, requiring consideration for either of the following:~~

~~(1) Transmitting Internet traffic to and from the Internet service provider's end users.~~

~~(2) Refraining from the activities prohibited in subdivisions (a) and (b).~~

~~(d) (x) Engaging in third-party paid prioritization.~~

~~(e) Engaging in application specific differential pricing or zero rating in exchange for consideration, monetary or otherwise, by third parties.~~

~~(f) Zero rating some Internet content, applications, services, or devices in a category of Internet content, applications, services, or devices, but not the entire category.~~

~~(g) Engaging in application specific differential pricing.~~

~~(h) (x) Unreasonably interfering with, or unreasonably disadvantaging, either an end user's ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of the end user's their choice, or an edge provider's ability to make lawful content, applications, services, or devices available to an end users, subject to reasonable network management practices. Reasonable network management shall not be considered a violation of this paragraph.~~

~~(i) Engaging in practices with respect to, related to, or in connection with, ISP traffic exchange that have the purpose or effect of circumventing or undermining the effectiveness of this section.~~

~~(j) Engaging in deceptive or misleading marketing practices that misrepresent the treatment of Internet traffic, content, applications, services, or devices by the Internet service provider, or that misrepresent the performance characteristics or commercial terms of the broadband Internet access service to its customers.~~

~~(k) Advertising, offering for sale, or selling broadband Internet access service without prominently disclosing with specificity all aspects of the service advertised, offered for sale, or sold.~~

~~(l) Failing to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of those services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.~~

(x) A Internet service provider engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient for consumers to make informed choices regarding uses of such services and for content, application, service, and device providers to develop, market, and maintain internet offerings.

~~**1776.5.** It shall be unlawful for an Internet service provider to offer or provide services other than broadband Internet access service that are delivered over the same last mile connection as the broadband Internet access service, if those services satisfy any of the following conditions:~~

~~(a) They are marketed, provide, or can be used as a functional equivalent of broadband Internet access service.~~

~~(b) They have the purpose or effect of circumventing or undermining the effectiveness of Section 1776.~~

~~(c) They negatively affect the performance of broadband Internet access service.~~

~~**1777.** (a) (1) An Internet service provider may offer different levels of quality of service to end users as part of its broadband Internet access service, without violating Section 1776, only if all of the following conditions exist:~~

~~(A) The different levels of quality of service are equally available to all Internet content, applications, services, and devices, and all classes of Internet content, applications, services, and devices, and the Internet service provider does not discriminate in the provision of the different levels of quality of service on the basis of Internet content, application, service, or device, or class of Internet content, application, service, or device.~~

~~(B) The Internet service provider's end users are able to choose whether, when, and for which Internet content, applications, services, or devices, or classes of Internet content, applications, services, or devices, to use each type of technical treatment.~~

~~(C) The Internet service provider charges only its own broadband Internet access service customers for the use of the different level of quality of service.~~

~~(D) The provision of the different levels of quality of service does not degrade the quality of the basic default service that Internet traffic receives if the customer does not choose another level of quality of service.~~

~~(b) An Internet service provider may zero rate Internet traffic in application agnostic ways, without violating Section 1776 or 1776.5, provided that no consideration, monetary or otherwise, is provided by any third party in exchange for the provider's decision to zero rate or to not zero rate traffic.~~

~~1778. Nothing in this chapter supersedes or limits any obligation or authorization an Internet service provider may have, or limits the ability of an Internet service provider, to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law.~~

~~(x) Nothing in this Section supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.~~

~~(x) Nothing in this Section prohibits reasonable efforts by an Internet service provider of broadband Internet access service to address copyright infringement or other unlawful activity.~~

~~1779. Violations of Section 1776, 1776.5, or 1777 shall be subject to the remedies and procedures established pursuant to Chapter 4 (commencing with Section 1780).~~

~~1777. A violation of this chapter shall be subject to the remedies and procedures established pursuant to Chapter 4 (commencing with Section 1780).~~

~~3020.(a) For purposes of this article, "broadband Internet access service," "Internet service provider," "network management practice," and "reasonable network management practice" have the same meanings as defined in Section 1775 of the Civil Code.~~

~~(b) For purposes of this article, "public entity" has the meaning as defined in Section 1100.~~

