

Senate Bill No. 822

CHAPTER 976

An act to add Title 15 (commencing with Section 3100) to Part 4 of Division 3 of the Civil Code, relating to communications.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 822, Wiener. Communications: broadband Internet access service.

Existing law imposes certain obligations in the context of particular transactions, and provides mechanisms to enforce those obligations.

This bill would enact the California Internet Consumer Protection and Net Neutrality Act of 2018. This act would prohibit fixed and mobile Internet service providers, as defined, that provide broadband Internet access service, as defined, from engaging in specified actions concerning the treatment of Internet traffic. The act would prohibit, among other things, blocking lawful content, applications, services, or nonharmful devices, impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device, and specified practices relating to zero-rating, as defined. It would also prohibit fixed and mobile Internet service providers from offering or providing services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services have the purpose or effect of evading the above-described prohibitions or negatively affect the performance of broadband Internet access service.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) This act is adopted pursuant to the police power inherent in the State of California to protect and promote the safety, life, public health, public convenience, general prosperity, and well-being of society, and the welfare of the state's population and economy, that are increasingly dependent on an open and neutral Internet.

(2) Almost every sector of California's economy, democracy, and society is dependent on the open and neutral Internet that supports vital functions regulated under the police power of the state, including, but not limited to, each of the following:

- (A) Police and emergency services.
- (B) Health and safety services and infrastructure.
- (C) Utility services and infrastructure.

(D) Transportation infrastructure and services, and the expansion of zero- and low-emission transportation options.

(E) Government services, voting, and democratic decisionmaking processes.

(F) Education.

(G) Business and economic activity.

(H) Environmental monitoring and protection, and achievement of state environmental goals.

(I) Land use regulation.

(b) This act shall be known, and may be cited, as the California Internet Consumer Protection and Net Neutrality Act of 2018.

SEC. 2. Title 15 (commencing with Section 3100) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 15. INTERNET NEUTRALITY

3100. For purposes of this title, the following definitions apply:

(a) “Application-agnostic” means not differentiating on the basis of source, destination, Internet content, application, service, or device, or class of Internet content, application, service, or device.

(b) “Broadband Internet access service” means a mass-market retail service by wire or radio provided to customers in California that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including, but not limited to, 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 provided to customers in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this title.

(c) “Class of Internet content, application, service, or device” means Internet content, or a group of Internet applications, services, or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service, or device, using the same application- or transport-layer protocol, or having similar technical characteristics, including, but not limited to, the size, sequencing, or timing of packets, or sensitivity to delay.

(d) “Content, applications, or services” means all Internet traffic transmitted to or from end users of a broadband Internet access service, including, but not limited to, traffic that may not fit clearly into any of these categories.

(e) “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.

(f) “End user” means any individual or entity that uses a broadband Internet access service.

(g) “Enterprise service offering” means an offering to larger organizations through customized or individually negotiated arrangements or special access services.

(h) “Fixed broadband Internet access service” means a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes, but is not limited to, fixed wireless services including, but not limited to, fixed unlicensed wireless services, and fixed satellite services.

(i) “Fixed Internet service provider” means a business that provides fixed broadband Internet access service to an individual, corporation, government, or other customer in California.

(j) “Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device” means impairing or degrading any of the following: (1) particular content, applications, or services; (2) particular classes of content, applications, or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices. The term includes, without limitation, differentiating, positively or negatively, between any of the following: (1) particular content, applications, or services; (2) particular classes of content, applications, or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices.

(k) “Internet service provider” means a business that provides broadband Internet access service to an individual, corporation, government, or other customer in California.

(l) “ISP traffic exchange” means the exchange of Internet traffic destined for, or originating from, an Internet service provider’s end users between the Internet service provider’s network and another individual or entity, including, but not limited to, an edge provider, content delivery network, or other network operator.

(m) “ISP traffic exchange agreement” means an agreement between an Internet service provider and another individual or entity, including, but not limited to, an edge provider, content delivery network, or other network operator, to exchange Internet traffic destined for, or originating from, an Internet service provider’s end users between the Internet service provider’s network and the other individual or entity.

