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Approved as to Form and Legality

**DRAFT**

City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

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**RESOLUTION IN SUPPORT OF SENATE BILL 822 (WIENER) THAT WOULD REINSTATE NET NEUTRALITY PROTECTIONS IN CALIFORNIA AND PROHIBIT INTERNET SERVICE PROVIDERS FROM ENGAGING PRACTICES THAT ARE INCONSISTENT WITH A FREE AND FAIR INTERNET**

**WHEREAS**, Net Neutrality refers to the principle that consumers, not Internet Service Providers (ISPs), get to decide what applications, content and services to use and access; and

**WHEREAS**, On December 14, 2017, the Federal Communications Commission (FCC) voted to abolish Net Neutrality protections, reversing more than 15 years of careful, bi-partisan work to keep the internet open for free speech, entrepreneurship and innovation.; and

**WHEREAS**, Under the new FCC order, ISPs are now free to charge "access fees" to sites and services simply to load for users, create fast and slow lanes that advantage deep-pocketed incumbents and ISPs' own content, and even block legal content that ISPs finds objectionable.; and

**WHEREAS**, Senate Bill (SB) 822 (Wiener) would reinstate Net Neutrality protections in California and prevents ISPs from engaging in practices that are inconsistent with a free and fair internet, including ensuring that consumers can choose which Internet content, applications, and services they can access and use through their broadband Internet access provider, prohibiting ISPs from engaging in blocking, speeding up, or slowing down applications or classes of applications or charging websites a fee for access to the ISPs' subscribers or a fast lane to those subscribers, and related provisions; and

**WHEREAS**, SB 822 is endorsed by numerous groups and organizations including Common Cause, CALPIRG, Electronic Frontier Foundation, Oakland Privacy, Greenlining Institute, and many others; now, therefore be it

**RESOLVED:** That the Oakland City Council hereby endorses SB 822 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

APR 19 PM 3:20



Councilmember Dan Kalb

CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2<sup>ND</sup> FLOOR - OAKLAND - CALIFORNIA 94612

## Agenda Memorandum

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To: Rules & Legislation Committee

From: Councilmembers Dan Kalb

Date: April 19, 2018

Subject: Support of SB 822: Restoring Net Neutrality in California

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OFFICE OF THE CITY CLERK  
OAKLAND  
18 APR 19 PM 3:20

Colleagues on the City Council and Members of the Public,

With our Resolution of Support for SB 822 (Wiener), we are submitting the attached Fact Sheet, text of the bill, and bill analysis by Senate Committee on Utilities, Energy, and Communications.

Respectfully submitted,

Dan Kalb, Councilmember



## Senator Scott Wiener, 11<sup>th</sup> Senate District

### SB 822 – Restoring Net Neutrality in California

#### SUMMARY

Senate Bill 822 establishes a strong Net Neutrality policy in California by banning practices by Internet Services Providers (ISPs) that block or slow access to websites or that discriminates among websites or applications. The bill empowers the California Attorney General to enforce and hold ISPs responsible for violations. SB 822 ensures that consumers who pay for internet access decide whether, when, and for what purpose to access the internet.

#### BACKGROUND

On December 14, 2017, the Federal Communications Commission (FCC) voted to abolish Net Neutrality protections, reversing more than 15 years of careful, bi-partisan work to keep the internet open for free speech, entrepreneurship and innovation. Net Neutrality refers to the principle that consumers, not ISPs, get to decide what applications, content and services, we use and access, and that the open internet thrives when consumers, not ISPs, decide what companies are winners and losers online. Under the new FCC order, ISPs are now free to charge “access fees” to sites and services simply to load for users, create fast and slow lanes that advantage deep-pocketed incumbents and ISPs’ own content, and even block legal content that ISPs finds objectionable.

For more than 15 years – dating back to Republican Chair Michael Powell, the FCC has worked to prevent broadband providers from interfering with consumers rights to use the sites, services, applications and devices of their choosing, which led to a series of new applications that drove demand for faster access, giving ISPs the incentive and revenue to build out their networks. But in 2017, the FCC threw out that model, leaving all Americans, including Californians, without the Net Neutrality protections that allowed us to collectively build the most democratic and entrepreneurial communication network in human history. Currently, no Net Neutrality framework exists within California law.

#### PROBLEM

Now that the FCC has abolished Net Neutrality protections and abdicated its responsibility to protect an open internet, ISPs are free to levy taxes on the free markets that depend on the internet and to interfere with consumer choice. For instance, ISPs can begin to charge businesses directly simply so that their sites load for the ISPs customers, creating fees that have never existed in the U.S. In fact, in 2012 an ISP explicitly told a federal court that it should be able to do this, despite telling their customers that its broadband service would get them fast access to everything on the internet.

Similarly, under the FCC’s new regime, ISPs could choose to speed up or slow down services like online video or calling, or even block all online calling services, except for the one service that paid that ISP. Such practices would extinguish the vital startup economy made possible by an open internet, hurt small businesses in California and keep vital information and communications services out of the hands of those without the means to pay.

Additionally, California’s vital services and utilities have become increasingly integrated with a free and open internet in order to manage energy and water resources. Maintaining public safety and the public health of our citizens is more and more dependent on free communication between emergency responders, law enforcement, and residents.

Furthermore, allowing ISPs to block specific websites and applications for any reason, including on the basis of their content, which opens the door for more direct forms of censorship. This could allow politicians and the federal government to pressure ISPs to block sites and services that are considered unpalatable or a threat to them. In a time of stark political polarization and contention, giving ISPs the power to decide what information citizens can access is innately dangerous and removes their shield from government interference. Legislation is now needed to bring Net Neutrality protections back to California.

## THIS BILL

SB 822 reinstates Net Neutrality protections in California and prevents ISPs from engaging in practices that are inconsistent with a free and fair internet.

Provisions of SB 822 include:

- Declares, that given the dependency of this state and its residents on a free and open access to the Internet, there is a compelling justification for the state to exercise its inherent police powers to preserve Net Neutrality in protecting the health, safety, and well-being of all Californians.
- Ensures that consumers can choose which Internet content, applications, and services they can access and use through their broadband Internet access provider.
- Clearly defines the following in line with the 2015 FCC Order: "Application agnostic," "Broadband Internet access service," "Edge provider," "Internet service provider," "paid prioritization," "network management practice," and "reasonable network management practice"
- Prohibits ISPs from engaging in blocking, speeding up or slowing down applications or classes of applications, or charging websites a fee for access to the ISPs' subscribers or a fast lane to those subscribers.
- Enacts strong policy preventing deceptive communication with consumers regarding the nature of the broadband service being provided.
- Grants the CPUC authority to ensure that ISPs only offer data fast lanes in way that benefits consumers and adheres to Net Neutrality principles.
- Conditions DIVCA franchise agreements for cable video service on adherence to Net Neutrality.
- Grants the Attorney General power to bring enforcement action against ISPs found to violate those terms.
- Prohibits the State of California from contracting with any ISP who violates Net Neutrality principles.

- Requires the California Advanced Services Fund and other universal service programs to ensure that grant recipients adhere to Net Neutrality.

All these steps in tandem will give California the ability to keep ISPs from engaging in practices that threaten Net Neutrality, and maintain the free flow of online information and discourse that is vital to a robust democracy. Upholding Net Neutrality is essential to our abilities as citizens to petition the government for change, to engage with our fellow citizens, and even to find new information that changes our minds and leads to social change. This bill will preserve the open and unrestricted internet that we have always known thanks to longstanding Net Neutrality protections which have become so vital to our country and state's economy and communities.

## SUPPORT

- Electronic Frontier Foundation
- CALPIRG
- Cogent Communications
- Common Cause
- Courage Campaign

## FOR MORE INFORMATION

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**Introduced by Senator Wiener**

**(Principal coauthors: Senators Allen, Dodd, Hill, McGuire,  
Monning, and Skinner)**

**(Principal coauthors: Assembly Members Bloom, Bonta, Chiu,  
Friedman, Kalra, and Mullin)**

**(Coauthor: Senator Leyva)**

**(Coauthor: Assembly Member Ting)**

January 3, 2018

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*An act to add Chapter 3.5 (commencing with Section 1775) to Title 1.5 of Part 4 of Division 3 of the Civil Code, to add Article 2 (commencing with Section 3020) to Chapter 3 of Part 1 of Division 2 of the Public Contract Code, and to amend Section 5840 of, to add Sections 272, 5905, and 8367 to, and to add Chapter 10 (commencing with Section 5600) to Division 2 of, the Public Utilities Code, relating to communications.*

LEGISLATIVE COUNSEL'S DIGEST

SB 822, as amended, Wiener. ~~Broadband~~ *Communications: broadband* Internet access service.

