



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5116/1
MCP:klm

2017 ASSEMBLY BILL 909

February 1, 2018 - Introduced by Representatives BROSTOFF, ANDERSON, HEBL, VRUWINK, BERCEAU, OHNSTAD, C. TAYLOR, SINICKI, SPREITZER, CROWLEY and SHANKLAND, cosponsored by Senators LARSON, RISSER, VINEHOUT, CARPENTER, HANSEN, JOHNSON and BEWLEY. Referred to Committee on Energy and Utilities.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to create** 100.80 of the statutes; **relating to:** requirements and
2 prohibited practices for Internet service providers and granting rule-making
3 authority.

Analysis by the Legislative Reference Bureau

This bill prohibits a provider of broadband Internet access service (BIAS) from doing any of the following:

1. Blocking lawful content, applications, or services or devices that do not harm the network.

2. Throttling lawful Internet traffic on the basis of content, application, or service or use of a device that does not harm the network.

3. Engaging in paid prioritization, which is the favoring of some Internet traffic over other traffic in exchange for some form of consideration.

4. Unreasonably interfering with or unreasonably disadvantaging an end user's ability to select, access, and use BIAS or an edge provider's ability to make lawful content, applications, services, and devices available to end users. An edge provider is someone who provides any content, application, or service over the Internet, or a device used for accessing any Internet content, application, or service.

5. Engaging in any unjust or unreasonable charge, practice, classification, or regulation.

6. Making any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services or subjecting any particular person, class of persons, or locality to any undue or unreasonable preference or advantage or prejudice or disadvantage.

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7. Using, disclosing, or permitting access to any individually identifiable customer proprietary network information except in the provision of the BIAS or related service.

The bill also requires a BIAS provider to disclose commercial terms, which must include information on pricing, other fees, and data caps and allowances, and to disclose network performance characteristics, which must include information regarding packet loss. In addition, the bill requires a BIAS provider to make its services and equipment accessible to individuals with disabilities.

Finally, the bill requires the Department of Agriculture, Trade and Consumer Protection to create and implement a complaint process for responding to violations of the bill's provisions.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.80 of the statutes is created to read:

2 **100.80 Internet service providers. (1) DEFINITIONS.** In this section:

3 (a) "Broadband Internet access service" means a mass-market retail service
4 by wire or radio, including both fixed and mobile service, that provides the capability
5 to transmit data to and receive data from all or substantially all Internet endpoints,
6 including any capabilities that are incidental to and enable the operation of the
7 communications service, but excluding dial-up Internet access service. "Broadband
8 Internet access service" includes any service that the department determines is
9 providing a functional equivalent of the service described in the previous sentence,
10 or that is used to evade the provisions of this section.

11 (b) "Content, applications, or services" includes all traffic transmitted to or
12 from end users of a broadband Internet access service.

13 (c) "Customer proprietary network information" means information that
14 relates to the quantity, technical configuration, type, destination, location, and
15 amount of use of broadband Internet access service subscribed to by a customer and

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1 that is made available to the broadband Internet access service provider by the
2 customer solely by virtue of the provider-customer relationship; and information
3 contained in the bills pertaining to the broadband Internet access service received
4 by the customer; except that such term does not include subscriber list information.

5 (d) "Edge provider" means any individual or entity that provides any content,
6 application, or service over the Internet and any individual or entity that provides
7 a device used for accessing any content, application, or service over the Internet.

8 (e) "End user" means any individual or entity that uses broadband Internet
9 access service.

10 (f) "Paid prioritization" means the management of a broadband provider's
11 network to directly or indirectly favor some traffic over other traffic, including
12 through use of techniques such as traffic shaping, prioritization, resource
13 reservation, or other forms of preferential traffic management, in exchange for
14 consideration, monetary or otherwise, from a 3rd party or to benefit an affiliated
15 entity.

16 (g) "Reasonable network management" means a practice that has a primarily
17 technical network management justification but that does not include other business
18 practices, and that is primarily used for and tailored to achieving a legitimate
19 network management purpose, taking into account the particular network
20 architecture and technology of the broadband Internet access service.

21 **(2) PROHIBITIONS.** A person engaged in the provision of broadband Internet
22 access service may not do any of the following:

23 (a) Block lawful content, applications, or services, or devices that do not harm
24 the network, except as needed for reasonable network management, or charge a fee

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1 to an edge provider to avoid having the edge provider's lawful content, service,
2 application, or nonharmful device blocked.

3 (b) Impair, degrade, slow down, or render effectively unusable lawful Internet
4 traffic on the basis of content, application, or service, or use of a device that does not
5 harm the network, except as needed for reasonable network management, or charge
6 a fee to an edge provider to avoid having the edge provider's lawful content, service,
7 application, or nonharmful device impaired, degraded, slowed down, or rendered
8 effectively unusable.

9 (c) Engage in paid prioritization. This paragraph does not apply to a petitioner
10 who requests a waiver from the department if the department determines that the
11 proposed practice would provide some significant public interest benefit and would
12 not harm the open nature of the Internet.

13 (d) Unreasonably interfere with or unreasonably disadvantage end users'
14 ability to select, access, and use broadband Internet access service or the lawful
15 content, applications, services, and devices of their choice and edge providers' ability
16 to make lawful content, applications, services, and devices available to end users,
17 except as needed for reasonable network management.

18 (e) Engage in any unjust or unreasonable charge, practice, classification, or
19 regulation, except that this paragraph does not apply to any charge, practice,
20 classification, or regulation that the department has exempted by rule.

21 (f) Make any unjust or unreasonable discrimination in charges, practices,
22 classifications, regulations, facilities, or services for or in connection with like
23 communication service, directly or indirectly, by any means or device; make or give
24 any undue or unreasonable preference or advantage to any particular person, class

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1 of persons, or locality; or subject any particular person, class of persons, or locality
2 to any undue or unreasonable prejudice or disadvantage.

3 (g) Use, disclose, or permit access to individually identifiable customer
4 proprietary network information except in the provision of the broadband Internet
5 access service to the customer or in the provision of services necessary to, or used in,
6 the provision of such service to the customer, including the publishing of directories,
7 unless such use, disclosure, or access is required by law or is approved in writing by
8 the customer.

9 **(3) REQUIREMENTS.** A person engaged in the provision of broadband Internet
10 access service shall do all of the following:

11 (a) Disclose, in a timely manner, prominently, in plain language, and in a way
12 that is accessible to current and prospective end users and edge providers, to the
13 department, and to 3rd parties who wish to monitor the provider's practices,
14 accurate information on all of the following, in addition to any other information
15 required to be disclosed under state or federal law:

16 1. Commercial terms, including pricing, other fees, and data caps and
17 allowances.

18 2. Network performance characteristics, including information regarding
19 packet loss, that is reasonably related to the performance the consumer would likely
20 experience in the geographic area in which the consumer is purchasing the service,
21 measured in terms of average performance over a reasonable period of time and
22 during times of peak usage.

23 (b) Make its services and equipment accessible to individuals with disabilities.