(n) “Mass market” service means a service marketed and sold on a standardized basis to residential customers, small businesses, and other customers, including, but not limited to, schools, institutions of higher learning, and libraries. “Mass market” services also include broadband Internet access services purchased with support of the E-rate and Rural Health Care programs and similar programs at the federal and state level, regardless of whether they are customized or individually negotiated, as well as any broadband Internet access service offered using networks supported by the Connect America Fund or similar programs at the federal and state level. “Mass market” service does not include enterprise service offerings.

(o) “Mobile broadband Internet access service” means a broadband Internet access service that serves end users primarily using mobile stations. Mobile broadband Internet access service includes, but is not limited to, broadband Internet access services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services.

(p) “Mobile Internet service provider” means a business that provides mobile broadband Internet access service to an individual, corporation, government, or other customer in California.

(q) “Mobile station” means a radio communication station capable of being moved and which ordinarily does move.

(r) “Paid prioritization” means the management of an Internet service provider’s network to directly or indirectly favor some traffic over other traffic, including, but not limited to, through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration, monetary or otherwise, from a third party, or (2) to benefit an affiliated entity.

(s) “Reasonable network management” means a network management practice that is reasonable. A network management practice is 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, and is as application-agnostic as possible.

(t) “Zero-rating” means exempting some Internet traffic from a customer’s data usage allowance.

3101. (a) It shall be unlawful for a fixed Internet service provider, insofar as the provider is engaged in providing fixed broadband Internet access service, to engage in any of the following activities:

(1) Blocking lawful content, applications, services, or nonharmful devices, subject to reasonable network management.

(2) 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.

(3) Requiring consideration, monetary or otherwise, from an edge provider, including, but not limited to, in exchange for any of the following:

(A) Delivering Internet traffic to, and carrying Internet traffic from, the Internet service provider’s end users.

(B) Avoiding having the edge provider’s content, application, service, or nonharmful device blocked from reaching the Internet service provider’s end users.

(C) Avoiding having the edge provider’s content, application, service, or nonharmful device impaired or degraded.

(4) Engaging in paid prioritization.

(5) Engaging in zero-rating in exchange for consideration, monetary or otherwise, from a third party.

(6) Zero-rating some Internet content, applications, services, or devices in a category of Internet content, applications, services, or devices, but not the entire category.

(7) (A) Unreasonably interfering with, or unreasonably disadvantaging, either an end user's ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of the end user's choice, or an edge provider's ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be a violation of this paragraph.

(B) Zero-rating Internet traffic in application-agnostic ways shall not be a violation of subparagraph (A) provided that no consideration, monetary or otherwise, is provided by any third party in exchange for the Internet service provider's decision whether to zero-rate traffic.

(8) Failing to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of those services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.

(9) Engaging in practices, including, but not limited to, agreements, with respect to, related to, or in connection with, ISP traffic exchange that have the purpose or effect of evading the prohibitions contained in this section and Section 3102. Nothing in this paragraph shall be construed to prohibit Internet service providers from entering into ISP traffic exchange agreements that do not evade the prohibitions contained in this section and Section 3102.

(b) It shall be unlawful for a mobile Internet service provider, insofar as the provider is engaged in providing mobile broadband Internet access service, to engage in any of the activities described in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) of subdivision (a).

3102. (a) It shall be unlawful for a fixed Internet service provider to offer or provide services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services satisfy either of the following conditions:

(1) They have the purpose or effect of evading the prohibitions in Section 3101.

(2) They negatively affect the performance of broadband Internet access service.

(b) It shall be unlawful for a mobile Internet service provider to offer or provide services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services satisfy either of the conditions specified in paragraphs (1) and (2) of subdivision (a).

(c) Nothing in this section shall be construed to prohibit a fixed or mobile Internet service provider from offering or providing services other than broadband Internet access service that are delivered over the same last-mile

connection as the broadband Internet access service and do not violate this section.

3103. (a) Nothing in this title supersedes any obligation or authorization a fixed or mobile Internet service provider 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.

(b) Nothing in this title prohibits reasonable efforts by a fixed or mobile Internet service provider to address copyright infringement or other unlawful activity.

3104. Notwithstanding Section 3268 or any other law, any waiver of the provisions of this title is contrary to public policy and shall be unenforceable and void.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.