*(1) Existing law, the Consumers Legal Remedies Act, makes unlawful certain unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer. Existing law authorizes any consumer who suffers damages as a result of the use or employment by any person of a method, act, or practice declared to be unlawful, as described above, to bring an action against that person to recover or obtain damages, restitution, an order*

*enjoining the methods, acts, or practice, or any other relief the court deems proper.*

*This bill would revise the act to prohibit specified actions by an Internet service provider, as defined, that provides broadband Internet access service, as defined, and would authorize the Attorney General to enforce those prohibitions pursuant to specified laws. This bill would prohibit a public entity, as defined, from purchasing, or providing funding for the purchase of, any fixed or mobile broadband Internet access services that violate these prohibitions. The bill would require an Internet service provider that provides fixed or mobile broadband Internet access service purchased or funded by a public entity to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service that is sufficient to enable end users of those purchased or funded services, including a public entity, to fully and accurately ascertain if the service violates these prohibitions.*

*Under*

*(2) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including telephone corporations. Pursuant to its existing authority, the ~~commission~~ PUC supervises administration of the state's telecommunications universal service programs. ~~The Digital Infrastructure and Video Competition Act of 2006 establishes a procedure for the issuance of state franchises for the provision of video service, defined to include cable service and open video systems, administered by the commission.~~*

*The bill would state the intent of the Legislature to enact legislation to effectuate net neutrality in California utilizing the state's regulatory powers and to prevent Internet service providers from engaging in practices inconsistent with net neutrality, including through 4 described means:*

*This bill would require that any moneys made available pursuant to the state's telecommunications universal service programs for the building of infrastructure for broadband communications be awarded only on the condition that any Internet service provider that provides broadband Internet access service utilizing that infrastructure not engage in any of the actions prohibited by the provisions of this bill. The bill would require that any moneys made available pursuant to the state's telecommunications universal service programs for access to the Internet be awarded only on the condition that any Internet service*

provider that receives those moneys not engage in any of those prohibited actions.

(3) Existing law, the Digital Infrastructure and Video Competition Act of 2006, establishes a procedure for the issuance of state franchises for the provision of video service, defined to include cable service and open-video systems, administered by the PUC. Under the act, any person or corporation that seeks to provide video service, as defined, in the state is required to file an application with the PUC for a state franchise. The act prohibits the PUC and any local entity from imposing any requirement on the holder of a state franchise, except as provided in the act. The act prohibits a franchise holder from discriminating against any group or denying access to subscribers because of the income of the residents in the local area in which the group resides and requires a franchise holder to comply with customer service standards pertaining to the provision of video service established by federal law or regulation and to comply with the Cable Television and Video Provider Customer Service and Information Act and the Video Customer Service Act. The Digital Infrastructure and Video Competition Act of 2006 requires that an application for the grant of a franchise or for renewal of a franchise include a sworn affidavit, signed under penalty of perjury, that the applicant or its affiliates agree to comply with all federal and state statutes, rules, and regulations, including the above-described nondiscrimination and customer service requirements.

This bill would prohibit a cable operator or video service provider that has been granted a state franchise under the Digital Infrastructure and Video Competition Act of 2006, and any affiliate, that provides broadband Internet access service from taking certain actions regarding the accessing of content on the Internet by customers. The bill would require that the sworn affidavit that is required to be filed with an application for the grant or renewal of a franchise state that the applicant or its affiliates agree to refrain from taking the prohibited actions. Because the affidavit is signed under penalty of perjury, the bill would impose a state-mandated local program by expanding the definition of a crime.

(4) Existing law requires the PUC, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission), the Independent System Operator (ISO), and other stakeholders, to determine the requirements for a smart grid deployment plan consistent with certain policies set forth in state and federal law. Existing law requires that the smart grid improve overall efficiency,



reliability, and cost-effectiveness of electrical system operations, planning, and maintenance. Existing law requires each electrical corporation to develop and submit a smart grid deployment plan to the PUC for approval.

This bill would require the PUC, in consultation with the Energy Commission, the ISO, and electrical corporations, to evaluate the role broadband Internet access and tools will play in the future operation of the state's smart grid.

(5) The bill would permit an Internet service provider to offer different types of technical treatment to end users as part of broadband Internet access service if specified conditions are met and would require the PUC to monitor the quality of the basic default service and establish minimum quality requirements if the offering of different types of technical treatment degrades the quality of the basic default service.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) This bill is adopted pursuant to the police power inherent  
4 in the State of California to protect and promote the safety, life,  
5 public health, public convenience, general prosperity, and  
6 well-being of society, and the welfare of the state's population and  
7 economy, that are increasingly dependent on an open and neutral  
8 Internet.

9 (b) Almost every sector of California's economy, democracy,  
10 and society is dependent on the open and neutral Internet that  
11 supports vital functions regulated under the police power of the  
12 state, including, but not limited to, each of the following:

- 13 (1) Police and emergency services.  
14 (2) Health and safety services and infrastructure.  
15 (3) Utility services and infrastructure.

1 (4) *Transportation infrastructure and services, and the*  
2 *expansion of zero- and low-emission transportation options.*

3 (5) *Government services, voting, and democratic decisionmaking*  
4 *processes.*

5 (6) *Education.*

6 (7) *Business and economic activity.*

7 (8) *Environmental monitoring and protection, and achievement*  
8 *of state environmental goals.*

9 (9) *Land use regulation.*

10 SEC. 2. *Chapter 3.5 (commencing with Section 1775) is added*  
11 *to Title 1.5 of Part 4 of Division 3 of the Civil Code, to read:*

12  
13 CHAPTER 3.5. *INTERNET NEUTRALITY*

14  
15 1775. *For purposes of this chapter, the following definitions*  
16 *apply:*

17 (a) *“Application-agnostic” means not differentiating on the*  
18 *basis of source, destination, Internet content, application, service,*  
19 *or device, or class of Internet content, application, service, or*  
20 *device.*

21 (b) *“Application-specific differential pricing” means charging*  
22 *different prices for Internet traffic to customers on the basis of*  
23 *Internet content, application, service, or device, or class of Internet*  
24 *content, application, service, or device, but does not include*  
25 *zero-rating.*

26 (c) *“Broadband Internet access service” means a mass-market*  
27 *retail service by wire or radio provided to customers in California*  
28 *that provides the capability to transmit data to, and receive data*  
29 *from, all or substantially all Internet endpoints, including any*  
30 *capabilities that are incidental to and enable the operation of the*  
31 *communications service, but excluding dial-up Internet access*  
32 *service. “Broadband Internet access service” also encompasses*  
33 *any service provided to customers in California that provides a*  
34 *functional equivalent of that service or that is used to evade the*  
35 *protections set forth in this chapter.*

36 (d) *“Class of Internet content, application, service, or device”*  
37 *means Internet content, or a group of Internet applications,*  
38 *services, or devices, sharing a common characteristic, including,*  
39 *but not limited to, sharing the same source or destination,*  
40 *belonging to the same type of content, application, service, or*

1 device, using the same application- or transport-layer protocol,  
2 or having similar technical characteristics, including, but not  
3 limited to, the size, sequencing, or timing of packets, or sensitivity  
4 to delay.

5 (e) "Content, applications, or services" means all Internet  
6 traffic transmitted to or from end users of a broadband Internet  
7 access service, including traffic that may not fit clearly into any  
8 of these categories.

9 (f) "Edge provider" means any individual or entity that provides  
10 any content, application, or service over the Internet, and any  
11 individual or entity that provides a device used for accessing any  
12 content, application, or service over the Internet.

13 (g) "End user" means any individual or entity that uses a  
14 broadband Internet access service.

15 (h) "Internet service provider" means a business that provides  
16 broadband Internet access service to an individual, corporation,  
17 government, or other customer in California.

18 (i) "ISP traffic exchange" means the exchange of Internet traffic  
19 destined for, or originating from, an Internet service provider's  
20 end users between the Internet service provider's network and  
21 another individual or entity, including, but not limited to, an edge  
22 provider, content delivery network, or other network operator.

23 (j) "Mass market" means a service marketed and sold on a  
24 standardized basis to residential customers, small businesses, and  
25 other end-use customers, including, but not limited to, schools,  
26 institutions of higher learning, and libraries. The term also includes  
27 broadband Internet access services purchased with support of the  
28 E-rate and Rural Health program and similar programs at the  
29 federal and state level, regardless of whether they are customized  
30 or individually negotiated, as well as any broadband Internet  
31 access service offered using networks supported by the Connect  
32 America Fund or similar programs at the federal and state level.

33 (k) "Network management practice" means a practice that has  
34 a primarily technical network management justification, but does  
35 not include other business practices.

