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**SENATE BILL 6423**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Ranker, Conway, Darneille, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Nelson, Pedersen, Takko, Wellman, and Rolfes

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

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

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 **Sec.**  (1) The legislature finds that the federal communications commission has repealed net neutrality rules intended to protect consumers and to ensure fair and reasonable access to the internet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(32) "Broadband internet access service" means a mass-market retail service by wire or radio in the state 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. "Broadband internet access service" also encompasses any service in the state that provides a functional equivalent of that service or that is used to evade the protections set forth in this chapter, as determined by the commission.

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

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

(35) "Paid prioritization" means the management of an internet service 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.

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

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

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

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

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

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

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

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

(a) Establishes rules implementing subsection (1) of this section, and by which the commission shall enforce this section. Nothing in this subsection affects the authority of the attorney general to enforce this section pursuant to the authority provided in section 4 of this act;

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

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

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

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

The legislature finds that the practices covered by section 3 of this act are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of section 3 of this act 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.

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

The internet consumer access account is created in the state treasury. All receipts from recoveries by the office of the attorney general for violations related to the consumer protection act under section 3 of this act, 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 and the utilities and transportation commission in the administration and enforcement of section 3 of this act.

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

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

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

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

Sections 2 through 5 of this act expire upon a determination by the commission that the United States congress has expressly established net neutrality consumer protections substantially equivalent to the levels of protection provided in this chapter, and that such congressional legislation expressly preempts states from any concurrent jurisdiction to provide for such protections. The commission must provide notice of the expiration date of sections 3 through 5 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 commission.

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

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**