



Senator Scott Wiener, 11th Senate District

Senate Bill 822 – Restoring Net Neutrality in California

SUMMARY OF MARCH 14, 2018 AMENDMENTS

1. Protecting the free and open internet is inherently in the interest of the State.

SB 822 is enacted pursuant to the inherent police power delegated to the State of California by the U.S. Constitution to effectuate net neutrality. The purpose of this section is to ground the bill in constitutional power and explain that a free and open internet is critical to protecting and promoting the safety, public health, and general welfare of the state.

2. Strong definitions to create the framework for enforcing Net Neutrality in California.

The bill codifies the “bright line rules” from the FCC’s 2015 Open Internet Order and defines other very important terms, including “Application-agnostic,” “Broadband Internet access service,” “Edge provider,” and “Third-party paid prioritization.”

3. California’s authority to protect Net Neutrality lies in the delivery of broadband Internet access service to California customers.

This bill focuses on the broadband Internet access service product that is offered to Californians. When a Californian pays for and logs onto the Internet, they should have access to a fully open and neutral Internet. The Net Neutrality provisions of this bill apply to all ISPs that provide broadband Internet access to people, businesses, government agencies, or other entities in the state of California.

4. Establishes strong protections against technical practices by ISPs that would hinder consumer access to an open Internet.

Specifically SB 822 lays out the following:

- **No blocking:** Prohibits ISPs from blocking content, applications, services, or devices subject to reasonable network management.
- **No application-specific technical discrimination:** Prohibits ISPs from technically discriminating (e.g., slowing down or speeding up) against applications (e.g., slowing down Netflix, but not YouTube) or classes of applications (e.g., slowing down all video streaming), subject to reasonable network management.
- **Exception for reasonable network management:** Requires network management practices to be used primarily for a legitimate network management purpose (as opposed to for profit-motivated reasons), tailored (e.g., only used during times of congestion), and as application-agnostic as possible.
- **No access fees:** Prohibits ISPs from charging edge providers fees for access to users.
- **No third-party paid prioritization:** Prohibits ISPs from charging edge providers for any form of technical preferential treatment (also called “no third-party paid prioritization” or “pay-to-play fast lanes”).

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5. Protects consumers from economic discrimination practices such as zero-rating that similarly distort choice and the freedom of the open Internet.

Specifically SB 822 does the following:

- Prohibits any form of zero-rating in exchange for payment from edge providers.
- Prohibits ISPs from zero-rating one or more applications in a class of similar applications without payment from edge providers.
- Allows zero-rating that is application agnostic and without payment from edge providers.
- Leaves zero-rating that is open to a whole class of application without payment from edge providers subject to the general conduct rule enforced by the Attorney General.

6. Enacts strong policy preventing deceptive communication with consumers regarding the nature of the broadband service being provided.

Senate Bill 822 prohibits ISPs from engaging in deceptive or misleading marketing practices that misrepresent the treatment of Internet traffic, content, applications, services, or devices, or performance characteristics, or commercial terms of the broadband Internet access service to its customers. It also prohibits ISPs from advertising, offering for sale, or selling broadband Internet access service without prominently disclosing with specificity all aspects of the service advertised, offered for sale, or sold. Finally, the bill requires ISPs to publicly disclose network management practices, performance and commercial terms.

7. Strong public disclosure requirements to better inform consumers.

Internet providers must publicly disclose accurate information regarding network management practices, broadband performance, and the commercial terms of its broadband Internet access services. This information must be intelligible and sufficient for the average consumer to make informed and free choices regarding the use of broadband service products.

8. The Attorney General will have authority to bring enforcement actions against ISPs in violation of the parameters of Net Neutrality in California.

Senate Bill 822 outlines specific and detailed terms for the acceptable treatment of broadband Internet access service delivered to customers in California. Violations of these terms will be under the jurisdiction of the California State Attorney General's office to enforce.

9. Public entities in the State of California must only contract with internet providers that follow Net Neutrality rules.

The bill prohibits public agencies from contracting with ISPs that are in violation of the terms of Net Neutrality as outlined in this legislation. When a public agency solicits contracts for broadband Internet service, the entity must make sure that the ISP is in compliance with the sections that this bill adds to the Civil Code defining Net Neutrality.

10. Providers receiving infrastructure grants awarded by California universal service programs must follow Net Neutrality rules.

The State of California awards millions of dollars in grants to companies to build out broadband infrastructure, particularly to rural, underserved, or unserved areas. With the reform of the California Advanced Services Fund last year, hundreds of millions of dollars will go toward programs to bring Internet access to Californians. This section requires that those grants only be awarded to companies whose service conforms with Net Neutrality as laid out in this bill.

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11. Applicants for state franchises and holders of state franchises for video service must include statements of adherence to Net Neutrality.

The bill requires any person or corporation who applies for a state cable franchise to provide video service certify under penalty of perjury that they will abide by the Net Neutrality principles laid out in this legislation. In addition, companies that currently hold franchises must abide by the rules of Net Neutrality laid out by this bill in the Civil Code to maintain their cable franchises.

12. A study of the vulnerability of California’s electrical grid and resource management practices to a non-neutral Internet.

This section draws attention to the integral role that Internet access and connectivity play in the overall function of the state. Many distributed energy resources are “behind the meter” and the property of consumers (e.g. solar panels, battery storage systems, electric vehicles, or home thermostats). We are asking the CPUC, in consultation with utilities and the ISO, to evaluate how dependent these resources are on private consumers’ internet connections. Furthermore, they must evaluate the potential risks that non-net neutral Internet might have on real-time communication with resources to manage the electrical grid.

13. Includes severability language to guard against legal challenges the whole or portions of this bill.

The bill contains a severability clause that asserts that even if one section of this bill is struck down in the courts as a result of legal challenge, the remaining elements of this bill are fully intact and enforceable.

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