36 (l) "Reasonable network management practice" means a  
37 network management practice that is primarily used for, and  
38 tailored to, achieving a legitimate network management purpose,  
39 taking into account the particular network architecture and

1 *technology of the broadband Internet access service, and that is*  
2 *as application-agnostic as possible.*

3 *(m) "Third-party paid prioritization" means the management*  
4 *of an Internet service provider's network to directly or indirectly*  
5 *favor some traffic over other traffic, including through the use of*  
6 *techniques such as traffic shaping, prioritization, resource*  
7 *reservation, or other forms of preferential traffic management,*  
8 *either (1) in exchange for consideration, monetary or otherwise,*  
9 *from a third party, or (2) to benefit an affiliated entity.*

10 *(n) "Zero-rating" means exempting some Internet traffic from*  
11 *a customer's data limitation.*

12 *1776. It shall be unlawful for an Internet service provider,*  
13 *insofar as the provider is engaged in providing broadband Internet*  
14 *access service, to engage in any of the following activities:*

15 *(a) Blocking lawful content, applications, services, or*  
16 *nonharmful devices, subject to reasonable network management*  
17 *practices.*

18 *(b) Speeding up, slowing down, altering, restricting, interfering*  
19 *with, or otherwise directly or indirectly favoring, disadvantaging,*  
20 *or discriminating between lawful Internet traffic on the basis of*  
21 *source, destination, Internet content, application, or service, or*  
22 *use of a nonharmful device, or of class of Internet content,*  
23 *application, service, or nonharmful device, subject to reasonable*  
24 *network management practices.*

25 *(c) Requiring consideration from edge providers, monetary or*  
26 *otherwise, in exchange for access to the Internet service provider's*  
27 *end users, including, but not limited to, requiring consideration*  
28 *for either of the following:*

29 *(1) Transmitting Internet traffic to and from the Internet service*  
30 *provider's end users.*

31 *(2) Refraining from the activities prohibited in subdivisions (a)*  
32 *and (b).*

33 *(d) Engaging in third-party paid prioritization.*

34 *(e) Engaging in application-specific differential pricing or*  
35 *zero-rating in exchange for consideration, monetary or otherwise,*  
36 *by third parties.*

37 *(f) Zero-rating some Internet content, applications, services, or*  
38 *devices in a category of Internet content, applications, services,*  
39 *or devices, but not the entire category.*

40 *(g) Engaging in application-specific differential pricing.*

1 (h) Unreasonably interfering with, or unreasonably  
2 disadvantaging, either an end user's ability to select, access, and  
3 use broadband Internet access service or lawful Internet content,  
4 applications, services, or devices of the end user's choice, or an  
5 edge provider's ability to make lawful content, applications,  
6 services, or devices available to an end user, subject to reasonable  
7 network management practices.

8 (i) Engaging in practices with respect to, related to, or in  
9 connection with, ISP traffic exchange that have the purpose or  
10 effect of circumventing or undermining the effectiveness of this  
11 section.

12 (j) Engaging in deceptive or misleading marketing practices  
13 that misrepresent the treatment of Internet traffic, content,  
14 applications, services, or devices by the Internet service provider,  
15 or that misrepresent the performance characteristics or commercial  
16 terms of the broadband Internet access service to its customers.

17 (k) Advertising, offering for sale, or selling broadband Internet  
18 access service without prominently disclosing with specificity all  
19 aspects of the service advertised, offered for sale, or sold.

20 (l) Failing to publicly disclose accurate information regarding  
21 the network management practices, performance, and commercial  
22 terms of its broadband Internet access services sufficient for  
23 consumers to make informed choices regarding use of those  
24 services and for content, application, service, and device providers  
25 to develop, market, and maintain Internet offerings.

26 (m) Offering or providing services other than broadband  
27 Internet access service that are delivered over the same last-mile  
28 connection as the broadband Internet access service, if those  
29 services satisfy any of the following conditions:

30 (1) They are marketed, provide, or can be used as a functional  
31 equivalent of broadband Internet access service.

32 (2) They have the purpose or effect of circumventing or  
33 undermining the effectiveness of this section.

34 (3) They negatively affect the performance of broadband Internet  
35 access service.

36 1777. (a) (1) An Internet service provider may offer different  
37 types of technical treatment to end users as part of its broadband  
38 Internet access service, without violating Section 1776, if all of  
39 the following conditions exist:

1 (A) The different types of technical treatment are equally  
2 available to all Internet content, applications, services, and devices,  
3 and all classes of Internet content, applications, services, and  
4 devices, and the Internet service provider does not discriminate  
5 in the provision of the different types of technical treatment on the  
6 basis of Internet content, application, service, or device, or class  
7 of Internet content, application, service, or device.

8 (B) The Internet service provider's end users are able to choose  
9 whether, when, and for which Internet content, applications,  
10 services, or devices, or classes of Internet content, applications,  
11 services, or devices, to use each type of technical treatment.

12 (C) The Internet service provider charges only its own  
13 broadband Internet access service customers for the use of the  
14 different types of technical treatment.

15 (2) Any Internet service provider offering different types of  
16 technical treatment pursuant to this subdivision shall notify the  
17 Public Utilities Commission and provide the commission with a  
18 specimen of any service contract that it offers to customers in  
19 California.

20 (3) If an Internet service provider offers different types of  
21 technical treatment pursuant to this subdivision, the Public Utilities  
22 Commission shall monitor the quality of the basic default service  
23 and establish minimum quality requirements if the offering of the  
24 different types of technical treatment degrades the quality of the  
25 basic default service.

26 (b) An Internet service provider may zero-rate Internet traffic  
27 in application-agnostic ways, without violating Section 1776,  
28 provided that no consideration, monetary or otherwise, is provided  
29 by any third party in exchange for the provider's decision to  
30 zero-rate or to not zero-rate traffic.

31 1778. Nothing in this chapter supersedes or limits any  
32 obligation, authorization, or ability of an Internet service provider  
33 to address the needs of emergency communications or law  
34 enforcement, public safety, or national security authorities.

35 1779. The Attorney General may bring an action to enforce  
36 Section 1776 pursuant to Chapter 5 (commencing with Section  
37 17200) of Part 2, and, where applicable, Article 1 (commencing  
38 with Section 17500) of Chapter 1 of Part 3, of Division 7 of the  
39 Business and Professions Code.

1 SEC. 3. Article 2 (commencing with Section 3020) is added to  
2 Chapter 3 of Part 1 of Division 2 of the Public Contract Code, to  
3 read:

4  
5 Article 2. Internet Neutrality

6  
7 3020. (a) For purposes of this article, "broadband Internet  
8 access service," "Internet service provider," "network  
9 management practice," and "reasonable network management  
10 practice" have the same meanings as defined in Section 1775 of  
11 the Civil Code.

12 (b) For purposes of this article, "public entity" has the meaning  
13 as defined in Section 1100.

14 3021. (a) A public entity shall not purchase any fixed or mobile  
15 broadband Internet access services from an Internet service  
16 provider that is in violation of Section 1776 of the Civil Code.

17 (b) A public entity shall not provide funding for the purchase  
18 of any fixed or mobile broadband Internet access services from  
19 an Internet service provider that is in violation of Section 1776 of  
20 the Civil Code.

21 3022. (a) Every contract between a public entity and an  
22 Internet service provider for broadband Internet access service  
23 shall require that the service be rendered consistent with the  
24 requirements of Section 1776 of the Civil Code.

25 (b) If, after execution of a contract for broadband Internet  
26 access service, a governmental entity determines that the Internet  
27 service provider has violated Section 1776 of the Civil Code in  
28 providing service to the public entity, the public entity may declare  
29 the contract void from the time it was entered into and require  
30 repayment of any payments made to the Internet service provider  
31 pursuant to the contract. The remedies available pursuant to this  
32 section are in addition to any remedy available pursuant to Chapter  
33 5 (commencing with Section 17200) of Part 2 of Division 7 of the  
34 Business and Professions Code.

35 3023. It shall not be a violation of this article for a public entity  
36 to purchase or fund fixed or mobile broadband Internet access  
37 services in a geographical area where Internet access services  
38 are only available from a single broadband Internet access service  
39 provider.

1     3024. *An Internet service provider that provides fixed or mobile*  
2 *broadband Internet access service purchased or funded by a public*  
3 *entity shall publicly disclose accurate information regarding the*  
4 *network management practices, performance, and commercial*  
5 *terms of its broadband Internet access service that is sufficient to*  
6 *enable end users of those purchased or funded services, including*  
7 *a public entity, to fully and accurately ascertain if the service is*  
8 *conducted in a lawful manner pursuant to Section 1776 of the Civil*  
9 *Code.*

10     SEC. 4. *Section 272 is added to the Public Utilities Code, to*  
11 *read:*

12     272. (a) *An award of moneys pursuant to this chapter for the*  
13 *building of infrastructure for broadband communications shall*  
14 *require the awardee to prevent any Internet service provider that*  
15 *provides broadband Internet access service utilizing that*  
16 *infrastructure from violating Section 1776 of the Civil Code.*

17     (b) *An award of moneys pursuant to this chapter for access to*  
18 *the Internet shall prohibit any Internet service provider that*  
19 *receives those moneys from violating Section 1776 of the Civil*  
20 *Code.*

21     SEC. 5. *Chapter 10 (commencing with Section 5600) is added*  
22 *to Division 2 of the Public Utilities Code, to read:*

23  
24                     CHAPTER 10. THE INTERNET

25  
26     5600. (a) *The commission shall exercise those functions with*  
27 *respect to Internet service providers that are delegated to it*  
28 *pursuant to paragraphs (2) and (3) of subdivision (a) of Section*  
29 *1777 of the Civil Code.*

30     (b) *Nothing in this section or Section 1777 of the Civil Code*  
31 *authorizes the commission to regulate an Internet service provider*  
32 *as a public utility.*

33     SEC. 6. *Section 5840 of the Public Utilities Code is amended*  
34 *to read:*

35     5840. (a) *The commission is the sole franchising authority for*  
36 *a state franchise to provide video service under this division.*  
37 *Neither the commission nor any local franchising entity or other*  
38 *local entity of the state may require the holder of a state franchise*  
39 *to obtain a separate franchise or otherwise impose any requirement*  
40 *on any holder of a state franchise except as expressly provided in*



1 this division. Sections 53066, 53066.01, 53066.2, and 53066.3 of  
2 the Government Code shall not apply to holders of a state franchise.

