21-15430

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ACA CONNECTS - AMERICA'S COMMUNICATIONS ASSOCIATION, FKA American Cable Association; CTIA - THE WIRELESS ASSOCIATION; NCTA - THE INTERNET & TELEVISION ASSOCIATION; and USTELECOM - THE BROADBAND ASSOCIATION, on behalf of their members,

Plaintiffs–Appellants,

v.

ROB BONTA, in his official capacity as Attorney General of California,

Defendant–Appellee.

On Appeal from the United States District Court
for the Eastern District of California

No. 2:18-cv-02664-JAM-DB
Hon. John A. Mendez, Judge

ANSWERING BRIEF

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INTRODUCTION

Nearly every facet of modern life depends on fair and open access to the Internet, as demonstrated by the paramount importance of online activity during the COVID-19 pandemic. After the repeal of federal net neutrality protections, resulting from a lack of federal authority to enact such protections, the California Legislature passed California's net neutrality law (Senate Bill 822). The Legislature acted based on concern that, absent net neutrality protections, major broadband providers have the incentive and ability to abuse their control over access to the Internet to economically benefit themselves and their business partners; stifle innovation and competition; and discourage or even prevent consumers from accessing the applications, services, and content of their choice. Broadband providers challenged this law as preempted, and sought a preliminary injunction blocking its enforcement. The district court denied the motion, finding that the industry had shown no likelihood of success on the merits, and had failed to demonstrate irreparable harm or any public benefit from enjoining the law. This Court should affirm.

Congress has not established a federal regulatory regime that bars the States from taking steps to safeguard access to something as essential as the Internet. The California Legislature determined that net neutrality is vital to

protecting public health, safety, and welfare in the State. Nothing in federal law prevents California from exercising its traditional police powers in this manner.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this timely interlocutory appeal of the district court's order denying a preliminary injunction motion. *See* 28 U.S.C. § 1292(a)(1).

STATEMENT REGARDING ADDENDUM

All pertinent constitutional, statutory, and regulatory provisions are set forth in the addendum to this brief. (Ninth Circuit Rule 28-2.7.)

ISSUES PRESENTED

Whether the district court correctly denied Plaintiffs' motion for a preliminary injunction against the enforcement of California's net neutrality law on the grounds that (1) Plaintiffs showed no likelihood of success on the merits of their preemption claim; (2) Plaintiffs failed to establish irreparable harm; and (3) the balance of equities supports denial of the preliminary injunction motion.

STATEMENT OF THE CASE

A. The Federal Regulatory Framework

Congress passed the Communications Act (the "Act") and created the Federal Communications Commission ("FCC" or "Commission") in 1934. 47 U.S.C. § 151 *et seq*. The Telecommunications Act of 1996 amended various provisions of the Act. *See* P.L. 104-104 (1996), 110 Stat. 56. "The Commission's authority [and responsibility] under the Act includes classifying various services into the appropriate statutory categories." *Mozilla Corp. v. F.C.C.*, 940 F.3d 1, 17 (D.C. Cir. 2019) (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980-81 (2005) ("*Brand X*")). For broadband Internet access services ("BIAS"), "the 1996 Telecommunications Act creates two potential classifications … 'telecommunications services' under Title II of the Act and 'information services' under Title I." *Id*.

"These similar-sounding terms carry considerable significance: Title II entails common carrier status, and triggers an array of statutory restrictions and requirements (subject to forbearance at the Commission's election)." *Mozilla*, 940 F.3d at 17 (citation omitted). However, "'information services'

are exempted from common carriage status and, hence, Title II regulation." *Id*.[1]

Whether a service is classified under Title I (information services) or Title II (telecommunications services) determines the scope of the FCC's authority to regulate that service. Whereas the FCC has "express and expansive" authority to regulate Title II telecommunications services, *Mozilla*, 940 F.3d at 75 (citation omitted), with respect to Title I information services the FCC has far more limited "ancillary authority," *Comcast Corp. v. F.C.C.*, 600 F.3d 642, 645 (D.C. Cir. 2010). Such authority "empowers the Commission to 'perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions,'" *Mozilla*, 940 F.3d. at 75 (quoting 47 U.S.C. § 154(i)), but extends only to matters "reasonably ancillary to the … effective performance of its statutorily mandated responsibilities," *Am. Library Ass'n v. F.C.C.*, 406 F.3d 689, 692 (D.C. Cir. 2005).

[1] "An analogous set of classifications applies to mobile broadband: A 'commercial mobile service' is subject to common carrier status, *see* 47 U.S.C. § 332(c)(1), whereas a 'private mobile service' is not, *see id.* § 332(c)(2)." *Mozilla*, 940 F.3d at 17.

B. The Development, Adoption, and Repeal of Federal Net Neutrality Requirements

The "major participants in the Internet marketplace" consist of "backbone networks, broadband providers, edge providers, and end users." *Verizon v. F.C.C.*, 740 F.3d 623, 628 (D.C. Cir. 2014) (citations omitted). "Backbone networks are interconnected, long-haul fiber-optic links and high-speed routers capable of transmitting vast amounts of data." *Id.* at 629. BIAS providers "operate the 'last-mile' transmission lines" connecting end users to these backbone networks, through "high-speed communications technologies, such as cable modem service." *Id*. "Edge providers are those who, like Amazon or Google, provide content, services, and applications over the Internet, while end users are those who consume edge providers' content, services, and applications." *Id*.

The companies that connect people to the Internet ("internet service providers" or "ISPs") can determine the content of data packets carried to and from their subscribers. This information allows an ISP to block, slow down, or speed up specific content, applications, or services, or to put particular websites that have paid a fee to the ISP in a "fast lane" to its subscribers. SER-152-153, 155-156 (Ohanian Decl. ¶¶ 5-6, 9, 14-15; Jordan Decl. ¶¶ 13-37; Dolgenos Decl. ¶¶ 4-8). ISPs can use this technology to

"prevent their end-user subscribers from accessing certain edge providers altogether, or might degrade the quality of their end-user subscribers' access to certain edge providers, either as a means of favoring their own competing content or services or to enable them to collect fees from certain edge providers." *Verizon*, 740 F.3d at 629.

ISPs have engaged in such conduct in the past. In 2010, the FCC determined that "broadband providers endanger the Internet's openness by blocking or degrading content and applications without disclosing their practices to end users and edge providers, notwithstanding the Commission's adoption of open Internet principles in 2005." *In the Matter of Preserving the Open Internet*, 25 FCC Rcd. 17905, ¶ 4 (2010) ("2010 Order"), *vacated in part*, *Verizon*, 740 F.3d 623; *see also Verizon*, 740 F.3d at 646 (describing FCC findings in 2010 Order).

Similarly, in 2015, the FCC found that "broadband providers hold all the tools necessary to deceive consumers, degrade content, or disfavor the content that they don't like," and that "broadband providers (including mobile broadband providers) have the economic incentives and technical ability to engage in practices that pose a threat to Internet openness by harming other network providers, edge providers, and end users." *In the*

Matter of Protecting and Promoting the Open Internet, 30 FCC Rcd. 5601 ¶¶ 8, 78 (2015) ("2015 Order").

Before 2018, the FCC sought to address this problem by adopting enforceable rules, merger conditions, and other requirements based on the principle of "internet openness—commonly known as net neutrality—the principle that broadband providers must treat all internet traffic the same regardless of source." *U.S. Telecom Ass'n v. F.C.C.*, 825 F.3d 674, 689 (D.C. Cir. 2016). In 2008, the FCC sought to regulate network management practices that interfered with certain peer-to-peer file-sharing applications, but the D.C. Circuit held that the Commission had exceeded its statutory authority. *See Comcast*, 600 F.3d 642. At the time, BIAS was classified as a Title I information service, and the court held that the FCC lacked ancillary authority. *Id*. at 661. In 2010, the FCC adopted formal transparency, anti-blocking, and anti-discrimination rules for BIAS providers.[2] However, the D.C. Circuit invalidated the anti-blocking and

[2] *See* 2010 Order ¶¶ 1, 117-123. The transparency requirement mandated that BIAS providers "publicly disclose accurate information regarding the network management practices, performance, and commercial terms of [their] broadband Internet access services." *Id*. ¶¶ 54, 98. The anti-blocking rules prohibited BIAS providers from preventing end-users from accessing a particular edge provider, and "impairing or degrading particular content, applications, services, or non-harmful devices so as to render them

anti-discrimination rules, because the FCC violated the statutory prohibition on imposing common carrier regulation (47 U.S.C. § 153(51)), given BIAS's classification as a Title I, not a Title II, service. *See Verizon*, 740 F.3d 623.

In response, the FCC adopted its 2015 Order, classifying fixed BIAS as a Title II "telecommunications service";[3] classifying mobile BIAS as a "telecommunications service" and a "commercial mobile service"; and adopting more detailed net neutrality rules and protections. 2015 Order ¶¶ 331, 383. The D.C. Circuit upheld the 2015 Order. *U.S. Telecom*, 825 F.3d 674, *cert. denied*, 139 S. Ct. 475 (2018).

The 2015 Order included anti-blocking and anti-throttling rules, which prohibited BIAS providers from blocking "lawful content, applications, services, or non-harmful devices" or throttling—degrading or impairing—

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effectively unusable." *Id*. ¶ 66. The anti-discrimination requirement prohibited fixed BIAS providers from "unreasonably discriminat[ing] in transmitting lawful network traffic[.]" *Id*. ¶ 68.

[3] From 1998 to 2005, portions of broadband over DSL telephone lines were classified as a telecommunications service. *See* 2015 Order, ¶¶ 315, 316, 321; *Verizon*, 740 F.3d at 630-631 (describing Title II classification of DSL services); *see also AT&T Corp. v. City of Portland*, 216 F.3d 871, 877-79 (9th Cir. 2000) (portions of broadband over cable are telecommunications service). In 2005, the Supreme Court upheld a 2002 FCC order classifying broadband provided over cable lines as a Title I information service. *See Brand X*, 535 U.S. at 986.

them. 2015 Order ¶¶ 112, ¶ 119. It also prohibited paid prioritization, barring BIAS providers from "favor[ing] some traffic over other traffic … either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity." *Id.* ¶ 125. The 2015 Order included a general conduct rule as well, requiring that BIAS providers "not unreasonably interfere with or unreasonably disadvantage (i) end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users." *Id.* ¶ 136. The Order also kept the transparency rule adopted in the 2010 Order. *Id.* ¶ 55.

In addition, the Order prohibited BIAS providers from charging edge providers for access to end-user Internet customers, and from engaging in practices or entering into agreements at the point of interconnection (i.e., where the data enters an ISP's network) that have the purpose or effect of evading net neutrality protections. 2015 Order ¶¶ 113, 120, 195, 206. The Order also barred BIAS providers from offering other services over the same last-mile connection as regular Internet access service, if such offerings were designed to evade the Order's net neutrality protections. *Id.* ¶¶ 112, 207, 210, 212. The FCC stated that it would examine zero-rating practices (i.e.,

exempting certain applications from consumers' data usage allowances) under the general conduct rule, "based on the facts of each individual case, and take action as necessary." *Id.* ¶¶ 151-152.[4]

In January 2018 the FCC reversed course and issued an order reclassifying fixed and mobile BIAS as a Title I "information service" and reclassifying mobile broadband as a "private mobile service." *In the Matter of Restoring Internet Freedom*, 33 FCC Rcd. 311, ¶¶ 26-64, 65-85, 263-283 (2018) ("2018 Order"), *vacated in part*, *Mozilla*, 940 F.3d 1. In doing so, the FCC disclaimed *any* authority to impose generally applicable net neutrality conduct rules on BIAS providers. *Id*. ¶¶ 267-294.[5] The FCC therefore repealed the net neutrality conduct rules promulgated in the 2015 Order, leaving in place only a modified version of the Transparency Rule.

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[4] The FCC later identified at least two kinds of zero-rating that likely violated the general conduct rule: (1) using zero-rating as a means of granting preferential treatment to content from affiliated edge providers or themselves, or (2) offering zero-rating in exchange for payment from edge providers. FCC, Policy Review of Mobile Broadband Operators' Sponsored Data Offerings for Zero-Rated Content and Services, at 16-17 (Jan. 11, 2017), *available at* https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0111/DOC-342982A1.pdf.

[5] Net neutrality conduct rules are net neutrality rules other than disclosure-based rules, such as the Transparency Rule. *See also* 2018 Order ¶ 239 (conduct rules "include[e] the general conduct rule and the prohibitions on paid prioritization, blocking, and throttling").

Id. ¶¶ 225, 239-67, 209-38. The FCC also adopted a "Preemption Directive" (*id*. ¶¶ 194-204) that prohibited state and local jurisdictions from enacting "any measures that would effectively impose rules or requirements that we have repealed or decided to refrain from imposing in this order or that would impose more stringent requirements for any aspect of broadband service that we adopt in this order," *id*. ¶ 195.

On review of the 2018 Order, the D.C. Circuit upheld the reclassification, repeal, and Transparency Rule. *Mozilla*, 940 F.3d 1. However, the court held that the Preemption Directive was not a valid exercise of the FCC's ancillary authority, noting that "nowhere in the 2018 Order … does [the FCC] claim ancillary authority for the Preemption Directive." *Mozilla*, 940 F.3d at 76. Because the FCC lacked regulatory authority to adopt net neutrality conduct rules, and could not point to any other statutorily mandated responsibility that would support an exercise of ancillary authority, it lacked the authority to preempt such rules. *Id*. at 74-76. The court thus vacated the Preemption Directive, reasoning that "in any area where the Commission lacks the authority to regulate, it equally lacks the power to preempt state law." *Id*. at 75. No party sought Supreme Court review of any issue resolved by the D.C. Circuit's decision.

C. California's Net Neutrality Law

In 2018, the California Legislature enacted the California Internet Consumer Protection and Net Neutrality Act. Cal. Stats. 2018, ch. 976 ("SB-822"). In doing so, the Legislature found that "[a]lmost every sector of [the] economy, democracy, and society is dependent on the open and neutral Internet." SB-822, Sec. 1(a)(2).

SB-822 applies to BIAS "provided to customers in California." Cal. Civ. Code § 3100(b); *see also id.* § 3100(i), (k), & (p). It adopts many of the same net neutrality protections as the FCC's 2015 Order. With respect to BIAS provided to customers in California, SB-822 prohibits:

- Blocking or throttling lawful content, applications, services, or nonharmful devices, Cal Civ. Code §§ 3101(a)(1), (2), (b);
- Charging edge providers for delivering Internet traffic to and from BIAS providers' Internet customers, *id*. §§ 3101(a)(3), (b);
- Charging edge providers for technical preferential treatment, such as establishing pay-to-play "fast" lanes, also known as paid prioritization, *id*. §§ 3101(a)(4), (b);
- Zero-rating in exchange for consideration, or zero-rating some Internet content, applications, services, or devices within a category, *id*. §§ 3101(a)(5) & (6), (a)(7)(B), (b).
- Unreasonably interfering with or disadvantaging an end-user's ability to select and access BIAS or the lawful content, applications, services, or devices of the end-user's choice, or an edge provider's ability to make these same things available to end-users, *id*. §§ 3101(a)(7)(A), (b);

- Failing to publicly disclose accurate information about network management practices, *id*. §§ 3101(a)(8), (b);
- Engaging in practices that have the purpose or effect of evading SB-822's net neutrality protections at the point of interconnection, where a BIAS provider exchanges Internet traffic to and from its BIAS customers with another entity (such as backbone providers), *id*. §§ 3101(a)(9), (b); and
- Offering other services over the same last-mile connection as regular Internet, if those services would evade SB-822's net neutrality protections, *id*. §§ 3102(a)(1), (b).

Some of SB-822's prohibitions are subject to an exception for "reasonable network management," *id*. §§ 3101(a)(1) (blocking), (a)(2) (throttling), and (a)(7)(a) (interference with end-user access to content, applications, or devices). The definition of "reasonable network management," *id*. § 3100(s), in §§ 3101(a)(1), (a)(2) and (a)(7)(a) is taken from the FCC's 2010 and 2015 Orders. *See* 2010 Order ¶ 87; 2015 Order ¶¶ 220-221; 47 C.F.R. § 8.2(f) (2015 ed.).

D. District Court Proceedings

When SB-822 was enacted in 2018, the United States and a group of industry trade associations for major ISPs (here, Plaintiffs) filed separate challenges to the law.[6] The cases were ordered related, and the parties agreed to stay the litigation pending resolution of *Mozilla*, with the State

[6] *United States v. California*, No. 2:18-cv-02660 (E.D. Cal.); *Am. Cable Ass'n v. Becerra*, No. 2:18-cv-02684 (E.D. Cal.).

agreeing to refrain from enforcing SB-822 pending resolution of any preliminary injunction motions filed after the resumption of litigation. ER-179-181. When litigation resumed in 2020, the United States and Plaintiffs filed amended complaints and preliminary injunction motions. The United States subsequently dismissed its complaint following the change in presidential administration.

The district court heard Plaintiffs' preliminary injunction motion on February 23, 2021, and denied the motion from the bench. ER 5-6. The court first explained that Plaintiffs had not shown a likelihood of success on the merits of their preemption claim. Rejecting Plaintiffs' field preemption argument, the court concluded that the Act does not effectuate "the type of pervasive regulatory system that left no room for state law such that this Court can infer … a congressional intent to displace all state law." ER-69, Tr. 63:21-23. The court further determined there was no implied conflict between SB-822 and the Act, because the "common carriage" provisions cited by Plaintiffs limit the FCC's authority, not the States'. ER-70, Tr. 64:7-8. Finally, it held that SB-822 does not conflict with the 2018 Order, which "is not an instance of affirmative deregulation but, rather, a decision by the FCC that it lacked authority to regulate in the first place," such that

"the deregulatory purposes" behind the reclassification decision "do not have preemptive effect."[7] ER-71-72, Tr. 65:21-23, 66:15-16.

With regard to the *Winter* factors, the court found no irreparable harm and concluded that "the balance of equities and the public interest weigh in favor of denying the injunction," because an injunction "would negatively impact the State of California more than the ISP companies and over the well-being the public." ER-73-75, Tr. 67:23-24, 68:6-8, 69:9-11.

Per the agreement staying the litigation, Defendant's commitment to refrain from enforcing SB-822 expired on March 25, 2021. ER-180.

STANDARD OF REVIEW

This Court reviews a denial of a preliminary injunction motion for abuse of discretion, which exists if the district court based its decision on an erroneous legal standard or clearly erroneous finding of fact. *Lands Council v. McNair*, 537 F.3d 981, 986 (9th Cir. 2008) (en banc). Conclusions of law receive de novo review. *Id*.

[7] The court also rejected the argument that express preemption results from the Act's prohibition on state regulation of "the entry of or the rates charged by … any private mobile service" (47 U.S.C. § 332(c)(3)(A)), concluding that SB-822 does not prevent mobile carriers from entering the market or regulate how much providers can charge their users. ER-73, Tr. 67:8-11, 18-21. Plaintiffs do not pursue this theory on appeal. Br. 23 n.21.

SUMMARY OF THE ARGUMENT

The district court correctly held that Plaintiffs' implied preemption theories have no likelihood of success on the merits.

First, SB-822 does not conflict with the 2018 Order, which was premised on the FCC's *lack* of authority to promulgate federal net neutrality conduct rules, given the classification of BIAS as a Title I service. Because the FCC lacks this authority, it cannot prevent the States from enacting their own net neutrality requirements. In the absence of statutory authority, it is irrelevant that the FCC's reclassification and repeal decisions were motivated in part by its preference for deregulation.

Plaintiffs miss the mark in arguing that, because the FCC's reclassification decision was entitled to *Chevron* deference, the policy preferences underlying that decision somehow have preemptive force. The argument misapprehends the limited decision that the FCC was authorized to make—whether BIAS is properly classified as a Title I information service or a Title II telecommunications service. Plaintiffs' theory cannot be reconciled with the basic limits of *Chevron* deference and implied preemption doctrine.

Second, SB-822 does not conflict with statutory limits on the FCC's power to regulate certain services as common carriers. As the plain text,

statutory structure, and legislative history demonstrate, the provisions in question limit only the FCC's authority to regulate "under this chapter," i.e., under the Communications Act; they do not limit the States' exercise of their historic police powers. Plaintiffs fail to explain how the phrase "under this chapter" can be read as a limit on state authority—let alone one with the far-reaching consequences they posit. And Plaintiffs' assertion that "decades" of precedent precludes the States from imposing "common carrier" regulation relies upon inapposite authorities.

Finally, Plaintiffs' field preemption theory also fails. The Act has never been construed to preempt the field of all "interstate communications services." This argument contradicts the text and structure of the Act, as well as the history of state-level regulation aimed at protecting public health, safety, and welfare on the Internet. Plaintiffs' novel theory of field preemption based on other "1930s regulatory statutes" has no basis in the case law.

Apart from the likelihood of success on the merits, the district court also correctly determined that the other preliminary injunction factors were not satisfied. Plaintiffs failed to establish irreparable harm or that the balance of equities weighs in their favor, because they allege only that their members might need to adjust certain business practices. If true, this would

only be with respect to BIAS provided to customers in California, because ISPs are fully capable of distinguishing between BIAS customers in California and BIAS customers in other States. And extensive evidence documents the numerous harms that SB-822 addresses, and supports the Legislature's policy judgment that an open, neutral Internet for California consumers is in the public interest.

ARGUMENT

I. PLAINTIFFS HAVE NO LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR PREEMPTION CLAIM

The Supremacy Clause "specifies that federal law is supreme in case of a conflict with state law." *Murphy v. NCAA*, 138 S. Ct. 1461, 1479 (2018). There are "three different types of preemption—'conflict,' 'express,' and 'field'—but all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore … the state law is preempted." *Id.* at 1480.

Here, Plaintiffs invoke conflict and field preemption, *see* Br. 26, because the D.C. Circuit has already invalidated the FCC's attempt to expressly preempt state laws such as SB-822, *Mozilla*, 940 F.3d at 74-86. And because Plaintiffs do not contend that it is "impossible" for them to

"comply with both" SB-822 and federal law, their conflict preemption theory is that SB-822 "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995); *see* Br. 27.

Regardless of the type of preemption at issue, "[i]nvoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to 'a constitutional text or a federal statute' that does the displacing or conflicts with state law," or that authorizes an agency to do so. *Va. Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1901 (2019) (lead opinion of Gorsuch, J) (cleaned up). Particularly in the context of "[i]mplied preemption analysis," courts must avoid conducting a "freewheeling judicial inquiry into whether a state statute is in tension with federal objectives." *Chamber of Com. v. Whiting*, 563 U.S. 582, 607 (2011); *accord, e.g.*, *Kansas v. Garcia*, 140 S. Ct. 791, 801 (2020).

Any preemption analysis must "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). "[I]t is a state's historic police power—not preemption—that [courts] must assume, unless clearly superseded by

federal statute." *United States v. California*, 921 F.3d 865, 887 (9th Cir. 2019) (citation omitted), *cert. denied*, 141 S. Ct. 124 (2020). This presumption applies here. SB-822 is a classic exercise of state police power to protect consumers, public health, and public safety. *See* SB-822, Sec. 1(a)(2); *Durnford v. MusclePharm Corp.*, 907 F.3d 595, 601 (9th Cir. 2018) ("[c]onsumer protection" laws "fall[] well within" the States' "traditional … police power" such that the "presumption against preemption applies").

Plaintiffs have failed to overcome this presumption and establish that the "clear and manifest purpose of Congress" was to prevent the States from enacting net neutrality protections. The FCC's lack of statutory authority to adopt such rules, and the absence of congressional intent to prohibit state regulation in this regard, foreclose Plaintiffs' preemption theories.

A. SB-822 Does Not Conflict With the 2018 Order

In reclassifying BIAS as a Title I information service, the FCC determined that it lacked statutory authority to promulgate net neutrality conduct rules. This lack of authority does not constitute congressional authorization to preclude the States from enacting such regulations. Nor does SB-822 conflict with any other terms of the 2018 Order.

Plaintiffs nevertheless argue that because the reclassification of BIAS (which resulted in the elimination of federal net neutrality protections) and

the adoption of the Transparency Rule were permissible under *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), these regulatory actions and the policy preferences motivating them preempt SB-822 as an obstacle to the agency's purposes and objectives. Br. at 30, 36-37. But notwithstanding an agency's power under *Chevron* to take policy considerations into account, those policy preferences are not, standing alone, a source of statutory authority either to preempt or to regulate. That basic principle defeats Plaintiffs' implied preemption arguments.

1. SB-822 Does Not Conflict with the FCC's Reclassification Decision, Which Reflects a Lack of Authority to Impose Net Neutrality Protections

When considering conflict preemption through agency action, courts must determine "whether that action is within the scope of the [agency's] delegated authority." *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 154 (1982); *see also La. Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 374 (1986) ("*Louisiana*") ("a federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority"). Courts "simply cannot accept an argument that the FCC may" preempt state law merely because "it thinks [preemption] will best effectuate a federal policy. An agency may not confer power upon itself." *Louisiana*, 476 U.S. at 374.

In the 2018 Order, the FCC reclassified BIAS as a Title I information service. *See* 2018 Order ¶ 2. As a result, the FCC lacks direct authority to regulate BIAS. *Mozilla*, 940 F.3d at 76 (the 2018 Order "placed broadband *outside* of [the FCC's] Title II jurisdiction"). Whereas the FCC has "express and expansive" authority to regulate telecommunications services under Title II, *Comcast*, 600 F.3d at 645, any regulatory action by the FCC with respect to BIAS, as a Title I information service, must now be "reasonably ancillary to the … effective performance of … statutorily mandated responsibilities." *Am. Library*, 406 F.3d at 692.

The 2018 Order also repealed the net neutrality conduct rules in the 2015 Order. 2018 Order ¶ 17. That SB-822 enacts many of these rules for BIAS provided to customers in California does not, in and of itself, result in conflict preemption. It is "quite wrong" to view the absence of federal regulation, on its own, "as the functional equivalent of a regulation prohibiting all States and their political subdivisions from adopting such a regulation." *Sprietsma v. Mercury Marine,* 537 U.S. 51, 65 (2002). Nor does preemption necessarily result when a State imposes a requirement that a federal agency lacks statutory authority to adopt. *See Whiting*, 563 U.S. at 608 (state requirement to use federal employment authorization program did

not conflict with federal law prohibiting federal agency from requiring participation in program).

