
SENATE BILL 6423

State of Washington

65th Legislature

2018 Regular Session

By Senator Ranker

1 AN ACT Relating to the internet; reenacting and amending RCW
2 80.04.010; adding new sections to chapter 80.04 RCW; adding a new
3 section to chapter 43.105 RCW; creating new sections; and providing a
4 contingent expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
7 communications commission has repealed net neutrality rules intended
8 to protect consumers and to ensure fair and reasonable access to the
9 internet.

10 (2) It is the intent of this act to ensure that corporations do
11 not impede competition or engage in deceptive consumer practices and
12 that they offer service to residential broadband internet customers
13 on a nondiscriminatory basis.

14 (3) It is further the intent of this act to ensure that all of
15 the following principles are met in the provision of internet
16 services:

17 (a) The development and deployment of new technologies and the
18 equitable provision of services in a way that efficiently meets
19 consumers needs and encourages the ubiquitous availability of a wide
20 choice of state-of-the-art services;

1 (b) The promotion of lower prices, broader consumer choice, and
2 avoidance of anticompetitive conduct; and

3 (c) The removal of the barriers to open and competitive markets
4 and the promotion of fair product and price competition in a way that
5 encourages greater efficiency, lower prices, and more consumer
6 choice.

7 **Sec. 2.** RCW 80.04.010 and 2011 c 214 s 2 and 2011 c 28 s 1 are
8 each reenacted and amended to read as follows:

9 (~~As used in this title, unless specifically defined otherwise or~~
10 ~~unless the context indicates otherwise:~~) The definitions in this
11 section apply throughout this chapter unless the context clearly
12 requires otherwise.

13 (1) "Automatic location identification" means a system by which
14 information about a caller's location, including the seven-digit
15 number or ten-digit number used to place a 911 call or a different
16 seven-digit number or ten-digit number to which a return call can be
17 made from the public switched network, is forwarded to a public
18 safety answering point for display.

19 (2) "Automatic number identification" means a system that allows
20 for the automatic display of the seven-digit or ten-digit number used
21 to place a 911 call.

22 (3) "Battery charging facility" includes a "battery charging
23 station" and a "rapid charging station" as defined in RCW 82.08.816.

24 (4) "Cogeneration facility" means any machinery, equipment,
25 structure, process, or property, or any part thereof, installed or
26 acquired for the primary purpose of the sequential generation of
27 electrical or mechanical power and useful heat from the same primary
28 energy source or fuel.

29 (5) "Commission" means the utilities and transportation
30 commission.

31 (6) "Commissioner" means one of the members of such commission.

32 (7) "Competitive telecommunications company" means a
33 telecommunications company which has been classified as such by the
34 commission pursuant to RCW 80.36.320.

35 (8) "Competitive telecommunications service" means a service
36 which has been classified as such by the commission pursuant to RCW
37 80.36.330.

38 (9) "Corporation" includes a corporation, company, association or
39 joint stock association.

1 (10) "Department" means the department of health.

2 (11) "Electric plant" includes all real estate, fixtures and
3 personal property operated, owned, used or to be used for or in
4 connection with or to facilitate the generation, transmission,
5 distribution, sale or furnishing of electricity for light, heat, or
6 power for hire; and any conduits, ducts or other devices, materials,
7 apparatus or property for containing, holding or carrying conductors
8 used or to be used for the transmission of electricity for light,
9 heat or power.

10 (12) "Electrical company" includes any corporation, company,
11 association, joint stock association, partnership and person, their
12 lessees, trustees or receivers appointed by any court whatsoever
13 (other than a railroad or street railroad company generating
14 electricity solely for railroad or street railroad purposes or for
15 the use of its tenants and not for sale to others), and every city or
16 town owning, operating or managing any electric plant for hire within
17 this state. "Electrical company" does not include a company or person
18 employing a cogeneration facility solely for the generation of
19 electricity for its own use or the use of its tenants or for sale to
20 an electrical company, state or local public agency, municipal
21 corporation, or quasi municipal corporation engaged in the sale or
22 distribution of electrical energy, but not for sale to others, unless
23 such company or person is otherwise an electrical company.

