

Enrolled House Bill 4155

Sponsored by Representatives WILLIAMSON, HOLVEY; Representatives ALONSO LEON, BARKER, BARNHART, BYNUM, CLEM, DOHERTY, FAHEY, GOMBERG, GORSEK, GREENLICK, HELM, HERNANDEZ, KENY-GUYER, KOTEK, LIVELY, MALSTROM, MARSH, MCLAIN, NATHANSON, NOSSE, PILUSO, POWER, RAYFIELD, SALINAS, SANCHEZ, SMITH WARNER, SOLLMAN, Senators FREDERICK, GELSER, TAYLOR (Pre-session filed.)

CHAPTER

AN ACT

Relating to Internet service providers; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a)(A) "Broadband Internet access service" means:

(i) A mass-market retail Internet access service provided by wire or radio that enables a person to transmit data to or receive data between the person's customer premises equipment, including mobile devices, and all, or substantially all, Internet endpoints;

(ii) Any service that the Public Utility Commission finds is providing a service that is the functional equivalent of the service described in sub-subparagraph (i) of this subparagraph; or

(iii) Any service that is incidental to or that enables the operation of the service described in sub-subparagraph (i) of this subparagraph.

(B) "Broadband Internet access service" does not include dial-up Internet access service.

(b) "Broadband Internet access service provider" means a person or public body that provides broadband Internet access service.

(c) "Content, applications or services" means all traffic transmitted to or from end users of a broadband Internet access service.

(d) "Edge provider" means any person that provides content, applications or services over the Internet, and any person that provides a device used for accessing content, applications or services over the Internet.

(e) "End user" means any person that uses a broadband Internet access service.

(f) "Fixed broadband Internet access service" means broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment, including fixed satellite services and licensed and unlicensed fixed wireless services.

(g) "Mobile broadband Internet access service" means broadband Internet access service that serves end users primarily using mobile stations.

(h) "Nonharmful device" means a device the Public Utility Commission determines by rule to be nonharmful to broadband Internet access services.

(i) "Paid prioritization" means a broadband Internet access service provider's management of its network to directly or indirectly favor some traffic over other traffic, including

through traffic shaping, prioritization, resource reservation or other forms of preferential traffic management, either in exchange for consideration from a third party or to benefit an affiliated entity.

(j) "Public body" means a public body, as defined in ORS 174.109, in this state.

(2) For the purposes of this section, a public body contracts with a broadband Internet access service provider if the public body procures, or provides funding for the procurement of, broadband Internet access service, including fixed broadband Internet access service or mobile broadband Internet access service, from the broadband Internet access service provider.

(3) A public body may not contract with a broadband Internet access service provider that, at any time on or after the operative date specified in section 3 of this 2018 Act:

(a) Engages in paid prioritization;

(b) Blocks lawful content, applications or services or nonharmful devices;

(c) Impairs or degrades lawful Internet traffic for the purpose of discriminating against or favoring certain Internet content, applications or services or the use of nonharmful devices;

(d) Unreasonably interferes with or unreasonably disadvantages an end user's ability to select, access and use the broadband Internet access service or lawful Internet content, applications or services or devices of the end user's choice; or

(e) Unreasonably interferes with or unreasonably disadvantages an edge provider's ability to make devices or lawful content, applications or services available to end users.

(4) Notwithstanding subsection (3) of this section, a public body may contract with a broadband Internet access service provider that:

(a) Is the sole provider of fixed broadband Internet access service to the geographic location subject to the contract;

(b) Engages in any of the activities described in subsection (3) of this section in the process of addressing copyright infringement or other unlawful activity or the needs of emergency communications, law enforcement, public safety or national security authorities;

(c) Engages in paid prioritization if the Public Utility Commission determines that the broadband Internet access service provider's paid prioritization provides significant public interest benefits and does not harm the open nature of the provided broadband Internet access service;

(d) Engages in any activities described in subsection (3)(b) to (d) of this section if the Public Utility Commission determines that the broadband Internet access service provider's engagement in the activity is reasonable network management. An activity is reasonable network management if the activity:

(A) Has a technical network management justification;

(B) Does not include other business practices; and

(C) Is narrowly tailored to achieve a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service; or

(e) Engaged in any of the activities described in subsection (3) of this section at any time on or after the operative date specified in section 3 of this 2018 Act if:

(A) The broadband Internet access service provider certifies that it has ceased engaging in all of the activities described in subsection (3) of this section; and

(B) The Public Utility Commission determines that allowing a public body to contract with the broadband Internet access service provider provides significant public interest benefits.

(5)(a) A broadband Internet access service provider engaged in the provision of broadband Internet access service to a public body shall publicly disclose information regarding the provider's network management practices and performance characteristics and the commercial terms of the provider's broadband Internet access service sufficient for end users

to verify that the service is provided in compliance with subsections (3) and (4) of this section.

(b) The Public Utility Commission by rule shall specify the manner and form in which disclosures under this subsection shall be made.

SECTION 2. Section 1 of this 2018 Act does not apply to a contract entered into before the operative date specified in section 3 of this 2018 Act. However, section 1 of this 2018 Act applies to a renewal or extension of an existing contract on or after the operative date specified in section 3 of this 2018 Act as well as to a new contract entered into on or after the operative date specified in section 3 of this 2018 Act.

SECTION 3. (1) Section 1 of this 2018 Act becomes operative on January 1, 2019.

(2) The Public Utility Commission may adopt rules and take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission, on and after the operative date specified in subsection (1) of this section, to exercise all of the powers and functions conferred on the commission by section 1 of this 2018 Act.

SECTION 4. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.

Passed by House February 26, 2018

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate March 1, 2018

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2018

Approved:

.....M.,....., 2018

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2018

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Dennis Richardson, Secretary of State