

2017 DRAFTING REQUEST

Bill

For: **Jonathan Brostoff (608) 266-0650** Drafter: **mpfotenh**
 By: **Rebecca** Secondary Drafters:
 Date: **12/20/2017** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Brostoff@legis.wisconsin.gov**
 Carbon copy (CC) to: **mary.pfotenhauer@legis.wisconsin.gov**
konrad.paczuski@legis.wisconsin.gov
mark.kunkel@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Net neutrality

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 12/21/2017	kmochal 12/22/2017			
/P1			dwalker 12/22/2017		State
/1			lparisi 1/9/2018	mbarman 1/9/2018	State

FE Sent For:

<END>

→ At Intro.

Pfotenhauer, Mary

From: Pfotenhauer, Mary
Sent: Tuesday, December 19, 2017 1:04 PM
To: Frank, Rebecca
Subject: Net Neutrality draft

Hi, Rebecca:

Thanks for your message.

One option for this draft would be to simply require ISPs in this state to engage in net neutrality. This is the approach taken in Washington bill 2018 HB 2282, which was just introduced. One issue with this approach is that the FCC order repealing net neutrality regulations says that state and local governments cannot impose their own regulations on broadband services. This preemption provision will likely feature prominently in the lawsuits that several states have filed against the FCC to block the net neutrality repeal.

Another option would be to impose requirements on actors other than ISPs, for example on the state itself. Washington's governor, for example, just released a list of policy provisions that might be able to be incorporated into this draft (although not all of them would necessarily fit in this state), including giving ISPs that engage in net neutrality a state certification and limiting state contracts to ISPs that engage in net neutrality. California Senator Wiener's proposal sounds somewhat similar, but no specifics have been released yet.

One big-picture question to consider is what you'd like "net neutrality" to mean here. Is it limited to the "big three" (no blocking, throttling, or paid prioritization), or does it also include all of the consumer protection provisions (e.g., requirements for disclosure of hidden fees and data caps) that were also repealed by the FCC order?

I'm happy to discuss any of this in more detail if you like.

Sincerely,

Mary Pfotenhauer
Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266-6778
mary.pfotenhauer@legis.wisconsin.gov

Per Rep. Brostoff:

- use WA bill approach

*- include big 3 and as many
add'l cons. prot. provisions
as possible*

- MCP

Pfotenhauer, Mary

From: Kunkel, Mark
Sent: Friday, December 15, 2017 1:49 PM
To: Pfotenhauer, Mary; Paczuski, Konrad
Subject: Internet trade reg request

Follow Up Flag: Follow up
Flag Status: Flagged

Rebecca in Rep. Brostoff's office called to request a bill that would, with respect to Wisconsin, reverse whatever changes the FCC made this week on net neutrality. She has heard that a similar proposal has been talked about or drafted for California, but she doesn't know the details.

As with other internet-related regulation, I think DATCP would be the enforcing agency, rather than the PSC. Currently, the PSC regulates some voice communications providers (but they are mostly de-regulated), and has no jurisdiction over Internet providers.

I haven't been following what the FCC has been doing on this issue. There might be some preemption issues.

Can one you look into this and get in touch with Rebecca if you have questions?

Thanks,

--Mark



State of Wisconsin
2017 - 2018 LEGISLATURE

1P1
LRB-5116(?)
MCP:llm

Due Fri. 12/22 by end of day

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Generate catalog

1 AN ACT ...; **relating to:** requirements and prohibited practices for Internet
2 service providers and granting rulemaking authority.