An agency's decision not to regulate may have preemptive effect only if the agency possesses statutory authority to regulate in the first place. *See Ark. Elec. Co-op. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 384 (1983) (agency must have the power to issue "an authoritative federal determination" regarding the appropriate regulatory approach). When an agency lacks statutory authority to enact a particular kind of regulation, it also lacks authority to make any authoritative federal determination that States should be precluded from enacting such regulations themselves. *See Louisiana*, 476 U.S. at 374-375.[8]

In the 2018 Order, the FCC repeatedly recognized that reclassification left it without statutory authority to promulgate net neutrality conduct rules. *See* 2018 Order ¶ 267 (finding no "source of statutory authority that

[8] This authority to regulate was present in the cases Plaintiffs cite as examples of preemption. Br. 27, 29, 30-31, 34, 38. *See Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 874-77 (2000) (agency authority to establish safety standards); *Cap. Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 700, 704 (1984) (FCC's "regulatory power" over carriage of broadcast signals); *Ray v. Atl. Richfield Co.*, 435 U.S. 151, 174, 178 (1978) ("the Secretary has the authority to establish 'vessel size and speed limitations'"); *California v. F.C.C.*, 39 F.3d 919, 932 ("*California III*") (9th Cir. 1994) (recognizing FCC's ancillary authority, based on previous determination that regulatory authority in question was ancillary to FCC's Title II authority).

individually or in the aggregate" supports net neutrality conduct rules); *id.* ¶¶ 267-283. Plaintiffs attempt to restyle this lack of power as the power to affirmatively deregulate (Br. 28-31), but *Mozilla* rejected this interpretation: "If Congress wanted Title I to vest the Commission with some form of Dormant-Commerce-Clause-like power to negate States' statutory (and sovereign) authority just by washing its hands of its own regulatory authority, Congress could have said so." *Mozilla*, 940 F.3d at 83; *see also ACA Connects - Am.'s Commc'ns Ass'n v. Frey*, 471 F. Supp. 3d 318, 326 (D. Me. 2020) (2018 Order was not "affirmative deregulation," but instead reflected FCC's recognition that "it lacked authority to regulate in the first place").[9]

[9] Plaintiffs invoke *Charter Advanced Services (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018), *cert. denied sub nom. Lipschultz v. Charter Advanced Services (MN), LLC*, 140 St. Ct. 6 (2019), for the proposition that "any state regulation of an information service conflicts with the federal policy of nonregulation." Br. 30. *Charter* involved Voice over Internet Protocol services, *see* 903 F.3d at 717, over which the FCC claims broad ancillary authority due to its interactions with traditional telephony. The language Plaintiffs quote is dicta, and unpersuasive because it fails to examine whether preemption is supported by statutory authority. *Cf. Lipschultz,* 140 S. Ct. at 7 (Thomas, J., joined by Gorsuch, J. concurring in the denial of certiorari) ("It is doubtful whether a federal policy—let alone a policy of nonregulation—is 'Law' for purposes of the Supremacy Clause.").

2. SB-822 Does Not Conflict with the Transparency Rule

The only affirmative regulation of BIAS in the 2018 Order—the Transparency Rule—does not conflict with the disclosure requirement in SB-822, as these rules are phrased nearly identically. *Compare* 47 C.F.R. § 8.1(a) *with* Cal. Civ. Code § 3101(a)(8). Nor does SB-822's disclosure requirement conflict with the congressionally authorized objectives underlying the adoption of the Transparency Rule. Authority for the Transparency Rule stems from the FCC's obligation to report to Congress on "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services." 47 U.S.C. §§ 257(a), (c) (1996 ed.).[10] As the FCC noted in the 2018 Order, its reliance on section 257 "centers on the need for [the Transparency Rule] to identify barriers and report to Congress in that regard." 2018 Order ¶¶ 233 n.853, 232.

SB-822's disclosure requirement does not prevent the FCC from collecting information from BIAS providers nationwide or from reporting to

[10] Section 257(c)'s reporting requirement now appears at 47 U.S.C. § 163. *See Mozilla*, 940 F.3d at 47 ("Section 257(c) was removed from the Communications Act before the 2018 Order became effective," but "was not altered in any material respect for purposes of the Commission's authority.").

Congress. In fact, Congress has actively encouraged state efforts to collect data about BIAS and BIAS providers. *See, e.g.* 47 U.S.C. § 1304 (federal funds for state studies regarding broadband deployment). Under these circumstances, there is no basis for finding a conflict. Moreover, even if the Court were to perceive a conflict, it would implicate only the disclosure provision of SB-822; the rest of the law would be unaffected.

3. The FCC's Policy Preferences Underlying the Reclassification Decision and the Transparency Rule Cannot Preempt SB-822

Despite the FCC's explicit recognition in the 2018 Order that it lacks authority to impose net neutrality conduct rules, Plaintiffs invoke the FCC's policy preferences underlying the reclassification decision and the Transparency Rule as the basis for conflict preemption. Br. 28-31. Under Plaintiffs' theory, because the reclassification decision and the Transparency Rule are permissible agency actions premised on interpretations of the agency's statutory authority that are reasonable under *Chevron*, SB-822 is preempted as conflicting with the purposes and objectives underlying these agency actions.

Plaintiffs' theory is incompatible with the basic nature of *Chevron* deference and implied preemption. *Chevron* is a source of "gap-filling authority," *United States v. Home Concrete & Supply, LLC*, 566 U.S. 478,

488 (2012), that allows agencies to make reasonable interpretations of statutes in resolving what are usually "technical, specialized interstitial matter[s] that Congress … does not decide itself," but instead "delegates" to agencies in light of their unique expertise, *Zuni Pub. School Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 90 (2007). Congress does not implicitly delegate to agencies under *Chevron* "question[s] of deep 'economic and political significance'" that are "central to [the] statutory scheme." *King v. Burwell*, 576 U.S. 473, 486 (2015). If Congress wishes to delegate that kind of question to an agency, it must "[do] so expressly." *Id.*; *see also Mozilla*, 940 F.3d at 84-85 (explaining that this principle forecloses the argument that the FCC's permissible reclassification decision under *Chevron* could support the Preemption Directive).

Under Plaintiffs' view, any agency policy preference that motivates an action premised on a permissible interpretation of the agency's statutory authority under *Chevron* could preempt any state law that reflects a contrary policy preference—even if the agency lacks statutory authority to preempt or impose the type of regulation it seeks to preempt. That novel theory would expand both *Chevron* deference and implied preemption beyond all reasonable bounds and should be rejected.

Plaintiffs mistakenly conflate the *reasons* why an agency may act with the *preemptive effects* of agency action. It is no doubt true that agencies may base their decisions—including the reasonable resolution under *Chevron* of ambiguities in statutes they administer—on their policy preferences. But in assessing the preemptive effects of agency action on state law, courts must consider what *authority* the agency had, not merely what policy preferences motivated the agency's action. *Chevron* does not disturb the basic principle that "the only agency actions that can" preempt state law are the agency's exercises of "congressionally delegated authority," because "[t]he Supremacy Clause grants 'supreme' status only to the 'the *Laws* of the United States,'" not to agency policy preferences that may motivate those exercises of authority. *Merck Sharp & Dohme Corp. v. Albrecht*, 139 S. Ct. 1668, 1679 (2019) (citing U. S. Const., Art. VI, cl. 2., emphasis in opinion).

Here, as the district court explained, the agency "decide[d] whether BIAS is an information service" under Title I or a "telecommunications service … under Title II." ER-72. That classification decision, *Brand X* and *Mozilla* establish, lies within the FCC's authority delegated by Congress. *Mozilla*, 940 F.3d at 17; *Brand X*, 545 U.S. at 980-81. In exercising this authority, the FCC must determine whether a service meets a particular statutory definition. *See Brand X*, 545 U.S. at 986. But "Congress

decided the appropriate level of regulation itself." ER-72. Congress gave the FCC a choice of two regimes: a Title I regime with minimal federal regulatory authority (but also minimal authority to preempt state law), or a Title II regime with more extensive federal regulation and correspondingly more extensive preemption authority.

Mozilla determined that the FCC permissibly classified BIAS as a Title I information service based in part on its deregulatory policy preference. But that policy preference cannot change the nature of the binary choice Congress conferred upon the agency. As the D.C. Circuit observed, Congress "created an interpretive statutory fork in the road and gave the Commission the authority to choose the path," but that "power to choose one regulatory destination or another does not carry with it the option to mix and match its favorite parts of both." *Mozilla*, 940 F.3d at 84. To find otherwise would "take[] the discretion to decide which definition best fits a real-world communications service and … turn that subsidiary judgment into a license to reorder the entire statutory scheme to enforce an overarching 'nationwide regime' that enforces the policy preference underlying the definitional choice." *Id.*; *see also Comcast,* 600 F.3d at 659 (rejecting the FCC's effort "to use its ancillary authority to pursue a stand-alone policy objective, rather than to support its exercise of a specifically delegated power").

Plaintiffs note that *Mozilla* recognized that any "state practice [that] actually undermines the 2018 Order," would be subject to conflict preemption, *see* 940 F.3d at 85, a "statement" they contend "would have no meaning" if a State could reimpose requirements on BIAS that the FCC repealed, Br. 34-35. But the FCC does have some limited authority to regulate Title I services—for instance, it permissibly exercised its ancillary authority to adopt the Transparency Rule. *Mozilla*, 940 F.3d at 47-48. The D.C. Circuit correctly observed that any state law that actually conflicts with these statutorily authorized regulations would indeed be preempted. For example, a state law could conflict with the Transparency Rule's congressionally authorized objectives by prohibiting BIAS providers from disclosing the required information. But SB-822 does not. *See supra* at Section I.A.2. *Mozilla*'s acknowledgement of the possibility of conflict preemption in certain instances cannot be read as an endorsement of Plaintiffs' theory that the policy preferences impliedly preempt state net neutrality protections that the FCC lacks the power to impose.

For similar reasons, the policy preferences underlying the FCC's Transparency Rule cannot preempt SB-822. Plaintiffs contend that SB-822 conflicts with "the FCC's affirmative regulation of broadband" in the form

of a "transparency-based regime."[11] Br. 28-31. But the source of the agency's authority to impose the Transparency Rule is its obligation to gather information for a report to Congress. *See* 47 U.S.C. § 257; *Mozilla*, 940 F.3d at 47 (concluding that this interpretation of the agency's authority is reasonable under *Chevron*); *supra* at Section I.A.2. Plaintiffs do not (and cannot) argue that this provision grants the FCC the authority to impose net neutrality conduct rules on BIAS providers or to set a national deregulatory approach to BIAS; that authority is available only under Title II, not Title I. Thus, just as the policy preferences underlying the permissible reclassification decision cannot impliedly preempt SB-822 in the absence of statutory authority to regulate, neither can the policy preferences underlying the Transparency Rule.

Plaintiffs' theory would transform *Chevron* from a modest gap-filling doctrine into a far-reaching source of agency authority to preempt state law. It would entail a "freewheeling judicial inquiry into whether a state statute is in tension with" the "federal objectives" underlying any agency action. *Whiting*, 563 U.S. at 607 (cleaned up). And it would allow "agency

[11] This term does not appear in the 2018 Order.

officials" to "invest themselves with power" to preempt state law that "Congress has not conferred." *Mozilla*, 940 F.3d at 83.

Here, it would mean that Congress has, *sub silentio*, given the FCC the power to create a regulatory vacuum, under which a Title I service may be subject to neither federal nor state oversight. But as the Supreme Court cautioned in a related context, "[i]t is highly unlikely that Congress would leave the determination of whether an industry will be entirely, or even substantially" free from regulation "to agency discretion"—and it is "even more unlikely" that Congress would do so implicitly through a statutory ambiguity. *MCI Telecom. Corp. v. AT&T Co.*, 512 U.S. 218, 231 (1994). "The Supreme Court has made very clear that *Chevron* does not have that much muscle." *Mozilla*, 940 F.3d at 84. In contrast, determining which of two statutorily prescribed regulatory regimes should apply to a particular type of service is the kind of choice Congress plausibly would have left to agency discretion. *See id.* at 18-21, 32-35.

Plaintiffs' *Chevron*-based implied preemption theory would also lead to anomalous results. The FCC would lack authority to expressly or impliedly preempt state regulation of services that are *unambiguously* classified under Title I, since there is no ambiguity for the agency to resolve under *Chevron*. But if a service's proper classification is ambiguous (like BIAS), the

agency's decision to classify it as a Title I service would result in preemption based on the policy preferences underlying that classification decision. There is no reason to think Congress would have intended such an odd result, and no precedent for applying *Chevron* in a manner that produces one.

Jurists have expressed concern about the potentially broad and uncertain reach both of *Chevron* deference, *see, e.g.*, *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1151-1158 (10th Cir. 2016) (Gorsuch, J., concurring), and of purposes-and-objectives preemption, *see, e.g.*, *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 341 (2011) (Thomas, J., concurring in the judgment). Plaintiffs ask this Court to combine and expand the two doctrines into an unprecedented principle that a state law is preempted if it departs from any policy preference motivating any permissible agency interpretation under *Chevron*. The Court should decline that invitation.

B. Statutory Limitations on the FCC's Power to Impose Common Carrier Rules Do Not Preempt SB-822

Section 153(51) defines "telecommunications carrier" and provides that a "telecommunications carrier shall be treated as a common carrier *under this chapter* only to the extent that it is engaged in providing telecommunications services." 47 U.S.C. § 153(51) (emphasis added).

Section 332(c)(2) similarly specifies that "[a] person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose *under this chapter*." *Id*. § 332(c)(2) (emphasis added). Plaintiffs perceive a conflict between SB-822 and these provisions. Br. 40. But restrictions on federal regulatory authority do not, on their own, limit the States' traditional police power. Nothing in the Act or the case law indicates that the FCC's lack of authority here reflects a congressional determination that the States' authority should also be so limited.[12]

1. Limitations on the FCC's Regulatory Authority Do Not Displace the States' Traditional Police Powers

The provisions in question limit only the FCC's authority to regulate telecommunications carriers and private mobile services as common carriers "under this chapter," that is, *under the Communications Act*. Section

[12] Even if these provisions did bind the States, Plaintiffs have not established that SB-822 "treats" BIAS providers "as common carriers" within the meaning of these provisions. Whether any given provision of SB-822 does so would need to be considered in the first instance by the district court, because existing precedents and FCC orders considering similar—but not identical—regulations are not binding. For example, unlike the "unreasonable discrimination" rule in the 2010 Order at issue in *Verizon*, 740 F.3d 623, SB-822's no-throttling rule prohibits discrimination against specific applications or classes of applications, but does not prohibit application-agnostic discrimination. *See* Cal. Civ. Code §§ 3101(a)(2), 3100(j).

153(51) is "a definitional provision," that "is a *limitation* on the Commission's authority," not a basis for preempting state law. *Mozilla*, 940 F.3d at 79 (citation omitted, emphasis in original). There is no plausible reading of either section that would limit a *State's* power to regulate BIAS *under its police powers*.

Congressional limitations on agency authority do not, by themselves, indicate that Congress also meant to limit the States' authority. *See supra* at Section I.A.1; *see also, e.g.*, *Whiting*, 563 U.S. at 608 (state requirement to use federal employment authorization program did not conflict with federal law prohibiting federal agency from requiring participation in program, because federal law "constrain[ing] federal action" simply "limits what the Secretary of Homeland Security may do—nothing more"); *Ark. Elec.*, 461 U.S. at 383-85 (congressional denial of agency authority over wholesale rates did not impliedly preempt States from regulating wholesale rates); *City of Dallas v. F.C.C.*, 165 F.3d 341, 348 (5th Cir. 1999) (removal of federal franchising requirement from the Communications Act did not impliedly preempt state's franchising requirement under traditional franchising authority). There is no reason to think that Congress, in denying the FCC the authority to treat non-common carriers as common carriers "under this

chapter," meant to do anything other than limit federal regulatory authority in this commonplace manner.

Plaintiffs' contrary theory fails as a matter of basic statutory interpretation. They concede the absence of "explicit statutory language" preempting SB-822 or similar laws. Br. 42 (cleaned up).[13] Nor does any case hold that these provisions render BIAS "immune" from common carrier regulation *by the States*. Br. 3. The cases Plaintiffs cite considered whether the *FCC* violated the restrictions on its regulatory authority. *Id*. at 39 (citing *Verizon*, 740 F.3d at 650; *Cellco P'ship v. F.C.C.*, 700 F.3d 534, 538 (D.C. Cir. 2012). And *Howard v. America Online, Inc.*, 208 F.3d 741 (9th Cir. 2000), does not address limits on even the FCC's, let alone the States', power to adopt common carrier rules. It simply recognizes that the Act's definition of "information services" comes from the FCC's legacy definition of "enhanced services." Br. 48.

Plaintiffs argue that the phrase "under this chapter" should not be read to "*sub silentio* open the door for 50 states" to regulate "interstate

[13] Plaintiffs' cited case interpreting the Federal Trade Commission Act cannot illuminate the meaning of "under this chapter" in the provisions at issue here, as that case never uses this phrase or considers whether the provisions at issue here restrict the States. Br. 39 n.29 (citing *F.T.C. v. AT&T Mobility LLC*, 883 F.3d 848, 861-64 (9th Cir. 2018) (en banc)).

information services." Br. 45. That flips the relevant inquiry on its head. Congress did not need to "open the door" for the States to exercise their traditional police powers. Regulation by "each of the 50 states," *id.* at 4, of businesses that operate nationwide is the norm in our federal system, not the exception. If Congress wanted a different rule to apply with respect to "interstate information services," it would have said so explicitly. *See Wyeth*, 555 U.S. at 565; *California*, 921 F.3d at 887.

2. The History and Structure of the Relevant Statutory Provisions Do Not Support Conflict Preemption

Although the text of the statute is unambiguous, were one to consult the legislative history of the Telecommunications Act of 1996, which amended the Communications Act to add § 153(51), that legislative history confirms that this provision applies only to the FCC, not the States. *See* H.R. Rep. No. 104-458, at 114 (1996) ("Conf. Rep.") ("The definition amends the Communications Act to explicitly provide that a 'telecommunications carrier' shall be treated as a common carrier fo*r purposes of the Communications Act* …." (emphasis added)).

This history, along with the statutory structure, also shows that Congress carefully considered the preemptive effect of various provisions, even as it declined to specify that § 153(51) preempts state law. The

Telecommunications Act includes numerous, carefully calibrated express preemption provisions.[14] In Conference, Congress strengthened some of these preemption provisions and removed others. *See* Conf. Rep. at 191, 197-198, 201, 210. If Congress had meant to limit state authority through § 153(51), it would have said so explicitly, rather than "bur[ying]" the preemption provision in "a definitional section in a non-regulatory part of the statute," *cf. Mozilla*, 940 F.3d at 84.

Plaintiffs attempt to explain these preemption provisions away by suggesting that Congress only felt the need to "expressly preempt states from regulating *intrastate* communications." Br. 43. But this is contradicted, for example, by the express preemption provision in 47 U.S.C. § 253(a) that applies to both interstate and intrastate telecommunications services.

Likewise, a provision immediately adjacent to § 332(c)(2) shows that it was not intended to limit the States' ability to act. Section 332(c)(3) expressly preempts the States from regulating "the entry of or the rates charged by any … private mobile service." 47 U.S.C. § 332(c)(3). Congress's decision to codify a limit on common carrier regulation *under*

[14] *See*, *e.g.*, 47 U.S.C. §§ 223(f)(2), 230(e)(3), 253(a), 253(d), 276(c), 332(c)(3), 332(c)(7), 543(a)(1), 544(e), 556(c).

this chapter without mentioning any restriction on the States, next to a section that actually contains an express preemption provision, strongly implies a lack of congressional intent to preempt state common carrier regulation.

3. Section 601(c)(1) Prohibits Implied Preemption by Section 153(51)

The Act's prohibition on implied preemption also forecloses an interpretation that § 153(51) impliedly preempts SB-822. The Telecommunications Act specifies that *none* of its provisions should be interpreted to authorize preemption unless an *express* provision so provides. Section 601(c)(1), codified in 47 U.S.C. § 152 note, states: "(1) NO IMPLIED EFFECT.—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless *expressly* so provided in such Act or amendments" (emphasis added). The Telecommunications Act amended the Communications Act to add § 153(51), as well as the definition of "information services," 47 U.S.C. § 153(24). Section 601(c)(1) therefore precludes an inference that state regulation of "information services" is impliedly preempted, or that § 153(51) impliedly preempts.

Courts have agreed that, by its plain terms, "§ 601(c)(1) … prohibit[s] implied preemption." *City of Dallas*, 165 F.3d at 348. Courts have similarly recognized that the provision "counsel[s] against any broad construction" of other provisions in the Act "that would create an implicit conflict with" state law. *Pinney v. Nokia,* 402 F.3d 430, 458 (4th Cir. 2005); *see also, e.g.*, *AT&T Comm'cns of Ill. v. Ill. Bell Tel. Co.*, 349 F.3d 402, 410 (7th Cir. 2003) (§ 601(c)(1) [erroneously cited as "47 U.S.C. § 609 note"] "precludes a reading that ousts the state legislature by implication"); *cf Abrams v. City of Rancho Palos Verdes*, 354 F.3d 1094, 1099-1100 (9th Cir. 2004) (§ 601(c)(1) precludes finding that Telecommunications Act forecloses remedies under 42 U.S.C. § 1983 by implication), *rev'd on other grounds*, 544 U.S. 113 (2005). The legislative history of § 601(c)(1) confirms that there can be no implied preemption from the Telecommunications Act. *See* Conf. Rep., 201 (§ 601(c)(1) "prevents affected parties from asserting that the bill impliedly preempts other laws"). And "conflict preemption"—especially the purposes-and-objectives variety of it that Plaintiffs invoke—is undoubtedly a form of "implied preemption." *Ventress v. Japan Airlines*, 747 F.3d 716, 720 (9th Cir. 2014).

Interpreting § 153(51) to limit only the FCC's authority results in an avoidance of conflict, consistent with § 601(c)(1). State common carriage

regulation of information services does not interfere with the limit on FCC authority; it does not force the Court to "read § 601(c)(1) to mandate acceptance of a state law that actually conflicts with federal law." Br. 48.

Because there is no conflict here, cases in which courts held that § 601(c)(1) does not overcome a conflict are distinguishable. *See Farina v. Nokia Inc.*, 625 F.3d 97, 131 (3d Cir. 2010); *Qwest Corp. v. Minn. Pub. Util. Comm'n*, 684 F.3d 721, 731 (8th Cir. 2012). In addition, these courts relied upon *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), but overlooked critical differences between the text of § 601(c)(1) and the savings clause at issue in *Geier*. That clause provided that "'compliance with' a federal safety standard 'does not exempt any person from liability under common law.'" 529 U.S. at 868 (alteration omitted) (quoting 15 U.S.C. § 1397(k) (1988 ed.)). That language, the Supreme Court reasoned, did not "foreclose or limit the operation of ordinary [conflict] pre-emption principles" because it did not reflect "an intent to save state-law tort actions that conflict with federal regulations." *Id.* at 869.

Section 601(c)(1), in contrast, includes the precise type of language one would expect Congress to use if it desired to prevent interpretations of the law that would result in implied preemption—or, at the very least, purposes-and-objectives preemption. It specifies that, as far as preemption of state

law is concerned, the federal statute shall have "NO IMPLIED EFFECT" and "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided." 47 U.S.C. § 152 note. That language is not remotely analogous to the text of the savings clause at issue in *Geier*, and the Third and Eighth Circuits were wrong to view it as such.

4. Plaintiffs' Interpretation of These Provisions Has No Support in the Case Law

The Act's express limits on FCC authority to impose common carrier regulations cannot be bootstrapped into a congressional determination that the States should also be so limited. The case law Plaintiffs cite (Br. 40-41) does not support Plaintiffs' implausible reading of the statute.

Plaintiffs rely on *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board of Mississippi*, 474 U.S. 409, 422-23 (1986). But that case involved the congressional removal of a specific regulatory tool in a preempted field, and the Supreme Court concluded that this removal did not leave room for state regulation. 474 U.S. at 418, 423.[15] Similarly, in *Public Utility District No. 1 of Grays Harbor County Washington v. IDACORP Inc.*, 379 F.3d 641 (9th Cir. 2004), a claim under state law requiring the

[15] Plaintiffs' reliance (Br. 41) on *Northwest Cent. Pipeline Corp v. State Corp. Comm'n*, 489 U.S. 493, 507 n.8 (1989), is also unavailing. The quoted language simply describes *Transcontinental*.

court to determine a fair price for energy was field preempted by the Federal Power Act, which gave the federal agency exclusive authority over wholesale rates. *Id*. at 650. And unlike here, the preempted state law in *Capital Cities Cable*, 467 U.S. at 700, 704 (1984), regulated an area that the FCC had expressly preempted, and also forced cable operators to violate FCC regulations. Here, there is no field preemption (*see infra* at Section III), nor is there any other indication that Congress intended the limitation on FCC authority to also apply to the States.

Attempting to overcome the plain meaning of the provisions at issue, Plaintiffs also contend that when § 153(51) was added, "decades" of precedent established that enhanced services—the predecessor to information services—are exempt from common carrier regulation by the States, thus eliminating any need to make this clear in the statute. Br. 8-11, 40, 44-45. This claim is directly contradicted by pre-1996 cases requiring FCC preemption to be supported by ancillary authority, *see California v. F.C.C.*, 905 F.2d 1217, 1240-41 n.35 (9th Cir. 1990); *California III*, 39 F.3d at 931; *Comp. & Commc'ns Indus. Ass'n v. F.C.C.*, 693 F.2d 198, 214 (D.C. Cir. 1982) ("*CCIA*"); as well as by a case vacating preemption of state common carrier regulation for lack of ancillary authority, *see Nat'l Ass'n of Regul. Util. Comm'rs v. F.C.C.*, 533 F.2d 601, 612, 615-617 (D.C. Cir.

1976) ("*NARUC II*")). Contrary to Plaintiffs' suggestion (Br. 8-11), these cases do not articulate a general rule prohibiting States from treating enhanced services as common carriers.[16]

Plaintiffs similarly argue that because "the federal government has exclusive jurisdiction over interstate communications" (Br. 45), § 153(51) did not need to address preemption of state law. That is a field preemption argument, not a conflict preemption argument, and it fails for the reasons discussed below. *See infra* at Section III.C.1.

