

# SENATE BILL REPORT

## SB 6423

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As of January 29, 2018

**Title:** An act relating to the internet.

**Brief Description:** Concerning the internet.

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

**Brief History:**

**Committee Activity:** Energy, Environment & Technology: 1/30/18.

### Brief Summary of Bill

- Prohibits Internet service providers from blocking, throttling, or engaging in paid prioritization of lawful Internet content.
- Requires the Utility Transportation Commission (UTC) to establish rules to enforce the prohibitions, ensure maximization of Internet neutrality and amend standards for compliance with consumer protection and Internet neutrality provisions.
- Expires the act when Congress has expressly established net neutrality consumer protections that are substantially equivalent.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

**Staff:** Jan Odano (786-7486)

**Background:** Federal Regulation. The Federal Communications Commission (FCC) regulates interstate and international communication in promotion of several purposes, including development and provision of services at reasonable rates and promotion of safety of life and property through communications use. The Federal Trade Commission (FTC) is tasked with preventing unfair or deceptive acts or practices in or affecting commerce, except with regard to certain industry sectors.

Prior to 2015, the FCC classified the provision of broadband Internet access services as an information service. The provision of information services is not subject to common carrier

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regulation by the FCC under the Federal Telecommunications Act. The FTC has authority to enforce privacy and data security for information services through its broad enforcement power over unfair or deceptive acts or practices. The Federal Trade Commission Act restricts the FTC from exercising jurisdiction over common carriers when engaged in business as a common carrier.

The FCC adopted Open Internet rules in 2010. The rules set requirements for transparency, and prohibited blocking and unreasonable discrimination. Both fixed and mobile broadband were required to publicly disclose commercial information about their Internet services. Fixed broadband service providers were prohibited from blocking lawful content, applications, services, or non-harmful devices, subject to management practices and unreasonably discriminating in transmitting lawful network traffic over a consumer's broadband Internet access service. In January 2014, the U.S. Court of Appeals vacated the rules prohibiting blocking and discrimination.

In a 2015 order, the FCC reclassified the provision of broadband Internet access services as a telecommunications service, subjecting it to common carrier regulation under Title II of the Federal Telecommunications Act.

The FCC adopted Protecting and Promoting the Open Internet rules in March 2015. The rules included definitions for broadband Internet access service, which included service by wire or radio with the capability to transmit data to and receive data from all or substantially all Internet end-points. Dial-up Internet service was excluded. The rules prohibit:

- blocking of lawful content, applications, services, or non-harmful devices, subject to reasonable network management;
- throttling, or impairing or degrading lawful Internet traffic on the basis of Internet content, application or service, or use of a non-harmful device, subject to reasonable network management; and
- paid prioritization, which favors some Internet traffic over others and includes forms of preferential traffic management in exchange for payment or to benefit an affiliated entity.

The FCC reversed its previously adopted Open Internet rules to return to the pre-2015 regulatory scheme in December 2017.

State Universal Service Program (USP). In 2011, the FCC approved a process to end the complex system of fees, surcharges, and subsidies that support rural telephone companies, and transitioned federal monies toward expanding broadband Internet capability in underserved areas. To assist rural companies in this transition period, the Legislature established a temporary universal service program operated by the UTC. The program expires in July 2019.

The Universal Service Program (USP) is funded by legislative appropriations to the Universal Communications Services Account (Universal Services Account). The maximum amount appropriated each year cannot exceed \$5 million. A telephone company is eligible to receive distributions from the Universal Services Account if:

- the company has fewer than 40,000 access lines in the state;

- the company's customers are at risk of rate instability or service interruptions absent distributions to the company; and
- the company meets any other criteria established by the UTC.

Emergency 911 communications services allow callers to reach agencies that can dispatch an appropriate type of response. Enhanced 911—also known as E-911—is a type of service that allows the caller's phone number and location to be automatically displayed at the public safety answering point. In Washington, 911 systems are primarily administered by counties, and in some cases, cities.

The Consolidated Technology Services Agency (CTSA), or WaTech, is required to establish security standards and policies to ensure the confidentiality and integrity of information transacted, stored, or processed in the state's information technology systems and infrastructure. Each state agency must develop an information technology security program.

The UTC regulates the rates and services of telephone companies operating in the state of Washington. The UTC does not regulate cable, Internet, wireless phones or voice over Internet protocol.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** An Internet service provider (ISP), subject to reasonable management practices, as determined by the UTC, is prohibited from:

- blocking lawful content, applications, services, or nonharmful devices; and
- impairing or degrading lawful Internet traffic based on Internet content, application, or service.

Additionally, an ISP is prohibited from:

- providing preferential treatment of some Internet traffic to any Internet customer;
- engaging in paid prioritization;
- unreasonably interfering with a customer's ability to select or use broadband Internet services, and lawful content and services;
- unreasonably interfering with an edge provider's ability to make lawful content, applications, services available to consumers; or
- misrepresenting the treatment of Internet traffic or contents to customers.

By January 1, 2019, the UTC must adopt an order establishing rules to enforce the prohibitions on Internet service by providers. The order must also ensure: funding for programs such as the USP and E911 is used to maximize Internet neutrality and fair distribution of services to low-income people and communities, UTC standards for eligible telecommunications carrier status are amended for compliance with consumer protection and Internet neutrality provisions, and establishment of a process to certify Internet service providers who adhere to Internet neutrality provisions.

The director of CTSA must adopt guidelines for state government's role as an Internet customer and to use that customer power to ensure implementation net neutrality provisions. The guidelines must establish sample master contracts for public entities that will be used as an incentive for ISPs to comply with net neutrality standards. In addition, the director must

adopt guidelines for testing broadband Internet speeds and allowing customers to test their own broadband Internet speeds. Customers must be able to submit their results to the CTSA to determine Internet speeds and where an ISP may be blocking, impairing, or degrading Internet traffic or content.

The provisions of this act expire when the UTC notifies the Legislature that it has determined Congress has expressly established net neutrality consumer protections that are substantially equivalent to the provisions of this act and preempts states.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.