

SECOND REGULAR SESSION

# HOUSE BILL NO. 1548

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SAIN.

3948H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to net neutrality.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto four new sections, to be known as sections 407.1160, 407.1161, 407.1162, and 407.1163, to read as follows:

**407.1160. As used in sections 407.1160 to 407.1163, the following terms mean:**

- (1) **"Application-agnostic", not differentiating on the basis of source, destination, internet content, application, service, or device, or class of internet content, application, service, or device;**
- (2) **"Broadband internet access service", a mass-market retail service by wire or radio provided to customers in Missouri that provides the capability to transmit data to, and receive data from, all or substantially all internet endpoints including, but not limited to, 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 Missouri that provides a functional equivalent of that service or that is used to evade the protections set forth in this title;**
- (3) **"Class of internet content, application, service, or device", 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;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18           (4) "Edge provider", any individual or entity that provides any content,  
19 application, or service over the internet, and any individual or entity that provides a device  
20 used for accessing any content, application, or service over the internet;

21           (5) "End user", any individual or entity that uses a broadband internet access  
22 service;

23           (6) "Enterprise service offering", an offering to larger organizations through  
24 customized or individually negotiated arrangements or special access services;

25           (7) "Fixed broadband internet access service", a broadband internet access service  
26 that serves end users primarily at fixed endpoints using stationary equipment. "Fixed  
27 broadband internet access service" includes, but is not limited to, fixed wireless services  
28 including, but not limited to, fixed unlicensed wireless services and fixed satellite services;

29           (8) "Impairing or degrading lawful internet traffic on the basis of internet content,  
30 application, or service, or use of a nonharmful device", impairing or degrading any of the  
31 following:

32           (a) Particular content, applications, or services;

33           (b) Particular classes of content, applications, or services;

34           (c) Lawful internet traffic to particular nonharmful devices; or

35           (d) Lawful internet traffic to particular classes of nonharmful devices;

36           (9) "Internet service provider", a business that provides broadband internet access  
37 service to an individual, corporation, government, or other customer in Missouri;

38           (10) "ISP traffic exchange", the exchange of internet traffic destined for, or  
39 originating from, an internet service provider's end users between the internet service  
40 provider's network and another individual or entity including, but not limited to, an edge  
41 provider, content delivery network, or other network operator;

42           (11) "ISP traffic exchange agreement", an agreement between an internet service  
43 provider and another individual or entity including, but not limited to, an edge provider,  
44 content delivery network, or other network operator, to exchange internet traffic destined  
45 for, or originating from, an internet service provider's end users between the internet  
46 service provider's network and the other individual or entity;

47           (12) "Mass market services", a service marketed and sold on a standardized basis  
48 to residential customers, small businesses, and other customers including, but not limited  
49 to, schools, institutions of higher education, and libraries. "Mass market services" also  
50 include broadband internet access services purchased with support of the E-rate and Rural  
51 Health Care programs and similar programs at the federal and state level, regardless of  
52 whether they are customized or individually negotiated, as well as any broadband internet  
53 access service offered using networks supported by the Connect America Fund or similar

54 programs at the federal and state level. "Mass market services" do not include enterprise  
55 service offerings;

56 (13) "Mobile broadband internet access service", a broadband internet access  
57 service that serves end users primarily using mobile stations. Mobile broadband internet  
58 access service includes, but is not limited to, broadband internet access services that use  
59 smartphones or mobile-network-enabled tablets as the primary endpoints for connection  
60 to the internet, as well as mobile satellite broadband services;

61 (14) "Mobile internet service provider", a business that provides mobile broadband  
62 internet access service to an individual, corporation, government, or other customer in  
63 Missouri;

64 (15) "Mobile station", a radio communication station capable of being moved and  
65 that ordinarily does move;

66 (16) "Paid prioritization", the management of an internet service provider's  
67 network to directly or indirectly favor some traffic over other traffic including, but not  
68 limited to, through the use of techniques such as traffic shaping, prioritization, resource  
69 reservation, or other forms of preferential traffic management, either in exchange for  
70 consideration, monetary or otherwise, from a third party or to benefit an affiliated entity;

71 (17) "Reasonable network management", a network management practice that is  
72 reasonable. A network management practice is a practice that has primarily technical  
73 network management justification but does not include other business practices. A  
74 network management practice is reasonable if it is primarily used for, and tailored to,  
75 achieving a legitimate network management purpose, taking into account the particular  
76 network architecture and technology of the broadband internet access service, and is as  
77 application-agnostic as possible;

78 (18) "Zero-rating", exempting some internet traffic from a customer's data usage  
79 allowance.