Finally, Plaintiffs characterize § 332(c)(2) as part of an effort to set a "comprehensive, consistent regulatory framework" for "all mobile services," suggesting that this provision must be read to prevent the States from taking their own approach to regulating mobile services. Br. 46-47 (quoting *Conn. Dep't of Pub. Util. Control v. F.C.C.*, 78 F.3d 842, 845 (2d Cir. 1996); *Am. Ass'n of Paging Carriers v FCC*, 442 F.3d 751, 753 (D.C. Cir. 2006)). But these cases merely note that the 1993 amendments to the Act revised the definitions of private and commercial mobile services to clarify that, for

[16] In *CCIA*, the D.C. Circuit did not address preemption of "enhanced services," holding only that the FCC validly preempted state tariffing of consumer premises equipment. *See* 693 F.2d at 214. Similarly, in *California III*, the court considered only certain state structural separation requirements and nonstructural safeguards, not state common carrier regulations. *See* 39 F.3d at 922.

purposes of federal regulation, they collectively encompass all mobile services; the cases did not consider whether § 332(c)(2) preempts the States. Thus, for both provisions at issue here, Plaintiffs have failed to identify any statutory text or case law that would justify discarding the plain language limiting these provisions to the FCC.

C. The Communications Act Does Not Preempt the Field of "Interstate Communications Services"

Under the doctrine of field preemption, "States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citation omitted). "The intent to displace state law altogether can only be inferred from a framework of regulation 'so pervasive … that Congress left no room for the States to supplement it' or where there is a 'federal interest … so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" *Id*. (citations omitted); *see also Nat'l Fed'n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 734 (9th Cir. 2016) ("The essential field preemption inquiry is whether the density and detail of federal regulation merits the inference that any state regulation within the same field will necessarily interfere with the federal regulatory scheme.").

Here, despite the Act's clear limitations on FCC authority over information services, Plaintiffs argue that the Act preempts the entire field of "interstate communications," including any state regulation of BIAS. But no court has ever found such preemption, and this theory is especially untenable with respect to information services, over which the FCC's authority is sharply limited. Plaintiffs' theory is contrary to the text and structure of the Act, the case law, and the history of robust state regulation in this area. Nor has any court suggested that other "1930s regulatory statutes" provide a basis for field preemption under the Act, as Plaintiffs suggest. Br. 51, 53.

1. The Text of the Act and Its Limitations on FCC Authority Are Inconsistent with Field Preemption

Plaintiffs cite § 152 of the Act as the source of field preemption for "interstate communications services." Br. 57, 51. Section 152(a) states, "the provisions of this chapter shall apply to all interstate and foreign communication by wire or radio," and § 152(b) deprives the FCC of "jurisdiction with respect to … charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio." 47 U.S.C. § 152. Nothing in the text of those

provisions evinces any congressional desire to create a field of exclusive federal regulation of all interstate communications.[17]

Courts have long rejected the view that § 152 gives the FCC blanket authority to regulate any and all services providing "interstate communications by wire or radio." *See NARUC II*, 533 F.2d at 612 ("The language of § 152(a) is quite general and is not unambiguously jurisdictional in character."); *id*. at 612 n.68; *United States v. Midwest Video Corp.*, 406 U.S. 649, 661 (1972) (§ 152(a) "does not in and of itself prescribe any objectives for which the Commission's regulatory power … might properly be exercised").

Indeed, the very structure of the Act is fundamentally inconsistent with the idea that it preempts the field of *all* "interstate communications

[17] Notably, in defending the 2018 Order's Preemption Directive, the FCC did not argue that federal law somehow occupies the field of "interstate communications." And contrary to Plaintiffs' description (Br. 18), *Mozilla* did not limit its rejection of the Preemption Directive to "intrastate broadband" or in any way suggest that States cannot regulate "interstate broadband." *Mozilla* did not consider the limits of state authority. Rather, it vacated the Preemption Directive *in its entirety*, because the FCC lacked direct authority over BIAS altogether, including its interstate aspects; lacked ancillary authority to promulgate net neutrality conduct rules; and could not point to any other source of preemption authority. *See* 940 F.3d at 18, 74-80. The court simply noted that the effect of the purported preemption on intrastate broadband was especially egregious given § 152(b)'s jurisdictional bar.

services." For any services outside of Titles II, III, and VI, the FCC only has ancillary authority. *See supra* at Section I.A.1. The lack of agency power over vast swaths of the purported field cannot be squared with a regulatory system "so pervasive" that there is "no room for the States to supplement it." *Arizona*, 567 U.S. at 399 (cleaned up). Plaintiffs' field preemption theory also contradicts cases holding that the FCC must identify either "express or ancillary authority" when seeking to preempt state law, as made clear most recently in *Mozilla*, 940 F.3d at 75-76; *see also Comcast*, 600 F.3d at 650-51, 653, 656-67 (citing and discussing other cases on this point).

It is therefore unsurprising that courts have rejected field preemption arguments with respect to much narrower fields that would presumably fall within the category of "interstate communications services." *See*, *e.g.*, *Head v. N. M. Bd. of Exam'rs in Optometry*, 374 U.S. 424, 432 (1963) (Act does not occupy the field of broadcast television).[18] These cases are consistent with the authorities acknowledging field preemption in much smaller fields

[18] *See also Greater L.A. Agency on Deafness, Inc. v. Cable News Network, Inc.*, 742 F.3d 414, 428 (9th Cir. 2014) ("*GLAAD*") (state regulation of online video captioning not field preempted); *Metrophones Telecomms., Inc. v. Global Crossing Telecomms., Inc.*, 423 F.3d 1056, 1072 (9th Cir. 2005) (no field preemption precluding state regulation of payphones); *Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003) ("[F]ield preemption is not an issue because state law unquestionably plays a role in the regulation of long-distance contracts.") (collecting cases).

that are pervasively regulated. And the cases Plaintiffs cite to show that "the federal government has exclusive jurisdiction over interstate communications," (Br. 45) either involve express or conflict preemption (not field preemption) with respect to more pervasively regulated services, or they discuss field preemption of a much narrower, pervasively regulated field, not the entire field of "interstate communications."[19]

2. The Act Recognizes State Regulation of Services Within the Purported Field

Plaintiffs' field preemption theory cannot be reconciled with numerous provisions of the Act authorizing express preemption and creating savings clauses to preserve other types of state regulation within the supposedly preempted field of "interstate communications." *See*, *e.g.*, 47 U.S.C. § 253(a) (preemption of regulations affecting both interstate and intrastate telecommunications services). There would be no need to expressly preempt the States from regulating aspects of interstate services, in this provision or

[19] *Nat'l Ass'n of Regul. Util. Comm'rs v. F.C.C.*, 746 F.2d 1492 (D.C. Cir. 1984) (express preemption of common carrier long-distance telephone service); *Cap. Cities Cable Inc.*, 467 U.S. 691 (express and conflict preemption of cable television service); *Worldcom, Inc. v. Graphnet, Inc.*, 343 F.3d 651 (3d Cir. 2003) (in considering federal question jurisdiction, describing field of "duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications service" in context of common carrier two-way telex transmissions service).

others,[20] if Congress had intended to occupy the field of "interstate communications services." *See Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 613 (1991) (express preemption provision "would be pure surplusage if Congress had intended to occupy the entire field"); *Metrophones Telecomms., Inc.*, 423 F.3d 1056 at 1072 ("[B]y expressly limiting federal preemption to state requirements that are *inconsistent* with the federal regulations, Congress signaled its intent not to occupy the entire field of payphone regulation.") (emphasis in original) (citing 47 U.S.C. § 276), *aff'd*, 550 U.S. 45 (2007).

In addition to various savings clauses, the Act contemplates the affirmative exercise of state regulatory power, including with respect to interstate communications. *See, e.g.*, *Mozilla*, 940 F.3d at 81 (describing "the Communication Act's vision of dual federal-state authority and cooperation"); *In re Verizon New England, Inc.*, 173 Vt. 327, 342 (2002) ("state regulation that reaches beyond federal law was explicitly contemplated by the [Telecommunications] Act and its predecessor, the 1934 Communications Act"); 47 U.S.C. § 254(i) ("The Commission and the States should ensure that universal service is available at rates that are just,

[20] *See* 47 U.S.C. §§ 223(f)(2), 230(e)(3), 253(d), 276(c), 332(c)(3), 332(c)(7), 543(a)(1), 544(e), 556(c).

reasonable, and affordable."); *id*. § 1302(a) (referring to "[t]he Commission and each State Commission with regulatory jurisdiction" in a chapter titled "Broadband"); *id*. § 1304 ("[e]ncouraging State initiatives to improve broadband").

Finally, as explained above (*supra* at Section I.B.3), the Act prohibits implied preemption—which includes field preemption, *see Ventress*, 747 F.3d at 720—with respect to information services. Section 601(c)(1) prohibits implied preemption from provisions of the Act added or amended by the Telecommunications Act, including the definition of information services in 47 U.S.C. § 153(24). *See GLAAD*, 742 F.3d at 428 (§ 601(c)(1) "signifies that Congress did not intend to occupy the entire legislative field of closed captioning"). This provision therefore forecloses Plaintiffs' field preemption claim with respect to information services, like BIAS.

3. Field Preemption Would Result in a Regulatory Vacuum, Which Is Inconsistent with the History of State Regulation of Interstate Communications

As explained, the FCC has only ancillary authority over information services, which can include almost anything offered over the Internet, such as websites and email services. *See Brand X*, 545 U.S. at 999. But the regulation of information services is often not reasonably ancillary to the statutorily mandated responsibilities the FCC does have. Field preemption

would thus create a regulatory vacuum where neither the FCC nor the States could regulate many information services. As numerous cases hold, however, congressional intent to create such a regulatory vacuum cannot be lightly assumed. *See Va. Uranium, Inc.*, 139 S. Ct. at 1903 (lead opinion of Gorsuch, J.) (rejecting field preemption of "private uranium mining" where agency had expressly disavowed authority over private uranium mining, finding it "more than a little unlikely" that "both state and federal authorities would be left unable to regulate"); *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 207-08 (1983) (rejecting field preemption claim, explaining that it "is almost inconceivable that Congress would have left a regulatory vacuum; the only reasonable inference is that Congress intended the States to continue to make these judgments"); *Knox v. Brnovich*, 907 F.3d 1167, 1178 (9th Cir. 2018) (finding no field preemption where "Congress has not made a clear and manifest determination that uncompensated carriage of mail should be left unregulated by states as well as federal authorities").

Here, Plaintiffs point to nothing "clear and manifest" in the Act seeking to exclude all state regulation of interstate information services, and their theory also runs counter to a long history of robust state regulation of numerous services that fall within the purported field. States can exercise

their historic police powers without prior authorization from the federal government, and they have done so repeatedly when protecting their residents from unfair and harmful practices on the Internet.[21] And courts have expressly upheld state regulation of interstate information services. *See, e.g.*, *GLAAD*, 742 F.3d at 428 (state regulation of captioning of video posted on website not field preempted); *Nat'l Fed'n of the Blind v. Target*, 452 F. Supp. 2d 946, 959 (N.D. Cal. 2006) (collecting cases upholding state regulation of online services).[22]

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[21] In California, such laws include those regulating the privacy and security of information sent over the Internet (e.g., Cal. Civ. Code §§ 1798.100 *et seq*.; Cal. Bus. & Prof. Code §§ 22575-22582); civil rights laws establishing accessibility and non-discrimination requirements with respect to Internet activity (e.g., Cal. Civ. Code §§ 51 *et seq*.); laws prohibiting fraudulent or deceptive advertisements or marketing practices over Internet websites or through email (e.g., Cal. Bus. & Prof. Code §§ 17200 *et seq*.; *id*. § 17529.5); and laws prohibiting criminal activity over the Internet (e.g., Cal. Pen. Code § 288.2(a)(1)).

There are numerous laws in other States regulating online services, such as laws regulating virtual schools (e.g., Mass. Gen. L., ch. 71, § 94), internet pharmacies (e.g., Del. Code tit. 16, § 4741 *et seq*.), online fantasy sports (e.g., Me. Rev. Stat. tit. 8, § 1101 *et seq*.), and privacy policies for internet websites or online services (e.g., Nev. Rev. Stat. § 603A.340; Or. Rev. Stat. § 646.607).

[22] One court has upheld state public utility regulation of rates, services, and facilities for community antenna television companies—which is an interstate communications service—directly contradicting Plaintiffs' claim that "there is no history of direct state regulation of any interstate communications service." Br. 45, 55. *See TV Pix, Inc v. Taylor*, 304 F. Supp. 459, 464 (D. Nev. 1968), *aff'd* 396 U.S. 556 (1970).

Against this backdrop of state regulation, the 2018 Order explicitly recognized that States can exercise regulatory power over voluntary commitments by "[m]any of the largest ISPs … not to block or throttle legal content," because "all states have laws proscribing deceptive trade practices." 2018 Order ¶ 142. Plaintiffs themselves acknowledge that these voluntary commitments can be enforced under state law. *See* ER-13, Tr. 7:13-7:17 ("state attorneys general can enforce those promises because under mini-FTC [Federal Trade Commission] acts under state law, including California's, providers cannot misrepresent how they're going to behave to their customers"); 8:12-8:13 ("these commitments which the FTC and the State AGs [attorneys general] can enforce"). But if the entire field of "interstate communications" were preempted, as Plaintiffs claim, it is not clear that such enforcement actions would be viable. *See California ex rel. Lockyer v. Dynegy*, 375 F.3d 831, 850-851 (9th Cir. 2004) (holding that the California Attorney General could not maintain an action for fraudulent and unfair practices in the preempted field of "wholesale power sales").

4. Cases Interpreting Other Statutes Do Not Establish Field Preemption Under the Act

Given the lack of cases establishing field preemption under the Act, Plaintiffs instead rely on strained analogies to "other 1930s regulatory

statutes" that purportedly "occupy their respective interstate fields." Br. 50, 51. Citing cases interpreting the Natural Gas Act and the Federal Power Act, Plaintiffs argue that statutory references to "interstate" and "intrastate" give federal agencies "exclusive jurisdiction" over all "interstate" matters. Br. 51-53, 57.

Plaintiffs' fundamental premise of a uniform field preemption analysis for all "1930s regulatory statute[s]" lacks any support in the case law. Br. 53-54.[23] Unlike the Federal Power Act and the Natural Gas Act, which are "substantially identical" to each other such that there is an "established practice of citing interchangeably decisions interpreting the pertinent sections of the two statutes," *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 578 n.7 (1981), no such "established practice" exists as between those statutes and the Communications Act, particularly in the preemption context.

Nor do cases interpreting the Communications Act's predecessor, the Interstate Commerce Act ("ICA"), establish preemption of the field of "interstate communications services" by the Communications Act. Br. 50 (citing *Postal-Tel. Cable Co. v. Warren-Godwin Lumber Co*., 251 U.S. 27

[23] The language quoted (Br. 51) from *Hughes v. Talen Energy Mktg., LLC*, is the Supreme Court's description of the legal standard for field preemption—not an interpretation of any statutory provision. 136 S. Ct. 1288, 1292, 1297 (2016).

(1919); *W. Union Tel. Co. v Boegli*, 251 U.S. 315 (1920)). These cases found preemption of much more limited fields, not the entire field of "interstate communications services." Although Plaintiffs identify one case finding these precedents relevant to interpretation of the Communications Act (Br. 6, 50, citing *Ivy Broad. Co. v. AT&T Co*., 391 F.2d 486, 490-91 (2d Cir. 1968)), that case considered federal question jurisdiction, not preemption, and concerned a narrow subset of the purported field: "the duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications." 391 F.2d at 491. Moreover, the D.C. Circuit has rejected a similar attempt to use the ICA as a stand-in for another statute, the Federal Power Act ("FPA"): "we agree that the FPA was modeled on the ICA [but] we cannot discharge our duty to construe the FPA in accordance with Congressional intent by presupposing that the FPA is identical with the ICA. Modeling is not cloning." *Middle S. Energy, Inc. v. F.E.R.C.*, 747 F.2d 763, 769 n.2. (D.C. Cir. 1984).[24]

[24] Because States are not categorically excluded from regulating "interstate communications services," it is irrelevant whether BIAS provided to California consumers, within the meaning of SB-822, is jurisdictionally interstate, intrastate, or mixed, for purposes of the Act. *See* Br. 49-50. Whether BIAS providers can treat "interstate" data packets (i.e., packets traveling between BIAS customers in California and locations in other States) differently from "intrastate" packets (i.e. packets traveling between

II. PLAINTIFFS FAILED TO DEMONSTRATE IRREPARABLE HARM

The district court correctly determined that Plaintiffs failed to establish irreparable harm, and that it "need not make a detailed finding" in this regard, "given that in this case there is no constitutional violation." ER-74. *See Edge v. City of Everett*, 929 F.3d 657, 663 (9th Cir. 2019) ("Likelihood of success on the merits is the most important factor; if a movant fails to meet this threshold inquiry, we need not consider the other factors."). Even if Plaintiffs had demonstrated a likelihood of success on the merits, however, they would still have to demonstrate irreparable harm in order to obtain an injunction, and they failed to do so. *See California*, 921 F.3d at 894 (finding lack of "compelling evidence" of harm, aside from "general pronouncements that a Supremacy Clause violation alone constitutes sufficient harm to warrant an injunction," and directing the district court to "reexamine the equitable *Winter* factors in light of the evidence in the record").

BIAS customers in CA and other locations in California) (Br. 50 n.29) is therefore irrelevant as well. Plaintiffs' claim that they *cannot* do so is also incorrect and not sufficiently supported, since the findings they rely upon were vacated by *Mozilla*, 940 F.3d at 74, 86. *See* SER-80-95, Jordan Decl. ¶¶ 11-60; SER-37-40, Schaeffer Decl. ¶¶ 66-74.

Plaintiffs describe their members as facing a "Hobson's choice" between incurring liability for violating SB-822, or suffering injuries from obeying SB-822. Br. 61 (citing *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1057-58 (9th Cir. 2009)). These injuries purportedly consist of being required to change their network management, interconnection, and zero-rating practices. Br. 61 & n.31. But even crediting Plaintiffs' declarations about SB-822's potential impacts to these discrete practices, which Defendant rebutted below,[25] such changes would not jeopardize the very existence of any company's business, as in *American Trucking*. 559 F.3d at 1058; *see also hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 993 (9th Cir. 2019) (finding irreparable harm when "survival of [plaintiff's] business is threatened absent a preliminary injunction"). Plaintiffs' members certainly did not face that level of threat when federal net neutrality protections were in effect from 2015 to 2018; indeed, Plaintiffs

[25] SER-85-86, Jordan Decl. ¶¶ 25-27 (discussing reasonable network management); SER-113-114, Kronenberg Decl. ¶ 32 (explaining how BIAS providers only bear the cost of transporting data within their networks that their subscribers pay for, and that is "not a large burden"); SER-114-115, Kronenberg Decl. ¶ 34 (describing how the costs of upgrading networks have fallen considerably); SER-32-37, Schaeffer Decl. ¶¶ 46-65 (rebutting claims of financial and nonfinancial harms that allegedly result if SB-822 is interpreted to prohibit BIAS providers from charging for interconnection).

do not identify any harm that occurred during that period.[26] And even if Plaintiffs do have to change some of their business practices to comply with SB-822, that would only be true with respect to BIAS provided to customers in California, not in other States. The evidence in the record establishes that ISPs can treat customers differently depending on their location,[27] and Plaintiffs point to no evidence to the contrary. So there is no reason to believe that SB-822 would force ISPs to change their business practices with

[26] As Defendant noted in opposition to the preliminary injunction motion, some large ISPs stated publicly that the 2015 Order's restrictions would not disrupt their operations. *See* Thomson Reuters Streetevents, *Edited Transcript CMCSA – Q1 2015 Comcast Corp. Earnings Call* (May 4, 2015) (2015 Order "really hasn't affected the way we have been doing our business or will do our business"; "we conduct our business the same we always have"), *available at* https://www.cmcsa.com/static-files/785af0f7-9fa7-4141-983a-556de09b8a71 (last visited May 4, 2021); Shalini Ramachandran & Michael Calia, *Cablevision CEO Plays Down Business Effect of FCC Proposal*, Wall St. J., Feb. 25, 2015 ("we don't see [the 2015 Order] as having any real effect on our business"), *available at* https://www.wsj.com/articles/cablevision-net-neutrality-fcc-proposal-earnings-subscribers-1424872198 (last visited May 4, 2021).

[27] SER-80-88, 93, Jordan Decl. ¶¶ 11-38, 52-55 (discussing how ISPs can comply with SB-822 solely with respect to customers in California); SER-37-40, Schaeffer Decl. ¶¶ 66-74 (explaining that BIAS providers can comply with laws in different jurisdictions); SER-75, Dolgenos Decl. ¶ 10 (noting that ISPs comply with different jurisdictional requirements "all the time by offering different services or plans to different subscribers").

respect to BIAS provided to customers in States other than California. *Cf.* *Mozilla*, 940 F.3d at 97 (Williams, J., dissenting) (expressing this concern).[28]

III. THE BALANCE OF EQUITIES WEIGHS STRONGLY AGAINST AN INJUNCTION

The balance of the hardships and the public interest factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors overwhelmingly favor Defendant, particularly given the enormous importance of fair and open access to the Internet. Plaintiffs offer only speculation about possibly needing to alter some of their existing business practices, while the harm to California from an injunction would be enormous. "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012). This is especially true of SB-822, which provides crucial protections for

[28] This Court should disregard Plaintiffs' extra-record recounting of their public relations efforts concerning "beneficial service offerings" they purportedly have been or might be forced to withdraw. Br. 61 & nn.32 & 33. "Save in unusual circumstances, [this Court] consider[s] only the district court record on appeal." *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003). And as explained in the proceedings below, large ISPs have the capability to tailor services to different types of end users and maintain different policies for different parts of a network—including the ability to discontinue zero-rating solely for California users. SER-75, Dolgenos Decl. ¶ 10; SER-80-88, 93, Jordan Decl. ¶ ¶ 11-38; 52-55.

California's economy, democracy, and society as a whole. *See* SB-822, Sec. 1(a)(2).

Defendant submitted a strong evidentiary record showing that net neutrality addresses the following public harms:

- Blocking and throttling of BIAS, particularly during emergencies, can undermine public safety.[29]
- Throttling, paid prioritization, and zero-rating harm competition among streaming and other service providers.[30]
- Absent net neutrality requirements, independent and local ISPs cannot compete with larger providers and serve low-income consumers.[31]

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[29] SER-50-54, Marquez Decl. ¶ 15-26 (discussing importance of open Internet to communicate with the public during emergencies); SER-148, Nakatani Decl. ¶ 11 (explaining the need for non-discriminatory treatment for broadband alarm and security services); SER-6-7, Bowden Decl. ¶ 6-11 (discussing ISP throttling during Mendocino Complex Fire in August 2018).

Despite Plaintiffs' attempt to minimize the extremely serious threat to public safety described in Fire Chief Bowden's declaration, Defendant has always maintained that the events described therein are directly relevant to understanding the dangers raised by blocking or throttling during an emergency. "[W]henever public safety is involved, lives are at stake …. [T]he harms from blocking and throttling during a public safety emergency are irreparable. People could be injured or die." *Mozilla*, 940 F.3d at 62.

[30] SER-138-139, McCollum Decl. ¶¶ 6-7 (discussing anti-competitive effects of zero-rating and throttling); SER-155-156, Ohanian Decl. ¶¶ 14-15 (discussing how net neutrality allows smaller online businesses to compete).

[31] SER-73-74, Dolgenos Decl. ¶¶ 5-7 (discussing how smaller ISPs would not be able to compete with larger providers absent net neutrality protections).

- Large ISPs allow congestion at interconnection points (where ISPs exchange Internet traffic with other entities) in order to extract payments.[32]

- ISPs can use their positions as terminating access monopolists to promote their own corporate affiliates' services and extract additional fees.[33]

- Communities of color and low-income communities need fair access to the open Internet. The zero-rated plans to which these communities disproportionately subscribe cannot supply this. Zero-rating allows ISPs to set artificially low data caps, and leaves these customers with insufficient access for everyday needs.[34]

- Zero-rating and the artificially low data caps resulting from it are also detrimental to activities that, even before the COVID-19 crisis, were already increasingly taking place online, including distance learning, working from home, political participation and organizing, healthcare, and public health outreach.[35]

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[32] SER-102-107, Kronenberg Decl. ¶¶ 12-21 (discussing interconnection congestion before 2015 Order); SER-40-44, Shaeffer Decl. ¶¶ 75-85 (same); SER-120-135, Li Decl. Ex. A (discussing New York Attorney General's Office investigations regarding deliberate interconnection congestion and extraction of payments). In settling these claims, the New York Attorney General did not clear Charter of wrongdoing. *See* Br. 62 n.34.

[33] SER-100-101, 103-104, 109-110, Kronenberg Decl. ¶¶ 8-10, 13-15, 25, 28; SER-140-141, McCollum Decl. ¶ 15; SER-40-44, Schaeffer Decl. ¶¶ 75-86.

[34] SER-63, 65, Breed Decl. ¶¶ 2, 11-12; SER-51-55, Dolgenos Decl. ¶¶ 3, 8; SER-158-160, 162-165, Renderos Decl. ¶¶ 5-10, 27-31, 35-39, 41.

[35] SER-63-65, Breed Decl. ¶¶ 2-9, 11-12; SER-51-55, Márquez Decl. ¶¶ 18, 20-25, 30-31, 33, 43; SER-159-161, 163, 165, Renderos Decl. ¶¶ 7-10, 14, 19-20, 30, 42.

As the district court noted, this evidence shows that SB-822 is "essential for fair access to the Internet, which … in the midst of the pandemic is essential to everyday functions, such as education, employment and even emergency response." ER-74, Tr 68:19-22. "[C]ourts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction," and the district court's analysis properly took into account the impact of net neutrality on the public good. *CTIA - The Wireless Ass'n v. City of Berkeley, Cal.*, 928 F.3d 832, 852 (9th Cir. 2019) (citations omitted).

Against all of this, Plaintiffs offer no evidence of harm to the public if SB-822 were enforced. Instead, they imply that SB-822 is simply unnecessary because their members have made "public, enforceable commitments to preserve core principles of Internet openness." Br. 62. But voluntary promises to refrain from a mere subset of the harmful conduct targeted by SB-822—promises that can be modified or taken back entirely at any time—are simply not enough to protect something as crucial as access to the Internet.[36]

[36] As the district court recognized, in the context of the historic Texas power outages in February 2021, "where the government decided to back off, to allow the energy companies to proceed in an arena of almost

Given the vital importance of open and fair Internet access to every part of modern life, an injunction would pose concrete, serious harms to the tens of millions of people in California. The balance of equities therefore weighs decisively in Defendant's favor.