3 (b) The application process described in this section and the  
4 authority granted to the commission under this section shall not  
5 exceed the provisions set forth in this section.

6 (c) Any person or corporation who seeks to provide video  
7 service in this state for which a franchise has not already been  
8 issued, after January 1, 2008, shall file an application for a state  
9 franchise with the commission. The commission may impose a  
10 fee on the applicant that shall not exceed the actual and reasonable  
11 costs of processing the application and shall not be levied for  
12 general revenue purposes.

13 (d) No person or corporation shall be eligible for a state-issued  
14 franchise, including a franchise obtained from renewal or transfer  
15 of an existing franchise, if that person or corporation is in violation  
16 of any final nonappealable order relating to either the Cable  
17 Television and Video Provider Customer Service and Information  
18 Act (Article 3.5 (commencing with Section 53054) of Chapter 1  
19 of Part 1 of Division 2 of Title 5 of the Government Code) or the  
20 Video Customer Service Act (Article 4.5 (commencing with  
21 Section 53088) of Chapter 1 of Part 1 of Division 2 of Title 5 of  
22 the Government Code).

23 (e) The application for a state franchise shall be made on a form  
24 prescribed by the commission and shall include all of the following:

25 (1) A sworn affidavit, signed under penalty of perjury by an  
26 officer or another person authorized to bind the applicant, that  
27 affirms all of the following:

28 (A) That the applicant has filed or will timely file with the  
29 Federal Communications Commission all forms required by the  
30 Federal Communications Commission before offering cable service  
31 or video service in this state.

32 (B) That the applicant or its affiliates ~~agrees~~ *agree* to comply  
33 with all federal and state statutes, rules, and regulations, including,  
34 but not limited to, the following:

35 (i) A statement that the applicant will not discriminate in the  
36 provision of video or cable services as provided in Section 5890.

37 (ii) A statement that the applicant will abide by all applicable  
38 consumer protection laws and rules as provided in Section 5900.

39 (iii) *A statement that the applicant will abide by the Internet*  
40 *neutrality requirements of Section 5905.*

1 (iii)

2 (iv) A statement that the applicant will remit the fee required  
3 by subdivision (a) of Section 5860 to the local entity.

4 (v)

5 (v) A statement that the applicant will provide PEG channels  
6 and the required funding as required by Section 5870.

7 (C) That the applicant agrees to comply with all lawful city,  
8 county, or city and county regulations regarding the time, place,  
9 and manner of using the public rights-of-way, including, but not  
10 limited to, payment of applicable encroachment, permit, and  
11 inspection fees.

12 (D) That the applicant will concurrently deliver a copy of the  
13 application to any local entity where the applicant will provide  
14 service.

15 (2) The applicant's legal name and any name under which the  
16 applicant does or will do business in this state.

17 (3) The address and telephone number of the applicant's  
18 principal place of business, along with contact information for the  
19 person responsible for ongoing communications with the  
20 commission.

21 (4) The names and titles of the applicant's principal officers.

22 (5) The legal name, address, and telephone number of the  
23 applicant's parent company, if any.

24 (6) A description of the video service area footprint that is  
25 proposed to be served, as identified by a collection of United States  
26 Census Bureau Block numbers (13 digit) or a geographic  
27 information system digital boundary meeting or exceeding national  
28 map accuracy standards. This description shall include the  
29 socioeconomic status information of all residents within the service  
30 area footprint.

31 (7) If the applicant is a telephone corporation or an affiliate of  
32 a telephone corporation, as defined in Section 234, a description  
33 of the territory in which the company provides telephone service.  
34 The description shall include socioeconomic status information of  
35 all residents within the telephone corporation's service territory.

36 (8) The expected date for the deployment of video service in  
37 each of the areas identified in paragraph (6).

38 (9) Adequate assurance that the applicant possesses the financial,  
39 legal, and technical qualifications necessary to construct and  
40 operate the proposed system and promptly repair any damage to

1 the public right-of-way caused by the applicant. To accomplish  
2 these requirements, the commission may require a bond.

3 (f) The commission may require that a corporation with wholly  
4 owned subsidiaries or affiliates is eligible only for a single  
5 state-issued franchise and prohibit the holding of multiple  
6 franchises through separate subsidiaries or affiliates. The  
7 commission may establish procedures for a holder of a state-issued  
8 franchise to amend its franchise to reflect changes in its service  
9 area.

10 (g) The commission shall commence accepting applications for  
11 a state franchise no later than April 1, 2007.

12 (h) (1) The commission shall notify an applicant for a state  
13 franchise and any affected local entities whether the applicant's  
14 application is complete or incomplete before the 30th calendar day  
15 after the applicant submits the application.

16 (2) If the commission finds the application is complete, it shall  
17 issue a state franchise before the 14th calendar day after that  
18 finding.

19 (3) If the commission finds that the application is incomplete,  
20 it shall specify with particularity the items in the application that  
21 are incomplete and permit the applicant to amend the application  
22 to cure any deficiency. The commission shall have 30 calendar  
23 days from the date the application is amended to determine its  
24 completeness.

25 (4) The failure of the commission to notify the applicant of the  
26 completeness or incompleteness of the application before the 44th  
27 calendar day after receipt of an application shall be deemed to  
28 constitute issuance of the certificate applied for without further  
29 action on behalf of the applicant.

30 (i) The state franchise issued by the commission shall contain  
31 all of the following:

32 (1) A grant of authority to provide video service in the service  
33 area footprint as requested in the application.

34 (2) A grant of authority to use the public rights-of-way, in  
35 exchange for the franchise fee adopted under subdivision (q), in  
36 the delivery of video service, subject to the laws of this state.

37 (3) A statement that the grant of authority is subject to lawful  
38 operation of the cable service or video service by the applicant or  
39 its successor in interest.

1 (j) The state franchise issued by the commission may be  
2 terminated by the video service provider by submitting at least 90  
3 days prior written notice to subscribers, local entities, and the  
4 commission.

5 (k) It is unlawful to provide video service without a state or  
6 locally issued franchise.

7 (l) Subject to the notice requirements of this division, a state  
8 franchise may be transferred to any successor in interest of the  
9 holder to which the certificate is originally granted, provided that  
10 the transferee first submits all of the information required of the  
11 applicant by this section to the commission and is in compliance  
12 with Section 5970.

13 (m) In connection with, or as a condition of, receiving a state  
14 franchise, the commission shall require a holder to notify the  
15 commission and any applicable local entity within 14 business  
16 days of any of the following changes involving the holder of the  
17 state franchise:

18 (1) Any transaction involving a change in the ownership,  
19 operation, control, or corporate organization of the holder,  
20 including a merger, an acquisition, or a reorganization.

21 (2) A change in the holder's legal name or the adoption of, or  
22 change to, an assumed business name. The holder shall submit to  
23 the commission a certified copy of either of the following:

24 (A) The proposed amendment to the state franchise.

25 (B) The certificate of assumed business name.

26 (3) A change in the holder's principal business address or in the  
27 name of the person authorized to receive notice on behalf of the  
28 holder.

29 (4) Any transfer of the state franchise to a successor in interest  
30 of the holder. The holder shall identify the successor in interest to  
31 which the transfer is made.

32 (5) The termination of any state franchise issued under this  
33 division. The holder shall identify both of the following:

34 (A) The number of subscribers in the service area covered by  
35 the state franchise being terminated.

36 (B) The method by which the holder's subscribers were notified  
37 of the termination.

38 (6) A change in one or more of the service areas of the holder  
39 of a state franchise pursuant to this division that would increase  
40 or decrease the territory within the service area. The holder shall

1 describe the new boundaries of the affected service areas after the  
2 proposed change is made.

3 (n) Prior to offering video service in a local entity's jurisdiction,  
4 the holder of a state franchise shall notify the local entity that the  
5 video service provider will provide video service in the local  
6 entity's jurisdiction. The notice shall be given at least 10 days, but  
7 no more than 60 days, before the video service provider begins to  
8 offer service.

9 (o) Any video service provider that currently holds a franchise  
10 with a local franchising entity is entitled to seek a state franchise  
11 in the area designated in that franchise upon meeting any of the  
12 following conditions:

13 (1) The expiration, prior to any renewal or extension, of its local  
14 franchise.

