2017 SENATE BILL 740

January 29, 2018 - Introduced by Senators ERPENBACH, LARSON, HANSEN, CARPENTER and VINEHOUT, cosponsored by Representatives ANDERSON, GENRICH, HEBL, CONSIDINE, BERCÉAU, ZAMARRIPA, VRUWINK, OHNSTAD, SINICKI, SPREITZER, POPE, BROSTOFF, CROWLEY, BILLINGS and HESSELBÉIN. Referred to Committee on Elections and Utilities.

AN ACT to amend 16.75 (1) (a) 1.; and to create 16.756 of the statutes; relating to: state contracts for broadband Internet access service.

Analysis by the Legislative Reference Bureau

This bill prohibits the state from contracting for broadband Internet access service (BIAS) unless the state determines that the service provider does not do any of the following:

1. Block lawful content, applications, or services or devices that do not harm the network.
2. Throttle lawful Internet traffic on the basis of content, application, or service or use of a device that does not harm the network.
3. Engage in paid prioritization, which is the favoring of some Internet traffic over other traffic in exchange for some form of consideration.
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.
5. Engage in any unjust or unreasonable charge, practice, classification, or regulation.
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.
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 prohibits the state from contracting for BIAS unless the state determines that the service provider 1) discloses its commercial terms, which must include information on pricing, other fees, and data caps and allowances; 2) discloses its network performance characteristics, which must include information regarding packet loss; and 3) makes its services and equipment accessible to individuals with disabilities.

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. 16.75 (1) (a) 1. of the statutes is amended to read:

16.75 (1) (a) 1. All orders awarded or contracts made by the department for all materials, supplies, equipment, and contractual services to be provided to any agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754, 16.756, 50.05 (7) (f), 153.05 (2m) (a), 165.987, and 287.15 (7), shall be awarded to the lowest responsible bidder, taking into consideration life cycle cost estimates under sub. (1m), when appropriate, the location of the agency, the quantities of the articles to be supplied, their conformity with the specifications, and the purposes for which they are required and the date of delivery.

SECTION 2. 16.756 of the statutes is created to read:

16.756 Broadband Internet access service contracts. (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) PROHIBITION. (a) The state may not contract for broadband Internet access service unless the state determines that the service provider does not do any of the following:

1. 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.

2. 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.

3. Engage in paid prioritization. This subdivision 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.

4. 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.

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

6. 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.

7. 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.

(b) The state may not contract for broadband Internet access service unless the state determines that the service provider does all of the following:

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

b. 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.

2. Makes its services and equipment accessible to individuals with disabilities.

SECTION 3. Initial applicability.

(1) This act first applies to contracts entered into, modified, extended, or renewed on the effective date of this subsection.

(END)