

Date of Hearing: August 22, 2018

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

SB 460 (De León) – As Amended August 7, 2018

SENATE VOTE: 21-12

SUBJECT: Communications: broadband Internet access service: state agencies

SUMMARY: Prohibits a state agency from contracting with an Internet service provider (ISP) for the provision of broadband Internet access service unless the ISP certifies in writing that it is in full compliance with, and the service provided to the state agency is rendered consistent with, specified net neutrality rules.

EXISTING LAW:

- 1) Specifies policies for telecommunications in California including; to promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct; to remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice; and to encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems. (Public Utilities Code (PUC) Section 709)
- 2) Prohibits the California Public Utilities Commission (CPUC) from exercising regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute, as specified. (PUC Section 710)
- 3) Establishes the Digital Infrastructure and Video Competition Act of 2006 which specifies that the CPUC is the sole franchising authority for a state franchise to provide video service, as specified. (PUC Section 5800 et seq.)
- 4) Requires specified State departments to require from all prospective bidders the completion, under penalty of perjury, of a standard form of questionnaire inquiring whether such prospective bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, has ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation, and if so to explain the circumstances. (Public Contract Code (PCC) Section 10162)
- 5) Specifies that a specified bid may be rejected on the basis of a bidder, any officer of such bidder, or any employee of such bidder who has a proprietary interest in such bidder, having been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local project because of a violation of law or a safety regulation. (PCC Section 10162)

- 6) Prohibits the use of untrue or misleading advertisements by any person, firm, corporation or association selling a product or service, as specified. (Business and Professions Code Section 17500)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Authors Statement:** According to the author, “In today’s world, open access to the internet is critical to free expression, free speech, and democracy. Americans of every income level and of political persuasion depend on the internet. That’s why the [Federal Communications commission] (FCC’s) partisan decision to repeal net neutrality rules is so dangerous. The FCC’s action directly contradicts the will of the vast majority of Americans. It gives [ISPs] unfettered power to sabotage the competition by throttling the internet speeds for competing content. The FCC action lets companies pay for priority to gain an unfair advantage in the race for our time, attention, and business. That’s also why this bill is so important.”
- 2) **Background:** There are a number of federal and state agencies that play a role in the regulation and enforcement of communications-related services including the FCC, the Federal Trade Commission (FTC), and the CPUC. The FCC is an independent federal agency overseen by Congress to regulate interstate and international communications by radio, television, wire, satellite and cable in the United States. The FCC is tasked with promoting the development of competitive networks, as well as ensuring universal service, consumer protection, public safety, and national security.

In addition, the FTC is an independent federal agency tasked with promoting consumer protection and preventing anticompetitive business practices. The FTC enforces antitrust laws, and protects consumers by stopping unfair, deceptive or fraudulent practices in the marketplace. In California, the CPUC regulates the telecommunications industry by developing and implementing policies to ensure fair, affordable universal access to necessary services, developing rules and regulatory tools, removing barriers that prevent a competitive market, and reducing or eliminating burdensome regulations.

- 3) **Net Neutrality & the Internet:** There are several major players in the operation of the Internet for data to be delivered from one point to another. Edge providers, such as Amazon, Google, and Facebook, develop and provide content, services, and applications over the Internet. End users are internet customers that consume content from edge providers. In order for products to be delivered from an edge provider to an end user, the product travels through backbone networks which are capable of transmitting vast amounts of data. End users and edge providers typically connect to these backbone networks through local ISPs, such as AT&T, Comcast, or Verizon. Such ISPs serve as the gatekeepers and provide the “on-ramp” to the internet.

Net neutrality is the principle that ISPs should not discriminate against legal content and applications, by charging edge providers different delivery speeds to deliver their content. Hence, ISPs cannot block, throttle, or create special “fast lanes” for certain content. Net neutrality rules serve the purpose of maintaining open access to the internet and limited the degree to which ISPs can interfere with a customer’s ability to access legal content on the internet. It can also serve to promote greater competition between content providers by

limiting the degree in which better resourced companies can pay to have their content prioritized and distributed to consumers at optimal speeds. Maintaining competition in the internet marketplace provides greater choices and reduced cost to consumers and new services entering the marketplace.