Analysis by the Legislative Reference Bureau

This bill prohibits a provider of broadband Internet access service (BIAS) from doing any of the following: *(ins)*

- 1) Block lawful content, applications, or services, or devices that do not harm the network. *(ins)*
- 2) Throttle lawful Internet traffic on the basis of content, application, or service, or use of a device that does not harm the network. *(ins)*
- 3) Engage in paid prioritization, which is the favoring of some Internet traffic over other traffic in exchange for some form of consideration. *(ins)*
- 4) Unreasonably interfere with or unreasonably disadvantage an end user's ability to select, access, and use BIAS or an edge provider's ability to make lawful content, applications, services, and devices available to end users. An edge provider is someone who provides any content, application, or service over the Internet, or a device used for accessing any Internet content, application, or service. *(ins)*
- 5) Engage in any unjust or unreasonable charge, practice, classification, or regulation. *(ins)*
- 6) Make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services or subject any particular person, class of persons, or locality to any undue or unreasonable preference or advantage or prejudice or disadvantage. *(ins)*

7) Use, disclose, or permit access to any individually identifiable customer proprietary network information except in the provision of the BIAS or related service.

The bill also requires a BIAS provider to disclose commercial terms, which must include information on pricing, other fees, and data caps and allowances, and to disclose network performance characteristics, which must include information regarding packet loss. In addition, the bill requires a BIAS provider to make its services and equipment accessible to individuals with disabilities.

Finally, the bill requires the Department of Agriculture, Trade and Consumer Protection to create and implement a complaint process for responding to violations of the bill's provisions.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.80 of the statutes is created to read:

2 **100.80 Internet service providers. (1) DEFINITIONS.** In this section:

3 (a) "Broadband Internet access service" means a mass-market retail service
 4 by wire or radio, including both fixed and mobile service, that provides the capability
 5 to transmit data to and receive data from all or substantially all Internet endpoints,
 6 including any capabilities that are incidental to and enable the operation of the
 7 communications service, but excluding dial-up Internet access service. "Broadband
 8 Internet access service" includes any service that the department determines is
 9 providing a functional equivalent of the service described in the previous sentence,
 10 or that is used to evade the provisions of this section.

11 (b) "Content, applications, and services" includes all traffic transmitted to or
 12 from end users of a broadband Internet access service.

13 (c) "Customer proprietary network information" means information that
 14 relates to the quantity, technical configuration, type, destination, location, and
 15 amount of use of broadband Internet access service subscribed to by a customer and

1 that is made available to the broadband Internet access service provider by the
2 customer solely by virtue of the provider-customer relationship; and information
3 contained in the bills pertaining to the broadband Internet access service received
4 by the customer; except that such term does not include subscriber list information.

5 (d) "Edge provider" means any individual or entity that provides any content,
6 application, or service over the Internet, and any individual or entity that provides
7 a device used for accessing any content, application, or service over the Internet.

8 (e) "End user" means any individual or entity that uses broadband Internet
9 access service.

10 (f) "Paid prioritization" means the management of a broadband provider's
11 network to directly or indirectly favor some traffic over other traffic, including
12 through use of techniques such as traffic shaping, prioritization, resource
13 reservation, or other forms of preferential traffic management, in exchange for
14 consideration, monetary or otherwise, from a third party or to benefit an affiliated
15 entity.

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

21 (2) PROHIBITIONS. A person engaged in the provision of broadband Internet
22 access service may not do any of the following:

23 (a) Block lawful content, applications, or services, or devices that do not harm
24 the network, except as needed for reasonable network management, or charge a fee

1 to an edge provider to avoid having the edge provider's lawful content, service,
2 application or non-harmful device blocked.

3 (b) Impair, degrade, slow down, or render effectively unusable lawful Internet
4 traffic on the basis of content, application, or service, or use of a device that does not
5 harm the network, except as needed for reasonable network management, or charge
6 a fee to an edge provider to avoid having the edge provider's lawful content, service,
7 application or non-harmful device impaired, degraded, slowed down, or rendered
8 effectively unusable.

9 (c) Engage in paid prioritization. This paragraph does not apply to a petitioner
10 who requests a waiver from the department if the department determines that the
11 proposed practice would provide some significant public interest benefit and would
12 not harm the open nature of the Internet.