~~3021. (a) A public entity shall not purchase any fixed or mobile broadband Internet access services from an Internet service provider that is in violation of Section 1776, 1776.5, or 1777 of the Civil Code.~~

~~(b) A public entity shall not provide funding for the purchase of any fixed or mobile broadband Internet access services from an Internet service provider that is in violation of Section 1776, 1776.5, or 1777 of the Civil Code.~~

~~3022.(a) Every contract between a public entity and an Internet service provider for broadband Internet access service shall require that the service be rendered consistent with the requirements of Sections 1776, 1776.5, and 1777 of the Civil Code.~~

~~(b) If, after execution of a contract for broadband Internet access service, a governmental entity determines that the Internet service provider has violated Section 1776, 1776.5, or~~

~~1777 of the Civil Code in providing service to the public entity, the public entity may declare the contract void from the time it was entered into and require repayment of any payments made to the Internet service provider pursuant to the contract. The remedies available pursuant to this section are in addition to any remedy available pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.~~

~~3023. It shall not be a violation of this article for a public entity to purchase or fund fixed or mobile broadband Internet access services in a geographical area where Internet access services are only available from a single broadband Internet access service provider.~~

~~3024. An Internet service provider that provides fixed or mobile broadband Internet access service purchased or funded by a public entity shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service that is sufficient to enable end users of those purchased or funded services, including a public entity, to fully and accurately ascertain if the service is conducted in a lawful manner pursuant to Sections 1776, 1776.5, and 1777 of the Civil Code.~~

(x) No state agency may contract with an Internet service provider for the provision of broadband internet access service unless that provider certifies, under penalty of perjury, that it is in full compliance with Civil Code Section 1775 and 1776.

- 10) **Related Legislation:** AB 1999 (Chau) of 2018 establishes net neutrality rules for local agencies that provide broadband services and expands the types of local agencies that may provide broadband infrastructure and/or services. *Status: Pending in the Senate Committee on Governance and Finance.*

SB 460 (De Leon) of 2018 establishes net neutrality rules by prohibiting ISPs from engaging in activities that interfere with a user's ability to access content on the internet. *Status: Pending in the Assembly Communications and Conveyance Committee.*

- 11) **Previous Legislation:** AJR 7 (Mullin) of 2017 urged the President of the United States and Members of the United States Congress to continue to protect net neutrality, open Internet access, the federal Lifeline program, and the E-rate program. *Status: Chaptered by the Secretary of State, Resolution Chapter 151, Statutes of 2017.*

- 12) **Double-referral:** This bill is double referred, and if passed by this Committee, will be referred to the Assembly Committee on Privacy and Consumer Protection.

REGISTERED SUPPORT / OPPOSITION:

Support

18MillionRising.Org
3scan
8Circuit Studios
ACCE Action
Access Humboldt

ACLU California
Ad Hoc Labs
AdRoll
ADT Security Services
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
American Sustainable Business Council
Angel Investment Capital
AppliedVR
Asian Americans Advancing Justice
California Common Cause
California Faculty Association
California Association of Competitive Telecommunications Companies
California Association of Nonprofits
California Association of Realtors
California Clean Money Campaign
California Conference Board
California Educational Technology Professionals Association
California Freedom Coalition
California Labor Federation
California Low-Income Consumer Coalition
California Public Interest Research Group
California State Student Association
California Teamsters
California Voices for Progress
CallFire
Canvas
CCTV Center for Media & Democracy
CD 4 Indivisible Network
Center for Democracy & Technology
Center for Media Justice
Center for Media Justice
Center for Rural Strategies
Chute
City and County of San Francisco
City of Emeryville
City of Los Angeles
City of Oakland
City of Sacramento
City of San Jose
Climate Solutions Net
Coalition for Human Immigrant Rights
Cogent Communications
Color of Change
Common Cause
Common Sense Kids Action
Computer-Using Educators
Consumer Attorneys of California
Consumer Union
Contextly