CONCLUSION

The Court should affirm the district court's order denying the preliminary injunction motion.

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complete deregulation … they didn't serve the public well." ER-33, Tr. 27:4-8. The district court therefore asked, "why shouldn't a court be concerned about the possibility of that happening if, in effect, there is … no regulation over ISPs right now?" ER-33, Tr. 27:9-12.

Dated: May 4, 2021

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21-15430

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ACA CONNECTS - AMERICA'S COMMUNICATIONS ASSOCIATION, FKA American Cable Association; CTIA - THE WIRELESS ASSOCIATION; NCTA - THE INTERNET & TELEVISION ASSOCIATION; and USTELECOM - THE BROADBAND ASSOCIATION, on behalf of their members,

Plaintiffs-Appellants,

v.

ROB BONTA, in his official capacity as Attorney General of California,

Defendant-Appellee.

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

Dated: May 4, 2021

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) **21-15430**

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21-15430

IN THE UNITED STATES COURT OF APPEALS

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Plaintiffs-Appellants,

v.

ROB BONTA, in his official capacity as Attorney General of California,

Defendant-Appellee.

ADDENDUM TO ANSWERING BRIEF

United States Code, Title 47

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

47 U.S.C.A. § 151

§ 151. Purposes of chapter; Federal Communications Commission created

Effective: February 8, 1996
Currentness

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

CREDIT(S)

(June 19, 1934, c. 652, Title I, § 1, 48 Stat. 1064; May 20, 1937, c. 229, § 1, 50 Stat. 189; Pub.L. 104-104, Title I, § 104, Feb. 8, 1996, 110 Stat. 86.)

47 U.S.C.A. § 151, 47 USCA § 151
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

47 U.S.C.A. § 152

§ 152. Application of chapter

Currentness

(a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone. The provisions of this chapter shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in subchapter V-A.

(b) Except as provided in sections 223 through 227 of this title, inclusive, and section 332 of this title, and subject to the provisions of section 301 of this title and subchapter V-A, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 to 205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4) of this subsection.

CREDIT(S)

(June 19, 1934, c. 652, Title I, § 2, 48 Stat. 1064; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Apr. 27, 1954, c. 175, § 1, 68 Stat. 63; Pub.L. 95-234, § 5, Feb. 21, 1978, 92 Stat. 35; Pub.L. 98-549, § 3(a), Oct. 30, 1984, 98 Stat. 2801; Pub.L. 101-166, Title V, § 521(2), Nov. 21, 1989, 103 Stat. 1193; Pub.L. 101-336, Title IV, § 401(b)(1), July 26, 1990, 104 Stat. 369; Pub.L. 102-243, § 3(b), Dec. 20, 1991, 105 Stat. 2401; Pub.L. 103-66, Title VI, § 6002(b)(2)(B)(i), Aug. 10, 1993, 107 Stat. 396.)

47 U.S.C.A. § 152, 47 USCA § 152
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

Editor's and Revisor's Notes (24)

HISTORICAL NOTES

Revision Notes and Legislative Reports

1954 Acts. Senate Report No. 1090 , see 1954 U.S.Code Cong. and Adm.News, p. 2133.

1978 Acts. Senate Report No. 95-580 , see 1978 U.S.Code Cong. and Adm.News, p. 109.

1984 Acts. House Report No. 98-934 and Statements by Legislative Leaders, see 1984 U.S.Code Cong. and Adm.News, p. 4655.

1989 Acts. Statement by President, see 1989 U.S.Code Cong. and Adm.News, p. 733-7.

1990 Acts. House Report No. 101-485 and House Conference Report No. 101-596 , see 1990 U.S.Code Cong. and Adm.News, p. 267.

1991 Acts. Senate Report No. 102-178 , see 1991 U.S. Code Cong. and Adm. News, p. 1979.

1993 Acts. House Report No. 103-111 and House Conference Report No. 103-213 , see 1993 U.S. Code Cong. and Adm. News, p. 378.

References in Text

This chapter, referred to in text, was in the original “this Act”, meaning Act June 19, 1934, c. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification, see 47 U.S.C.A. § 609 and Tables.

For definition of Canal Zone, referred to in subsec. (a), see 22 U.S.C.A. § 3602(b) .

Subchapter V-A, referred to in subsec. (a), is 47 U.S.C.A. § 521 et seq.

Codifications

Words, “the Philippine Islands or”, preceding “the Canal Zone”, were omitted from this section on authority of 1946 Proc. No. 2695 , issued pursuant to 22 U.S.C.A. § 1394 , which recognized the independence of the Philippine Islands as of July 4, 1946. 1946 Proc. No. 2695 is set out as a note under 22 U.S.C.A. § 1394 .

Amendments

1993 Amendments. Subsec. (b). Pub.L. 103-66 , § 6002(b)(2)(B)(i), inserted “and section 332 of this title,” after “inclusive,”.

1991 Amendments. Subsec. (b). Pub.L. 102-243 substituted reference to sections 223 through 227 of this title, inclusive, for reference to sections 223 or 224 and 225 of this title.

1990 Amendments. Subsec. (b). Pub.L. 101-336 , § 401(b)(1), which directed substitution of “sections 224 and 225” for “section 224”, could not be executed because of the intervening amendment by Pub.L. 101-166 which substituted “section 223 or 224” for “section 224”. See 1989 Amendments note set out under this section.

1989 Amendments. Subsec. (b). Pub.L. 101-166 substituted “section 223 or 224” for “section 224”.

1984 Amendments. Subsec. (a). Pub.L. 98-549 , § 3(a)(1), inserted provision making this chapter applicable with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable persons which relate to such service, as provided in subchapter V-A of this chapter.

Subsec. (b). Pub.L. 98-549 , § 3(a)(2), substituted “section 301 of this title and subchapter V-A of this chapter” for “section 301 of this title”.

1978 Amendments. Subsec. (b). Pub.L. 95-234 substituted “Except as provided in section 224 of this title and subject” for “Subject”.

1954 Amendments. Subsec. (b). Act Apr. 27, 1954 made it clear that intrastate communication service, whether by “wire or radio”, would not be subject to the Commission's jurisdiction over charges, classifications, etc., and added cls. (3) and (4).

Effective and Applicability Provisions

1989 Acts. Section 521(3) of Pub.L. 101-166 provided: “The amendments made by this subsection [probably means this section, amending subsec. (b) of this section and section 223 of this title] shall take effect 120 days after the date of enactment of this Act [Nov. 21, 1989]. ”

1984 Acts. Amendment by Pub.L. 98-549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub.L. 98-549 , set out as a note under section 521 of this title.

1978 Acts. Section 7 of Pub.L. 95-234 provided that: “The amendments made by this Act [enacting section 224 of this title amending this section and section 503 and 504 of this title, repealing section 510 of this title, and enacting provision set out as a note under section 609 of this title] shall take effect on the thirtieth day after the date of enactment of this Act [Feb. 21, 1978]; except that the provisions of sections 503(b) and 510 of the Communications Act of 1934 [section 503(b) and 510 of this title], as in effect on such date of enactment [Feb. 21, 1978], shall continue to constitute the applicable law with the respect to any act or omission which occurs prior to such thirtieth day.”

STATUTORY NOTES

Applicability of Consent Decrees and Other Law

Pub.L. 104-104, Title VI, § 601 , Feb. 8, 1996, 110 Stat. 143, provided that:

“(a) Applicability of amendments to future conduct.--

“(1) AT&T Consent Decree. --Any conduct or activity that was, before the date of enactment of this Act [Feb. 8, 1996], subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act [this chapter as amended by the Telecommunications Act of 1996, Pub.L. 104-104 , Feb. 8, 1996, 110 Stat. 56, for distribution of which see Short Title note set out under section 609 of this title] and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

“(2) GTE Consent Decree. --Any conduct or activity that was, before the date of enactment of this Act [Feb. 8, 1996], subject to any restriction or obligation imposed by the GTE Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

“(3) McCaw Consent Decree. --Any conduct or activity that was, before the date of enactment of this Act [Feb. 8, 1996], subject to any restriction or obligation imposed by the McCaw Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and subsection (d) of this section and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

“(b) Antitrust laws.--

“(1) Savings clause. --Except as provided in paragraphs (2) and (3), nothing in this Act or the amendments made by this Act [Telecommunications Act of 1996, Pub.L. 104-104 , Feb. 8, 1996, 110 Stat. 56, for distribution

of which see Short Title note set out under section 609 of this title] shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

"(2) Repeal. --[Par. (2) repealed subsection (a) of section 221 of this title].

"(3) Clayton Act. --[Par. (3) amended section 18 of Title 15, Commerce and Trade].

"(c) Federal, State, and local law.--

"(1) No implied effect. --This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

"(2) State tax savings provision. --Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided in sections 622 and 653(c) of the Communications Act of 1934 [sections 542 and 573(c) of this title] and section 602 of this Act [set out as a note under this section].

"(d) Commercial mobile service joint marketing. --Notwithstanding section 22.903 of the Commission's regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act [sections 271(e)(1) and 272 of this title] as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.

"(e) Definitions. --As used in this section:

"(1) AT&T Consent Decree. --The term 'AT&T Consent Decree' means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

"(2) GTE Consent Decree. --The term 'GTE Consent Decree' means the order entered December 21, 1984, as restated January 11, 1985, in the action styled United States v. GTE Corp., Civil Action No. 83-1298, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after December 21, 1984.

"(3) McCaw Consent Decree. --The term 'McCaw Consent Decree' means the proposed consent decree filed on July 15, 1994, in the antitrust action styled United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94-01555, in the United States District Court for the District of Columbia. Such term includes any stipulation that the parties will abide by the terms of such proposed consent decree until it is entered and any order entering such proposed consent decree.

"(4) Antitrust laws. --The term 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)) [section 12(a) of Title 15], except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.) [sections 13, 13a, 13b, and 21a of Title 15], commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) [section 45 of Title 15] to the extent that such section 5 applies to unfair methods of competition."

Preemption of Local Taxation With Respect to Direct-to-Home Services

Pub.L. 104-104, Title VI, § 602 , Feb. 8, 1996, 110 Stat. 144, provided that:

"(a) Preemption. --A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

"(b) Definitions. --For the purposes of this section--

"(1) Direct-to-home satellite service. --The term 'direct-to-home satellite service' means only programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite.

"(2) Provider of direct-to-home satellite service. --For purposes of this section, a 'provider of direct-to-home satellite service' means a person who transmits, broadcasts, sells, or distributes direct-to-home satellite service.

"(3) Local taxing jurisdiction. --The term 'local taxing jurisdiction' means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include a State.

"(4) State. --The term 'State' means any of the several States, the District of Columbia, or any territory or possession of the United States.

"(5) Tax or fee. --The terms 'tax' and 'fee' mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

"(c) Preservation of State authority. --This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a State."

47 U.S.C.A. § 153

§ 153. Definitions

Effective: October 8, 2010
Currentness

For the purposes of this chapter, unless the context otherwise requires--

(1) Advanced communications services

The term "advanced communications services" means--

(A) interconnected VoIP service;

(B) non-interconnected VoIP service;

(C) electronic messaging service; and

(D) interoperable video conferencing service.

(2) Affiliate

The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(3) Amateur station

The term "amateur station" means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(4) AT&T Consent Decree

The term "AT&T Consent Decree" means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(5) Bell operating company

The term "Bell operating company"--

(A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, US West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(B) includes any successor or assign of any such company that provides wireline telephone exchange service; but

(C) does not include an affiliate of any such company, other than an affiliate described in subparagraph (A) or (B).

(6) Broadcast station

The term "broadcast station", "broadcasting station", or "radio broadcast station" means a radio station equipped to engage in broadcasting as herein defined.

(7) Broadcasting

The term "broadcasting" means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(8) Cable service

The term "cable service" has the meaning given such term in section 522 of this title.

(9) Cable system

The term "cable system" has the meaning given such term in section 522 of this title.

(10) Chain broadcasting

The term "chain broadcasting" means simultaneous broadcasting of an identical program by two or more connected stations.

(11) Common carrier

The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(12) Connecting carrier

The term "connecting carrier" means a carrier described in clauses (2), (3), or (4) of section 152(b) of this title.

(13) Construction permit

The term "construction permit" or "permit for construction" means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(14) Consumer generated media

The term "consumer generated media" means content created and made available by consumers to online websites and services on the Internet, including video, audio, and multimedia content.

(15) Corporation

The term "corporation" includes any corporation, joint-stock company, or association.

(16) Customer premises equipment

The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(17) Dialing parity

The term "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

(18) Disability

The term "disability" has the meaning given such term under section 12102 of Title 42.

(19) Electronic messaging service

The term "electronic messaging service" means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.

(20) Exchange access

The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

(21) Foreign communication

The term "foreign communication" or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(22) Great Lakes Agreement

The term "Great Lakes Agreement" means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

(23) Harbor

The term "harbor" or "port" means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

(24) Information service

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(25) Interconnected VoIP service

The term "interconnected VoIP service" has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

(26) InterLATA service

The term "interLATA service" means telecommunications between a point located in a local access and transport area and a point located outside such area.

(27) Interoperable video conferencing service

The term "interoperable video conferencing service" means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.

(28) Interstate communication

The term "interstate communication" or "interstate transmission" means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(29) Land station

The term "land station" means a station, other than a mobile station, used for radio communication with mobile stations.

(30) Licensee

The term "licensee" means the holder of a radio station license granted or continued in force under authority of this chapter.

(31) Local access and transport area

The term "local access and transport area" or "LATA" means a contiguous geographic area--

(A) established before February 8, 1996, by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after February 8, 1996, and approved by the Commission.

(32) Local exchange carrier

The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.

(33) Mobile service

The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

(34) Mobile station

The term "mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

(35) Network element

The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(36) Non-interconnected VoIP service

The term "non-interconnected VoIP service"--

(A) means a service that--

(i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(ii) requires Internet protocol compatible customer premises equipment; and

(B) does not include any service that is an interconnected VoIP service.

(37) Number portability

The term "number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(38) Operator

(A) The term "operator" on a ship of the United States means, for the purpose of parts II and III of subchapter III of this chapter, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

(B) "Operator" on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding a certificate as such of the proper class complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

(39) Person

The term "person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

(40) Radio communication

The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(41) Radio officer

(A) The term "radio officer" on a ship of the United States means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a "radio officer" in accordance with chapter 71 of Title 46.

(B) "Radio officer" on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

(42) Radio station

The term "radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

(43) Radiotelegraph auto alarm

The term "radiotelegraph auto alarm" on a ship of the United States subject to the provisions of part II of subchapter III of this chapter means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. "Radiotelegraph auto alarm" on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship

is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this chapter or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of subchapter III of this chapter, on a foreign ship subject to part II of subchapter III of this chapter, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus.

(44) Rural telephone company

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity--

(A) provides common carrier service to any local exchange carrier study area that does not include either--

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

(45) Safety convention

The term "safety convention" means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

(46) Ship

(A) The term "ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

(B) A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

(C) A cargo ship means any ship not a passenger ship.

(D) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

(E) "Nuclear ship" means a ship provided with a nuclear powerplant.

(47) State

The term "State" includes the District of Columbia and the Territories and possessions.

(48) State commission

The term "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

(49) Station license

The term "station license", "radio station license", or "license" means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(50) Telecommunications

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(51) Telecommunications carrier

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(52) Telecommunications equipment

The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(53) Telecommunications service

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(54) Telephone exchange service

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(55) Telephone toll service

The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(56) Television service

(A) Analog television service

The term "analog television service" means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(a) of its regulations (47 C.F.R. 73.682(a)).

(B) Digital television service

The term "digital television service" means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(d) of its regulations (47 C.F.R. 73.682(d)).

(57) Transmission of energy by radio

The term "transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(58) United States

The term "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

(59) Wire communication

The term "wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such

transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

CREDIT(S)

(June 19, 1934, c. 652, Title I, § 3, 48 Stat. 1065; May 20, 1937, c. 229, § 2, 50 Stat. 189; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; July 16, 1952, c. 879, § 2, 66 Stat. 711; Apr. 27, 1954, c. 175, §§ 2, 3, 68 Stat. 64; Aug. 13, 1954, c. 729, § 3, 68 Stat. 707; Aug. 13, 1954, c. 735, § 1, 68 Stat. 729; Aug. 6, 1956, c. 973, § 3, 70 Stat. 1049; Pub.L. 89-121, § 1, Aug. 13, 1965, 79 Stat. 511; Pub.L. 90-299, § 2, May 3, 1968, 82 Stat. 112; Pub.L. 97-259, Title I, § 120(b), Sept. 13, 1982, 96 Stat. 1097; Pub.L. 103-66, Title VI, § 6002(b)(2)(B)(ii), Aug. 10, 1993, 107 Stat. 396; Pub.L. 104-104, § 3(a), (c), Feb. 8, 1996, 110 Stat. 58, 61; Pub.L. 105-33, Title III, § 3001(b), Aug. 5, 1997, 111 Stat. 258; Pub.L. 111-260, Title I, § 101, Oct. 8, 2010, 124 Stat. 2752.)

47 U.S.C.A. § 153, 47 USCA § 153
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

47 U.S.C.A. § 154

§ 154. Federal Communications Commission

Effective: March 23, 2018
Currentness

(a) Number of commissioners; appointment

The Federal Communications Commission (in this chapter referred to as the "Commission") shall be composed of five commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Qualifications

(1) Each member of the Commission shall be a citizen of the United States.

(2)(A) No member of the Commission or person employed by the Commission shall--

(i) be financially interested in any company or other entity engaged in the manufacture or sale of telecommunications equipment which is subject to regulation by the Commission;

(ii) be financially interested in any company or other entity engaged in the business of communication by wire or radio or in the use of the electromagnetic spectrum;

(iii) be financially interested in any company or other entity which controls any company or other entity specified in clause (i) or clause (ii), or which derives a significant portion of its total income from ownership of stocks, bonds, or other securities of any such company or other entity; or

(iv) be employed by, hold any official relation to, or own any stocks, bonds, or other securities of, any person significantly regulated by the Commission under this chapter;

except that the prohibitions established in this subparagraph shall apply only to financial interests in any company or other entity which has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission.

(B)(i) The Commission shall have authority to waive, from time to time, the application of the prohibitions established in subparagraph (A) to persons employed by the Commission if the Commission determines that the financial interests of a person which are involved in a particular case are minimal, except that such waiver authority shall be subject to the provisions of section 208 of Title 18. The waiver authority established in this subparagraph shall not apply with respect to members of the Commission.

(ii) In any case in which the Commission exercises the waiver authority established in this subparagraph, the Commission shall publish notice of such action in the Federal Register.

(3) The Commission, in determining whether a company or other entity has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission, shall consider (without excluding other relevant factors)--

(A) the revenues, investments, profits, and managerial efforts directed to the related communications, manufacturing, or sales activities of the company or other entity involved, as compared to the other aspects of the business of such company or other entity;

(B) the extent to which the Commission regulates and oversees the activities of such company or other entity;

(C) the degree to which the economic interests of such company or other entity may be affected by any action of the Commission; and

(D) the perceptions held by the public regarding the business activities of such company or other entity.

(4) Members of the Commission shall not engage in any other business, vocation, profession, or employment while serving as such members.

(5) The maximum number of commissioners who may be members of the same political party shall be a number equal to the least number of commissioners which constitutes a majority of the full membership of the Commission.

(c) Terms of office; vacancies

(1) A commissioner--

(A) shall be appointed for a term of 5 years;

(B) except as provided in subparagraph (C), may continue to serve after the expiration of the fixed term of office of the commissioner until a successor is appointed and has been confirmed and taken the oath of office; and

(C) may not continue to serve after the expiration of the session of Congress that begins after the expiration of the fixed term of office of the commissioner.

(2) Any person chosen to fill a vacancy in the Commission--

(A) shall be appointed for the unexpired term of the commissioner that the person succeeds;

(B) except as provided in subparagraph (C), may continue to serve after the expiration of the fixed term of office of the commissioner that the person succeeds until a successor is appointed and has been confirmed and taken the oath of office; and

(C) may not continue to serve after the expiration of the session of Congress that begins after the expiration of the fixed term of office of the commissioner that the person succeeds.

(3) No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission.

(d) Compensation of Commission members

Each Commissioner shall receive an annual salary at the annual rate payable from time to time for level IV of the Executive Schedule, payable in monthly installments. The Chairman of the Commission, during the period of his service as Chairman, shall receive an annual salary at the annual rate payable from time to time for level III of the Executive Schedule.

(e) Principal office; special sessions

The principal office of the Commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States.

(f) Employees and assistants; compensation of members of Field Engineering and Monitoring Bureau; use of amateur volunteers for certain purposes; commercial radio operator examinations

(1) The Commission shall have authority, subject to the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of Title 5, to appoint such officers, engineers, accountants, attorneys, inspectors, examiners, and other employees as are necessary in the exercise of its functions.

(2) Without regard to the civil-service laws, but subject to chapter 51 and subchapter III of chapter 53 of Title 5, each commissioner may appoint three professional assistants and a secretary, each of whom shall perform such duties as such commissioner shall direct. In addition, the chairman of the Commission may appoint, without regard to the civil-service laws, but subject to chapter 51 and subchapter III of chapter 53 of Title 5, an administrative assistant who shall perform such duties as the chairman shall direct.

(3) The Commission shall fix a reasonable rate of extra compensation for overtime services of engineers in charge and radio engineers of the Field Engineering and Monitoring Bureau of the Federal Communications Commission, who may be required to remain on duty between the hours of 5 o'clock postmeridian and 8 o'clock antemeridian or on Sundays or holidays to perform services in connection with the inspection of ship radio equipment and apparatus for the purposes of part II of subchapter III of this chapter or the Great Lakes Agreement, on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond 5 o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from 5 o'clock postmeridian to 8 o'clock antemeridian) and two additional days' pay for Sunday or holiday duty. The said extra compensation for overtime services shall be paid by the master, owner, or agent of such vessel to the local United States collector of customs or his representative, who shall deposit such collection into the Treasury of the United States to an appropriately designated receipt account: *Provided*, That the amounts of such collections received by the said collector of customs or his representatives shall be covered into the Treasury as miscellaneous receipts; and the payments of such extra compensation to the several employees entitled thereto shall be made from the annual appropriations for salaries and expenses of the Commission: *Provided further*, That to the extent that the annual appropriations which are authorized to be made from the general fund of the Treasury are insufficient, there are authorized to be appropriated from the general fund of the Treasury such additional amounts as may be necessary to the extent that the amounts of such receipts are in excess of the amounts appropriated: *Provided further*, That such extra compensation shall be paid if such field employees have been ordered to report for duty and have so reported whether the actual inspection of the radio equipment or apparatus takes place or not: *And provided further*, That in those ports where customary working hours are other than those hereinabove mentioned, the engineers in charge are vested with authority to regulate the hours of such employees so as to agree with prevailing working hours in said ports where inspections are to be made, but nothing contained in this proviso shall be construed in any manner to alter the length of a working day for the engineers in charge and radio engineers or the overtime pay herein fixed: and *Provided further*, That, in the alternative, an entity designated by the Commission may make the inspections referred to in this paragraph.

(4)(A) The Commission, for purposes of preparing or administering any examination for an amateur station operator license, may accept and employ the voluntary and uncompensated services of any individual who holds an amateur station operator license of a higher class than the class of license for which the examination is being prepared or administered. In the case of examinations for the highest class of amateur station operator license, the Commission may accept and employ such services of any individual who holds such class of license.

(B)(i) The Commission, for purposes of monitoring violations of any provision of this chapter (and of any regulation prescribed by the Commission under this chapter) relating to the amateur radio service, may--

(I) recruit and train any individual licensed by the Commission to operate an amateur station; and

(II) accept and employ the voluntary and uncompensated services of such individual.

(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any amateur station operator organization.

(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to--

(I) the detection of improper amateur radio transmissions;

(II) the conveyance to Commission personnel of information which is essential to the enforcement of this chapter (or regulations prescribed by the Commission under this chapter) relating to the amateur radio service; and

(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this chapter (or regulations prescribed by the Commission under this chapter) relating to the amateur radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

(C)(i) The Commission, for purposes of monitoring violations of any provision of this chapter (and of any regulation prescribed by the Commission under this chapter) relating to the citizens band radio service, may--

(I) recruit and train any citizens band radio operator; and

(II) accept and employ the voluntary and uncompensated services of such operator.

(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any citizens band radio operator organization. The Commission, in accepting and employing services of individuals under this subparagraph, shall seek to achieve a broad representation of individuals and organizations interested in citizens band radio operation.

(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to--

(I) the detection of improper citizens band radio transmissions;

(II) the conveyance to Commission personnel of information which is essential to the enforcement of this chapter (or regulations prescribed by the Commission under this chapter) relating to the citizens band radio service; and

(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this chapter (or regulations prescribed by the Commission under this chapter) relating to the citizens band radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

(D) The Commission shall have the authority to endorse certification of individuals to perform transmitter installation, operation, maintenance, and repair duties in the private land mobile services and fixed services (as defined by the Commission by rule) if

such certification programs are conducted by organizations or committees which are representative of the users in those services and which consist of individuals who are not officers or employees of the Federal Government.

(E) The authority of the Commission established in this paragraph shall not be subject to or affected by the provisions of part III of Title 5 or section 1342 of Title 31.

(F) Any person who provides services under this paragraph shall not be considered, by reason of having provided such services, a Federal employee.

(G) The Commission, in accepting and employing services of individuals under subparagraphs (A) and (B), shall seek to achieve a broad representation of individuals and organizations interested in amateur station operation.

(H) The Commission may establish rules of conduct and other regulations governing the service of individuals under this paragraph.

(I) With respect to the acceptance of voluntary uncompensated services for the preparation, processing, or administration of examinations for amateur station operator licenses pursuant to subparagraph (A) of this paragraph, individuals, or organizations which provide or coordinate such authorized volunteer services may recover from examinees reimbursement for out-of-pocket costs.