24 (13) "Facilities" means lines, conduits, ducts, poles, wires,
25 cables, cross-arms, receivers, transmitters, instruments, machines,
26 appliances, instrumentalities and all devices, real estate,
27 easements, apparatus, property and routes used, operated, owned or
28 controlled by any telecommunications company to facilitate the
29 provision of telecommunications service.

30 (14) "Gas company" includes every corporation, company,
31 association, joint stock association, partnership and person, their
32 lessees, trustees or receiver appointed by any court whatsoever, and
33 every city or town, owning, controlling, operating or managing any
34 gas plant within this state.

35 (15) "Gas plant" includes all real estate, fixtures and personal
36 property, owned, leased, controlled, used or to be used for or in
37 connection with the transmission, distribution, sale or furnishing of
38 natural gas, or the manufacture, transmission, distribution, sale or
39 furnishing of other type gas, for light, heat or power.

1 (16) "LATA" means a local access transport area as defined by the
2 commission in conformance with applicable federal law.

3 (17) "Local exchange company" means a telecommunications company
4 providing local exchange telecommunications service.

5 (18) "Noncompetitive telecommunications service" means any
6 service which has not been classified as competitive by the
7 commission.

8 (19) "Person" includes an individual, a firm or partnership.

9 (20) "Private shared telecommunications services" includes the
10 provision of telecommunications and information management services
11 and equipment within a user group located in discrete private
12 premises in building complexes, campuses, or high-rise buildings, by
13 a commercial shared services provider or by a user association,
14 through privately owned customer premises equipment and associated
15 data processing and information management services and includes the
16 provision of connections to the facilities of a local exchange and to
17 interexchange telecommunications companies.

18 (21) "Private switch automatic location identification service"
19 means a service that enables automatic location identification to be
20 provided to a public safety answering point for 911 calls originating
21 from station lines served by a private switch system.

22 (22) "Private telecommunications system" means a
23 telecommunications system controlled by a person or entity for the
24 sole and exclusive use of such person, entity, or affiliate thereof,
25 including the provision of private shared telecommunications services
26 by such person or entity. "Private telecommunications system" does
27 not include a system offered for hire, sale, or resale to the general
28 public.

29 (23) "Public service company" includes every gas company,
30 electrical company, telecommunications company, wastewater company,
31 and water company. Ownership or operation of a cogeneration facility
32 does not, by itself, make a company or person a public service
33 company.

34 (24) "Radio communications service company" includes every
35 corporation, company, association, joint stock association,
36 partnership, and person, their lessees, trustees, or receivers
37 appointed by any court, and every city or town making available
38 facilities to provide radio communications service, radio paging, or
39 cellular communications service for hire, sale, or resale.

1 (25) "Service" is used in this title in its broadest and most
2 inclusive sense.

3 (26) "System of sewerage" means collection, treatment, and
4 disposal facilities and services for sewerage, or storm or surface
5 water runoff.

6 (27) "Telecommunications" is the transmission of information by
7 wire, radio, optical cable, electromagnetic, or other similar means.
8 As used in this definition, "information" means knowledge or
9 intelligence represented by any form of writing, signs, signals,
10 pictures, sounds, or any other symbols.

11 (28) "Telecommunications company" includes every corporation,
12 company, association, joint stock association, partnership and
13 person, their lessees, trustees or receivers appointed by any court
14 whatsoever, and every city or town owning, operating or managing any
15 facilities used to provide telecommunications for hire, sale, or
16 resale to the general public within this state.

17 (29)(a) "Wastewater company" means a corporation, company,
18 association, joint stock association, partnership and person, their
19 lessees, trustees, or receivers that owns or proposes to develop and
20 own a system of sewerage that is designed for a peak flow of twenty-
21 seven thousand to one hundred thousand gallons per day if treatment
22 is by a large on-site sewerage system, or to serve one hundred or
23 more customers.