County of San Mateo
County of Santa Clara
Courage Campaign
Creative Action Network
CreaTV San Jose
CREDO Action
Daily Kos
Degreed
Demand Progress Action
Democracy for America
Disability Rights Educations and Defense Fund
DLT Education
DroneTV.Com
Electronic Frontier Foundation
Engine
Engineers and Scientists of California (ESC)
Equal Rights Advocates
Etsy
Evensi
EveryLibrary
Expa
Faithful Internet
Fight for the Future
Flip The Fourth
Founder Academy
Foursquare
Friends of the Millbrae Public Library
Girl Groove
GitHub
GoGo Technologies
Golden
Greenpeace USA
Gusto
Hackers/Founders
Heartwood Studios
HelloSign
High Fidelity
Homebrew
Honorable Anna G. Eshoo, Member of Congress
Honorable Dave Jones, State Insurance Commissioner
Honorable Nancy Pelosi, Member of Congress
Ifixit
INCOMPAS
Indivisible CA-25 Simi Valley Porter Ranch
Indivisible Beach Cities
Indivisible CA: StateStrong
Indivisible CA-33
Indivisible CA-43
Indivisible Chapter Change Begins With ME

Indivisible North San Diego County
Indivisible Sacramento
Indivisible San Diego Central
Indivisible San Diego Districts 52/53
Indivisible Santa Cruz
Indivisible Sausalito
Indivisible SF
Indivisible Sonoma County
Inflect
International Federation of Professional & Technical Engineers (IFPTE)
Internet Creators Guild
Jockeys Guild
Kaizena
Karma+
Latino Coalition for a Healthy California
Libib, Inc.
Loungebuddy
Mallonee & Associates
Manargy
May First/People Link
Mechanics' Institute Library
Media Alliance
Media Mobilizing Project
Medium
Milo Magnus
Mindhive
MinOps
Miracle Mile Democratic Club
National Consumer Law Center, on behalf of its low-income clients
National Hispanic Media Coalition
NextGen California
New Media Rights
Normal Heights Indivisible
Oakland Privacy
Office of Ratepayer Advocates – ORA
Onfleet
OpenMedia
Pacific Community Solutions, Inc.
Pactio
Patreon
PEN America
People Demanding Action
Pilotly
Point.com
Privacy Rights Clearinghouse
Progressive Technology Project
Public Knowledge
Reddit
REELY

RootsAction.Org
San Bernardino County District Advocates for Better Schools
San Francisco Unified School District
SEIU California
Service Employees International Union California (SEIU)
Shotwell Labs
Small School Districts' Association
Sonos
Starsky Robotics
SumOfUs
SV Angel
Tersorio
The Butcher Shop
The Greenlining Institute
The Monger
The Run Experience
The Utility Reform Network
Tostie Productions
Twilio
UFCW Western State Council
Underdog Media
United Auto Workers
United Food and Commercial Workers International Union (UFCW)
UNITEHERE!
Unwired
Upgraded
Venntive
VividSeats
Western Center on Law and Poverty
Woopie Media
World Wide Web Foundation
Writers Guild of America West
Numerous Individuals

Opposition

Advancing The Seed, Inc.
AT&T
BizFed Los Angeles County
California Asian Pacific Chamber of Commerce
California Cable & Telecommunications Association
California Chamber of Commerce
California Communications Association
California Hispanic Chamber of Commerce
California Latino Leadership Institute
California Manufacturers & Technology Association
CenturyLink
Civil Justice Association of California

Coachella Valley Economic Partnership
Congress of California Seniors
Consolidated Communications Inc.
CTIA
Frontier Communications
Greater Coachella Valley Chamber of Commerce
Jesse Miranda Center for Hispanic Leadership
Latin Business Association
Latino Coalition for Community Leadership
Los Angeles Area Chamber of Commerce
Macedonia Community Development Corporation
Mexican American Opportunity Foundation
Mexican American Opportunity Foundation
National Asian American Coalition
National Diversity Coalition
NCTA – The Internet & Television Association
North Orange County Chamber
OASIS Center International
Orange County Business Council
Organization for Chinese Americans – East Bay
San Gabriel Valley Economic Partnership
Small Business Development Corporation of Orange County
Southern Christian Leadership Conference of Southern California
Sprint
The Chamber of Commerce Alliance of Ventura and Santa Barbara Counties
T-Mobile
TracFone
USTelecom
Valley Industry and Commerce Association
Verizon

Analysis Prepared by: Edmond Cheung / C. & C. / (916) 319-2637