15 (2) A mutually agreed upon date set by both the local franchising  
16 entity and video service provider to terminate the franchise  
17 provided in writing by both parties to the commission.

18 (3) When a video service provider that holds a state franchise  
19 provides the notice required pursuant to subdivision (n) to a local  
20 jurisdiction that it intends to initiate providing video service in all  
21 or part of that jurisdiction, a video service provider operating under  
22 a franchise issued by a local franchising entity may elect to obtain  
23 a state franchise to replace its locally issued franchise. The  
24 franchise issued by the local franchising entity shall terminate and  
25 be replaced by a state franchise when the commission issues a state  
26 franchise for the video service provider that includes the entire  
27 service area served by the video service provider and the video  
28 service provider notifies the local entity that it will begin providing  
29 video service in that area under a state franchise.

30 (p) Notwithstanding any rights to the contrary, an incumbent  
31 cable operator opting into a state franchise under this section shall  
32 continue to serve all areas as required by its local franchise  
33 agreement existing on January 1, 2007, until that local franchise  
34 otherwise would have expired. However, an incumbent cable  
35 operator that is also a telephone corporation with less than  
36 1,000,000 telephone customers in California and is providing video  
37 service in competition with another incumbent cable operator shall  
38 not be required to provide service beyond the area in which it is  
39 providing video service as of January 1, 2007.

1 (q) (1) There is hereby adopted a state franchise fee payable as  
2 rent or a toll for the use of the public rights-of-way by holders of  
3 the state franchise issued pursuant to this division. The amount of  
4 the state franchise fee shall be 5 percent of gross revenues, as  
5 defined in subdivision (d) of Section 5860, or the percentage  
6 applied by the local entity to the gross revenue of the incumbent  
7 cable operator, whichever is less. If there is no incumbent cable  
8 operator or upon the expiration of the incumbent cable operator's  
9 franchise, the amount of the state franchise fee shall be 5 percent  
10 of gross revenues, as defined in subdivision (d) of Section 5860,  
11 unless the local entity adopts an ordinance setting the amount of  
12 the franchise fee at less than 5 percent.

13 (2) (A) The state franchise fee shall apply equally to all video  
14 service providers in the local entity's jurisdiction.

15 (B) Notwithstanding subparagraph (A), if the video service  
16 provider is leasing access to a network owned by a local entity,  
17 the local entity may set a franchise fee for access to the network  
18 different from the franchise fee charged to a video service provider  
19 for access to the rights-of-way to install its own network.

20 *SEC. 7. Section 5905 is added to the Public Utilities Code, to*  
21 *read:*

22 *5905. (a) For purposes of this section, "application-agnostic,"*  
23 *"application-specific differential pricing," "broadband Internet*  
24 *access service," "class of Internet content, application, service,*  
25 *or device," "content, applications, or services," "edge provider,"*  
26 *"end user," "Internet service provider," "ISP traffic exchange,"*  
27 *"mass market," "network management practice," "reasonable*  
28 *network management practice," "third-party paid prioritization,"*  
29 *and "zero-rating" have the same meanings as defined in Section*  
30 *1775 of the Civil Code.*

31 *(b) A cable operator or video service provider that has been*  
32 *granted a state franchise under this division, and any affiliate,*  
33 *insofar as the provider is engaged in providing broadband Internet*  
34 *access service, shall not engage in any of the following activities:*

35 *(1) Blocking lawful content, applications, services, or*  
36 *nonharmful devices, subject to reasonable network management*  
37 *practices.*

38 *(2) Speeding up, slowing down, altering, restricting, interfering*  
39 *with, or otherwise directly or indirectly favoring, disadvantaging,*  
40 *or discriminating between lawful Internet traffic on the basis of*

1 source, destination, Internet content, application, or service, or  
2 use of a nonharmful device, or of class of Internet content,  
3 application, service, or nonharmful device, subject to reasonable  
4 network management practices.

5 (3) Requiring consideration from edge providers, monetary or  
6 otherwise, in exchange for access to the Internet service provider's  
7 end users, including, but not limited to, requiring consideration  
8 for either of the following:

9 (A) Transmitting Internet traffic to and from the Internet service  
10 provider's end users.

11 (B) Refraining from the activities prohibited in paragraphs (1)  
12 and (2).

13 (4) Engaging in third-party paid prioritization.

14 (5) Engaging in application-specific differential pricing or  
15 zero-rating in exchange for consideration, monetary or otherwise,  
16 by third parties.

17 (6) Zero-rating some Internet content, applications, services,  
18 or devices in a category of Internet content, applications, services,  
19 or devices, but not the entire category.

20 (7) Engaging in application-specific differential pricing.

21 (8) Unreasonably interfering with, or unreasonably  
22 disadvantaging, either an end user's ability to select, access, and  
23 use broadband Internet access service or lawful Internet content,  
24 applications, services, or devices of the end user's choice, or an  
25 edge provider's ability to make lawful content, applications,  
26 services, or devices available to an end user, subject to reasonable  
27 network management practices.

28 (9) Engaging in practices with respect to, related to, or in  
29 connection with, ISP traffic exchange that have the purpose or  
30 effect of circumventing or undermining the effectiveness of this  
31 section.

32 (10) Engaging in deceptive or misleading marketing practices  
33 that misrepresent the treatment of Internet traffic, content,  
34 applications, services, or devices by the Internet service provider,  
35 or that misrepresent the performance characteristics or commercial  
36 terms of the broadband Internet access service to its customers.

37 (11) Advertising, offering for sale, or selling broadband Internet  
38 access service without prominently disclosing with specificity all  
39 aspects of the service advertised, offered for sale, or sold.

1 (12) *Failing to publicly disclose accurate information regarding*  
2 *the network management practices, performance, and commercial*  
3 *terms of its broadband Internet access services sufficient for*  
4 *consumers to make informed choices regarding use of those*  
5 *services and for content, application, service, and device providers*  
6 *to develop, market, and maintain Internet offerings.*

7 (13) *Offering or providing services other than broadband*  
8 *Internet access service that are delivered over the same last-mile*  
9 *connection as the broadband Internet access service, if those*  
10 *services satisfy any of the following conditions:*

11 (A) *They are marketed, provide, or can be used as a functional*  
12 *equivalent of broadband Internet access service.*

13 (B) *They have the purpose or effect of circumventing or*  
14 *undermining the effectiveness of this section.*

15 (C) *They negatively affect the performance of broadband*  
16 *Internet access service.*

17 (c) (1) *An Internet service provider may offer different types*  
18 *of technical treatment to end users as part of its broadband Internet*  
19 *access service if it meets the conditions specified in subdivision*  
20 *(a) of Section 1777 of the Civil Code.*

21 (2) *An Internet service provider may zero-rate Internet traffic*  
22 *in application-agnostic ways, provided that no consideration,*  
23 *monetary or otherwise, is provided by any third party in exchange*  
24 *for the provider's decision to zero-rate or to not zero-rate traffic.*

25 (d) *In addition to the authority granted the commission pursuant*  
26 *to this division, any violation of this section may be enforced by*  
27 *the Attorney General, a district attorney, or a city attorney*  
28 *pursuant to Chapter 5 (commencing with Section 17200) of Part*  
29 *2, and, when applicable, Chapter 1 (commencing with Section*  
30 *17500) of Part 3, of Division 7 of the Business and Professions*  
31 *Code.*

32 SEC. 8. *Section 8367 is added to the Public Utilities Code, to*  
33 *read:*

34 8367. *The commission, in consultation with the Energy*  
35 *Commission, the Independent System Operator, and electrical*  
36 *corporations, shall evaluate the role broadband Internet access*  
37 *and tools, especially as they relate to private consumers, will play*  
38 *in the future operation of the state's smart grid. The evaluation*  
39 *should consider at least the following:*



1 (a) The reliance of the Independent System Operator and  
2 electrical corporations on consumer broadband services to manage  
3 energy resources.

4 (b) The impact that paid prioritization, throttling, and blocking  
5 in consumer broadband Internet service would have on resource  
6 management and grid reliability.

7 (c) The future cost to the state and agencies if state agencies  
8 need to enter into long-term paid prioritization contracts if net  
9 neutrality principles are no longer in place.

10 SEC. 9. The provisions of this act are severable. If any  
11 provision of this act or its application is held invalid, that invalidity  
12 shall not affect other provisions or applications that can be given  
13 effect without the invalid provision or application.

14 SEC. 10. No reimbursement is required by this act pursuant  
15 to Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.

