

House Bill 2410

Sponsored by Representative MARSH, Senator FREDERICK (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits public bodies from contracting with broadband Internet access service providers that do not offer low income rate program that meets minimum standards established by Public Utility Commission by rule.

Becomes operative January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to broadband; creating new provisions; amending ORS 276A.418; and prescribing an effective date.

3
4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 276A.418 is amended to read:

6 276A.418. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (i) "Paid prioritization" means a broadband Internet access service provider's management of its
 2 network to directly or indirectly favor some traffic over other traffic, including through traffic
 3 shaping, prioritization, resource reservation or other forms of preferential traffic management, either
 4 in exchange for consideration from a third party or to benefit an affiliated entity.

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

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

10 (3) A public body may not contract with a broadband Internet access service provider that, at
 11 any time on or after January 1, 2019:

12 (a) Engages in paid prioritization;

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

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

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

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

21 **(4) A public body may not contract with a broadband Internet access service provider**
 22 **that, at any time after January 1, 2022, does not offer to qualifying end users a low income**
 23 **rate program that meets minimum standards established by the Public Utility Commission**
 24 **by rule.**

25 [(4)] (5) Notwithstanding [subsection (3)] **subsections 3 and 4** of this section, a public body may
 26 contract with a broadband Internet access service provider that:

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

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

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

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

39 (A) Has a technical network management justification;

40 (B) Does not include other business practices; and

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

44 (e) Engaged in any of the activities described in subsection (3) of this section at any time on
 45 or after January 1, 2019, if:

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

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

5 ~~[(5)(a)]~~ **(6)(a)** A broadband Internet access service provider engaged in the provision of
6 broadband Internet access service to a public body shall publicly disclose information regarding the
7 provider's network management practices and performance characteristics and the commercial terms
8 of the provider's broadband Internet access service sufficient for end users to verify that the service
9 is provided in compliance with subsections ~~[(3) and (4)]~~ **(3) to (5)** of this section.

10 (b) The Public Utility Commission by rule shall specify the manner and form in which disclo-
11 sures under this subsection shall be made.

12 **SECTION 2. The amendments to ORS 276A.418 by section 1 of this 2021 Act do not apply**
13 **to a contract entered into before the operative date specified in section 3 of this 2021 Act.**
14 **However, the amendments to ORS 276A.418 by section 1 of this 2021 Act apply to a renewal**
15 **or extension of an existing contract on or after the operative date specified in section 3 of**
16 **this 2021 Act as well as to a new contract entered into on or after the operative date speci-**
17 **fied in section 3 of this 2021 Act.**

18 **SECTION 3. (1) The amendments to ORS 276A.418 by section 1 of this 2021 Act become**
19 **operative on January 1, 2022.**

20 **(2) The Public Utility Commission may adopt rules and take any action before the oper-**
21 **ative date specified in subsection (1) of this section that is necessary to enable the commis-**
22 **sion, on and after the operative date specified in subsection (1) of this section, to exercise**
23 **all of the powers and functions conferred on the commission by the amendments to ORS**
24 **276A.418 by section 1 of this 2021 Act.**

25 **SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021**
26 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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