
SENATE BILL 5470

State of Washington

67th Legislature

2021 Regular Session

By Senators Rivers, Nguyen, and Wilson, L.

Read first time 03/02/21. Referred to Committee on Environment,
Energy & Technology.

1 AN ACT Relating to prohibiting broadband internet access service
2 providers from applying data caps during a state of emergency;
3 amending RCW 19.385.020; and adding a new section to chapter 19.385
4 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.385
7 RCW to read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

16 (b) "Broadband internet access service" also encompasses any
17 service that the federal communications commission finds to be
18 providing a functional equivalent of the service described in (a) of
19 this subsection, or that is used to evade the protections set forth
20 in RCW 19.385.020.

1 (2) "Data cap" means a limitation on the amount of data that an
2 end user is allowed to use, or the imposition of a charge on the end
3 user for exceeding a certain data usage threshold.

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

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

11 (i) In exchange for consideration, monetary or otherwise, from a
12 third party; or

13 (ii) To benefit an affiliated entity.

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

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

23 (6) "Tiered internet access service" means offering end users a
24 choice between different packages of service with clearly advertised
25 speeds, prices, terms, and conditions; for example, a 10 megabit
26 service for one price and a 50 megabit service for a different price.

27 **Sec. 2.** RCW 19.385.020 and 2018 c 5 s 1 are each amended to read
28 as follows:

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

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

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

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

9 (c) Engage in paid prioritization; or

10 (d) Apply a data cap during a state of emergency issued pursuant
11 to RCW 43.06.210.

12 (3) Nothing in this chapter:

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

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

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

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

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

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

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

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

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

8 ~~(B) To benefit an affiliated entity.~~

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

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

18 ~~(f) "Tiered internet access service" means offering end users a~~
19 ~~choice between different packages of service with clearly advertised~~
20 ~~speeds, prices, terms, and conditions; for example, a ten megabit~~
21 ~~service for one price and a fifty megabit service for a different~~
22 ~~price.))~~

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