(5)(A) The Commission, for purposes of preparing and administering any examination for a commercial radio operator license or endorsement, may accept and employ the services of persons that the Commission determines to be qualified. Any person so employed may not receive compensation for such services, but may recover from examinees such fees as the Commission permits, considering such factors as public service and cost estimates submitted by such person.

(B) The Commission may prescribe regulations to select, oversee, sanction, and dismiss any person authorized under this paragraph to be employed by the Commission.

(C) Any person who provides services under this paragraph or who provides goods in connection with such services shall not, by reason of having provided such service or goods, be considered a Federal or special government employee.

(g) Expenditures

(1) The Commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for office supplies, law books, periodicals, and books of reference, for printing and binding, for land for use as sites for radio monitoring stations and related facilities, including living quarters where necessary in remote areas, for the construction of such stations and facilities, and for the improvement, furnishing, equipping, and repairing of such stations and facilities and of laboratories and other related facilities (including construction of minor subsidiary buildings and structures not exceeding $25,000 in any one instance) used in connection with technical research activities), as may be necessary for the execution of the functions vested in the Commission and as may be appropriated for by the Congress in accordance with the authorizations of appropriations established in section 156 of this title. All expenditures of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees, under their orders, in making any

investigation or upon any official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission or by such other member or officer thereof as may be designated by the Commission for that purpose.

(2) Repealed. Pub.L. 115-141, Div. P, Title IV, § 402(i)(1)(B), Mar. 23, 2018, 132 Stat. 1089

(3)(A) Notwithstanding any other provision of law, in furtherance of its functions the Commission is authorized to accept, hold, administer, and use unconditional gifts, donations, and bequests of real, personal, and other property (including voluntary and uncompensated services, as authorized by section 3109 of Title 5).

(B) The Commission, for purposes of providing radio club and military-recreational call signs, may utilize the voluntary, uncompensated, and unreimbursed services of amateur radio organizations authorized by the Commission that have tax-exempt status under section 501(c)(3) of Title 26.

(C) For the purpose of Federal law on income taxes, estate taxes, and gift taxes, property or services accepted under the authority of subparagraph (A) shall be deemed to be a gift, bequest, or devise to the United States.

(D) The Commission shall promulgate regulations to carry out the provisions of this paragraph. Such regulations shall include provisions to preclude the acceptance of any gift, bequest, or donation that would create a conflict of interest or the appearance of a conflict of interest.

(h) Quorum; seal

Three members of the Commission shall constitute a quorum thereof. The Commission shall have an official seal which shall be judicially noticed.

(i) Duties and powers

The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.

(j) Conduct of proceedings; hearings

The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

(k) Record of reports

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier or licensee that may have been complained of.

(l) Publication of reports; admissibility as evidence

The Commission shall provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof.

(m) Compensation of appointees

Rates of compensation of persons appointed under this section shall be subject to the reduction applicable to officers and employees of the Federal Government generally.

(n) Use of communications in safety of life and property

For the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property, the Commission shall investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems.

(o) Redesignated (n)

CREDIT(S)

(June 19, 1934, c. 652, Title I, § 4, 48 Stat. 1066; Jan. 22, 1936, c. 25, 49 Stat. 1098; May 20, 1937, c. 229, §§ 3, 4, 50 Stat. 190; Mar. 23, 1941, c. 24, 55 Stat. 46; July 16, 1952, c. 879, § 3, 66 Stat. 711; Aug. 13, 1954, c. 735, § 2, 68 Stat. 729; Pub.L. 86-533, § 1(24), June 29, 1960, 74 Stat. 249; Pub.L. 86-619, § 2, July 12, 1960, 74 Stat. 407; Pub.L. 86-752, § 2, Sept. 13, 1960, 74 Stat. 889; Pub.L. 97-35, Title XII, § 1251(b), Aug. 13, 1981, 95 Stat. 738; Pub.L. 97-253, Title V, § 501(b)(1)-(3), Sept. 8, 1982, 96 Stat. 805, 806; Pub.L. 97-259, Title I, §§ 102-104, Sept. 13, 1982, 96 Stat. 1087-1089; Pub.L. 98-214, §§ 10, 11, Dec. 8, 1983, 97 Stat. 1471; Pub.L. 99-272, Title V, § 5002(b), Apr. 7, 1986, 100 Stat. 118; Pub.L. 99-334, § 1(a), June 6, 1986, 100 Stat. 513; Pub.L. 100-594, § 3, Nov. 3, 1988, 102 Stat. 3021; Pub.L. 101-396, §§ 3, 4, Sept. 28, 1990, 104 Stat. 848, 849; Pub.L. 102-538, Title II, §§ 201, 208, Oct. 27, 1992, 106 Stat. 3542, 3543; Pub.L. 103-414, Title III, § 303(a)(1), Oct. 25, 1994, 108 Stat. 4294; Pub.L. 104-66, Title II, § 2051(b), Dec. 21, 1995, 109 Stat. 729; Pub.L. 104-104, Title IV, § 403(a), (b), Feb. 8, 1996, 110 Stat. 130; Pub.L. 115-141, Div. P, Title IV, § 402(h)(1), (i)(1), Title V, § 509, Mar. 23, 2018, 132 Stat. 1089, 1096.)

47 U.S.C.A. § 154, 47 USCA § 154
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

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Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter I. General Provisions (Refs & Annos)

47 U.S.C.A. § 163

§ 163. Communications marketplace report

Effective: March 23, 2018
Currentness

(a) In general

In the last quarter of every even-numbered year, the Commission shall publish on its website and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the state of the communications marketplace.

(b) Contents

Each report required by subsection (a) shall--

(1) assess the state of competition in the communications marketplace, including competition to deliver voice, video, audio, and data services among providers of telecommunications, providers of commercial mobile service (as defined in section 332 of this title), multichannel video programming distributors (as defined in section 522 of this title), broadcast stations, providers of satellite communications, Internet service providers, and other providers of communications services;

(2) assess the state of deployment of communications capabilities, including advanced telecommunications capability (as defined in section 1302 of this title), regardless of the technology used for such deployment;

(3) assess whether laws, regulations, regulatory practices (whether those of the Federal Government, States, political subdivisions of States, Indian tribes or tribal organizations (as such terms are defined in section 5304 of Title 25), or foreign governments), or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services;

(4) describe the agenda of the Commission for the next 2-year period for addressing the challenges and opportunities in the communications marketplace that were identified through the assessments under paragraphs (1) through (3); and

(5) describe the actions that the Commission has taken in pursuit of the agenda described pursuant to paragraph (4) in the previous report submitted under this section.

(c) Extension

If the President designates a Commissioner as Chairman of the Commission during the last quarter of an even-numbered year, the portion of the report required by subsection (b)(4) may be published on the website of the Commission and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate as an addendum during the first quarter of the following odd-numbered year.

(d) Special requirements

(1) Assessing competition

In assessing the state of competition under subsection (b)(1), the Commission shall consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet.

(2) Assessing deployment

In assessing the state of deployment under subsection (b)(2), the Commission shall compile a list of geographical areas that are not served by any provider of advanced telecommunications capability.

(3) Considering small businesses

In assessing the state of competition under subsection (b)(1) and regulatory barriers under subsection (b)(3), the Commission shall consider market entry barriers for entrepreneurs and other small businesses in the communications marketplace in accordance with the national policy under section 257(b) of this title.

CREDIT(S)

(June 19, 1934, c. 652, Title I, § 13, as added Pub.L. 115-141, Div. P, Title IV, § 401, Mar. 23, 2018, 132 Stat. 1087.)

47 U.S.C.A. § 163, 47 USCA § 163
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

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United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part I. Common Carrier Regulation

47 U.S.C.A. § 223

§ 223. Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications

Effective: March 7, 2013
Currentness

(a) Prohibited acts generally

Whoever--

(1) in interstate or foreign communications--

(A) by means of a telecommunications device knowingly--

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, with intent to abuse, threaten, or harass another person;

(B) by means of a telecommunications device knowingly--

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

(C) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to abuse, threaten, or harass any specific person;

(D) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(E) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any specific person; or

(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under Title 18 or imprisoned not more than two years, or both.

(b) Prohibited acts for commercial purposes; defense to prosecution

(1) Whoever knowingly--

(A) within the United States, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A),

shall be fined in accordance with Title 18 or imprisoned not more than two years, or both.

(2) Whoever knowingly--

(A) within the United States, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes which is available to any person under 18 years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(3) It is a defense to prosecution under paragraph (2) of this subsection that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with subsection (c) of this section and with such procedures as the Commission may prescribe by regulation.

(4) In addition to the penalties under paragraph (1), whoever, within the United States, intentionally violates paragraph (1) or (2) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(5)(A) In addition to the penalties under paragraphs (1), (2), and (5), whoever, within the United States, violates paragraph (1) or (2) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(B) A fine under this paragraph may be assessed either--

(i) by a court, pursuant to civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

(6) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1) or (2). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.

(c) Restriction on access to subscribers by common carriers; judicial remedies respecting restrictions

(1) A common carrier within the District of Columbia or within any State, or in interstate or foreign commerce, shall not, to the extent technically feasible, provide access to a communication specified in subsection (b) from the telephone of any subscriber who has not previously requested in writing the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication.

(2) Except as provided in paragraph (3), no cause of action may be brought in any court or administrative agency against any common carrier, or any of its affiliates, including their officers, directors, employees, agents, or authorized representatives on account of--

(A) any action which the carrier demonstrates was taken in good faith to restrict access pursuant to paragraph (1) of this subsection; or

(B) any access permitted--

(i) in good faith reliance upon the lack of any representation by a provider of communications that communications provided by that provider are communications specified in subsection (b), or

(ii) because a specific representation by the provider did not allow the carrier, acting in good faith, a sufficient period to restrict access to communications described in subsection (b).

(3) Notwithstanding paragraph (2) of this subsection, a provider of communications services to which subscribers are denied access pursuant to paragraph (1) of this subsection may bring an action for a declaratory judgment or similar action in a court. Any such action shall be limited to the question of whether the communications which the provider seeks to provide fall within

the category of communications to which the carrier will provide access only to subscribers who have previously requested such access.

(d) Sending or displaying offensive material to persons under 18

Whoever--

(1) in interstate or foreign communications knowingly--

(A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

(B) uses any interactive computer service to display in a manner available to a person under 18 years of age,

any comment, request, suggestion, proposal, image, or other communication that is obscene or child pornography, regardless of whether the user of such service placed the call or initiated the communication; or

(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under Title 18 or imprisoned not more than two years, or both.

(e) Defenses

In addition to any other defenses available by law:

(1) No person shall be held to have violated subsection (a) or (d) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that does not include the creation of the content of the communication.

(2) The defenses provided by paragraph (1) of this subsection shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate this section, or who knowingly advertises the availability of such communications.

(3) The defenses provided in paragraph (1) of this subsection shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of this section that is owned or controlled by such person.

(4) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer (A) having knowledge of such conduct, authorizes or ratifies such conduct, or (B) recklessly disregards such conduct.

(5) It is a defense to a prosecution under subsection (a)(1)(B) or (d), or under subsection (a)(2) with respect to the use of a facility for an activity under subsection (a)(1)(B) that a person--

(A) has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

(6) The Commission may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d). Nothing in this section authorizes the Commission to enforce, or is intended to provide the Commission with the authority to approve, sanction, or permit, the use of such measures. The Commission shall have no enforcement authority over the failure to utilize such measures. The Commission shall not endorse specific products relating to such measures. The use of such measures shall be admitted as evidence of good faith efforts for purposes of paragraph (5) in any action arising under subsection (d). Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers.

(f) Violations of law required; commercial entities, nonprofit libraries, or institutions of higher education

(1) No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

(2) No State or local government may impose any liability for commercial activities or actions by commercial entities, nonprofit libraries, or institutions of higher education in connection with an activity or action described in subsection (a)(2) or (d) that is inconsistent with the treatment of those activities or actions under this section: *Provided, however*, That nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

(g) Application and enforcement of other Federal law

Nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under subsection (a) or (d) shall be construed to affect or limit the application or enforcement of any other Federal law.

(h) Definitions

For purposes of this section--

(1) The use of the term "telecommunications device" in this section--

(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this chapter;

(B) does not include an interactive computer service; and

(C) in the case of subparagraph (C) of subsection (a)(1), includes any device or software that can be used to originate telecommunications or other types of communications that are transmitted, in whole or in part, by the Internet (as such term is defined in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note)).

(2) The term "interactive computer service" has the meaning provided in section 230(f)(2) of this title.

(3) The term "access software" means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(4) The term "institution of higher education" has the meaning provided in section 1001 of Title 20.

(5) The term "library" means a library eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 355e et seq.).

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 223, as added Pub.L. 90-299, § 1, May 3, 1968, 82 Stat. 112; amended Pub.L. 98-214, § 8(a), (b), Dec. 8, 1983, 97 Stat. 1469, 1470; Pub.L. 100-297, Title VI, § 6101, Apr. 28, 1988, 102 Stat. 424; Pub.L. 100-690, Title VII, § 7524, Nov. 18, 1988, 102 Stat. 4502; Pub.L. 101-166, Title V, § 521(1), Nov. 21, 1989, 103 Stat. 1192; Pub.L. 103-414, Title III, § 303(a)(9), Oct. 25, 1994, 108 Stat. 4294; Pub.L. 104-104, Title V, § 502, Feb. 8, 1996, 110 Stat. 133; Pub.L. 105-244, Title I, § 102(a)(14), Oct. 7, 1998, 112 Stat. 1621; Pub.L. 105-277, Div. C, Title XIV, § 1404(b), Oct. 21, 1998, 112 Stat. 2681-739; Pub.L. 108-21, Title VI, § 603, Apr. 30, 2003, 117 Stat. 687; Pub.L. 109-162, Title I, § 113(a), Jan. 5, 2006, 119 Stat. 2987; Pub.L. 113-4, Title XI, § 1102, Mar. 7, 2013, 127 Stat. 135.)

47 U.S.C.A. § 223, 47 USCA § 223
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part I. Common Carrier Regulation

47 U.S.C.A. § 230

§ 230. Protection for private blocking and screening of offensive material

Effective: April 11, 2018
Currentness

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1). [1]

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit--

(A) any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of Title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of Title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 230, as added Pub.L. 104-104, Title V, § 509, Feb. 8, 1996, 110 Stat. 137; amended Pub.L. 105-277, Div. C, Title XIV, § 1404(a), Oct. 21, 1998, 112 Stat. 2681-739; Pub.L. 115-164, § 4(a), Apr. 11, 2018, 132 Stat. 1254.)

Footnotes

1 So in original. Probably should be "subparagraph (A)".

47 U.S.C.A. § 230, 47 USCA § 230

Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part II. Development of Competitive Markets (Refs & Annos)

47 U.S.C.A. § 253

§ 253. Removal of barriers to entry

Effective: February 8, 1996
Currentness

(a) In general

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers

Nothing in this section shall affect the application of section 332(c)(3) of this title to commercial mobile service providers.

(f) Rural markets

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section

214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 253, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.)

47 U.S.C.A. § 253, 47 USCA § 253
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

47 U.S.C.A. § 254

§ 254. Universal service

Effective: October 1, 2016
Currentness

(a) Procedures to review universal service requirements

(1) Federal-State Joint Board on universal service

Within one month after February 8, 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) of this title a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) of this title and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c) of this title, one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after February 8, 1996.

(2) Commission action

The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after February 8, 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

(b) Universal service principles

The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) Quality and rates

Quality services should be available at just, reasonable, and affordable rates.

(2) Access to advanced services

Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Access in rural and high cost areas

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) Equitable and nondiscriminatory contributions

All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) Specific and predictable support mechanisms

There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) Access to advanced telecommunications services for schools, health care, and libraries

Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) Additional principles

Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.

(c) Definition

(1) In general

Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services--

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(2) Alterations and modifications

The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.

(3) Special services

In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

(d) Telecommunications carrier contribution

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

(e) Universal service support

After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

(f) State authority

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

(g) Interexchange and interstate services

Within 6 months after February 8, 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

(h) Telecommunications services for certain providers

(1) In general

(A) Health care providers for rural areas

A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

(B) Educational providers and libraries

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall--

(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

(2) Advanced services

The Commission shall establish competitively neutral rules--

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and

(B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

(3) Terms and conditions

Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

(4) Eligibility of users

No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in paragraph (7)(A) with an endowment of more than $50,000,000, or is a library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act.

(5) Requirements for certain schools with computers having Internet access

(A) Internet safety

(i) In general

Except as provided in clause (ii), an elementary or secondary school having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, local educational agency, or other authority with responsibility for administration of the school--

(I) submits to the Commission the certifications described in subparagraphs (B) and (C);

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the school under subsection (l); and

(III) ensures the use of such computers in accordance with the certifications.

(ii) Applicability

The prohibition in clause (i) shall not apply with respect to a school that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(iii) Public notice; hearing

An elementary or secondary school described in clause (i), or the school board, local educational agency, or other authority with responsibility for administration of the school, shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy. In the case of an elementary or secondary school other than an elementary school or a secondary school as defined in section 7801 of Title 20, the notice and hearing required by this clause may be limited to those members of the public with a relationship to the school.

(B) Certification with respect to minors

A certification under this subparagraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school--

(i) is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are--

(I) obscene;

(II) child pornography; or

(III) harmful to minors;

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors; and

(iii) as part of its Internet safety policy is educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

(C) Certification with respect to adults

A certification under this paragraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school--

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are--

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) Disabling during adult use

An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) Timing of implementation

(i) In general

Subject to clause (ii) in the case of any school covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made--

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) Process

(I) Schools with Internet safety policy and technology protection measures in place

A school covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) Schools without Internet safety policy and technology protection measures in place

A school covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)--

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any school that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such school comes into compliance with this paragraph.

(III) Waivers

Any school subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year program may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A school, school board, local educational agency, or other authority with responsibility for administration of the school shall notify the Commission of the applicability of such subclause to the school. Such notice shall certify that the school in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the school is applying for funds under this subsection.

(F) Noncompliance

(i) Failure to submit certification

Any school that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) Failure to comply with certification

Any school that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse any funds and discounts received under this subsection for the period covered by such certification.

(iii) Remedy of noncompliance

(I) Failure to submit

A school that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the school shall be eligible for services at discount rates under this subsection.

(II) Failure to comply

A school that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school shall be eligible for services at discount rates under this subsection.

(6) Requirements for certain libraries with computers having Internet access

(A) Internet safety

(i) In general

Except as provided in clause (ii), a library having one or more computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the library--

(I) submits to the Commission the certifications described in subparagraphs (B) and (C); and

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the library under subsection (l); and

(III) ensures the use of such computers in accordance with the certifications.

(ii) Applicability

The prohibition in clause (i) shall not apply with respect to a library that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(iii) Public notice; hearing

A library described in clause (i) shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

(B) Certification with respect to minors

A certification under this subparagraph is a certification that the library--

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are--

(I) obscene;

(II) child pornography; or

(III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

(C) Certification with respect to adults

A certification under this paragraph is a certification that the library--

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are--

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) Disabling during adult use

An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) Timing of implementation

(i) In general

Subject to clause (ii) in the case of any library covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made--

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) Process

(I) Libraries with Internet safety policy and technology protection measures in place

A library covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) Libraries without Internet safety policy and technology protection measures in place

A library covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)--

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any library that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such library comes into compliance with this paragraph.

(III) Waivers

Any library subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A library, library board, or other authority with responsibility for administration of the library shall notify the Commission of the applicability of such subclause to the library. Such notice shall certify that the library in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the library is applying for funds under this subsection.

(F) Noncompliance

(i) Failure to submit certification

Any library that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) Failure to comply with certification

Any library that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse all funds and discounts received under this subsection for the period covered by such certification.

(iii) Remedy of noncompliance

(I) Failure to submit

A library that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the library shall be eligible for services at discount rates under this subsection.

(II) Failure to comply

A library that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the library shall be eligible for services at discount rates under this subsection.

(7) Definitions

For purposes of this subsection:

(A) Elementary and secondary schools

The term "elementary and secondary schools" means elementary schools and secondary schools, as defined in section 7801 of Title 20.

(B) Health care provider

The term "health care provider" means--

(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(ii) community health centers or health centers providing health care to migrants;

(iii) local health departments or agencies;

(iv) community mental health centers;

(v) not-for-profit hospitals;

(vi) rural health clinics;

(vii) skilled nursing facilities (as defined in section 395i-3(a) of Title 42); and

(viii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vii).

(C) Public institutional telecommunications user

The term "public institutional telecommunications user" means an elementary or secondary school, a library, or a health care provider as those terms are defined in this paragraph.

(D) Minor

The term "minor" means any individual who has not attained the age of 17 years.

(E) Obscene

The term "obscene" has the meaning given such term in section 1460 of Title 18.

(F) Child pornography

The term "child pornography" has the meaning given such term in section 2256 of Title 18.

(G) Harmful to minors

The term "harmful to minors" means any picture, image, graphic image file, or other visual depiction that--

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(H) Sexual act; sexual contact

The terms "sexual act" and "sexual contact" have the meanings given such terms in section 2246 of Title 18.

(I) Technology protection measure

The term "technology protection measure" means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (5) or (6) to which such certification relates.

(i) Consumer protection

The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

(j) Lifeline assistance

Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

(k) Subsidy of competitive services prohibited

A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

(l) Internet safety policy requirement for schools and libraries

(1) In general

In carrying out its responsibilities under subsection (h), each school or library to which subsection (h) applies shall--

(A) adopt and implement an Internet safety policy that addresses--

(i) access by minors to inappropriate matter on the Internet and World Wide Web;

(ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

(iii) unauthorized access, including so-called "hacking", and other unlawful activities by minors online;

(iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

(v) measures designed to restrict minors' access to materials harmful to minors; and

(B) provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

(2) Local determination of content

A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may--

(A) establish criteria for making such determination;

(B) review the determination made by the certifying school, school board, local educational agency, library, or other authority; or

(C) consider the criteria employed by the certifying school, school board, local educational agency, library, or other authority in the administration of subsection (h)(1)(B).

(3) Availability for review

Each Internet safety policy adopted under this subsection shall be made available to the Commission, upon request of the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

(4) Effective date

This subsection shall apply with respect to schools and libraries on or after the date that is 120 days after December 21, 2000.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 254, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 71; amended Pub.L. 104-208, Div. A, Title I, § 101(e) [Title VII, § 709(a)(8)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-313; Pub.L. 106-554, § 1(a)(4) [Div. B, Title XVII, §§ 1721(a) to (d), 1732], Dec. 21, 2000, 114 Stat. 2763, 2763A-343 to 2763A-350; Pub.L. 107-110, Title X, § 1076(hh), Jan. 8, 2002, 115 Stat. 2094; Pub.L. 110-385, Title II, § 215, Oct. 10, 2008, 122 Stat. 4104; Pub.L. 114-95, Title IX, § 9215(s), Dec. 10, 2015, 129 Stat. 2171; Pub.L. 114-182, Title II, § 202(a), June 22, 2016, 130 Stat. 512.)

47 U.S.C.A. § 254, 47 USCA § 254
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part II. Development of Competitive Markets (Refs & Annos)

This section has been updated. Click here for the updated version.

47 U.S.C.A. § 257

§ 257. Market entry barriers proceeding

Effective: February 8, 1996 to March 22, 2018

(a) Elimination of barriers

Within 15 months after February 8, 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this chapter (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) National policy

In carrying out subsection (a) of this section, the Commission shall seek to promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

(c) Periodic review

Every 3 years following the completion of the proceeding required by subsection (a) of this section, the Commission shall review and report to Congress on--

(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) of this section and that can be prescribed consistent with the public interest, convenience, and necessity; and

(2) the statutory barriers identified under subsection (a) of this section that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 257, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 77.)

47 U.S.C.A. § 257, 47 USCA § 257

Current through PL 117-11 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part II. Development of Competitive Markets (Refs & Annos)

47 U.S.C.A. § 257

§ 257. Market entry barriers proceeding

Effective: March 23, 2018
Currentness

(a) Elimination of barriers

Within 15 months after February 8, 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this chapter (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) National policy

In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

(c) Repealed. Pub.L. 115-141, Div. P, Title IV, § 402(f), Mar. 23, 2018, 132 Stat. 1089

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 257, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 77; amended Pub.L. 115-141, Div. P, Title IV, § 402(f), Mar. 23, 2018, 132 Stat. 1089.)

47 U.S.C.A. § 257, 47 USCA § 257
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part III. Special Provisions Concerning Bell Operating Companies

47 U.S.C.A. § 276

§ 276. Provision of payphone service

Effective: February 8, 1996
Currentness

(a) Nondiscrimination safeguards

After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service--

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) Regulations

(1) Contents of regulations

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 8, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on February 8, 1996, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

(2) Public interest telephones

In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) Existing contracts

Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of February 8, 1996.

(c) State preemption

To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

(d) "Payphone service" defined

As used in this section, the term "payphone service" means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 276, as added Pub.L. 104-104, Title I, § 151(a), Feb. 8, 1996, 110 Stat. 106.)

47 U.S.C.A. § 276, 47 USCA § 276
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter III. Special Provisions Relating to Radio (Refs & Annos)
Part I. General Provisions

47 U.S.C.A. § 332

§ 332. Mobile services

Effective: March 23, 2018
Currentness

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will--

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of Title 5 or section 1342 of Title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

(1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that--

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to August 10, 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part,

the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 of the corporation authorized by title III of such Act.

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of section 310(b) of this title to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

(i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and

(iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section--

(1) the term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

(3) the term "private mobile service" means any mobile service (as defined in section 153 of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

CREDIT(S)

(June 19, 1934, c. 652, Title III, § 332, formerly § 331, as added Pub.L. 97-259, Title I, § 120(a), Sept. 13, 1982, 96 Stat. 1096; renumbered § 332, Pub.L. 102-385, § 25(b), Oct. 5, 1992, 106 Stat. 1502; amended Pub.L. 103-66, Title VI, § 6002(b)(2)(A), Aug. 10, 1993, 107 Stat. 393; Pub.L. 104-104, § 3(d)(2), Title VII, §§ 704(a), 705, Feb. 8, 1996, 110 Stat. 61, 151, 153; Pub.L. 115-141, Div. P, Title IV, § 402(g), Mar. 23, 2018, 132 Stat. 1089.)

