

OREGON PROGRESSIVE PARTY



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Oregon Progressive Party

Position on Bill at 2018

Session of Oregon Legislature:

**HB 4155: Support bill, Oppose -3 and -4 amendments,
suggest adopting language from
Washington's HB 2282**

Dear Committee:

The Oregon Progressive Party supports on this bill, which:

- Prohibits a broadband Internet access service provider from disclosing, selling, or permitting access to personal information of customers of the provider except by the customer's consent starting January 1, 2019.
- Requires a broadband Internet access service provider to take reasonable measure to protect their customers' personal information.
- Makes a violation an unlawful trade practice.
- Establishes the Task Force on Broadband Security.
- Requires Task Force to study laws protecting information of broadband Internet customers.
- Requires the Task Force to report to the interim committee of the Legislative Assembly related to the judiciary no later than December 15, 2018.

We oppose the -3 amendment, which replaces this bill with one seeking to ensure net neutrality by prohibiting public bodies from contracting with broadband ISPs that "disadvantages lawful internet content." Net neutrality protection can be added to this bill without deleting all of its other provisions. We oppose the -4 amendment for the same reason.

Both the -3 and -4 amendments are very weak measures to protect net neutrality,

merely prohibiting public bodies from contracting with broadband ISPs under certain circumstances. The -4 amendment is even weaker than the -3 amendment, as it allows the Public Utility Commission to override the prohibition upon making a vague finding that the impairment of net neutrality "provides significant public interest benefits" (undefined) or "is reasonable network management." The "public interest benefits" loophole makes the -4 amendment almost completely impotent.

Instead of merely prohibiting public bodies from contracting with certain ISP, we recommend that the bill be amended to include the language of HB 2282 in the Washington Legislature. Its House of Representatives passed that bill on February 9, 2018, by a vote of 93-5 (attached). That bill:

- Prohibits blocking of lawful content
- Prohibits impairment or degrading of lawful internet traffic on basis of content, application, or service.

Those prohibitions are "subject to reasonable network management," defined as:

"Reasonable network management" means 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.

The Washington bill has no "public interest benefits" loophole.

No doubt the ISP industry will sue to invalidate a state law that seeks to protect net neutrality on grounds of federal preemption and perhaps other grounds as well. Adopting in large part the Washington language will have the effect of recruiting the State of Washington to join in defending the state net neutrality law in the inevitable court battles.

Oregon Progressive Party

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SUBSTITUTE HOUSE BILL 2282

State of Washington

65th Legislature

2018 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Hansen, Cody, Goodman, Pettigrew, Tarleton, Fey, DeBolt, Bergquist, Springer, Santos, McBride, Smith, Chapman, Slatter, Peterson, Wylie, Fitzgibbon, Morris, Stonier, Lytton, Sawyer, Robinson, Tharinger, Kagi, Pellicciotti, Dolan, Orwall, Valdez, Haler, Kilduff, Senn, Frame, Sells, Kirby, Stanford, Blake, Reeves, Clibborn, Macri, Kloba, Appleton, Stambaugh, Jinkins, Ormsby, Ryu, Hayes, Pollet, Doglio, Ortiz-Self, Riccelli, McDonald, and Gregerson)

READ FIRST TIME 01/30/18.

1 AN ACT Relating to protecting an open internet in Washington
2 state; adding a new chapter to Title 19 RCW; and providing a
3 contingent effective date.

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

5 NEW SECTION. **Sec. 1.** (1) Any person providing broadband
6 internet access service in Washington state shall publicly disclose
7 accurate information regarding the network management practices,
8 performance characteristics, and commercial terms of its broadband
9 internet access services sufficient to enable consumers to make
10 informed choices regarding the purchase and use of such services and
11 entrepreneurs and other small businesses to develop, market, and
12 maintain internet offerings. The disclosure must be made via a
13 publicly available, easily accessible web site.

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

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

19 (b) Impair or degrade lawful internet traffic on the basis of
20 internet content, application, or service, or use of a nonharmful
21 device, subject to reasonable network management; or

1 (c) Engage in paid prioritization.

2 (3) Nothing in this chapter:

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

8 (b) Prohibits reasonable efforts by a provider of broadband
9 internet access service to address copyright infringement or other
10 unlawful activity.

11 (4) The definitions in this subsection apply throughout this
12 section unless the context clearly requires otherwise.

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

19 (ii) "Broadband internet access service" also encompasses any
20 service that the federal communications commission finds to be
21 providing a functional equivalent of the service described in (a)(i)
22 of this subsection, or that is used to evade the protections set
23 forth in this section.

24 (b) "Edge provider" means any individual or entity that provides
25 any content, application, or service over the internet, and any
26 individual or entity that provides a device used for accessing any
27 content, application, or service over the internet.

28 (c) "End user" means any individual or entity that uses a
29 broadband internet access service.

30 (d)(i) "Paid prioritization" means the management of a broadband
31 provider's network to directly or indirectly favor some traffic over
32 other traffic, including through the use of techniques such as
33 traffic shaping, prioritization, resource reservation, or other forms
34 of preferential traffic management, either:

35 (A) In exchange for consideration, monetary or otherwise, from a
36 third party; or

37 (B) To benefit an affiliated entity.

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

1 (e) "Reasonable network management" means a practice that has a
2 primarily technical network management justification, but does not
3 include other business practices. A network management practice is
4 reasonable if it is primarily used for and tailored to achieving a
5 legitimate network management purpose, taking into account the
6 particular network architecture and technology of the broadband
7 internet access service.

8 (f) "Tiered internet access service" means offering end users a
9 choice between different packages of service with clearly advertised
10 speeds, prices, terms, and conditions; for example, a ten megabit
11 service for one price and a fifty megabit service for a different
12 price.

13 NEW SECTION. **Sec. 2.** (1) The legislature finds that the
14 practices covered by this chapter are matters vitally affecting the
15 public interest for the purpose of applying the consumer protection
16 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
17 in relation to the development and preservation of business and is an
18 unfair or deceptive act in trade or commerce and an unfair method of
19 competition for the purpose of applying the consumer protection act,
20 chapter 19.86 RCW.

21 (2) This chapter may be enforced solely by the attorney general
22 under the consumer protection act, chapter 19.86 RCW.

23 NEW SECTION. **Sec. 3.** The internet consumer access account is
24 created in the state treasury. All receipts from recoveries by the
25 office of the attorney general for lawsuits related to the consumer
26 protection act under the provisions of this chapter, or otherwise
27 designated to this account, must be deposited into the account.
28 Moneys in the account may be spent only after appropriation.
29 Expenditures from the account may be used only for costs incurred by
30 the office of the attorney general in the administration and
31 enforcement of this chapter.

32 NEW SECTION. **Sec. 4.** (1) This act takes effect on the later of
33 the following:

34 (a) Ninety days after adjournment of the legislative session in
35 which this act is passed; or

1 (b) The date the federal communications commission's restoring
2 internet freedom order (FCC 17-166) as issued on January 4, 2018,
3 takes effect.

4 (2) The utilities and transportation commission must provide
5 notice of the effective date of this act to affected parties, the
6 chief clerk of the house of representatives, the secretary of the
7 senate, the office of the code reviser, and others as deemed
8 appropriate by the utilities and transportation commission.

9 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act
10 constitute a new chapter in Title 19 RCW.

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