

HOUSE BILL REPORT

HB 2284

As Reported by House Committee On:
Technology & Economic Development

Title: An act relating to protecting consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service in Washington state.

Brief Description: Protecting consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service in Washington state.

Sponsors: Representatives Smith, Cody, Tarleton, DeBolt, Springer, Santos, McBride, Chapman, Wylie, Fitzgibbon, Peterson, Morris, Stonier, Kagi, Senn, Kirby, Stanford, Blake, Reeves, Kilduff, Clibborn, Macri, Pettigrew, Orcutt, Stambaugh, Ormsby, Ryu, Hayes, Pollet, Doglio, Ortiz-Self, Riccelli, McDonald, Jinkins and Gregerson.

Brief History:

Committee Activity:

Technology & Economic Development: 1/18/18, 1/25/18 [DPS].

Brief Summary of Substitute Bill

- Prohibits Internet providers from engaging in certain types of conduct in the provision of service.
- Requires Internet providers to make certain disclosures related to service.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Morris, Chair; Kloba, Vice Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Doglio, Fey, Harmsworth, Hudgins, McDonald, Nealey, Santos, Slatter, Steele and Wylie.

Minority Report: Do not pass. Signed by 1 member: Representative Manweller.

Minority Report: Without recommendation. Signed by 1 member: Representative Young.

Staff: Lily Smith (786-7175).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Federal Communications Commission.

The Federal Communications Commission (FCC) regulates interstate and international communications in commerce, with particular requirements for common carriers. Providers of telecommunications services are considered common carriers.

Prior to 2015, the FCC classified the provision of broadband Internet access services (Internet service) as an information service, which is not subject to common carrier regulation. In a 2015 order, the FCC reclassified Internet service as a telecommunications service and applied specific service conduct rules, which prohibited blocking, throttling, and the use of paid prioritization. The 2015 order included a noninterference conduct standard and updates to a pre-existing disclosure rule. The 2015 regulatory action is often referred to as "net neutrality."

In 2018 the FCC issued an order reclassifying Internet service as an information service and reversing the 2015 conduct rules, conduct standard, and updates to the disclosure rule.

Federal Trade Commission.

The Federal Trade Commission (FTC) is tasked with preventing unfair or deceptive acts or practices in or affecting commerce under the Federal Trade Commission Act (FTCA), along with enforcement of specific consumer protection and antitrust laws.

The FTCA does not apply to common carriers when engaged in business as a common carrier. Prior to the 2015 FCC order reclassifying Internet service as a telecommunications service, the FTC had authority over Internet service providers under the FTCA. The 2018 FCC order returns that authority.

Summary of Substitute Bill:

Internet providers in Washington are prohibited, with some exceptions, from:

- blocking content, applications, services, or nonharmful devices;
- impairing or degrading ("throttling") traffic on the basis of content, application, service, or use of nonharmful device; or
- favoring some traffic over others in exchange for benefit ("paid prioritization").

Internet providers in Washington are required to disclose information about network management practices, performance, and commercial terms.

A violation of the act is enforceable under the Consumer Protection Act, chapter 19.86 RCW, solely by the Attorney General.

The Internet Consumer Access Account is created in the State Treasury.

The act takes effect upon the later of: (1) 90 days after adjournment of the legislative session in which it is passed; or (2) the effective date of the federal order repealing equivalent federal rules.

Substitute Bill Compared to Original Bill:

The substitute bill adds a disclosure requirement for network management practices, performance, and commercial terms.

"Paid prioritization" is specified to not include the provision of tiered Internet services, and the waiver process for the prohibition on paid prioritization is removed.

Exemptions are added for actions related to:

- law enforcement and public safety needs; and
- protecting against copyright infringement or other unlawful activity.

The effective date is modified to be contingent upon the effective date of the federal order repealing equivalent federal rules.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains a contingent effective date and takes effect on the later of: (1) 90 days after adjournment of the legislative session in which it is passed; or (2) the effective date of the federal order repealing equivalent federal rules.

Staff Summary of Public Testimony:

(In support) This bill is good for business and consistent with what customers expect and deserve. It is important to think about what industry has stated on this subject. A coalition of consumer groups and companies have expressed support for net neutrality. This bill takes a 400-page regulation and reduces it to three pages, while making the rules clear. This issue is about consumer choice and the consolidation of power. We must do what is right for the economy and for businesses to prosper on a fair playing field.

(Opposed) The wireless industry supports an open and free Internet. Industry opposition has been about the reclassification of service. The FCC adopted 1930s-style regulations for Internet providers and then found that they did public harm and investments declined. Strong consumer protections, such as under the FTC and the Attorney General, are still in place. Before 2015 there were virtually no instances where wireless companies were found to be engaging in these practices. Internet providers have made legally enforceable promises to not throttle or discriminate and to make practices transparent. The Internet is interstate, the FCC has reiterated that this issue is about interstate commerce, and it broadly preempted state laws. A patchwork of state laws would be untenable, and this area is best dealt with in federal law.

Persons Testifying: (In support) Representative Smith, prime sponsor.

(Opposed) Gerard Keegan, CTIA; and Ron Main, Broadband Communications Association of Washington.

Persons Signed In To Testify But Not Testifying: None.