47 U.S.C.A. § 332, 47 USCA § 332
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

47 U.S.C.A. § 543

§ 543. Regulation of rates

Effective: March 23, 2018
Currentness

(a) Competition preference; local and Federal regulation

(1) In general

No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 532 of this title. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

(2) Preference for competition

If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition--

(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

(3) Qualification of franchising authority

A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that--

(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

(4) Approval by Commission

A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that--

(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) Revocation of jurisdiction

Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

(6) Exercise of jurisdiction by Commission

If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(7) Aggregation of equipment costs

(A) In general

The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

(B) Revision to Commission rules; forms

Within 120 days of February 8, 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).

(b) Establishment of basic service tier rate regulations

(1) Commission obligation to subscribers

The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

(2) Commission regulations

Within 180 days after October 5, 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission--

(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

(C) shall take into account the following factors:

(i) the rates for cable systems, if any, that are subject to effective competition;

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

(3) Equipment

The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for--

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

(B) installation and monthly use of connections for additional television receivers.

(4) Costs of franchise requirements

The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

(5) Implementation and enforcement

The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include--

(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

(6) Notice

The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

(7) Components of basic tier subject to rate regulation

(A) Minimum contents

Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 534 and 535 of this title.

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

(B) Permitted additions to basic tier

A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

(8) Buy-through of other tiers prohibited

(A) Prohibition

A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

(B) Exception; limitation

The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after--

(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

(ii) 10 years after October 5, 1992, subject to subparagraph (C).

(C) Waiver

If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

(c) Regulation of unreasonable rates

(1) Commission regulations

Within 180 days after October 5, 1992, the Commission shall, by regulation, establish the following:

(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any franchising authority (in accordance with paragraph (3)) alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of the first complaint filed with the franchising authority under paragraph (3) and that are determined to be unreasonable.

(2) Factors to be considered

In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors--

(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(B) the rates for cable systems, if any, that are subject to effective competition;

(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

(3) Review of rate changes

The Commission shall review any complaint submitted by a franchising authority after February 8, 1996, concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

(4) Sunset of upper tier rate regulation

This subsection shall not apply to cable programming services provided after March 31, 1999.

(d) Uniform rate structure required

A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system. This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

(e) Discrimination; services for the hearing impaired

Nothing in this subchapter shall be construed as prohibiting any Federal agency, State, or a franchising authority from--

(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

(f) Negative option billing prohibited

A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

(g) Collection of information

The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after October 5, 1992, and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(h) Prevention of evasions

Within 180 days after October 5, 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

(i) Small system burdens

In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

(j) Rate regulation agreements

During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

(k) Reports on average prices

(1) In general

The Commission shall publish with its report under section 163 of this title statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment of cable systems that the Commission has found are subject to effective competition under subsection (a)(2) compared with cable systems that the Commission has found are not subject to such effective competition.

(2) Inclusion in report

(A) In general

The Commission shall include in its report under paragraph (1) the aggregate average total amount paid by cable systems in compensation under section 325 of this title.

(B) Form

The Commission shall publish information under this paragraph in a manner substantially similar to the way other comparable information is published in such report.

(l) Definitions

As used in this section--

(1) The term "effective competition" means that--

(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

(B) the franchise area is--

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area;

(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area; or

(D) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(2) The term "cable programming service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

(m) Special rules for small companies

(1) In general

Subsections (a), (b), and (c) do not apply to a small cable operator with respect to--

(A) cable programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that operator services 50,000 or fewer subscribers.

(2) "Small cable operator" defined

For purposes of this subsection, the term "small cable operator" means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

(n) Treatment of prior year losses

Notwithstanding any other provision of this section or of section 532 of this title, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

(o) Streamlined petition process for small cable operators

(1) In general

Not later than 180 days after December 4, 2014, the Commission shall complete a rulemaking to establish a streamlined process for filing of an effective competition petition pursuant to this section for small cable operators, particularly those who serve primarily rural areas.

(2) Construction

Nothing in this subsection shall be construed to have any effect on the duty of a small cable operator to prove the existence of effective competition under this section.

(3) Definition of small cable operator

In this subsection, the term "small cable operator" has the meaning given the term in subsection (m)(2).

CREDIT(S)

(June 19, 1934, c. 652, Title VI, § 623, as added Pub.L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2788; amended Pub.L. 102-385, § 3(a), Oct. 5, 1992, 106 Stat. 1464; Pub.L. 104-104, Title III, § 301(b), (c), (j), (k)(1), Feb. 8, 1996, 110 Stat. 114, 116, 118; Pub.L. 113-200, Title I, §§ 110, 111, Dec. 4, 2014, 128 Stat. 2065; Pub.L. 115-141, Div. P, Title IV, § 402(e), Mar. 23, 2018, 132 Stat. 1089.)

47 U.S.C.A. § 543, 47 USCA § 543
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter V-A. Cable Communications
Part III. Franchising and Regulation

47 U.S.C.A. § 544

§ 544. Regulation of services, facilities, and equipment

Effective: February 8, 1996
Currentness

(a) Regulation by franchising authority

Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this subchapter.

(b) Requests for proposals; establishment and enforcement of requirements

In the case of any franchise granted after the effective date of this subchapter, the franchising authority, to the extent related to the establishment or operation of a cable system--

(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 546 of this title), may establish requirements for facilities and equipment, but may not, except as provided in subsection (h), establish requirements for video programming or other information services; and

(2) subject to section 545 of this title, may enforce any requirements contained within the franchise--

(A) for facilities and equipment; and

(B) for broad categories of video programming or other services.

(c) Enforcement authority respecting franchises effective under prior law

In the case of any franchise in effect on the effective date of this subchapter, the franchising authority may, subject to section 545 of this title, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.

(d) Cable service unprotected by Constitution; blockage of premium channel upon request

(1) Nothing in this subchapter shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2) In order to restrict the viewing of of of [1] programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge--

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R.

(e) Technical standards

Within one year after October 5, 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

(f) Limitation on regulatory powers of Federal agencies, States, or franchising authorities; exceptions

(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this subchapter.

(2) Paragraph (1) shall not apply to--

(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this subchapter; and

(B) any rule, regulation, or order under Title 17.

(g) Access to emergency information

Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

(h) Notice of changes in and comments on services

A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

(i) Disposition of cable upon termination of service

Within 120 days after October 5, 1992, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.

CREDIT(S)

(June 19, 1934, c. 652, Title VI, § 624, as added Pub.L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2789; amended Pub.L. 102-385, §§ 15, 16, Oct. 5, 1992, 106 Stat. 1490; Pub.L. 103-414, Title III, §§ 303(a)(23), 304(a)(12), Oct. 25, 1994, 108 Stat. 4295, 4297; Pub.L. 104-104, Title III, § 301(e), Feb. 8, 1996, 110 Stat. 116.)

Footnotes

1 So in original.

47 U.S.C.A. § 544, 47 USCA § 544

Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter V-A. Cable Communications
Part IV. Miscellaneous Provisions

47 U.S.C.A. § 556

§ 556. Coordination of Federal, State, and local authority

Effective: February 8, 1996
Currentness

(a) Regulation by States, political subdivisions, State and local agencies, and franchising authorities

Nothing in this subchapter shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this subchapter.

(b) State jurisdiction with regard to cable services

Nothing in this subchapter shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this subchapter.

(c) Preemption

Except as provided in section 557 of this title, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.

(d) "State" defined

For purposes of this section, the term "State" has the meaning given such term in section 153 of this title.

CREDIT(S)

(June 19, 1934, c. 652, Title VI, § 636, as added Pub.L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2800; amended Pub.L. 104-104, § 3(d)(3), Feb. 8, 1996, 110 Stat. 61.)

47 U.S.C.A. § 556, 47 USCA § 556
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 12. Broadband

47 U.S.C.A. § 1302

§ 1302. Advanced telecommunications incentives

Effective: October 1, 2016
Currentness

(a) In general

The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) Inquiry

The Commission shall, within 30 months after February 8, 1996, and annually thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) Demographic information for unserved areas

As part of the inquiry required by subsection (b), the Commission shall compile a list of geographical areas that are not served by any provider of advanced telecommunications capability (as defined by subsection (d)(1)) and to the extent that data from the Census Bureau is available, determine, for each such unserved area--

(1) the population;

(2) the population density; and

(3) the average per capita income.

(d) Definitions

For purposes of this subsection: [1]

(1) Advanced telecommunications capability

The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, 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.

(2) Elementary and secondary schools

The term "elementary and secondary schools" means elementary and secondary schools, as defined in section 7801 of Title 20.

CREDIT(S)

(Pub.L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153; Pub.L. 107-110, Title X, § 1076(gg), Jan. 8, 2002, 115 Stat. 2093; Pub.L. 110-385, Title I, § 103(a), Oct. 10, 2008, 122 Stat. 4096; Pub.L. 114-95, Title IX, § 9215(ttt), Dec. 10, 2015, 129 Stat. 2190.)

Footnotes

1 So in original. Probably should be "section:".

47 U.S.C.A. § 1302, 47 USCA § 1302

Current through PL 117-11 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 47. Telecommunications (Refs & Annos)
Chapter 12. Broadband

47 U.S.C.A. § 1304

§ 1304. Encouraging State initiatives to improve broadband

Effective: October 10, 2008
Currentness

(a) Purposes

The purposes of any grant under subsection (b) are--

(1) to ensure that all citizens and businesses in a State have access to affordable and reliable broadband service;

(2) to achieve improved technology literacy, increased computer ownership, and broadband use among such citizens and businesses;

(3) to establish and empower local grassroots technology teams in each State to plan for improved technology use across multiple community sectors; and

(4) to establish and sustain an environment ripe for broadband services and information technology investment.

(b) Establishment of State broadband data and development grant program

(1) In general

The Secretary of Commerce shall award grants, taking into account the results of the peer review process under subsection (d), to eligible entities for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each State.

(2) Competitive basis

Any grant under subsection (b) shall be awarded on a competitive basis.

(c) Eligibility

To be eligible to receive a grant under subsection (b), an eligible entity shall--

(1) submit an application to the Secretary of Commerce, at such time, in such manner, and containing such information as the Secretary may require;

(2) contribute matching non-Federal funds in an amount equal to not less than 20 percent of the total amount of the grant; and

(3) agree to comply with confidentiality requirements in subsection (h)(2) of this section.

(d) Peer review; nondisclosure

(1) In general

The Secretary shall by regulation require appropriate technical and scientific peer review of applications made for grants under this section.

(2) Review procedures

The regulations required under paragraph (1) shall require that any technical and scientific peer review group--

(A) be provided a written description of the grant to be reviewed;

(B) provide the results of any review by such group to the Secretary of Commerce; and

(C) certify that such group will enter into voluntary nondisclosure agreements as necessary to prevent the unauthorized disclosure of confidential and proprietary information provided by broadband service providers in connection with projects funded by any such grant.

(e) Use of funds

A grant awarded to an eligible entity under subsection (b) shall be used--

(1) to provide a baseline assessment of broadband service deployment in each State;

(2) to identify and track--

(A) areas in each State that have low levels of broadband service deployment;

(B) the rate at which residential and business users adopt broadband service and other related information technology services; and

(C) possible suppliers of such services;

(3) to identify barriers to the adoption by individuals and businesses of broadband service and related information technology services, including whether or not--

(A) the demand for such services is absent; and

(B) the supply for such services is capable of meeting the demand for such services;

(4) to identify the speeds of broadband connections made available to individuals and businesses within the State, and, at a minimum, to rely on the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers, to promote greater consistency of data among the States;

(5) to create and facilitate in each county or designated region in a State a local technology planning team--

(A) with members representing a cross section of the community, including representatives of business, telecommunications labor organizations, K-12 education, health care, libraries, higher education, community-based organizations, local government, tourism, parks and recreation, and agriculture; and

(B) which shall--

(i) benchmark technology use across relevant community sectors;

(ii) set goals for improved technology use within each sector; and

(iii) develop a tactical business plan for achieving its goals, with specific recommendations for online application development and demand creation;

(6) to work collaboratively with broadband service providers and information technology companies to encourage deployment and use, especially in unserved areas and areas in which broadband penetration is significantly below the national average, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers to deploy;

(7) to establish programs to improve computer ownership and Internet access for unserved areas and areas in which broadband penetration is significantly below the national average;

(8) to collect and analyze detailed market data concerning the use and demand for broadband service and related information technology services;

(9) to facilitate information exchange regarding the use and demand for broadband services between public and private sectors; and

(10) to create within each State a geographic inventory map of broadband service, including the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers, which shall--

(A) identify gaps in such service through a method of geographic information system mapping of service availability based on the geographic boundaries of where service is available or unavailable among residential or business customers; and

(B) provide a baseline assessment of statewide broadband deployment in terms of households with high-speed availability.

(f) Participation limit

For each State, an eligible entity may not receive a new grant under this section to fund the activities described in subsection (d) within such State if such organization obtained prior grant awards under this section to fund the same activities in that State in each of the previous 4 consecutive years.

(g) Reporting; broadband inventory map

The Secretary of Commerce shall--

(1) require each recipient of a grant under subsection (b) to submit a report on the use of the funds provided by the grant; and

(2) create a web page on the Department of Commerce website that aggregates relevant information made available to the public by grant recipients, including, where appropriate, hypertext links to any geographic inventory maps created by grant recipients under subsection (e)(10).

(h) Access to aggregate data

(1) In general

Subject to paragraph (2), the Commission shall provide eligible entities access, in electronic form, to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.

(2) Limitation

Notwithstanding any provision of Federal or State law to the contrary, an eligible entity shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity. This paragraph applies only to information submitted by the Commission or a broadband provider to carry out the provisions of this chapter and shall not

otherwise limit or affect the rules governing public disclosure of information collected by any Federal or State entity under any other Federal or State law or regulation.

(i) Definitions

In this section:

(1) Commission

The term "Commission" means the Federal Communications Commission.

(2) Eligible entity

The term "eligible entity" means--

(A) an entity that is either--

(i) an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State;

(ii) a nonprofit organization that is described in section 501(c)(3) of Title 26 and that is exempt from taxation under section 501(a) of such title; or

(iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and

(B) is the single eligible entity in the State that has been designated by the State to receive a grant under this section.

(j) No regulatory authority

Nothing in this section shall be construed as giving any public or private entity established or affected by this chapter any regulatory jurisdiction or oversight authority over providers of broadband services or information technology.

CREDIT(S)

(Pub.L. 110-385, Title I, § 106, Oct. 10, 2008, 122 Stat. 4099.)

47 U.S.C.A. § 1304, 47 USCA § 1304
Current through PL 117-8 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. Some statute sections may be more current, see credits for details.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 8. Internet Freedom (Refs & Annos)

47 C.F.R. § 8.1

§ 8.1 Transparency.

Effective: June 11, 2018
Currentness

(a) Any person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

(b) Broadband internet access service is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.

(c) A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband internet access service.

Credits
[80 FR 19847, April 13, 2015; 83 FR 7922, Feb. 22, 2018; 83 FR 21927, May 11, 2018]

SOURCE: 76 FR 59232, Sept. 23, 2011; 80 FR 19847, April 13, 2015; 83 FR 7922, Feb. 22, 2018, unless otherwise noted.

AUTHORITY: 47 U.S.C. 154, 201(b), 257, and 303(r).

Current through April 23, 2021; 86 FR 21666.

End of Document

Code of Federal Regulations
Title 47. Telecommunication
Chapter I. Federal Communications Commission (Refs & Annos)
Subchapter A. General
Part 8. Protecting and Promoting the Open Internet [Changed to "Internet Freedom" Effective April 23, 2018] (Refs & Annos)

This section has been updated. Click here for the updated version.

47 C.F.R. § 8.2

§ 8.2 Definitions.

Effective: June 12, 2015 to June 10, 2018

<Text of section effective until June 11, 2018.>

(a) Broadband Internet access service. A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this part.

(b) Edge provider. Any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.

(c) End user. Any individual or entity that uses a broadband Internet access service.

(d) Fixed broadband Internet access service. A broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services (including fixed unlicensed wireless services), and fixed satellite services.

(e) Mobile broadband Internet access service. A broadband Internet access service that serves end users primarily using mobile stations.

(f) Reasonable network management. A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

Credits
[80 FR 19847, April 13, 2015]

SOURCE: 76 FR 59232, Sept. 23, 2011; 80 FR 19847, April 13, 2015; 83 FR 7922, Feb. 22, 2018, unless otherwise noted.

AUTHORITY: 47 U.S.C. 154, 201(b), 257, and 303(r).

End of Document

2018 Cal. Legis. Serv. Ch. 976 (S.B. 822) (WEST)

CALIFORNIA 2018 LEGISLATIVE SERVICE

2018 Portion of 2017-2018 Regular Session

Additions are indicated by **Text**; deletions by
* * * .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

CHAPTER 976
S.B. No. 822
CALIFORNIA INTERNET CONSUMER PROTECTION AND NET NEUTRALITY ACT

AN ACT to add Title 15 (commencing with Section 3100) to Part 4 of Division 3 of the Civil Code, relating to communications.

[Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 822, Wiener. Communications: broadband Internet access service.

Existing law imposes certain obligations in the context of particular transactions, and provides mechanisms to enforce those obligations.

This bill would enact the California Internet Consumer Protection and Net Neutrality Act of 2018. This act would prohibit fixed and mobile Internet service providers, as defined, that provide broadband Internet access service, as defined, from engaging in specified actions concerning the treatment of Internet traffic. The act would prohibit, among other things, blocking lawful content, applications, services, or nonharmful devices, impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device, and specified practices relating to zero-rating, as defined. It would also prohibit fixed and mobile Internet service providers from offering or providing services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services have the purpose or effect of evading the above-described prohibitions or negatively affect the performance of broadband Internet access service.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

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

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

(A) Police and emergency services.

(B) Health and safety services and infrastructure.

(C) Utility services and infrastructure.

(D) Transportation infrastructure and services, and the expansion of zero- and low-emission transportation options.

(E) Government services, voting, and democratic decisionmaking processes.

(F) Education.

(G) Business and economic activity.

(H) Environmental monitoring and protection, and achievement of state environmental goals.

(I) Land use regulation.

(b) This act shall be known, and may be cited, as the California Internet Consumer Protection and Net Neutrality Act of 2018.

SEC. 2. Title 15 (commencing with Section 3100) is added to Part 4 of Division 3 of the Civil Code, to read:

d. 3 pt. 4 t. 15 pr. § 3100

Title 15. Internet Neutrality

<< CA CIVIL § 3100 >>

3100. For purposes of this title, the following definitions apply:

(a) "Application–agnostic" means not differentiating on the basis of source, destination, Internet content, application, service, or device, or class of Internet content, application, service, or device.

(b) "Broadband Internet access service" means a mass-market retail service by wire or radio provided to customers in California that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including, but not limited to, any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. "Broadband Internet access service" also encompasses any service provided to customers in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this title.

(c) "Class of Internet content, application, service, or device" means Internet content, or a group of Internet applications, services, or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service, or device, using the same application- or transport-layer protocol, or having similar technical characteristics, including, but not limited to, the size, sequencing, or timing of packets, or sensitivity to delay.

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

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

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

(g) "Enterprise service offering" means an offering to larger organizations through customized or individually negotiated arrangements or special access services.

(h) "Fixed broadband Internet access service" means a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes, but is not limited to, fixed wireless services including, but not limited to, fixed unlicensed wireless services, and fixed satellite services.

(i) "Fixed Internet service provider" means a business that provides fixed broadband Internet access service to an individual, corporation, government, or other customer in California.

(j) "Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device" means impairing or degrading any of the following: (1) particular content, applications, or services; (2) particular classes of content, applications, or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices. The term includes, without limitation, differentiating, positively or negatively, between any of the following: (1) particular content, applications, or services; (2) particular classes of content, applications, or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices.

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

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

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

(n) "Mass market" service means a service marketed and sold on a standardized basis to residential customers, small businesses, and other customers, including, but not limited to, schools, institutions of higher learning, and libraries. "Mass market" services also include broadband Internet access services purchased with support of the E-rate and Rural Health Care programs and similar programs at the federal and state level, regardless of whether they are customized or individually negotiated, as well as any broadband Internet access service offered using networks supported by the Connect America Fund or similar programs at the federal and state level. "Mass market" service does not include enterprise service offerings.

(*o*) "Mobile broadband Internet access service" means a broadband Internet access service that serves end users primarily using mobile stations. Mobile broadband Internet access service includes, but is not limited to, broadband Internet access services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services.

(p) "Mobile Internet service provider" means a business that provides mobile broadband Internet access service to an individual, corporation, government, or other customer in California.

(q) “Mobile station” means a radio communication station capable of being moved and which ordinarily does move.

(r) “Paid prioritization” means the management of an Internet service provider's network to directly or indirectly favor some traffic over other traffic, including, but not limited to, through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration, monetary or otherwise, from a third party, or (2) to benefit an affiliated entity.

(s) “Reasonable network management” means a network management practice that is reasonable. A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for, and tailored to, achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service, and is as application-agnostic as possible.

(t) “Zero–rating” means exempting some Internet traffic from a customer's data usage allowance.

<< CA CIVIL § 3101 >>

3101. (a) It shall be unlawful for a fixed Internet service provider, insofar as the provider is engaged in providing fixed broadband Internet access service, to engage in any of the following activities:

(1) Blocking lawful content, applications, services, or nonharmful devices, subject to reasonable network management.

(2) Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device, subject to reasonable network management.

(3) Requiring consideration, monetary or otherwise, from an edge provider, including, but not limited to, in exchange for any of the following:

(A) Delivering Internet traffic to, and carrying Internet traffic from, the Internet service provider's end users.

(B) Avoiding having the edge provider's content, application, service, or nonharmful device blocked from reaching the Internet service provider's end users.

(C) Avoiding having the edge provider's content, application, service, or nonharmful device impaired or degraded.

(4) Engaging in paid prioritization.

(5) Engaging in zero-rating in exchange for consideration, monetary or otherwise, from a third party.

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

(7)(A) Unreasonably interfering with, or unreasonably disadvantaging, either an end user's ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of the end user's choice, or an edge provider's ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be a violation of this paragraph.

(B) Zero–rating Internet traffic in application-agnostic ways shall not be a violation of subparagraph (A) provided that no consideration, monetary or otherwise, is provided by any third party in exchange for the Internet service provider's decision whether to zero-rate traffic.

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

(9) Engaging in practices, including, but not limited to, agreements, with respect to, related to, or in connection with, ISP traffic exchange that have the purpose or effect of evading the prohibitions contained in this section and Section 3102. Nothing in this paragraph shall be construed to prohibit Internet service providers from entering into ISP traffic exchange agreements that do not evade the prohibitions contained in this section and Section 3102.

(b) It shall be unlawful for a mobile Internet service provider, insofar as the provider is engaged in providing mobile broadband Internet access service, to engage in any of the activities described in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) of subdivision (a).

<< CA CIVIL § 3102 >>

3102. (a) It shall be unlawful for a fixed Internet service provider to offer or provide services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services satisfy either of the following conditions:

(1) They have the purpose or effect of evading the prohibitions in Section 3101.

(2) They negatively affect the performance of broadband Internet access service.

(b) It shall be unlawful for a mobile Internet service provider to offer or provide services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services satisfy either of the conditions specified in paragraphs (1) and (2) of subdivision (a).

(c) Nothing in this section shall be construed to prohibit a fixed or mobile Internet service provider from offering or providing services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service and do not violate this section.

<< CA CIVIL § 3103 >>

3103. (a) Nothing in this title supersedes any obligation or authorization a fixed or mobile Internet service provider may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.

(b) Nothing in this title prohibits reasonable efforts by a fixed or mobile Internet service provider to address copyright infringement or other unlawful activity.

<< CA CIVIL § 3104 >>

3104. Notwithstanding Section 3268 or any other law, any waiver of the provisions of this title is contrary to public policy and shall be unenforceable and void.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

End of Document

West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 7. General Business Regulations (Refs & Annos)
Part 2. Preservation and Regulation of Competition (Refs & Annos)
Chapter 5. Enforcement (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 17200

§ 17200. Unfair competition; prohibited activities

Currentness

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

Credits
(Added by Stats.1977, c. 299, p. 1202, § 1. Amended by Stats.1992, c. 430 (S.B.1586), § 2.)

West's Ann. Cal. Bus. & Prof. Code § 17200, CA BUS & PROF § 17200
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 7. General Business Regulations (Refs & Annos)
Part 3. Representations to the Public (Refs & Annos)
Chapter 1. Advertising (Refs & Annos)
Article 1.8. Restrictions on Unsolicited Commercial E-Mail Advertisers (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 17529.5

§ 17529.5. Unlawful activities relating to commercial e-mail advertisements; additional remedies

Effective: January 1, 2006
Currentness

(a) It is unlawful for any person or entity to advertise in a commercial e-mail advertisement either sent from California or sent to a California electronic mail address under any of the following circumstances:

(1) The e-mail advertisement contains or is accompanied by a third-party's domain name without the permission of the third party.

(2) The e-mail advertisement contains or is accompanied by falsified, misrepresented, or forged header information. This paragraph does not apply to truthful information used by a third party who has been lawfully authorized by the advertiser to use that information.

(3) The e-mail advertisement has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(b)(1)(A) In addition to any other remedies provided by any other provision of law, the following may bring an action against a person or entity that violates any provision of this section:

(i) The Attorney General.

(ii) An electronic mail service provider.

(iii) A recipient of an unsolicited commercial e-mail advertisement, as defined in Section 17529.1.

(B) A person or entity bringing an action pursuant to subparagraph (A) may recover either or both of the following:

(i) Actual damages.

(ii) Liquidated damages of one thousand dollars ($1,000) for each unsolicited commercial e-mail advertisement transmitted in violation of this section, up to one million dollars ($1,000,000) per incident.

(C) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(D) However, there shall not be a cause of action under this section against an electronic mail service provider that is only involved in the routine transmission of the e-mail advertisement over its computer network.

(2) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this section, the court shall reduce the liquidated damages recoverable under paragraph (1) to a maximum of one hundred dollars ($100) for each unsolicited commercial e-mail advertisement, or a maximum of one hundred thousand dollars ($100,000) per incident.

(3)(A) A person who has brought an action against a party under this section shall not bring an action against that party under Section 17529.8 or 17538.45 for the same commercial e-mail advertisement, as defined in subdivision (c) of Section 17529.1.

(B) A person who has brought an action against a party under Section 17529.8 or 17538.45 shall not bring an action against that party under this section for the same commercial e-mail advertisement, as defined in subdivision (c) of Section 17529.1.

(c) A violation of this section is a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000), imprisonment in a county jail for not more than six months, or both that fine and imprisonment.

