

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 1699 (Levine) – As Amended April 22, 2019

SUBJECT: Telecommunications: mobile internet service providers: public safety customer accounts: states of emergency.

SUMMARY: Prohibits a mobile internet service provider from impairing or degrading the lawful internet traffic of its public safety customer accounts, subject to reasonable network management, during a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by an official, board, or other governing body vested with authority to make such a declaration in any city, county, or city and county.

EXISTING LAW:

- 1) Specifies that the Governor is empowered to proclaim a state of emergency in an area affected or likely to be affected thereby when:
 - a) He finds that specified circumstances exist;
 - b) He is requested to do so in the case of a city by the mayor or chief executive, in the case of a county by the chairman of the board of supervisors or the county administrative officer; or,
 - c) He finds that local authority is inadequate to cope with the emergency. (Government Code (GOV) Section 8625)
- 2) Defines a “State of emergency” to mean the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission (CPUC). (GOV Section 8558 (b))
- 3) Specifies that a local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body. (GOV Section 8630)
- 4) Defines a “Local emergency” to mean the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm,

epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the CPUC. (GOV Section 8558 (c))

- 5) Makes it unlawful for a fixed or mobile internet service provider (ISP), insofar as the provider is engaged in providing broadband Internet access service, to engage in the specified activities that interferes with a users' ability to access content on the internet. (Civil Code Section 3100 et seq.)

FISCAL EFFECT: Unknown. This bill has been keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Authors Statement:** According to the author, "While combatting the Mendocino Complex Fire, Santa Clara County Fire officials experienced data throttling of mutual aid communications equipment by their telecommunications service provider, Verizon Wireless [...] It is the responsibility of the state to provide public safety personnel with fully-functioning equipment and while steps have been taken by providers to negate a repeat situation, AB 1699 will ensure the data throttling of public safety communications equipment is never repeated."
- 2) **Background:** Although California is no stranger to natural disasters, the scale and frequency of recent wildfires has pose a continuous threat to public health and safety. California's fire season normally peaks in October, but due to the combination of strong winds, low humidity, and climate change, 2017 and 2018 saw a series of wildfires that broke previous wildfire records across the State. In December 2017, the Thomas Fire became the largest wildfire in California history. But by July 2018, that record had been eclipsed by the Mendocino Complex Fires, which burned more than 459,000 acres across four counties. A month later, the Camp Fire broke out in the foothills of Butte County. By the time the Camp Fire was fully contained over 19,000 properties had been destroyed, 85 residents were killed with hundreds more homeless and unaccounted for, and the town of Paradise was completely destroyed.
- 3) **Emergency Declarations:** Governors are tasked with ensuring that their state is adequately prepared for emergencies and disasters. While most day to day emergency situations such as fires, power outages, hazardous material spills, are handled at the local level, some raise to the level of requiring a response beyond the capacity of local governments or even the state. Current law empowers the Governor to proclaim a state of emergency in an area affected by certain circumstances such as fires, floods, earthquakes, epidemics, riots, and drought. Governors may also declare a state of emergency if they are requested to do so by local executives such as a mayor or the chair of the county board of supervisors, or if they find that the local authority is inadequate to cope with the emergency. Local governments can declare local emergencies if a disaster or emergency affects the territorial limits of its jurisdiction, but may not rise to the state level.

- 4) **Mendocino Complex Fire:** The Mendocino Complex Fire comprised of two wildfires, the River Fire and the Ranch Fire that broke out on July 27, 2018, burning in Mendocino, Lake, Colusa, and Glenn County. The River Fire was contained on August 13th while the Ranch Fire was not contained until September 18th. By the time the Mendocino Complex Fire was contained it was the biggest complex fire; with the Ranch Fire by itself being the largest single wildfire, in California history. The Mendocino Complex Fire burned over 459,000 acres and destroyed over 500 buildings.
- 5) **Verizon Throttling during Mendocino Fires:** During the Mendocino Complex Fire, the Santa Clara Fire Department, which had been deployed to provide mutual aid, began experiencing a dramatic decrease in the data connection speed of their communications equipment to the point where it severely interfered with the Department's ability to function effectively. The Santa Clara Fire Department contacted its ISP, Verizon, which explained that the Department's service plan, while offering unlimited data, had a provision in which its data speed would decrease considerably once a certain threshold of data had been exceeded in a given billing cycle. The Department asked Verizon to end the throttling in light of the emergency situation, however, it only ended after the Department agreed to purchase another plan that included a higher data threshold. Following the incident, Verizon acknowledged that it had made a mistake and issued an apology in which it stated,