23 ~~SECTION 1. It is the intent of the Legislature to enact~~  
24 ~~legislation to effectuate net neutrality in California utilizing the~~  
25 ~~state's regulatory powers and to prevent Internet service providers~~  
26 ~~from engaging in practices inconsistent with net neutrality,~~  
27 ~~including, without limitation, by means of each of the following:~~

28 (a) ~~Using the state's market influence as a purchaser of Internet~~  
29 ~~and telecommunications services to effectuate net neutrality.~~

30 (b) ~~Strengthening the state's consumer protection and deceptive~~  
31 ~~and unfair business practice laws to effectuate net neutrality.~~

32 (c) ~~Conditioning issuance or renewal of a state franchise~~  
33 ~~pursuant to the Digital Infrastructure and Video Competition Act~~  
34 ~~of 2006 (Division 2.5 (commencing with Section 5800) of the~~  
35 ~~Public Utilities Code), and use of the public rights-of-way for~~  
36 ~~Internet infrastructure, on adherence to net neutrality, and on~~  
37 ~~promotion of the availability of municipal broadband.~~

- 1 ~~(d) Conditioning any state-granted right to attach small cell or~~
- 2 ~~other broadband wireless communications devices to utility poles~~
- 3 ~~on adherence to net neutrality.~~

O



regarding communication services, directly or indirectly, by any means or device. Common carriers may not give any undue or unreasonable preference or advantage to any person, class of persons, or locality. Additionally, they may not subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage. (47 United States Code §202/ *Communications Act of 1934*, Title II)

- 4) Requires the FCC and state agencies with telecommunications regulatory authority to encourage the deployment of advanced telecommunications capability to all Americans in a reasonable and timely manner. These agencies must exercise this authority in a manner consistent with the public interest, convenience, necessity, price cap regulation, regulatory forbearance, methods for encouraging local telecommunications market competition, or other regulatory methods for removing barriers to infrastructure investment. Advanced telecommunications capability is defined as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology. (47 United States Code §1302/ *Telecommunications Act of 1996* §706)
- 5) Authorizes the California Public Utilities Commission (CPUC) to fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction. (California Constitution, Article XII, §6)
- 6) Gives the CPUC the authority to supervise and regulate every public utility in the state and do all things necessary and convenient in the exercise of such power and jurisdiction. (Public Utilities Code §701)
- 7) Defines the term “public utility” and includes common carriers in the definition of a public utility. (Public Utilities Code §216)
- 8) Limits the CPUC from applying provisions of the Public Utilities Act to interstate commerce unless permitted by federal law. (Public Utilities Code §202)
- 9) States California’s telecommunications policy, including affirming the State’s commitment to universal service by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians; encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians; promoting lower

prices, broader consumer choice, and avoidance of anticompetitive conduct; and encouraging fair treatment of consumers through the provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems. (Public Utilities Code §709)

- 10) Gives the CPUC sole franchising authority for state cable franchises. The CPUC, local franchise entities, and other local entities in California are prohibited from requiring the holder of a state franchise to obtain a separate franchise or otherwise impose any requirement on any holder of a state franchise except as expressly stated in law. (Public Utilities Code §5840)

This bill:

- 1) Prohibits ISPs and cable franchises that provide broadband internet services from engaging in certain activities that impact a consumer's ability to lawfully access content on the internet, including, but not limited to the following:
  - a) Intentionally blocking lawful content, slowing or speeding traffic, or otherwise interfering with access to lawful content on the basis of source, destination, internet content, application, or service, or use of a non-harmful device.
  - b) Requiring consideration or payment from edge providers in exchange for ensuring their consumers' access to content, applications, and services at appropriate traffic speeds.
  - c) Engaging in third-party paid prioritization.
  - d) Selectively zero-rating some internet content, applications, services, or devices or zero-rating in exchange for consideration or payment.
  - e) Engaging in deceptive or misleading marketing practices that misrepresent the treatment of internet traffic, content, applications, services, or devices.
  - f) Failing to publicly disclose accurate information about the network management practices, performance, and commercial terms of its broadband internet access services to enable consumers to make informed choices about those services.
  - g) Providing services other than broadband internet access service delivered over the same last-mile connection as the broadband internet access service if those other services can be used as an equivalent of broadband internet, circumvent or undermine the other prohibitions for ISPs, or negatively impact the performance of broadband internet services.
- 2) Establishes the criteria by which an ISP may offer different types of technical treatment to end users as part of its broadband Internet access service, without violating the bill's provisions. This bill requires the CPUC to monitor the

quality of an ISP's basic service if the ISP offers different technical treatment and the basic service degrades.

- 3) Specifies that nothing in this bill limits any obligation, authorization, or ability of an ISP to address the needs of emergency communications, law enforcement, public safety, or national security authorities.
- 4) Authorizes the Attorney General, district attorneys and city attorneys to bring an action against an ISP engaging in prohibited activities.
- 5) Prohibits public entities from purchasing services from or providing funding to ISPs that engage in prohibited activities. This bill authorizes a public entity that enters into a contract with an ISP later found to be in violation of this bill's requirements to declare the contract void.
- 6) Requires an ISP with a contract or funding from a public entity to provide sufficient information about its network management practices, performance, and commercial terms of its broadband Internet access service to enable end users and public entities to ensure the ISP's compliance with this bill's requirements.
- 7) Requires a cable franchise applicant to submit a statement with the franchise application affirming that the applicant will comply with this bill's net neutrality requirements.
- 8) Requires the CPUC to work with the California Energy Commission (CEC) and the California Independent System Operator (CAISO) to evaluate the role that broadband internet and tools will play in California's smart grid. This evaluation must consider the following: the extent to which the CAISO and electrical corporations rely on consumers broadband services to manage energy resources; the impact that intentional slowing, content blocking and paid prioritization of broadband internet would have on grid reliability; and the future cost to state agencies if they must enter into long-term paid prioritization contracts if the net neutrality provisions of the bill are not enacted.
- 9) Defines various terms regarding net neutrality requirements.

## **Background**

Net neutrality is the principle that ISPs should enable access to all websites and content without intentionally thwarting or favoring certain content or applications. In the absence of net neutrality, ISPs may slow down, speed up, block, or require

payment to access certain internet websites or content. In 2015, the Obama Administration FCC enacted specific net neutrality rules prohibiting ISPs from engaging in technical discrimination. However, the Trump Administration FCC reversed these rules in December 2017, and the existing net neutrality requirements are expected to become ineffective during the summer of 2018.

*Title I or Title II?* Existing federal law distinguishes between “information services” and “common carriers.” The FCC’s authority to regulate information services is commonly referred to as Title I authority, and its authority to regulate common carriers is referred to as Title II authority. Generally, Title II provides the FCC with more stringent regulatory authority over telecommunications as utilities. As broadband internet technology and usage has evolved, net neutrality debates at the federal level have focused on the degree to which ISPs should be treated as public utilities.

While concerns about the internet’s openness have existed since its inception, the FCC has not always regulated ISPs as utilities. Between 2002 and 2005, the FCC classified cable modem internet service, wireline broadband, and wireless broadband as information services, limiting the degree to which ISPs were subject to regulatory action. Between 2005 and 2010, the FCC sought to establish a number of policies supporting net neutrality. However, concerns regarding ISPs’ compliance with these policies persisted. In 2010, the FCC approved the Open Internet Order, which established basic net neutrality requirements for ISPs. The FCC relied on its Title I authority to establish the 2010 order. In 2014, the United States Court of Appeals determined that the FCC did not have sufficient authority under Title I to enforce the order’s net neutrality requirements because ISPs were not classified as common carriers. After the court’s ruling, the FCC adopted the 2015 net neutrality requirements and re-classified ISPs as common carriers under Title II. Following the most recent change in the federal administration, the FCC reversed the net neutrality requirements in 2017. As part of the reversal, the FCC moved to reclassify ISPs as information services under Title I.

*Potential benefits of net neutrality.* The continuation of federal net neutrality requirements could provide consumers with significant benefits. Prohibitions against intentionally blocking content, slowing traffic, and prioritizing content based on payment limits the degree to which ISPs can interfere with consumers’ access to content over the internet. Net neutrality also has the potential to support greater competition between content providers by limiting the degree to which better resourced companies can pay to ensure their content is prioritized and distributed to consumers at optimal speeds. Enhanced competition between content providers could give consumers a greater number of choices for certain

high demand online services like streaming video. Competition also has the potential to reduce costs or contain costs as new services enter the market.

*Beyond the last mile: interconnection.* The point at which end user services intersect with an ISP's network connection to edge providers like Netflix is generally known as the point of "interconnection." This point is a gateway between the ISP's backend services and the "last mile" of service to an end user. The last mile of service is generally where consumer-oriented services are targeted because it is the portion of where disruptions are most visible to the consumer.

During the FCC's 2015 Open Internet proceeding, the FCC acknowledged that activities beyond the last mile can impact the consumer's internet access. The order specifically references disputes over "peering agreements" between edge providers and ISPs. Peering agreements are arrangements between edge providers and ISPs in which edge providers usually pay ISPs for costs that ISPs incur to upgrade their networks to prevent congestion problems. Edge providers supply content to consumers over ISP networks. While edge providers supply data accessed by consumers, they do not generally maintain networks. Instead, they rely upon the ISPs to maintain internet networks. These networks require upgrades to support internet traffic. As more devices become connected to the internet and consumers increase their data demands, upgrades will be needed. Congestion can impact a consumer's access to content and generally occurs when consumers demand a large quantity of data in a short time frame. For example, in the evenings, demand for video streaming content from providers such as Netflix and Hulu significantly increases. According to the FCC's 2015 order, disputes between edge providers and ISPs over peering agreements led to consumer service disruptions between 2013 and 2014.

