

Chapter 19.385 RCW
OPEN INTERNET ACCESS

Sections

- 19.385.010 Unfair or deceptive act and unfair method of competition
—Enforced by attorney general.
- 19.385.020 Provider disclosures—Definitions.
- 19.385.030 Internet consumer access account.

RCW 19.385.010 Unfair or deceptive act and unfair method of competition—Enforced by attorney general. (1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) This chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW. [2018 c 5 s 2.]

Contingent effective date—2018 c 5: See note following RCW 19.385.020.

RCW 19.385.020 Provider disclosures—Definitions. (1) Any person providing broadband internet access service in Washington state shall publicly disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. The disclosure must be made via a publicly available, easily accessible website.

(2) A person engaged in the provision of broadband internet access service in Washington state, insofar as the person is so engaged, may not:

(a) Block lawful content, applications, services, or nonharmful devices, subject to reasonable network management;

(b) Impair or degrade lawful internet traffic on the basis of internet content, application, or service, or use of a nonharmful device, subject to reasonable network management; or

(c) Engage in paid prioritization.

(3) Nothing in this chapter:

(a) Supersedes any obligation or authorization a provider of broadband internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so; or

(b) Prohibits reasonable efforts by a provider of broadband internet access service to address copyright infringement or other unlawful activity.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) (i) "Broadband internet access service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.

(ii) "Broadband internet access service" also encompasses any service that the federal communications commission finds to be providing a functional equivalent of the service described in (a) (i) of this subsection, or that is used to evade the protections set forth in this section.

(b) "Edge provider" means any individual or entity that provides any content, application, or service over the internet, and any individual or entity that provides a device used for accessing any content, application, or service over the internet.

(c) "End user" means any individual or entity that uses a broadband internet access service.

(d) (i) "Paid prioritization" means the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either:

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

(B) To benefit an affiliated entity.

(ii) "Paid prioritization" does not include the provision of tiered internet access service or offerings to a retail end user.

(e) "Reasonable network management" means a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband internet access service.

(f) "Tiered internet access service" means offering end users a choice between different packages of service with clearly advertised speeds, prices, terms, and conditions; for example, a ten megabit service for one price and a fifty megabit service for a different price. [2018 c 5 s 1.]

Contingent effective date—2018 c 5: "(1) This act takes effect on the later of the following:

(a) Ninety days after adjournment of the legislative session in which this act is passed; or

(b) The date the federal communications commission's restoring internet freedom order (FCC 17-166) as issued on January 4, 2018, takes effect.

(2) The utilities and transportation commission must provide notice of the effective date of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the utilities and transportation commission." [2018 c 5 s 4.] The utilities and transportation commission provided notice on May 14, 2018, that chapter 5, Laws of 2018 takes effect June 11, 2018.

RCW 19.385.030 Internet consumer access account. The internet consumer access account is created in the state treasury. All receipts from recoveries by the office of the attorney general for lawsuits related to the consumer protection act under the provisions of this chapter, or otherwise designated to this account, must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for costs incurred by the office of the attorney general in the administration and enforcement of this chapter. [2018 c 5 s 3.]

Contingent effective date—2018 c 5: See note following RCW 19.385.020.