"In supporting first responders in the Mendocino fire, we didn't live up to our own promise of service and performance excellence when our process failed some first responders on the line, battling a massive California wildfire. For that, we are truly sorry. And we're making every effort to ensure that it will never happen again."

This bill prohibits a mobile internet service provider from impairing or degrading the lawful internet traffic of its public safety customer accounts during an emergency. Needless to say, the throttling of our first responder emergency communication networks can have a dramatic impact on their ability to protect public safety and save lives. The events of 9/11 for example, demonstrated how the failure of our first responder's communications network during a crisis led to confusion and delays in rescue operations and coordination.

- 6) **Net Neutrality?** Net neutrality is the principle that ISPs should not discriminate against legal content and applications, by charging edge providers different delivery speed to deliver their content. Hence ISPs should not block, throttle, or create special "fast lanes" for certain content. Following the Mendocino Complex Fire incident, the Santa Clara Fire Chief submitted a declaration supporting a petition seeking to restore net neutrality rules that the Federal Communications Commission had repealed.

Although some have associated the act of throttling during the Mendocino Complex Fire as an example of a net neutrality violation, it is important to note that throttling in regards to net neutrality is not simply the impairing or degrading of lawful internet traffic, but the impairing or degrading lawful internet traffic *on the basis of Internet content, application, or service*. In the case of the Mendocino Complex Fire, the throttling, as far as we know, was not discriminatory based on the *content* that was being delivered through the network. The incident arguably was a clear failure in customer service on the part of Verizon, but it did not demonstrate a net neutrality violation.

- 7) **Arguments in Support:** According to the California Professional Firefighters, “An essential component of emergency communication in the modern fire service is transmission and receipt of data [...] Throttling data service can be disastrous to the public’s safety. Indeed, an [ISP’s] manipulation, or ‘throttling,’ of the data rates can render a fire department’s needed communication resources virtually useless during an emergency [...] At a time when firefighters are attempting to save lives and property, they cannot afford the added danger – to the safety of the public as well as their own safety – of unnecessary interferences in the technology they rely on to do their jobs and keep civilians and themselves safe.
- 8) **Arguments in Opposition:** According to CTIA, “The bill’s vague mandates, problematic emergency trigger requirement and failure to include notification requirements could work to impede activities by first responders during disasters [...] AB 1699’s ‘not impair or degrade’ standard is ambiguous and may result in serious unintended consequences, including needless litigation [...] The ‘emergency trigger’ for AB 1699 is excessive and should be limited to a ‘state of emergency’ declared by the President or the Governor [...] AB 1699 should include notification requirements [...] AB 1699’s provisions should not be in the Public Utilities Code [...] For these reasons, CTIA must oppose AB 1699 unless it is amended to address the foregoing concerns and looks forward to working with the author to that end.”
- 9) **Prior Legislation:** AB 1999 (Chau) of 2018 established net neutrality rules for local agencies that provide broadband services and expands the type of local agencies that may provide broadband infrastructure. *Status: Chaptered by the Secretary of State – Chapter 963, Statutes of 2018.*
- SB 822 (Wiener) of 2018 established net neutrality rules by prohibiting internet service providers from engaging in activities that interfere with a user’s ability to access content on the internet. *Status: Chaptered by the Secretary of State – Chapter 976, Statutes of 2018.*
- 10) **Double-referral:** This bill is double referred, and if passed by this Committee, will be referred to the Assembly Committee on Privacy and Consumer Protection.

REGISTERED SUPPORT / OPPOSITION:

Support

California Central Valley Flood Control Association
 California Fire Chiefs Association
 California Professional Firefighters
 County of Santa Clara
 Electronic Frontier Foundation
 Fire Districts Association of California
 Public Advocates Office

Opposition

CTIA – The Wireless Association (unless amended)

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