- 4) **Bright-line Rules and the 2015 Open Internet Order:** After a series of court cases in which the FCC attempted to enforce net neutrality rules were overturned, in May 2014 the FCC began a rulemaking to respond to the lack of conduct-based rules to protect and promote an open internet. In February 2015, the FCC adopted the Open Internet Order which established three “bright-line” rules banning certain practices that the FCC considers to harm open access to the Internet. The bright-line rules include:
- a) No Blocking: ISPs may not block access to legal content, applications, services, or non-harmful devices;
 - b) No Throttling: ISPs may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices; and,
 - c) No Paid Prioritization: ISPs may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration of any kind.

In addition, recognizing that there may exist other current or future practices that cause the type of harms the bright-line rules are intended to address, the 2015 Open Internet Order also included a no unreasonable interference or unreasonable disadvantage Standard for Internet Conduct rule. The Internet Conduct Standard serves as a catch-all by prohibiting practices that unreasonably interferes with, or unreasonably disadvantages, an end users ability to access, or an edge providers ability to deliver, content over the internet. Furthermore, the Order also reaffirmed the importance of ensuring transparency and adopted enhanced transparency rules so that consumers would have accurate information sufficient for them to make informed choices of available services.

Within the FCC’s 2015 Open Internet rules included provisions to reclassify ISPs from an “information service” under Title I of the Telecommunications Act of 1996 (the Act), to a “telecommunications service” under Title II of the Act. This would allow the FCC to regulate ISPs similar to traditional public utilities, which may include rate of return regulation. However, when the FCC adopted the 2015 Open Internet rules it specified that certain provisions of Title II would not apply to broadband services. Proponents of net neutrality argue that the FCC needs to reclassify ISPs as common carriers (e.g. a private company that is required to sell their services to everyone under the same terms) under Title II of the Act, in order to prevent anticompetitive behaviors. While opponents argue that the FTC already has the authority to prevent anticompetitive business practices and that Title II is an archaic provision created to regulate telecommunications services long before the Internet existed.

- 5) **2017 Restoring Internet Freedom Order & State Response:** In December 2017, following the election of President Trump, the FCC adopted the Restoring Internet Freedom Order which repealed the 2015 Open Internet order. The new FCC argued that net neutrality rules were unnecessary because ISPs have publicly stated their opposition to violating such principles, and if an ISP were to engage in such activities, consumer expectations, market incentives, and the deterrent threat of enforcement actions by antitrust and consumer

protection agencies, such as the FTC, will constrain such practices *ex ante*. To enact such changes the FCC reclassified ISPs under Title I of the Act and asserted significant preemption over state and local regulations, and laws. In June 2018, the repeal took effect.

In response to the 2017 Restoring Internet Freedom Order, Legislators in 29 states have introduced over 65 bills requiring ISPs to ensure various net neutrality principles. In 13 states and the District of Columbia, 23 resolutions have been introduced expressing opposition to the FCC's repeal of net neutrality rules and urging the U.S. Congress to reinstate and preserve net neutrality. In California, the Legislature passed AJR 7 (Mullin) Chapter 151, Statutes of 2017, which urged the President and Members of Congress to continue to protect net neutrality, open Internet access, the federal Lifeline program, and the E-rate program.

Currently, Governors in six states have signed executive orders and three states have enacted net neutrality legislation, including Oregon, Vermont, and Washington. Legislation introduced typically includes one or more of the following:

- Prohibiting blocking, throttling and paid prioritization of internet traffic, usually by invoking state consumer protection laws;
- Requiring ISPs to be transparent about their network management practices; or,
- Requiring state contractors for ISP service to abide by net neutrality rules.

This bill seeks to follow a similar approach by prohibiting state agencies from contracting with an ISP for services unless the provider certifies that it is in full compliance with, and the service provided to the state agency is rendered consistent with, specified net neutrality rules.

- 6) **Arguments in Support:** According to the ACLU of California, “Strong, enforceable net neutrality provisions ensure an open Internet for all Californians, free from interference by ISPs that would otherwise be empowered to hinder competition and limit choices. Net neutrality is the simple principle that ISP customers, not the ISP itself, should choose what apps, services, and websites they want to use. It enables competition by ensuring that small start-ups have a level playing field with incumbent services with deep pockets. It prevents ISPs from choosing winners and losers online based on their own interests. And it allows marginalized voices, who often have the fewest resources to ‘pay to play,’ to leverage the Internet to build communities and create societal change.”
- 7) **Arguments in Opposition:** According to a coalition of industry groups, “SB 460 requires ISPs that contract with state agencies to certify in writing they are in ‘full’ compliance with [specified] net neutrality requirements [...] The uncertainty created by SB 460 will lead to procurement delays as claims of noncompliance will be easy to make and difficult to disprove – and cause the state to engage in protracted and expensive litigation. SB 460 [...] will not promote or protect an open Internet. Instead, it opens the door to a patchwork of unworkable state regulations that will stymie innovation, and potentially undermine the backbone of California’s Internet economy.”
- 8) **Related Legislation:** AB 1999 (Chau) of 2018 establishes net neutrality rules for local agencies that provide broadband services and expands the types of local agencies that may provide broadband infrastructure and/or services. *Status: Pending on the Senate Floor.*