13 (d) Unreasonably interfere with or unreasonably disadvantage end users'
14 ability to select, access, and use broadband Internet access service or the lawful
15 content, applications, services, and devices of their choice and edge providers' ability
16 to make lawful content, applications, services, and devices available to end users,
17 except as needed for reasonable network management.

18 (e) Engage in any unjust or unreasonable charge, practice, classification, or
19 regulation, except that this paragraph does not apply to any charge, practice,
20 classification, or regulation that the department has exempted by rule.

21 (f) Make any unjust or unreasonable discrimination in charges, practices,
22 classifications, regulations, facilities, or services for or in connection with like
23 communication service, directly or indirectly, by any means or device; make or give
24 any undue or unreasonable preference or advantage to any particular person, class

1 of persons, or locality; or subject any particular person, class of persons, or locality
2 to any undue or unreasonable prejudice or disadvantage.

3 (g) Use, disclose, or permit access to individually identifiable customer
4 proprietary network information except in the provision of the Broadband Internet
5 access service to the customer or in the provision of services necessary to, or used in,
6 the provision of such service to the customer including the publishing of directories,
7 unless such use, disclosure, or access is required by law or is approved in writing by
8 the customer.


9 (3) REQUIREMENTS. A person engaged in the provision of broadband Internet
10 access service shall do all of the following:

11 (a) Disclose, in a timely manner, prominently, in plain language, and in a way
12 that is accessible to current and prospective end users and edge providers, to the
13 department, and to third parties who wish to monitor the provider's practices,
14 accurate information on all of the following, in addition to any other information
15 required to be disclosed under state or federal law:

16 1. Commercial terms, including pricing, other fees, and data caps and
17 allowances.

18 2. Network performance characteristics, including information regarding
19 packet loss, that is reasonably related to the performance the consumer would likely
20 experience in the geographic area in which the consumer is purchasing the service,
21 measured in terms of average performance over a reasonable period of time and
22 during times of peak usage.

23 (b) Make its services and equipment accessible to individuals with disabilities.

1 (4) COMPLAINT PROCESS.  The department shall create and administer a process
2 to allow parties to file complaints relating to violations of this section and for
3 investigating and responding to complaints.

4 (5) RULES. The department may promulgate rules to implement and enforce
5 the provisions of this section.

6 
7 (END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5116/PT
MCP:klm

11
No
changes

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 **AN ACT** *to create* 100.80 of the statutes; **relating to:** requirements and
2 prohibited practices for Internet service providers and granting rule-making
3 authority.

Analysis by the Legislative Reference Bureau

This bill prohibits a provider of broadband Internet access service (BIAS) from doing any of the following:

1. Blocking lawful content, applications, or services or devices that do not harm the network.
2. Throttling lawful Internet traffic on the basis of content, application, or service or use of a device that does not harm the network.
3. Engaging in paid prioritization, which is the favoring of some Internet traffic over other traffic in exchange for some form of consideration.
4. Unreasonably interfering with or unreasonably disadvantaging an end user's ability to select, access, and use BIAS or an edge provider's ability to make lawful content, applications, services, and devices available to end users. An edge provider is someone who provides any content, application, or service over the Internet, or a device used for accessing any Internet content, application, or service.
5. Engaging in any unjust or unreasonable charge, practice, classification, or regulation.
6. Making any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services or subjecting any particular person, class of persons, or locality to any undue or unreasonable preference or advantage or prejudice or disadvantage.

1 (4) COMPLAINT PROCESS. The department shall create and administer a process
2 to allow parties to file complaints relating to violations of this section and for
3 investigating and responding to complaints.

4 (5) RULES. The department may promulgate rules to implement and enforce
5 the provisions of this section.

6 (END)

Barman, Mike

From: Pfothenauer, Mary
Sent: Tuesday, January 09, 2018 11:32 AM
To: LRB.Legal
Subject: -5116/1

I received a message from Rebecca in Rep. Brostoff's office. Please jacket 17-5116/1 for the Assembly.
Thanks!

Mary Pfothenauer
Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266 – 6778
mary.pfothenauer@legis.wisconsin.gov