Credits

(Added by Stats.2003, c. 487 (S.B.186), § 1. Amended by Stats.2004, c. 571 (S.B.1457), § 1; Stats.2005, c. 247 (S.B.97), § 1.)

West's Ann. Cal. Bus. & Prof. Code § 17529.5, CA BUS & PROF § 17529.5
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22. Internet Privacy Requirements (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 22575

§ 22575. Commercial Web site operators; posting of privacy policy; violation of subdivision for failure to post policy; policy requirements

Effective: January 1, 2014
Currentness

(a) An operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service shall conspicuously post its privacy policy on its Web site, or in the case of an operator of an online service, make that policy available in accordance with paragraph (5) of subdivision (b) of Section 22577. An operator shall be in violation of this subdivision only if the operator fails to post its policy within 30 days after being notified of noncompliance.

(b) The privacy policy required by subdivision (a) shall do all of the following:

(1) Identify the categories of personally identifiable information that the operator collects through the Web site or online service about individual consumers who use or visit its commercial Web site or online service and the categories of third-party persons or entities with whom the operator may share that personally identifiable information.

(2) If the operator maintains a process for an individual consumer who uses or visits its commercial Web site or online service to review and request changes to any of his or her personally identifiable information that is collected through the Web site or online service, provide a description of that process.

(3) Describe the process by which the operator notifies consumers who use or visit its commercial Web site or online service of material changes to the operator's privacy policy for that Web site or online service.

(4) Identify its effective date.

(5) Disclose how the operator responds to Web browser “do not track” signals or other mechanisms that provide consumers the ability to exercise choice regarding the collection of personally identifiable information about an individual consumer's online activities over time and across third-party Web sites or online services, if the operator engages in that collection.

(6) Disclose whether other parties may collect personally identifiable information about an individual consumer's online activities over time and across different Web sites when a consumer uses the operator's Web site or service.

(7) An operator may satisfy the requirement of paragraph (5) by providing a clear and conspicuous hyperlink in the operator's privacy policy to an online location containing a description, including the effects, of any program or protocol the operator follows that offers the consumer that choice.

Credits

(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004. Amended by Stats.2004, c. 183 (A.B.3082), § 21; Stats.2004, c. 865 (S.B.1914), § 32; Stats.2013, c. 390 (A.B.370), § 1.)

West's Ann. Cal. Bus. & Prof. Code § 22575, CA BUS & PROF § 22575
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22. Internet Privacy Requirements (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 22576

§ 22576. Violation of section for failure to comply with provisions of posted privacy policy

Effective: July 1, 2004
Currentness

An operator of a commercial Web site or online service that collects personally identifiable information through the Web site or online service from individual consumers who use or visit the commercial Web site or online service and who reside in California shall be in violation of this section if the operator fails to comply with the provisions of Section 22575 or with the provisions of its posted privacy policy in either of the following ways:

(a) Knowingly and willfully.

(b) Negligently and materially.

Credits
(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

West's Ann. Cal. Bus. & Prof. Code § 22576, CA BUS & PROF § 22576
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22. Internet Privacy Requirements (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 22577

§ 22577. Definitions

Effective: July 1, 2004
Currentness

For the purposes of this chapter, the following definitions apply:

(a) The term "personally identifiable information" means individually identifiable information about an individual consumer collected online by the operator from that individual and maintained by the operator in an accessible form, including any of the following:

(1) A first and last name.

(2) A home or other physical address, including street name and name of a city or town.

(3) An e-mail address.

(4) A telephone number.

(5) A social security number.

(6) Any other identifier that permits the physical or online contacting of a specific individual.

(7) Information concerning a user that the Web site or online service collects online from the user and maintains in personally identifiable form in combination with an identifier described in this subdivision.

(b) The term "conspicuously post" with respect to a privacy policy shall include posting the privacy policy through any of the following:

(1) A Web page on which the actual privacy policy is posted if the Web page is the homepage or first significant page after entering the Web site.

(2) An icon that hyperlinks to a Web page on which the actual privacy policy is posted, if the icon is located on the homepage or the first significant page after entering the Web site, and if the icon contains the word "privacy." The icon shall also use a color that contrasts with the background color of the Web page or is otherwise distinguishable.

(3) A text link that hyperlinks to a Web page on which the actual privacy policy is posted, if the text link is located on the homepage or first significant page after entering the Web site, and if the text link does one of the following:

(A) Includes the word "privacy."

(B) Is written in capital letters equal to or greater in size than the surrounding text.

(C) Is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) Any other functional hyperlink that is so displayed that a reasonable person would notice it.

(5) In the case of an online service, any other reasonably accessible means of making the privacy policy available for consumers of the online service.

(c) The term "operator" means any person or entity that owns a Web site located on the Internet or an online service that collects and maintains personally identifiable information from a consumer residing in California who uses or visits the Web site or online service if the Web site or online service is operated for commercial purposes. It does not include any third party that operates, hosts, or manages, but does not own, a Web site or online service on the owner's behalf or by processing information on behalf of the owner.

(d) The term "consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

Credits
(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

West's Ann. Cal. Bus. & Prof. Code § 22577, CA BUS & PROF § 22577
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22. Internet Privacy Requirements (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 22578

§ 22578. Legislative intent of chapter

Effective: July 1, 2004
Currentness

It is the intent of the Legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the posting of a privacy policy on an Internet Web site.

Credits
(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

West's Ann. Cal. Bus. & Prof. Code § 22578, CA BUS & PROF § 22578
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22. Internet Privacy Requirements (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 22579

§ 22579. Operative date of chapter

Effective: July 1, 2004
Currentness

This chapter shall become operative on July 1, 2004.

Credits
(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

West's Ann. Cal. Bus. & Prof. Code § 22579, CA BUS & PROF § 22579
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22.1. Privacy Rights for California Minors in the Digital World (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 22580

§ 22580. Operator of Internet Web site, or online or mobile application directed to minors; marketing or advertising; products and services prohibited

Effective: January 1, 2019
Currentness

(a) An operator of an Internet Web site, online service, online application, or mobile application directed to minors shall not market or advertise a product or a service described in subdivision (i) on its Internet Web site, online service, online application, or mobile application directed to minors.

(b) An operator of an Internet Web site, online service, online application, or mobile application:

(1) Shall not market or advertise a product or service described in subdivision (i) to a minor who the operator has actual knowledge is using its Internet Web site, online service, online application, or mobile application and is a minor, if the marketing or advertising is specifically directed to that minor based upon information specific to that minor, including, but not limited to, the minor's profile, activity, address, or location sufficient to establish contact with a minor, and excluding Internet Protocol (IP) address and product identification numbers for the operation of a service.

(2) Shall be deemed to be in compliance with paragraph (1) if the operator takes reasonable actions in good faith designed to avoid marketing or advertising under circumstances prohibited under paragraph (1).

(c) An operator of an Internet Web site, online service, online application, or mobile application directed to minors or who has actual knowledge that a minor is using its Internet Web site, online service, online application, or mobile application, shall not knowingly use, disclose, compile, or allow a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising products or services to that minor for a product described in subdivision (i).

(d) “Minor” means a natural person under 18 years of age who resides in this state.

(e) “Internet Web site, online service, online application, or mobile application directed to minors” mean an Internet Web site, online service, online application, or mobile application, or a portion thereof, that is created for the purpose of reaching an audience that is predominately comprised of minors, and is not intended for a more general audience comprised of adults. Provided, however, that an Internet Web site, online service, online application, or mobile application, or a portion thereof, shall not be deemed to be directed at minors solely because it refers or links to an Internet Web site, online service, online application, or mobile application directed to minors by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(f) "Operator" means any person or entity that owns an Internet Web site, online service, online application, or mobile application. It does not include any third party that operates, hosts, or manages, but does not own, an Internet Web site, online service, online application, or mobile application on the owner's behalf or processes information on the owner's behalf.

(g) This section shall not be construed to require an operator of an Internet Web site, online service, online application, or mobile application to collect or retain age information about users.

(h)(1) With respect to marketing or advertising provided by an advertising service, the operator of an Internet Web site, online service, online application, or mobile application directed to minors shall be deemed to be in compliance with subdivision (a) if the operator notifies the advertising service, in the manner required by the advertising service, that the site, service, or application is directed to minors.

(2) If an advertising service is notified, in the manner required by the advertising service, that an Internet Web site, online service, online application, or mobile application is directed to minors pursuant to paragraph (1), the advertising service shall not market or advertise a product or service on the operator's Internet Web site, online service, online application, or mobile application that is described in subdivision (i).

(i) The marketing and advertising restrictions described in subdivisions (a) and (b) shall apply to the following products and services as they are defined under state law:

(1) Alcoholic beverages, as referenced in Sections 23003 to 23007, inclusive, and Section 25658.

(2) Firearms or handguns, as referenced in Sections 16520, 16640, and 27505 of the Penal Code.

(3) Ammunition or reloaded ammunition, as referenced in Sections 16150 and 30300 of the Penal Code.

(4) Handgun safety certificates, as referenced in Sections 31625 and 31655 of the Penal Code.

(5) Aerosol container of paint that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(6) Etching cream that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(7) Any tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, as referenced in Division 8.5 (commencing with Section 22950) and Sections 308, 308.1, 308.2, and 308.3 of the Penal Code.

(8) Notwithstanding subdivision (b) of Section 26151, any cannabis, cannabis product, cannabis business, or any instrument or paraphernalia that is designed for the smoking or ingestion of cannabis or cannabis products.

(9) BB device, as referenced in Sections 16250 and 19910 of the Penal Code.

(10) Dangerous fireworks, as referenced in Sections 12505 and 12689 of the Health and Safety Code.

(11) Tanning in an ultraviolet tanning device, as referenced in Sections 22702 and 22706.

(12) Dietary supplement products containing ephedrine group alkaloids, as referenced in Section 110423.2 of the Health and Safety Code.

(13) Tickets or shares in a lottery game, as referenced in Sections 8880.12 and 8880.52 of the Government Code.

(14) Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A, as referenced in Section 379 of the Penal Code.

(15) Body branding, as referenced in Sections 119301 and 119302 of the Health and Safety Code.

(16) Permanent tattoo, as referenced in Sections 119301 and 119302 of the Health and Safety Code and Section 653 of the Penal Code.

(17) Drug paraphernalia, as referenced in Section 11364.5 of the Health and Safety Code.

(18) Electronic cigarette, as referenced in Section 119406 of the Health and Safety Code.

(19) Obscene matter, as referenced in Section 311 of the Penal Code.

(20) A less lethal weapon, as referenced in Sections 16780 and 19405 of the Penal Code.

(j) The marketing and advertising restrictions described in subdivisions (a), (b), and (c) shall not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for the purposes of marketing and advertising of the products or services described in subdivision (i).

(k) “Marketing or advertising” means, in exchange for monetary compensation, to make a communication to one or more individuals, or to arrange for the dissemination to the public of a communication, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.

Credits

(Added by Stats.2013, c. 336 (S.B.568), § 1, operative Jan. 1, 2015. Amended by Stats.2018, c. 347 (A.B.3067), § 1, eff. Jan. 1, 2019.)

West's Ann. Cal. Bus. & Prof. Code § 22580, CA BUS & PROF § 22580
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Ann.Cal.Bus. & Prof.Code § 22581

§ 22581. Minor registered users; removal of posted content or information; permission by operator; notice that minor may remove posted content or information; instructions; exceptions regarding elimination of content; authority of law enforcement agency to obtain content; compliance

Effective: January 1, 2015
Currentness

(a) An operator of an Internet Web site, online service, online application, or mobile application directed to minors or an operator of an Internet Web site, online service, online application, or mobile application that has actual knowledge that a minor is using its Internet Web site, online service, online application, or mobile application shall do all of the following:

(1) Permit a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application to remove or, if the operator prefers, to request and obtain removal of, content or information posted on the operator's Internet Web site, online service, online application, or mobile application by the user.

(2) Provide notice to a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application that the minor may remove or, if the operator prefers, request and obtain removal of, content or information posted on the operator's Internet Web site, online service, online application, or mobile application by the registered user.

(3) Provide clear instructions to a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application on how the user may remove or, if the operator prefers, request and obtain the removal of content or information posted on the operator's Internet Web site, online service, online application, or mobile application.

(4) Provide notice to a minor who is a registered user of the operator's Internet Web site, online service, online application, or mobile application that the removal described under paragraph (1) does not ensure complete or comprehensive removal of the content or information posted on the operator's Internet Web site, online service, online application, or mobile application by the registered user.

(b) An operator or a third party is not required to erase or otherwise eliminate, or to enable erasure or elimination of, content or information in any of the following circumstances:

(1) Any other provision of federal or state law requires the operator or third party to maintain the content or information.

(2) The content or information was stored on or posted to the operator's Internet Web site, online service, online application, or mobile application by a third party other than the minor, who is a registered user, including any content or information posted by the registered user that was stored, republished, or reposted by the third party.

(3) The operator anonymizes the content or information posted by the minor who is a registered user, so that the minor who is a registered user cannot be individually identified.

(4) The minor does not follow the instructions provided to the minor pursuant to paragraph (3) of subdivision (a) on how the registered user may request and obtain the removal of content or information posted on the operator's Internet Web site, online service, online application, or mobile application by the registered user.

(5) The minor has received compensation or other consideration for providing the content.

(c) This section shall not be construed to limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or pursuant to an order of a court of competent jurisdiction.

(d) An operator shall be deemed compliant with this section if:

(1) It renders the content or information posted by the minor user no longer visible to other users of the service and the public even if the content or information remains on the operator's servers in some form.

(2) Despite making the original posting by the minor user invisible, it remains visible because a third party has copied the posting or reposted the content or information posted by the minor.

(e) This section shall not be construed to require an operator of an Internet Web site, online service, online application, or mobile application to collect age information about users.

(f) “Posted” means content or information that can be accessed by a user in addition to the minor who posted the content or information, whether the user is a registered user or not, of the Internet Web site, online service, online application, or mobile application where the content or information is posted.

Credits
(Added by Stats.2013, c. 336 (S.B.568), § 1, operative Jan. 1, 2015.)

West's Ann. Cal. Bus. & Prof. Code § 22581, CA BUS & PROF § 22581
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22.1. Privacy Rights for California Minors in the Digital World (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 22582

§ 22582. Operative date of chapter

Effective: January 1, 2015
Currentness

This chapter shall become operative on January 1, 2015.

Credits
(Added by Stats.2013, c. 336 (S.B.568), § 1, operative Jan. 1, 2015.)

West's Ann. Cal. Bus. & Prof. Code § 22582, CA BUS & PROF § 22582
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Annotated California Codes
Civil Code (Refs & Annos)
Division 1. Persons (Refs & Annos)
Part 2. Personal Rights (Refs & Annos)

West's Ann.Cal.Civ.Code § 51

§ 51. Unruh Civil Rights Act; equal rights; business establishments; violations of federal Americans with Disabilities Act

Effective: January 1, 2016
Currentness

(a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, citizenship, primary language, or immigration status, or to persons regardless of their genetic information.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) “Disability” means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2)(A) “Genetic information” means, with respect to any individual, information about any of the following:

(i) The individual's genetic tests.

(ii) The genetic tests of family members of the individual.

(iii) The manifestation of a disease or disorder in family members of the individual.

(B) "Genetic information" includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(C) "Genetic information" does not include information about the sex or age of any individual.

(3) "Medical condition" has the same meaning as defined in subdivision (i) of Section 12926 of the Government Code.

(4) "Religion" includes all aspects of religious belief, observance, and practice.

(5) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. "Sex" also includes, but is not limited to, a person's gender. "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

(6) "Sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status" includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

(7) "Sexual orientation" has the same meaning as defined in subdivision (s) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the federal Americans with Disabilities Act of 1990 (Public Law 101-336) [1] shall also constitute a violation of this section.

(g) Verification of immigration status and any discrimination based upon verified immigration status, where required by federal law, shall not constitute a violation of this section.

(h) Nothing in this section shall be construed to require the provision of services or documents in a language other than English, beyond that which is otherwise required by other provisions of federal, state, or local law, including Section 1632.

Credits

(Added by Stats.1905, c. 413, p. 553, § 1. Amended by Stats.1919, c. 210, p. 309, § 1; Stats.1923, c. 235, p. 485, § 1; Stats.1959, c. 1866, p. 4424, § 1; Stats.1961, c. 1187, p. 2920, § 1; Stats.1974, c. 1193, p. 2568, § 1; Stats.1987, c. 159, § 1; Stats.1992, c. 913 (A.B.1077), § 3; Stats.1998, c. 195 (A.B.2702), § 1; Stats.2000, c. 1049 (A.B.2222), § 2; Stats.2005, c. 420 (A.B.1400), § 3; Stats.2011, c. 261 (S.B.559), § 3; Stats.2011, c. 719 (A.B.887), § 1.5; Stats.2015, c. 303 (A.B.731), § 25, eff. Jan. 1, 2016; Stats.2015, c. 282 (S.B.600), § 1, eff. Jan. 1, 2016.)

Footnotes

1 For public law sections classified to the U.S.C.A., see USCA-Tables.

West's Ann. Cal. Civ. Code § 51, CA CIVIL § 51
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West's Annotated California Codes
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 4. Obligations Arising from Particular Transactions (Refs & Annos)
Title 1.81.5. California Consumer Privacy Act of 2018 (Refs & Annos)

West's Ann.Cal.Civ.Code § 1798.100

§ 1798.100. Consumer rights regarding personal information collection by businesses; disclosure; information requests; retention of personal information collected for single, one-time use transaction

Effective: January 1, 2020 to December 31, 2022
Currentness

<Section operative until Jan. 1, 2023. See, also, § 1798.100 operative Jan. 1, 2023.>

(a) A consumer shall have the right to request that a business that collects a consumer's personal information disclose to that consumer the categories and specific pieces of personal information the business has collected.

(b) A business that collects a consumer's personal information shall, at or before the point of collection, inform consumers as to the categories of personal information to be collected and the purposes for which the categories of personal information shall be used. A business shall not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

(c) A business shall provide the information specified in subdivision (a) to a consumer only upon receipt of a verifiable consumer request.

(d) A business that receives a verifiable consumer request from a consumer to access personal information shall promptly take steps to disclose and deliver, free of charge to the consumer, the personal information required by this section. The information may be delivered by mail or electronically, and if provided electronically, the information shall be in a portable and, to the extent technically feasible, readily useable format that allows the consumer to transmit this information to another entity without hindrance. A business may provide personal information to a consumer at any time, but shall not be required to provide personal information to a consumer more than twice in a 12-month period.

(e) This section shall not require a business to retain any personal information collected for a single, one-time transaction, if such information is not sold or retained by the business or to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.

Credits

(Added by Stats.2018, c. 55 (A.B.375), § 3, eff. Jan. 1, 2019, operative Jan. 1, 2020. Amended by Stats.2018, c. 735 (S.B.1121), § 1, eff. Sept. 23, 2018, operative Jan. 1, 2020; Stats.2019, c. 757 (A.B.1355), § 1, eff. Jan. 1, 2020.)

West's Ann. Cal. Civ. Code § 1798.100, CA CIVIL § 1798.100
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Ann.Cal.Civ.Code § 3100

§ 3100. Definitions

Effective: January 1, 2019
Currentness

For purposes of this title, the following definitions apply:

(a) "Application-agnostic" means not differentiating on the basis of source, destination, Internet content, application, service, or device, or class of Internet content, application, service, or device.

(b) "Broadband Internet access service" means a mass-market retail service by wire or radio provided to customers in California that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including, but not limited to, any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. "Broadband Internet access service" also encompasses any service provided to customers in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this title.

(c) "Class of Internet content, application, service, or device" means Internet content, or a group of Internet applications, services, or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service, or device, using the same application- or transport-layer protocol, or having similar technical characteristics, including, but not limited to, the size, sequencing, or timing of packets, or sensitivity to delay.

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

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

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

(g) "Enterprise service offering" means an offering to larger organizations through customized or individually negotiated arrangements or special access services.

(h) "Fixed broadband Internet access service" means a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes, but is not limited to, fixed wireless services including, but not limited to, fixed unlicensed wireless services, and fixed satellite services.

(i) "Fixed Internet service provider" means a business that provides fixed broadband Internet access service to an individual, corporation, government, or other customer in California.

(j) "Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device" means impairing or degrading any of the following: (1) particular content, applications, or services; (2) particular classes of content, applications, or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices. The term includes, without limitation, differentiating, positively or negatively, between any of the following: (1) particular content, applications, or services; (2) particular classes of content, applications, or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices.

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

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

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

(n) "Mass market" service means a service marketed and sold on a standardized basis to residential customers, small businesses, and other customers, including, but not limited to, schools, institutions of higher learning, and libraries. "Mass market" services also include broadband Internet access services purchased with support of the E-rate and Rural Health Care programs and similar programs at the federal and state level, regardless of whether they are customized or individually negotiated, as well as any broadband Internet access service offered using networks supported by the Connect America Fund or similar programs at the federal and state level. "Mass market" service does not include enterprise service offerings.

(*o*) "Mobile broadband Internet access service" means a broadband Internet access service that serves end users primarily using mobile stations. Mobile broadband Internet access service includes, but is not limited to, broadband Internet access services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services.

(p) "Mobile Internet service provider" means a business that provides mobile broadband Internet access service to an individual, corporation, government, or other customer in California.

(q) “Mobile station” means a radio communication station capable of being moved and which ordinarily does move.

(r) “Paid prioritization” means the management of an Internet service provider's network to directly or indirectly favor some traffic over other traffic, including, but not limited to, through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration, monetary or otherwise, from a third party, or (2) to benefit an affiliated entity.

(s) “Reasonable network management” means a network management practice that is reasonable. A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for, and tailored to, achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service, and is as application-agnostic as possible.

(t) “Zero-rating” means exempting some Internet traffic from a customer's data usage allowance.

Credits
(Added by Stats.2018, c. 976 (S.B.822), § 2, eff. Jan. 1, 2019.)

West's Ann. Cal. Civ. Code § 3100, CA CIVIL § 3100
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Ann.Cal.Civ.Code § 3101

§ 3101. Prohibited activities for fixed broadband Internet access service providers; mobile broadband Internet access service providers

Effective: January 1, 2019
Currentness

(a) It shall be unlawful for a fixed Internet service provider, insofar as the provider is engaged in providing fixed broadband Internet access service, to engage in any of the following activities:

(1) Blocking lawful content, applications, services, or nonharmful devices, subject to reasonable network management.

(2) Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device, subject to reasonable network management.

(3) Requiring consideration, monetary or otherwise, from an edge provider, including, but not limited to, in exchange for any of the following:

(A) Delivering Internet traffic to, and carrying Internet traffic from, the Internet service provider's end users.

(B) Avoiding having the edge provider's content, application, service, or nonharmful device blocked from reaching the Internet service provider's end users.

(C) Avoiding having the edge provider's content, application, service, or nonharmful device impaired or degraded.

(4) Engaging in paid prioritization.

(5) Engaging in zero-rating in exchange for consideration, monetary or otherwise, from a third party.

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

(7)(A) Unreasonably interfering with, or unreasonably disadvantaging, either an end user's ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of the end user's choice, or an edge provider's ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be a violation of this paragraph.

(B) Zero-rating Internet traffic in application-agnostic ways shall not be a violation of subparagraph (A) provided that no consideration, monetary or otherwise, is provided by any third party in exchange for the Internet service provider's decision whether to zero-rate traffic.

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

(9) Engaging in practices, including, but not limited to, agreements, with respect to, related to, or in connection with, ISP traffic exchange that have the purpose or effect of evading the prohibitions contained in this section and Section 3102. Nothing in this paragraph shall be construed to prohibit Internet service providers from entering into ISP traffic exchange agreements that do not evade the prohibitions contained in this section and Section 3102.

(b) It shall be unlawful for a mobile Internet service provider, insofar as the provider is engaged in providing mobile broadband Internet access service, to engage in any of the activities described in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) of subdivision (a).

Credits
(Added by Stats.2018, c. 976 (S.B.822), § 2, eff. Jan. 1, 2019.)

West's Ann. Cal. Civ. Code § 3101, CA CIVIL § 3101
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

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West's Annotated California Codes
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 4. Obligations Arising from Particular Transactions (Refs & Annos)
Title 15. Internet Neutrality (Refs & Annos)

West's Ann.Cal.Civ.Code § 3102

§ 3102. Prohibition on services meant to evade the prohibitions in § 3101 or affect internet performance; mobile broadband Internet access service providers

Effective: January 1, 2019
Currentness

(a) It shall be unlawful for a fixed Internet service provider to offer or provide services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services satisfy either of the following conditions:

(1) They have the purpose or effect of evading the prohibitions in Section 3101.

(2) They negatively affect the performance of broadband Internet access service.

(b) It shall be unlawful for a mobile Internet service provider to offer or provide services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services satisfy either of the conditions specified in paragraphs (1) and (2) of subdivision (a).

(c) Nothing in this section shall be construed to prohibit a fixed or mobile Internet service provider from offering or providing services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service and do not violate this section.

Credits
(Added by Stats.2018, c. 976 (S.B.822), § 2, eff. Jan. 1, 2019.)

West's Ann. Cal. Civ. Code § 3102, CA CIVIL § 3102
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Annotated California Codes
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 4. Obligations Arising from Particular Transactions (Refs & Annos)
Title 15. Internet Neutrality (Refs & Annos)

West's Ann.Cal.Civ.Code § 3103

§ 3103. Applicability to emergency communication, public safety, or efforts to address unlawful activity

Effective: January 1, 2019
Currentness

(a) Nothing in this title supersedes any obligation or authorization a fixed or mobile Internet service provider may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.

(b) Nothing in this title prohibits reasonable efforts by a fixed or mobile Internet service provider to address copyright infringement or other unlawful activity.

Credits
(Added by Stats.2018, c. 976 (S.B.822), § 2, eff. Jan. 1, 2019.)

West's Ann. Cal. Civ. Code § 3103, CA CIVIL § 3103
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Annotated California Codes
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 4. Obligations Arising from Particular Transactions (Refs & Annos)
Title 15. Internet Neutrality (Refs & Annos)

West's Ann.Cal.Civ.Code § 3104

§ 3104. Waiver of provisions

Effective: January 1, 2019
Currentness

Notwithstanding Section 3268 or any other law, any waiver of the provisions of this title is contrary to public policy and shall be unenforceable and void.