24 (b) For purposes of commission jurisdiction, wastewater company
25 does not include: (i) Municipal, county, or other publicly owned
26 systems of sewerage; or (ii) wastewater company service to customers
27 outside of an urban growth area as defined in RCW 36.70A.030.

28 (30)(a) "Water company" includes every corporation, company,
29 association, joint stock association, partnership and person, their
30 lessees, trustees or receivers appointed by any court whatsoever, and
31 every city or town owning, controlling, operating, or managing any
32 water system for hire within this state.

33 (b) For purposes of commission jurisdiction, "water company" does
34 not include any water system serving less than one hundred customers
35 where the average annual gross revenue per customer does not exceed
36 three hundred dollars per year, which revenue figure may be increased
37 annually by the commission by rule adopted pursuant to chapter 34.05
38 RCW to reflect the rate of inflation as determined by the implicit
39 price deflator of the United States department of commerce. The
40 measurement of customers or revenues must include all portions of

1 water companies having common ownership or control, regardless of
2 location or corporate designation.

3 (c) "Control" is defined by the commission by rule and does not
4 include management by a satellite agency as defined in chapter 70.116
5 RCW if the satellite agency is not an owner of the water company.

6 (d) "Water company" also includes, for auditing purposes only,
7 nonmunicipal water systems which are referred to the commission
8 pursuant to an administrative order from the department, or the city
9 or county as provided in RCW 80.04.110.

10 (e) Water companies exempt from commission regulation are subject
11 to the provisions of chapter 19.86 RCW. A water company cannot be
12 removed from regulation except with the approval of the commission.
13 Water companies subject to regulation may petition the commission for
14 removal from regulation if the number of customers falls below one
15 hundred or the average annual revenue per customer falls below three
16 hundred dollars. The commission is authorized to maintain continued
17 regulation if it finds that the public interest so requires.

18 (31) "Water system" includes all real estate, easements,
19 fixtures, personal property, dams, dikes, head gates, weirs, canals,
20 reservoirs, flumes or other structures or appliances operated, owned,
21 used or to be used for or in connection with or to facilitate the
22 supply, storage, distribution, sale, furnishing, diversion, carriage,
23 apportionment or measurement of water for power, irrigation,
24 reclamation, manufacturing, municipal, domestic or other beneficial
25 uses for hire.

26 (32) "Broadband internet access service" means a mass-market
27 retail service by wire or radio in the state that provides the
28 capability to transmit data to and receive data from all or
29 substantially all internet endpoints, including any capabilities that
30 are incidental to and enable the operation of the communications
31 service, but excluding dial-up internet access service. "Broadband
32 internet access service" also encompasses any service in the state
33 that provides a functional equivalent of that service or that is used
34 to evade the protections set forth in this chapter, as determined by
35 the commission.

36 (33) "Edge provider" means any individual or entity in the state
37 that provides any content, application, or service over the internet,
38 and any individual or entity in the state that provides a device used
39 for accessing any content, application, or service over the internet.

1 (34) "Internet service provider" means a business that provides
2 broadband internet access service to an individual, corporation,
3 government, or other customer in the state.

4 (35) "Paid prioritization" means the management of an internet
5 service provider's network to directly or indirectly favor some
6 traffic over other traffic, including through the use of techniques
7 such as traffic shaping, prioritization, resource reservation, or
8 other forms of preferential traffic management, either:

9 (a) In exchange for consideration, monetary or otherwise, from a
10 third party; or

11 (b) To benefit an affiliated entity.