Despite acknowledging the potential impact of peering agreement disputes on consumers, the FCC's 2015 Open Internet order limited its scope and explicitly did not apply open internet rules to interconnection. The FCC's order stated the following:

"While we have more than a decade's worth of experience with last-mile practices, we lack a similar depth of background in the Internet traffic exchange context. Thus, we find that the best approach is to watch, learn, and act as required, but not intervene now, especially not with prescriptive rules. This Order – for the first time – provides authority to consider claims involving interconnection, a process that is sure to bring greater understanding to the Commission."



While the FCC found that peering agreements were within the FCC's regulatory scope, it also determined that oversight should be administered on a case-by-case basis instead of establishing a flat prohibition or prescriptive rules. The order describes the case-by-case approach as more appropriate for disputes over commercial terms involving very large corporations.

*Who pays?* In the 2015 Open Internet Order, the FCC found that internet traffic challenged traditional arrangements for maintaining networks. The order notes that large consumer demand for video streaming contributes a significant amount of internet traffic and peering agreements are one mechanism for paying for services that limit congestion. This bill would prohibit peering agreements. In the absence of peering agreements, costs for network upgrades could either be absorbed by ISPs or passed to consumers. In the short-term, consumers may not experience significant cost impacts. However, a long-term absence of other mechanisms to pay for infrastructure upgrades could increase cost pressures for consumers. In the event that consumers are required to pay for network upgrades to prevent congestion, the cost impact is unclear; however, it is likely that cost increases for consumers would disproportionately impact lower-income Californians and increase needs for universal service programs that supply broadband access at affordable rates.

Prohibiting zero-rating may also have the unintended consequence of increasing some consumers' costs. Zero-rating is the process by which an ISP exempts certain applications, content or traffic from data caps. Currently, ISPs and wireless carriers can offer sponsored data plans that selectively exempt certain applications from a consumer's data limit. This exemption enables the consumer to use this application without its data use counting towards the consumer's data limit. Selective zero-rating can also enable ISPs and carriers to favor certain applications and content over others. This favoritism could limit competition within the content provider market. This bill prohibits selective zero-rating but permits zero-rating when it is applied without favoritism. For example, it would enable a carrier or ISP to zero-rate all data during a specific time frame. It would also permit carriers to exempt entire types of applications but not a specific application. For example, a carrier could exempt all video streaming applications from the data limit but not a specific video streaming application. In the 2015 order, the FCC explored the possibility of addressing zero-rating in the proceeding and determined that it would instead continue to address sponsored data plans on a case-by-case basis instead of establishing specific rules. The FCC stated the following about these plans in the order:

“We are mindful of the concerns raised in the record that sponsored data plans have the potential to distort competition by allowing

service providers to pick and choose among content and application providers to feature on different service plans. At the same time, new service offerings, depending on how they are structured, could benefit consumers and competition. Accordingly, we will look at and assess such practices under the no-unreasonable interference/disadvantage standard, based on the facts of each individual case, and take action as necessary.”

To the extent that sponsored data plans provide consumers with more access to data at a lower cost, prohibiting beneficial forms of zero-rating could increase consumers’ data costs in the long-term. Low-income Californians who more heavily rely on mobile devices in lieu of fixed services could be disproportionately impacted.

*Application to Universal Service Programs.* This bill would require telecommunications companies participating in universal service programs to comply with its net neutrality requirements as a pre-requisite for receiving public funding. Applying net neutrality requirements to these companies may support enforcement of net neutrality requirements across the state; however, it may also provide a disincentive to companies that participate in these programs by increasing their administrative burdens. For example, the CPUC administers the California Advanced Services Fund (CASF) to expand broadband deployment in underserved areas that currently lack broadband by providing grants to telephone corporations for projects in specific geographic areas. It is unclear how a company participating in a CASF project would demonstrate compliance with the net neutrality requirements to ensure continued funding for broadband deployment. To the extent that these additional requirements slow the CASF grant process, it may slow broadband deployment in communities that currently lack broadband. Slowing broadband infrastructure deployment could undermine state and federal universal service goals. If this bill’s requirements provide a disincentive to companies participating in other universal service programs like the Lifeline program, it may reduce the number of carriers participating in the program and discourage eligible consumers from enrolling in the service.

*CPUC enforcement:* This bill establishes multiple mechanisms for enforcement. Under this bill, attorneys at the municipal, county, and state level may bring an action against an ISP that potentially violates this bill’s provisions. This bill also establishes oversight requirements for the CPUC that would require the CPUC to monitor the quality of internet services. Specifically, this bill permits ISPs to offer different classes of service to consumers as long as the ISPs comply with specific criteria. If an ISP offers different classes of service and the quality of the ISP’s basic service declines, this bill requires the CPUC to monitor the quality of the

basic service and establish minimum quality standards for basic internet service. While this bill requires the CPUC to create basic quality standards for the internet, it explicitly states that it does not authorize the CPUC to regulate an ISP as a public utility. It is unclear how the CPUC could monitor and enforce internet quality of service without establishing regulations defining quality internet service and regulating an ISP providing access to different classes of service. It is also likely that the CPUC would need significantly greater resources to acquire quality of service monitoring tools and effectively monitor and enforce internet quality of service.

The CPUC's enforcement duties may also be limited by interstate commerce restrictions. Existing state law prohibits the CPUC from applying powers provided by the Public Utilities Act to interstate commerce unless authorized by federal law. To the extent that internet service is classified as a means of interstate commerce, the CPUC's ability to regulate internet service may be limited.

*Application to video franchises.* In addition to requiring compliance with net neutrality as a pre-requisite for public funding and contracting, this bill would also require California video franchise applicants to affirm that they will comply with the net neutrality requirements. Requiring compliance at franchise application may be an additional mechanism to support compliance; however, it is not clear that requiring video franchisees to demonstrate compliance is necessary to ensure that ISPs comply with the provisions regarding broadband. Video franchise applicants that also provide broadband internet access service would be subject to the enforcement and consumer disclosure provisions of this bill applied to all ISPs.

*Smart-Grid impacts.* This bill requires the CPUC to work with the CEC and the CAISO to determine the extent to which broadband tools will support a smart grid and analyze how net neutrality limitations would impact the management of these resources. It is unclear to which resources this requirement would apply. Currently, the CAISO uses a virtual private network called the Energy Communication Network, which is managed by AT&T. On the distribution side of the electrical system, broadband is a more heavily used resource because both residential and non-residential customers may use broadband to connect smart appliances and other distributed resources. While additional evaluation of interconnected distributed resources could be beneficial, it is not clear that it is needed to effectively implement net neutrality.

*Need for amendments.* This bill contains a number of provisions that are not necessary for establishing net neutrality requirements, could be challenging for the CPUC to implement, and could impact universal service efforts. [REDACTED]

~~Prohibitions would impact universal service programs.~~ This bill also contains provisions that are outside the scope of the FCC's 2015 Open Internet order.

~~PROVISIONS PROHIBITING THE STATE FROM ENACTING A POLICY THAT...~~

*Double referral.* Should this bill be approved by this committee, it will be re-referred to the Senate Committees on Judiciary for their consideration.

**Prior/Related Legislation**

AB 375 (Chau, 2017) would enact the California Broadband Internet Privacy Act in an effort to reinstate the consumer privacy protections afforded by rules finalized by the FCC in October 2016. The bill is currently on the Senate Inactive File.

SB 460 (De León, 2017) would adopt the main components of the federal net neutrality rules prohibiting ISPs from intentionally interfering with consumers' ability access internet content. The bill would also prohibit state agencies from contracting with providers unless they commit to not engage in practices that violate the net neutrality provisions. The bill is currently in the Assembly, pending referral to a policy committee.