407.1161. 1. It shall be unlawful for a fixed internet service provider, insofar as the  
2 provider is engaged in providing fixed broadband internet access service, to engage in any  
3 of the following activities:

4 (1) Blocking lawful content, applications, services, or nonharmful devices, subject  
5 to reasonable network management;

6 (2) Impairing or degrading lawful internet traffic on the basis of internet content,  
7 application, or service, or use of a nonharmful device, subject to reasonable network  
8 management;

9 (3) Requiring consideration, monetary or otherwise, from an edge provider  
10 including, but not limited to, in exchange for any of the following:

11 (a) Delivering internet traffic to, and carrying internet traffic from, the internet  
12 service provider's end users;

13 (b) Avoiding having the edge provider's content, application, service, or  
14 nonharmful device blocked from reaching the internet service provider's end users; or

15 (c) Avoiding having the edge provider's content, application, service, or  
16 nonharmful device impaired or degraded;

17 (4) Engaging in paid prioritization;

18 (5) Engaging in zero-rating in exchange for consideration, monetary or otherwise,  
19 from a third party;

20 (6) Zero-rating certain internet content, applications, services, or devices in a  
21 category of internet content, applications, services, or devices, but not the entire category;

22 (7) Unreasonably interfering with, or unreasonably disadvantaging, either an end  
23 user's ability to select, access, and use broadband internet access service or the lawful  
24 internet content, applications, services, or devices of the end user's choice, or an edge  
25 provider's ability to make lawful content, applications, services, or devices available to end  
26 users. Reasonable network management shall not be a violation of this paragraph;

27 (8) Zero-rating internet traffic in application-agnostic ways shall not be a violation  
28 of subdivision (7), provided that no consideration, monetary or otherwise, is provided by  
29 any third party in exchange for the internet service provider's decision whether to  
30 zero-rate traffic;

31 (9) Failing to publicly disclose accurate information regarding the network  
32 management practices, performance, and commercial terms of its broadband internet  
33 access services sufficient for consumers to make informed choices regarding use of those  
34 services and for content, application, service, and device providers to develop, market, and  
35 maintain internet offerings; or

36 (10) Engaging in practices including, but not limited to, agreement with respect to,  
37 related to, or in connection with ISP traffic exchange that have the purpose or effect of  
38 evading the prohibitions contained in this section and section 407.1162. Nothing in this  
39 paragraph shall be construed to prohibit internet service providers from entering into ISP  
40 traffic exchange agreements that do not evade the prohibitions contained in this section  
41 and section 407.1162 shall be unlawful for a mobile internet service provider.

42 2. It shall be unlawful for a mobile internet service provider, insofar as the provider  
43 is engaged in providing mobile broadband internet access service, to engage in any of the  
44 activities described in subdivisions (1) to (10) of subsection 1 of this section.

407.1162. 1. It shall be unlawful for a fixed internet provider to offer or provide  
2 services other than broadband internet access service that are delivered over the same

3 **last-mile connection as the broadband internet access service if those services satisfy either**  
4 **of the following conditions:**

5 **(1) They have the purpose or effect of evading the prohibitions in section 407.1162;**

6 **or**

7 **(2) They negatively affect the performance of broadband internet access service.**

8 **2. It shall be unlawful for a mobile internet service provider to offer or provide**  
9 **services other than broadband internet access service that are delivered over the same**  
10 **last-mile connection as the broadband internet access service, if those services satisfy either**  
11 **of the conditions specified in subdivisions (1) and (2) of subsection 1 of this section.**

12 **3. Nothing in this section shall be construed to prohibit a fixed or mobile internet**  
13 **service provider from offering or providing services other than broadband internet access**  
14 **service that are delivered over the same last-mile connection as the broadband internet**  
15 **access service and do not violate this section.**

**407.1163. 1. Nothing in sections 407.1160 to 407.1163 supersedes any obligation or**  
2 **authorization a fixed or mobile internet service provider may have to address the needs of**  
3 **emergency communications or law enforcement, public safety, or national security**  
4 **authorities, consistent with or as permitted by applicable law, or limits the provider's**  
5 **ability to do so.**

6 **2. Nothing in sections 407.1160 to 407.1163 prohibits reasonable efforts by a fixed**  
7 **or mobile internet service provider to address copyright infringement or other unlawful**  
8 **activity.**

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