House Bill 2410

Sponsored by Representative MARSH, Senator FREDERICK (Presession 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

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

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

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

276A.418. (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.

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.

LC 873
(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 January 1, 2019:

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

[(4)] (5) Notwithstanding [subsection (3)] subsections 3 and 4 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 January 1, 2019, 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) (6)(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)] (3) to (5) of this section.

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

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

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

(2) The Public Utility Commission may adopt rules and take any action before the opera-
тивate date specified in subsection (1) of this section that is necessary to enable the commis-
sion, 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 the amendments to ORS
276A.418 by section 1 of this 2021 Act.

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