SB 822 (Wiener) of 2018 establishes net neutrality rules by prohibiting ISPs from engaging in activities that interfere with a user's ability to access content on the internet. *Status: Pending in the Assembly Communications and Conveyance Committee.*

9) **Previous Legislation:** AJR 7 (Mullin) of 2017 urged the President of the United States and Members of the United States Congress to continue to protect net neutrality, open Internet access, the federal Lifeline program, and the E-rate program. *Status: Chaptered by the Secretary of State, Resolution Chapter 151, Statutes of 2017.*

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

Access Humboldt
ACLU of California
ADT Security Services
California Association of Realtors
California Clean Money Campaign
California Common Cause
CallFire
CALPIRG
Center for Media Justice
Color of Change
Communications Workers of America, District 9
Consumer Federation of California
Consumer Union
Contextly
Electronic Frontier Foundation
Engine
Etsy
Eventbrite
Expa
Fight for the Future
Founder Academy
Foursquare
GitHub
Greenlining Institute
Gusto
Hellosign
Indivisible CA: StateStrong
Mapbox
Media Alliance
Medium
New America's Open Technology Institute

NextGen California
Oakland Privacy
Patreon
Placer Independent Resource Services
Public Knowledge
Reddit
Sonos
The Utility Reform Network
Twilio
Vimeo
Vivid Seats
Voices for Progress
Numerous Individuals

Opposition

100 Black Men of Long Beach
Affordable Living for the Aging
African American Male Education Network and Development Organization
Alhambra Chamber of Commerce
American Legion Post 290
Asian Pacific Islander American Public Affairs Association – Greater Sacramento
Asian Pacific Islander American Public Affairs Association – Solano County
Asian Resources Inc.
AT&T
Athletes and Entertainers for Change
Brotherhood Crusade
Burbank Chamber of Commerce
CalCom
California Asian Pacific Chamber of Commerce
California Cable & Telecommunications Association
California Chamber of Commerce
California Hispanic Chamber of Commerce
California League of United Latin American Citizens
California Manufacturers & Technology Association
California State Conference of the NAACP
CenturyLink
Chinese American Association of Solano County
Civil Justice Association of California
Community Women Vital Voices
CompTIA
Concerned Citizens Community Involvement
Congress of California Seniors
CONNECT
Consolidated Communications Inc.
CTIA
Frontier Communications
Gamma Zeta Boule Foundation
Greater Coachella Valley Chamber of Commerce

Greater Los Angeles African American Chamber of Commerce
Greater Riverside Chamber of Commerce
Inglewood / South Bay NAACP
Inland Empire Economic Partnership
Janet Goeske Foundation
Korean American Central Chamber of Commerce
Korean American Seniors Association of Orange County
La Canada Flintridge Chamber of Commerce and Community Association
Los Angeles African American Women's Public Policy Institute
Los Angeles NAACP
Marjaree Mason Center
Monterey County Business Council
Monterey County Hospitality Association
Mother Lode Rehabilitation Enterprises Inc.
Music Changing Lives
NAACP – Venture County
Oceanside Chamber of Commerce
Orange County Business Council
Organization of Chinese Americans – Sacramento
Organization of Chinese Americans – San Mateo County
Organization of Chinese Americans – Silicon Valley
PulsePoint Foundation
Sacramento Asian Pacific Chamber of Commerce
Sacramento Black Chamber of Commerce
Sacramento Metro Chamber
San Diego Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
San Marcos Chamber of Commerce
San Ysidro Chamber of Commerce
Solano Community College Educational Foundation
Sprint
T-Mobile
Tracefone
Tulare Kings Hispanic Chamber of Commerce
Valley Industry and Commerce Association
Verizon
Vietnamese American Chamber of Commerce

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