12 NEW SECTION. Sec. 3. A new section is added to chapter 80.04
13 RCW to read as follows:

14 (1) An internet service provider may not engage in any of the
15 following activities:

16 (a) Blocking unlawful content, applications, services, or
17 nonharmful devices, subject to reasonable network management
18 practices as determined by the commission;

19 (b) Impairing or degrading lawful internet traffic on the basis
20 of internet content, application, or service, or use of a nonharmful
21 device, subject to reasonable network management practices as
22 determined by the commission;

23 (c) Engaging in paid prioritization, or providing preferential
24 treatment of some internet traffic to any internet customer;

25 (d) Unreasonably interfering with, or unreasonably
26 disadvantaging, either a customer's ability to select, access, and
27 use broadband internet access service or lawful internet content,
28 applications, services, or devices of the customer's choice, or an
29 edge provider's ability to make lawful content, applications,
30 services, or devices available to a customer; or

31 (e) Engaging in deceptive or misleading marketing practices that
32 misrepresent the treatment of internet traffic or content to its
33 customers.

34 (2) By January 1, 2019, the commission shall adopt an order that
35 does the following:

36 (a) Establishes rules implementing subsection (1) of this
37 section, and by which the commission shall enforce this section.
38 Nothing in this subsection affects the authority of the attorney

1 general to enforce this section pursuant to the authority provided in
2 section 4 of this act;

3 (b) Ensures that public purpose program funding, such as the
4 state universal communications services program, Washington technical
5 assistance program, enhanced 911 services, and other similar publicly
6 funded programs, is expended in a manner that will maximize internet
7 neutrality and ensure the fair distribution of services to low-income
8 individuals and communities;

9 (c) Amends or modifies commission standards pertaining to
10 eligible telecommunications carrier status, which is necessary to
11 participate as a provider in the lifeline service program and to
12 receive other federal funding, to ensure compliance with consumer
13 protection and internet neutrality standards provided under this
14 section; and

15 (d) Establishes a process whereby an internet service provider
16 certifies to the commission that it is providing broadband internet
17 access service in accordance with the requirements set forth in this
18 section.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.04
20 RCW to read as follows:

21 The legislature finds that the practices covered by section 3 of
22 this act are matters vitally affecting the public interest for the
23 purpose of applying the consumer protection act, chapter 19.86 RCW. A
24 violation of section 3 of this act is not reasonable in relation to
25 the development and preservation of business and is an unfair or
26 deceptive act in trade or commerce and an unfair method of
27 competition for the purpose of applying the consumer protection act,
28 chapter 19.86 RCW.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.04
30 RCW to read as follows:

31 The internet consumer access account is created in the state
32 treasury. All receipts from recoveries by the office of the attorney
33 general for violations related to the consumer protection act under
34 section 3 of this act, or otherwise designated to this account, must
35 be deposited into the account. Moneys in the account may be spent
36 only after appropriation. Expenditures from the account may be used
37 only for costs incurred by the office of the attorney general and the

1 utilities and transportation commission in the administration and
2 enforcement of section 3 of this act.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.105
4 RCW to read as follows:

5 (1) The director shall adopt guidelines that identify and specify
6 the state government's role as an internet customer, uses that
7 customer power to ensure implementation of this act, and establishes
8 sample master contracts for public entities to be used as an
9 incentive for Washington internet service providers to comply with
10 the net neutrality standards provided in section 3 of this act.

11 (2) The director shall adopt guidelines that may be easily
12 accessed by the public that include "ground truth" testing for
13 broadband internet speeds to create a single objective statewide
14 internet speed test, which permits customers to test their own
15 broadband internet speed and submit their results to the director to
16 determine what internet speeds consumers are receiving and where
17 internet service providers may be blocking, impairing, or degrading
18 internet traffic or content.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.04
20 RCW to read as follows:

21 Sections 2 through 5 of this act expire upon a determination by
22 the commission that the United States congress has expressly
23 established net neutrality consumer protections substantially
24 equivalent to the levels of protection provided in this chapter, and
25 that such congressional legislation expressly preempts states from
26 any concurrent jurisdiction to provide for such protections. The
27 commission must provide notice of the expiration date of sections 3
28 through 5 of this act to affected parties, the chief clerk of the
29 house of representatives, the secretary of the senate, the office of
30 the code reviser, and others as deemed appropriate by the commission.

31 NEW SECTION. **Sec. 8.** This act may be known and cited as the
32 Washington net neutrality act.

33 NEW SECTION. **Sec. 9.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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