2017 ASSEMBLY BILL 909

February 1, 2018 – Introduced by Representatives BROSTOFF, ANDERSON, HEBL, VRUWINK, BERCEAU, OHNSTAD, C. TAYLOR, SINICKI, SPREITZER, CROWLEY and SHANKLAND, cosponsored by Senators LARSON, RISER, VINEHOUT, CARPENTER, HANSEN, JOHNSON and BEWLEY. Referred to Committee on Energy and Utilities.

AN ACT to create 100.80 of the statutes; relating to: requirements and prohibited practices for Internet service providers and granting rule-making 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.
7. Using, disclosing, or permitting 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:

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

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

(a) “Broadband Internet access service” means a mass-market retail service by wire or radio, including both fixed and mobile service, that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including 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” includes any service that the department determines is providing a functional equivalent of the service described in the previous sentence, or that is used to evade the provisions of this section.

(b) “Content, applications, or services” includes all traffic transmitted to or from end users of a broadband Internet access service.

(c) “Customer proprietary network information” means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of broadband Internet access service subscribed to by a customer and
that is made available to the broadband Internet access service provider by the
customer solely by virtue of the provider-customer relationship; and information
contained in the bills pertaining to the broadband Internet access service received
by the customer; except that such term does not include subscriber list information.

(d) “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.

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

(f) “Paid prioritization” means the management of a broadband provider’s
network to directly or indirectly favor some traffic over other traffic, including
through use of techniques such as traffic shaping, prioritization, resource
reservation, or other forms of preferential traffic management, in exchange for
consideration, monetary or otherwise, from a 3rd party or to benefit an affiliated
entity.

(g) “Reasonable network management” means a practice that has a primarily
technical network management justification but that does not include other business
practices, and that 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.

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

(a) Block lawful content, applications, or services, or devices that do not harm
the network, except as needed for reasonable network management, or charge a fee
to an edge provider to avoid having the edge provider’s lawful content, service,
application, or nonharmful device blocked.

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

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

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

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

(f) Make any unjust or unreasonable discrimination in charges, practices,
classifications, regulations, facilities, or services for or in connection with like
communication service, directly or indirectly, by any means or device; make or give
any undue or unreasonable preference or advantage to any particular person, class
of persons, or locality; or subject any particular person, class of persons, or locality
to any undue or unreasonable prejudice or disadvantage.

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

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

(a) Disclose, in a timely manner, prominently, in plain language, and in a way
that is accessible to current and prospective end users and edge providers, to the
department, and to 3rd parties who wish to monitor the provider’s practices,
accurate information on all of the following, in addition to any other information
required to be disclosed under state or federal law:

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

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

(b) Make its services and equipment accessible to individuals with disabilities.
(4) COMPLAINT PROCESS. The department shall create and administer a process
to allow parties to file complaints relating to violations of this section and for
investigating and responding to complaints.

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