SB 1161 (Padilla, Chapter 733, Statutes of 2012) prohibits the CPUC from regulating Voice over Internet Protocol (VoIP) and Internet Protocol enabled service (IP enabled service), except as required or authorized by federal law or expressly specified in statute.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:**

- 18MillionRising.org
- Access Humboldt
- Agribody Technologies, Inc
- Aixa Fielder, Inc
- Alameda Motor
- American Civil Liberties Union of California
- American Sustainable Business
- Analysis of Motion
- Barnes Insurance
- BentonWebs
- Bioeconomy Partners
- Brian Boortz Public Relations

- Johnson Properties
- Judith Glickman Zevin, Psy.D.
- Kahl Consultants
- Langlers WebWorks
- Lat13
- Leatherback Canvas
- Leet Sauce Studios, LLC
- Leverata, Inc
- Lisa LaPlaca Interior Design
- Logical Computer Solutions
- Magical Moments Event Planning & Coordinating
- May First/People Link

Brightline Defense Project  
 C, Wolfe Software Engineering  
 Califa  
 California Alarm Association  
 California Association of Competitive  
     Telecommunications Companies  
 California Association of Realtors  
 California Common Cause  
 California Freedom Coalition  
 California Public Interest Research Group  
 Cartoonland  
 CCTV Center for Media & Democracy  
 Center for Democracy & Technology  
 Center for Media Justice  
 Center for Rural Strategies  
 Cheryl Elkins Jewelry  
 Chris Garcia Studio  
 City and County of San Francisco  
 City of Emeryville  
 City of Los Angeles  
 City of Oakland  
 City of Sacramento  
 City of San Jose  
 Cogent Communications  
 Color Of Change  
 Common Cause  
 Computer-Using Educators  
 Corporate Host Services  
 Constituent Records  
 Consumer Action  
 Consumers Union  
 County of Santa Clara  
 Courage Campaign  
 CREDO Action  
 CreaTV San Jose  
 Daily Kos  
 David's Amusement Company  
 Demand Progress Action  
 Democracy for America  
 Digital Deployment  
 Disability Rights Education & Defense Fund  
 Dragon's Treasure  
 dsherman design  
 Electronic Frontier Foundation  
 Engine  
 EveryLibrary  
 Faithful Internet  
 Federal Communications Commission Commissioners  
     & Chairs (Former): Michael Copps, Gloria Tristani,  
     Tom Wheeler  
 Fight for the Future  
 FREE GEEK  
 Free Press  
 Friends of the Millbrae Public Library  
 Gold Business & IP Law  
 Goodlight Natural Candles  
 Grass Fed Bakery  
 Greenpeace USA  
 Grocery Outlet of Lompoc

Mechanics' Institute Library  
 Media Alliance  
 Media Mobilizing Project  
 Melbees  
 Merriman Properties LLC  
 MGCC  
 Milked Media  
 Mixt Media Art  
 MM Photo  
 Mobile Citizen  
 Mogin Associates  
 Narrow Bridge Candles  
 National Consumer Law Center  
 National Digital Inclusion Alliance  
 National Hispanic Media Coalition  
 New American's Open Technology Institute  
 New Media Rights  
 Nobody Cares Media  
 Nonprofit Technology Network  
 Oakland Privacy  
 Obscure Engineering  
 Office of Ratepayer Advocates  
 OpenMedia  
 Oregon Citizens' Utility Board  
 Orthogonal, LLC  
 Pacific Community Solutions, Inc  
 Paper Pastiche  
 Patty's Cakes and Desserts  
 PEN America  
 People Demanding Action  
 Personhood Press  
 Pony Named Bill Tack  
 Pretty Me Store  
 Progressive Technology Project  
 Prosenenergy  
 Public Knowledge  
 Reid Case Management  
 RI Lopez Interpreter Services  
 RootsAction.org  
 Silicon Harlem  
 Silver Lining Unlimited  
 SNAP Cats  
 Sonic.net, LLC  
 spamedfit.com  
 Stauter Flight Instruction  
 Sternidae Industries  
 SumOfUs  
 Suzi Squishies  
 Tarragon Consulting Corporation  
 Tech Goes Home  
 The Greenlining Institute  
 The Radio Doctor  
 The Utility Reform Network  
 Thinkshif Communications  
 Trader Ann's Attic  
 Tribd Publishing Co.  
 TWB & Associates  
 Twilio  
 UHF

Horticultrist  
 iam Bloom  
 iHomefinder, Inc  
 Indivisible CA: StateStrong  
 Indivisible Sacramento  
 Indivisible SF  
 Indivisible Sonoma County  
 inNative  
 Intex Solutions, Inc  
 IR Meyers Photography

UX Consulting  
 Vic DeAngelo IT Consulting  
 Voices for Progress  
 Wallin Mental Medical  
 Wonderlandstudios  
 Words 2 Wow Life Science Marketing  
 World Wide Web Foundation  
 Writers Guild of America West  
 XPromos Marketing Mastery, LLC  
 A petition with several individuals

**OPPOSITION:**

2-1-1 Humboldt Information and Resource Center  
 Asian Pacific Islander American Public Affairs  
 Association of:  
     Bay Area  
     Central Valley Region  
     Community Education Foundation  
     Solano County  
     Southern California Region  
 AT&T  
 Athletes and Entertainers For Change  
 Benefit Tomorrow Foundation  
 Black Business Association  
 Black Chamber of Orange County  
 Black Women Organized for Political Action  
 Boys and Girls Club of El Dorado County  
 Brotherhood Crusade  
 California Cable & Telecommunications Association  
 California Communications Association  
 California State Conference of the National Association  
 for the Advancement of Colored People  
 Camp Fire Inland Southern California  
 Chamber of Commerce:  
     Alhambra  
     California Asian Pacific Islander  
     California Black  
     California Hispanic  
     El Dorado County  
     Escondido  
     Fresno  
     Fresno Metro Black  
     Greater Coachella Valley  
     Greater Los Angeles African American  
     InBiz Latino/North County Hispanic  
     Korean American Central  
     Mariposa County  
     Oceanside  
     Orange County Hispanic  
     Sacramento Asian Pacific Islander  
     Sacramento Black  
     Sacramento Hispanic  
     Sacramento Metropolitan  
     Slavic American  
 Community Women Vital Voices  
 Computing Technology Industry Association  
 Concerned Black Men of Los Angeles

Concerned Citizens Community Involvement  
 Congress of California Seniors  
 CONNECT  
 Consolidated Board of Realists  
 DeBar Consulting  
 Entrepreneurs of Tomorrow Foundation  
 Eskaton  
 Fresno Area Hispanic Foundation  
 Fresno County Economic Development Corp.  
 Frontier Communications  
 Guardians of Love  
 Hacker Lab  
 Hispanic 100  
 Inland Empire Economic Partnership  
 International Leadership Foundation  
 International Leadership Foundation Orange County  
 Chapter  
 KoBE Government Contracting Alliance  
 Krimson and Kreme  
 Latin Business Association  
 Latino Service Providers  
 LightHouse Counseling & Family Resource Center  
 LIME Foundation  
 Mandarin Business Association  
 Merced Lao Family Community, Inc.  
 National Association for the Advancement of Colored  
 People, Ventura County  
 North Bay Leadership Council  
 North Orange County Chamber  
 OCA East Bay Chapter  
 OCA Sacramento Chapter  
 OCA Silicon Valley  
 OCA National  
 Orange County Business Council  
 Puertas Abiertas Community Resources Center  
 RightWay Foundation  
 San Gabriel Valley Economic Partnership  
 Sierra College Foundation  
 Society for the Blind  
 TechNet  
 The Fresno Center  
 UFCW Local 648  
 USTelecom  
 Valley Industry and Commerce Association  
 Young Visionaries Youth Leadership Academy

**ARGUMENTS IN SUPPORT:** According to the author:

“Senate Bill 822 puts California at the national forefront of ensuring an open internet. It establishes comprehensive and enforceable net neutrality standards to ensure that all California residents have the right to choose whether, when, and for what purpose they use the internet.

SB 822 stands for the basic proposition that the role of internet service providers (ISPs) is to provide neutral access to the internet, not to pick winners and losers by deciding (based on financial payments or otherwise) which websites or applications will be easy or hard to access, which will have fast or slow access, and which will be blocked entirely.

Under the state’s police power, SB 822 prohibits any practice that hinders or manipulates consumer access to the Internet to favor certain types of content, services, or devices over others. This includes prohibiting all of the following: blocking or speeding up or slowing down of favored data, paid prioritization, charging services (whether businesses, nonprofits, government agencies, advocacy organizations, etc.) access fees to reach certain consumers, and economic discrimination practices that distort consumer choice.

SB 822 also prohibits misleading marketing practices and enacts strong disclosure requirements to better inform consumers. The bill further requires that any ISP that contracts with the State of California, receives public infrastructure grants to build out broadband service, or applies for or holds a state franchise for video service must comply with these standards.

Without net neutrality, ISPs have the power to manipulate which business, media, nonprofit, or political websites are accessible and by whom. SB 822 contains strong, comprehensive, and enforceable policies that will position California as a leader in the fight for net neutrality.

**ARGUMENTS IN OPPOSITION:** Opponents claim that this bill is more restrictive than the rules adopted in the FCC’s Open Internet order, and they oppose establishing state-level net neutrality requirements. The California Cable and Telecommunications Association says, “...state level policies regulating the

Internet are pre-empted by federal regulations and are inappropriate for an inherently interstate service. It would most likely result in unnecessary and costly litigation.” Opponents specifically oppose the provisions of this bill that prohibit peering agreements, sponsored data plans, and those that direct the CPUC to regulate internet quality of service. Opponents also argue that this bill would increase compliance costs to participate in universal service programs and could slow broadband deployment in rural and underserved communities. The California State Conference of the National Association for the Advancement of Colored People (NAACP) opposes the provisions of this bill that prohibit selective zero-rating and state, “Ending free Internet data is particularly harmful to younger, low-income, and minority Californians who are more dependent on their mobile devices to access the Internet.”

**-- END --**