Credits
(Added by Stats.2018, c. 976 (S.B.822), § 2, eff. Jan. 1, 2019.)

West's Ann. Cal. Civ. Code § 3104, CA CIVIL § 3104
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments (Refs & Annos)
Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals (Refs & Annos)
Chapter 5. Bigamy, Incest, and the Crime Against Nature (Refs & Annos)

West's Ann.Cal.Penal Code § 288.2

§ 288.2. Harmful matter sent to minor; knowledge; intent; punishment

Effective: January 1, 2014
Currentness

(a)(1) Every person who knows, should have known, or believes that another person is a minor, and who knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including by physical delivery, telephone, electronic communication, or in person, any harmful matter that depicts a minor or minors engaging in sexual conduct, to the other person with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of the minor, and with the intent or for the purposes of engaging in sexual intercourse, sodomy, or oral copulation with the other person, or with the intent that either person touch an intimate body part of the other, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or is guilty of a felony, punishable by imprisonment in the state prison for two, three, or five years.

(2) If the matter used by the person is harmful matter but does not include a depiction or depictions of a minor or minors engaged in sexual conduct, the offense is punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for 16 months, or two or three years.

(3) For purposes of this subdivision, the offense described in paragraph (2) shall include all of the elements described in paragraph (1), except as to the element modified in paragraph (2).

(b) For purposes of this section, "sexual conduct" has the same meaning as defined in subdivision (d) of Section 311.4.

(c) For purposes of this section, "harmful matter" has the same meaning as defined in Section 313.

(d) For purposes of this section, an intimate body part includes the sexual organ, anus, groin, or buttocks of any person, or the breasts of a female.

(e) Prosecution under this section shall not preclude prosecution under any other provision of law.

(f) It shall be a defense to any prosecution under this section that a parent or guardian committed the act charged in aid of legitimate sex education.

(g) It shall be a defense in any prosecution under this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(h) It does not constitute a violation of this section for a telephone corporation, as defined in Section 234 of the Public Utilities Code, a cable television company franchised pursuant to Section 53066 of the Government Code, or any of its affiliates, an Internet service provider, or commercial online service provider, to carry, broadcast, or transmit messages described in this section or perform related activities in providing telephone, cable television, Internet, or commercial online services.

Credits
(Added by Stats.2013, c. 777 (S.B.145), § 2.)

West's Ann. Cal. Penal Code § 288.2, CA PENAL § 288.2
Current with urgency legislation through Ch. 16 of 2021 Reg.Sess

End of Document

West's Delaware Code Annotated
Title 16. Health and Safety
Part IV. Food and Drugs
Chapter 47. Uniform Controlled Substances Act (Refs & Annos)
Subchapter III-A. Safe Internet Pharmacy Act

16 Del.C. § 4741

§ 4741. Short title

Effective: July 21, 2008
Currentness

This subchapter shall be known as the "Safe Internet Pharmacy Act."

Credits
Added by 76 Laws 2008, ch. 410, § 1, eff. July 21, 2008.

16 Del.C. § 4741, DE ST TI 16 § 4741
Current through ch. 18 of the 151st General Assembly (2021-2022). Some statute sections may be more current, see credits for details. Revisions to 2021 Acts by the Delaware Code Revisors were unavailable at the time of publication.

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XII. Education (Ch. 69-78a)
Chapter 71. Public Schools (Refs & Annos)

M.G.L.A. 71 § 94

§ 94. Commonwealth virtual schools

Effective: February 20, 2018
Currentness

(a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Board”, the board of elementary and secondary education.

“Commissioner”, the commissioner of elementary and secondary education.

“Commonwealth virtual school”, a public school operated by a board of trustees whose teachers primarily teach from a remote location using the internet or other computer-based methods and whose students are not required to be located at the physical premises of the school.

“Certificate”, a certificate of organization issued by the board to a commonwealth virtual school's board of trustees which governs the operations of the commonwealth virtual school.

“Department”, the department of elementary and secondary education.

“District” or “school district”, the school department of a city, town, regional school district or county agricultural school.

“Education collaborative”, an association of 2 or more school committees or boards of trustees of charter schools established pursuant to section 4E of chapter 40.

(b) On or before October 1, the board shall issue a request for proposals to establish 1 or more commonwealth virtual schools; provided, however, that the board shall not be required to issue a request for proposals for any school year for which a certificate is not available to be awarded. The request for proposals shall be published on the department's website. Persons or entities eligible to submit a proposal to establish a commonwealth virtual school shall include, but not be limited to: (i) a school district; (ii) 2 or more school districts; (iii) an education collaborative; (iv) an institution of higher education; (v) a non-profit entity; (vi) 2 or more certified teachers; or (vii) parents. Private and parochial schools and for-profit entities shall not be eligible to submit a proposal. A proposal shall be selected from the responses to the request for proposals and an applicant awarded a certificate under the procedures adopted by the board. The request for proposals shall include, but not be limited to, the following terms and conditions that shall be addressed in each response to the request for proposals and, upon selection by the board, shall be incorporated into the certificate to operate a commonwealth virtual school:

(1) the mission, purpose and specialized focus, if any, of the proposed commonwealth virtual school;

(2) the educational program, instructional methodology and services to be offered to students;

(3) the organization of the school by ages of students or grades to be taught and an estimate of the total enrollment of the commonwealth virtual school;

(4) the method for and timetable of admission to the commonwealth virtual school;

(5) the commonwealth virtual school governance and by-laws;

(6) the proposed school year;

(7) how the commonwealth virtual school shall administer state required assessment tests;

(8) a statement of equal educational opportunity which shall state that the commonwealth virtual school shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, religion, sex, gender identity or sexual orientation;

(9) a description of any preferences the school shall give for enrollment and how the school shall conduct a lottery for admission if applications exceed enrollment capacity;

(10) the identity of any third party software or curriculum vendors that the school intends to use;

(11) a proposed arrangement or contract with an organization that shall manage or operate the school, including any proposed or agreed upon payments to such organization;

(12) a demonstration of the applicant's capacity to support and store all critical student, program and staff data for expedient retrieval and analysis in compliance with federal and state laws;

(13) provisions for cyber safety;

(14) how the school shall notify each school district in writing of the number and grade levels of students who shall be attending the commonwealth virtual school from that district within 10 days of the student registering for enrollment in the commonwealth virtual school;

(15) whether the commonwealth virtual school will offer online courses to students attending other schools;

(16) the financial plan for the operation of the school;

(17) the number and qualifications of teachers and administrators to be employed;

(18) the procedures for evaluation and professional development for teachers and administrators, including what training, if any, shall be provided to teachers who have not previously taught online;

(19) the school's capacity to address the particular needs of English learners as defined in chapter 71A to learn English and learn content matter;

(20) the school's plan to conduct outreach to prospective students;

(21) what supports shall be provided to students to help them complete courses, including the school's strategies for ensuring that an enrolled student shall complete the program and goals regarding course completion and student achievement;

(22) how the school will monitor student progress in order to identify areas of difficulty and assist students who need additional attention;

(23) where relevant, what supports will be provided to help students prepare for college and careers;

(24) the school's capacity to support students' social and emotional growth;

(25) how the school shall create a community for students who are enrolled in the commonwealth virtual school;

(26) how the commonwealth virtual school applicant shall include activities to engage students;

(27) what, if any, in person activities, learning or interaction will be provided or offered, including extra-curricular activities;

(28) expectations for age appropriate supervision of students under the age of 14, if applicable;

(29) a description of where students will access the school's courses, including whether it is in the home or in a location provided and overseen by the commonwealth virtual school applicant;

(30) methods to assure that all students shall have access to necessary technology and materials;

(31) what technical support shall be available to students, including whether the commonwealth virtual school applicant shall offer an orientation for taking an online course before starting the coursework;

(32) how the school shall define and monitor student attendance, including how it shall verify that each student is participating in classes, how truancy shall be addressed and goals regarding student attendance;

(33) expectations and goals for communication between teachers and students and how such interaction shall be documented;

(34) how the school shall involve parents and guardians as partners in the education of the children and goals for parental and family engagement;

(35) the school's capacity to implement the proposal and provide high quality instructional services;

(36) the school's capacity to instruct students in the following categories, if the school intends to serve any such students: (i) students with physical or other challenges that make it difficult for them to physically attend a school; (ii) students with medical needs requiring a home or hospital setting; (iii) students with unusual needs requiring a flexible schedule; (iv) students who are over-age for their grade; (v) students who have been expelled; (vi) students who have dropped out or are at risk of dropping out; (vii) students who are pregnant or have a child; (viii) students with social and emotional challenges that make it difficult for them to physically attend a school; (ix) students who feel bullied or cannot attend school because their safety is at risk; (x) gifted and talented students; (xi) students who seek academic work not available in their school; (xii) students in rural communities; and (xiii) students in institutionalized settings;

(37) whether the school proposes a mechanism to provide meals to students eligible for free and reduced price lunch;

(38) the student to teacher ratio; and

(39) whether the school will establish a personalized learning plan for each student, in conjunction with the student's school district of residence.

(c) The board shall make the final determination on selecting proposals; provided, however, that the board shall only grant a certificate to a qualified applicant as determined by the board; provided further, that the board shall hold a public hearing on the proposals which shall be attended by at least 1 member of the board. Not more than 10 commonwealth virtual schools shall be allowed to operate in the commonwealth at any time; provided, however, that a commonwealth virtual school operated by a single school district, under an agreement entered into by more than 1 school district or by an education collaborative shall not be counted towards this limit if the commonwealth virtual school only enrolls students who reside in the school district, in the school districts that signed the agreement or in the school districts that are members of an education collaborative. The board may authorize a single board of trustees to manage more than 1 commonwealth virtual school; provided, however, that each school is issued its own certificate. Under no circumstances shall the total number of full-time students attending commonwealth virtual schools exceed 2 per cent of the total number of students attending public schools in the commonwealth.

The board shall give preference to proposals that include an educational program or specialized focus that appropriately addresses 1 or more of the following: students with physical or other challenges that make it difficult for them to physically attend a school; students with medical needs requiring a home or hospital setting; students with unusual needs requiring a flexible schedule; students who are over-age for their grade; students who have been expelled; students who have dropped out; students at risk of dropping out; students who are pregnant or have a child; students with social and emotional challenges that make it difficult for them to physically attend a school; students who feel bullied or cannot attend school because the students' safety is at risk; gifted and talented students; students who seek academic work not available in their school; students in rural

communities; and students in institutionalized settings. The board shall also consider whether proposed schools will create or enhance the opportunity for students to attend virtual schools in all grades from kindergarten through grade 12.

(d) A commonwealth virtual school shall operate under a certificate issued by the board and be governed by a board of trustees. If a district or education collaborative operates the commonwealth virtual school, then the board of trustees shall be appointed by the member school committees of the district or the collaborative board. The board of trustees of a commonwealth virtual school, upon being granted a certificate, shall be deemed to be a public agent authorized by the commonwealth to supervise and control the commonwealth virtual school. A commonwealth virtual school shall be deemed to be a state agency under chapter 268A and members of the board of trustees shall be deemed to be public employees under chapter 268B.

(e) The board of trustees of a commonwealth virtual school shall have all powers necessary or desirable for carrying out its virtual program, including, but not limited to, the power to:

(1) adopt a name and corporate seal; provided, that any name selected shall include the words “commonwealth virtual school”;

(2) acquire real property, from public or private sources, by lease, lease with an option to purchase or by gift, for use as a school facility;

(3) receive and disburse funds for school purposes;

(4) incur temporary debt in anticipation of receipt of funds; provided that, notwithstanding any general or special law to the contrary, the terms of repayment of any commonwealth virtual school's debt shall not exceed the duration of the school's certificate without the approval of the board;

(5) solicit and accept grants or gifts for school purposes; and

(6) determine the school's curriculum and develop the school's annual budget.

(f) A commonwealth virtual school may provide access to its courses in an existing public school building or any other suitable location; provided, however, that a commonwealth virtual school shall comply with all applicable state and federal health and safety laws and regulations.

(g) The board may waive requirements that students who attend a commonwealth virtual school, attend school for a minimum number of hours or days each school year and may permit students to earn credits by demonstrating competency in a grade or subject matter. Students in commonwealth virtual schools shall be required to meet the same academic standards, testing and portfolio requirements set by the board for students in other public schools.

To ensure that students are learning and demonstrating their knowledge, each commonwealth virtual school shall ensure that students are provided, in each credit-bearing course, multiple synchronous learning opportunities with their teachers in which students are required to participate and share their knowledge.

(h) Commonwealth virtual schools shall comply with chapter 71B; provided, however, that the fiscal responsibility for a student with a disability enrolled in or determined to require a private day or residential school shall remain with the school district where the student resides. If a commonwealth virtual school expects that a student with a disability enrolled in the commonwealth virtual school may be in need of the services of a private day or residential school, it shall convene an individualized education program team meeting for the student. Notice of the team meeting shall be provided to the special education department of the school district in which the child resides at least 5 days in advance. Personnel from the school district in which the child resides shall participate in the team meeting concerning future placement of and services for the child and shall agree on the needed services for the child.

(i) No teacher shall be hired by a commonwealth virtual school who is not certified pursuant to section 38G. Nothing herein shall preclude such teacher from using digital content which may include, but not be limited to, guest lecturers.

(j) A certificate to operate a commonwealth virtual school granted by the board shall be for not less than 3 years and not more than 5 years, as determined by the board. The board shall develop procedures and guidelines for amending, revoking and renewing a virtual school's certificate. When deciding on certificate renewal, the board shall consider progress made in student academic achievement and whether the school has met its obligations and commitments under the certificate.

(k) The amount of tuition per pupil a school district shall pay for a student residing in the district who is enrolled in a commonwealth virtual school shall be the school choice tuition amount, which shall be paid through the school choice mechanism; provided, that the department may, in consultation with the operational services division, approve alternative tuition amounts proposed by applicants that shall not exceed the state average per pupil foundation budget for students of the same classification and grade level; provided, further, that the department may authorize additional tuition assessments for services required by an individualized education program established pursuant to chapter 71B. If a commonwealth virtual school offers online courses to students attending other schools, the commonwealth virtual school shall work with the student's district or school to determine whether the online courses meet said district's or school's standards and requirements and what the commonwealth virtual school will charge the student's district or school for such online courses.

The department may retain not more than $75 per pupil for the administration of the commonwealth virtual school program.

The department, in consultation with the department of youth services, shall determine the appropriate tuition responsibility for students who are in the custody of the department of corrections, a sheriff or the department of youth services.

Students enrolled in a commonwealth virtual school shall be counted in the foundation enrollment of the school district where the student resides.

(*l*) The department shall promulgate rules and regulations creating a reporting requirement for a commonwealth virtual school's net asset balance at the end of each fiscal year; provided, however, that the report shall include, but not be limited to: (1) the revenue and expenditures for the prior fiscal year with a specific accounting of the uses of public and private dollars; (2) compensation and benefits for teachers, staff, administrators, executives and members of the board of trustees; (3) the amount of funds paid to a management company; (4) the sources of surplus funds, specifically whether the funds are private or public; (5) how surplus funds were used in the previous fiscal year; and (6) the planned use of surplus funds in the upcoming fiscal year and in future fiscal years. The board may establish limits for excess funds that may be retained by commonwealth virtual schools and may require commonwealth virtual schools to return excess funds to school districts.

(m) Each commonwealth virtual school shall submit an annual report, on or before January 1, to the board. The school shall make its report available to the public on its website. The annual report shall be in such form as may be prescribed by the board and shall include, but not be limited to: (1) a discussion of progress made toward the achievement of the goals set forth in the certificate; (2) a list of the programs and courses offered; (3) a description and number of the students enrolled in the commonwealth virtual school by grade level, the number of students eligible for free and reduced price lunch and the number of students who applied and were not admitted; (4) a financial statement describing by appropriate categories the revenue and expenditures for the prior fiscal year and a balance sheet describing the commonwealth virtual school's assets, liabilities and fund balances or equities; (5) information regarding and a discussion of student attendance and participation; (6) information regarding and a discussion of student-teacher interaction; (7) information regarding and a discussion of student performance in the commonwealth virtual school, including data from state assessments and a comparison of students' achievement against the achievement of the students in the sending district; (8) a discussion of how many courses were completed and not completed; (9) a discussion of how the school created a community for students; (10) what activities were included to engage students and how students participated in those activities; (11) a discussion of parental involvement; and (12) a discussion of the school's outreach and recruitment efforts; provided, however, that said report shall include input from teachers and administrators at the virtual school and input from administrators in a district that has established a virtual school or districts that are members of an education collaborative that has established a virtual school.

(n) Each commonwealth virtual school shall maintain an accurate account of all its activities and all its receipts and expenditures and shall annually conduct an independent audit of its accounts. Such audit shall be filed annually, on or before January 1 with the department and the state auditor and shall be in a form prescribed by the state auditor. The state auditor may investigate the budget and finances of commonwealth virtual schools and their financial dealings, transactions and relationships and shall have the power to examine the records of commonwealth virtual schools and to prescribe methods of accounting and the rendering of periodic reports.

(o) On or before September 1, the commissioner shall furnish a supplemental report on the Massachusetts comprehensive assessment system performance results of students served by each commonwealth virtual school and on the racial, ethnic and socio-economic make-up of the students served by each commonwealth virtual school. The commissioner shall also provide information on the number of students enrolled in each commonwealth virtual school who have individualized education programs pursuant to chapter 71B. The department shall make such report available to the public on the department's website.

(p) On or before September 1, the commissioner shall prepare a report on the implementation and impact of this section, including, but not limited to:

(1) the fiscal impact on sending districts;

(2) any necessary adjustments to tuition rates, including whether the amount should vary based on grade or type of school and the appropriate mechanism for funding virtual schools;

(3) information on course completion and student attendance and participation rates;

(4) the academic achievement of students attending commonwealth virtual schools;

(5) the level of supervision or support needed for students in elementary and middle school;

(6) the support necessary or helpful to ensure that students successfully complete online courses;

(7) the professional development virtual school teachers require;

(8) the appropriate enrollment limit for a virtual school, if any, including information about wait lists; and

(9) the need for any changes to the commonwealth virtual school program.

The report shall be based partially on information in each commonwealth virtual school's annual report and financial audits. This report shall include input from virtual school teachers and administrators. The commissioner shall consult with the digital learning advisory council to prepare this report. The commissioner shall file the report with the clerks of the house and senate, who shall forward the report to the joint committee on education. The department shall make the report available to the public on the department's website.

(q) The commissioner shall identify and offer information on online courses which are aligned with state academic standards that districts may use and shall publish that list on the department's website. At least 1 of the online courses listed shall be available at no cost to school districts, provided that such no cost online course is aligned with state academic standards. The list shall be reviewed and updated annually. Nothing in this subsection shall preclude school districts from using other courses not identified by the commissioner.

(r) The board may promulgate regulations for implementation and enforcement of this section, provided that the regulations may include, but shall not be limited to, a provision indicating the appropriate percentage of online academic instruction provided for a school to be considered a commonwealth virtual school pursuant to this section. Upon release of the proposed regulations, the board shall file a copy of the regulations with the clerks of the house of representatives and the senate, who shall forward the regulations to the joint committee on education. Within 30 days of the filing, the committee may hold a public hearing and issue a report on the regulations and file the report with the board. The board, pursuant to applicable law, may adopt final regulations making revisions to the proposed regulations as it deems appropriate after consideration of the report and shall file a copy of the regulations with the chairpersons of the joint committee on education and, not earlier than 30 days after the filing, the board shall file the final regulations with the state secretary.

(s) Nothing in this section shall preclude a student from taking some or all of the student's classes online when such classes are offered or approved by the school the student attends or by an education collaborative in which the student's school district participates.

This section shall not apply to a virtual school operated by a single school district if the school enrolls only students residing in the school district; provided, however, that such district shall submit a summary description of the proposed virtual school to the commissioner for review and comment at least 4 months in advance of the opening of the virtual school. The commissioner shall then provide written comments on the proposal to each district's school committee.

(t) A school committee may, by vote, restrict enrollment of its students in commonwealth virtual schools if the total enrollment of its students in commonwealth virtual schools exceeds 1 per cent of the total enrollment in its district; provided, however, that no student enrolled in a commonwealth virtual school shall be compelled to withdraw as a result of that vote.

Credits

Added by St.2012, c. 379, § 5, eff. Jan. 2, 2013. Amended by St.2016, c. 133, § 49, eff. July 1, 2016; St.2017, c. 138, § 34, eff. Feb. 20, 2018.

M.G.L.A. 71 § 94, MA ST 71 § 94
Current through Chapter 3 of the 2021 1st Annual Session

End of Document

Maine Revised Statutes Annotated
Title 8. Amusements and Sports
Chapter 33. Regulation of Fantasy Contests

8 M.R.S.A. § 1101

§ 1101. Definitions

Effective: November 1, 2017
Currentness

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Beginner fantasy contestant. "Beginner fantasy contestant" means an individual who has entered fewer than 51 fantasy contests offered by a single fantasy contest operator.

2. Director. "Director" means the director of the Gambling Control Unit within the Department of Public Safety.

3. Entry fee. "Entry fee" means cash or a cash equivalent that is required to be paid by a fantasy contestant to a fantasy contest operator in order to participate in a fantasy contest.

4. Fantasy contest. "Fantasy contest" means a simulated game or contest in which:

A. One or more fantasy contestants pay an entry fee to participate;

B. Fantasy contestants compete against each other by using their knowledge and understanding of sports events and persons engaged in those sports events to select and manage a simulated team roster whose performance directly corresponds with the actual performance of human competitors on sports teams and in sports events; and

C. The outcome of the game or contest reflects the relative knowledge and skill of the contestants and does not depend on the performance of any one participant in a sports event or the outcome of any one sports event but is determined predominantly by accumulated statistical results of the performance of individual competitors on sports teams and in sports events.

5. Fantasy contestant. "Fantasy contestant" means an individual who participates in a fantasy contest offered by a fantasy contest operator.

6. Fantasy contest operator. "Fantasy contest operator" means a person that offers a platform for the playing of fantasy contests and that administers a fantasy contest for which a prize of value is awarded.

7. Gross fantasy contest revenues. "Gross fantasy contest revenues" means the amount determined by subtracting the total of all sums paid out by a fantasy contest operator as cash prizes to all fantasy contestants from the total of all entry fees that the fantasy contest operator collects from all fantasy contestants and multiplying the result by the resident percentage. Sums paid out as prizes may not include the cash equivalent of any merchandise or something of value awarded as a prize.

8. Highly experienced fantasy contestant. "Highly experienced fantasy contestant" means a fantasy contestant who has:

A. Entered more than 1,000 fantasy contests operated by a single fantasy contest operator; or

B. Won more than 3 prizes of $1,000 or more each from a single fantasy contest operator.

9. Platform. "Platform" means an online or electronic method by which access to a fantasy contest is provided, including, but not limited to, a website, personal digital device, such as a device commonly known as a smartphone, or other application providing access to a fantasy contest.

10. Resident percentage. "Resident percentage" means, for each fantasy contest, the percentage, rounded to the nearest tenth of a percent, obtained by dividing the total amount of entry fees collected from fantasy contestants located in the State by the total amount of entry fees collected from all fantasy contestants.

Credits
2017, c. 303, § 2, eff. Nov. 1, 2017.

8 M. R. S. A. § 1101, ME ST T. 8 § 1101
Current with legislation through Chapter 31 of the 2021 First Regular Session of the 130th Legislature. The First Regular Session convened December 2, 2020.

End of Document

West's Nevada Revised Statutes Annotated
Title 52. Trade Regulations and Practices (Chapters 597-604b)
Chapter 603A. Security and Privacy of Personal Information
Notice Regarding Privacy of Information Collected on Internet from Consumers

N.R.S. 603A.340

603A.340. Notice regarding covered information collected by operator: Operator required to make available to consumers; contents; period to remedy failure to comply with requirements; exception

Effective: October 1, 2017
Currentness

1. Except as otherwise provided in subsection 3, an operator shall make available, in a manner reasonably calculated to be accessible by consumers whose covered information the operator collects through its Internet website or online service, a notice that:

(a) Identifies the categories of covered information that the operator collects through its Internet website or online service about consumers who use or visit the Internet website or online service and the categories of third parties with whom the operator may share such covered information;

(b) Provides a description of the process, if any such process exists, for an individual consumer who uses or visits the Internet website or online service to review and request changes to any of his or her covered information that is collected through the Internet website or online service;

(c) Describes the process by which the operator notifies consumers who use or visit the Internet website or online service of material changes to the notice required to be made available by this subsection;

(d) Discloses whether a third party may collect covered information about an individual consumer's online activities over time and across different Internet websites or online services when the consumer uses the Internet website or online service of the operator; and

(e) States the effective date of the notice.

2. An operator may remedy any failure to comply with the provisions of subsection 1 within 30 days after being informed of such a failure.

3. The provisions of subsection 1 do not apply to an operator:

(a) Who is located in this State;

(b) Whose revenue is derived primarily from a source other than the sale or lease of goods, services or credit on Internet websites or online services; and

(c) Whose Internet website or online service has fewer than 20,000 unique visitors per year.

Credits

Added by Laws 2017, c. 570, § 6, eff. Oct. 1, 2017.

N. R. S. 603A.340, NV ST 603A.340

Current through legislation of the 81st Regular Session (2021) effective as of April 8, 2021. Text subject to revision and classification by the Legislative Counsel Bureau.

End of Document

West's Oregon Revised Statutes Annotated
Title 50. Trade Regulations and Practices
Chapter 646. Trade Practices and Antitrust Regulation (Refs & Annos)
Unlawful Trade Practices (Refs & Annos)

O.R.S. § 646.607

646.607. Unlawful trade practice

Effective: January 1, 2020
Currentness

A person engages in an unlawful trade practice if in the course of the person's business, vocation or occupation the person:

(1) Employs any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation.

(2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a customer's request, fails to refund money that the customer gave to the person to purchase the undelivered real estate, goods or services and that the person does not retain pursuant to any right, claim or defense the person may assert in good faith. This subsection does not create a warranty obligation and does not apply to a dispute over the quality of real estate, goods or services delivered to a customer.

(3) Violates ORS 401.965 (2).

(4) Violates a provision of ORS 646A.725 to 646A.750.

(5) Violates ORS 646A.530.

(6) Employs a collection practice that is unlawful under ORS 646.639.

(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2).

(8) Violates ORS 646A.093.

(9) Violates a provision of ORS 646A.600 to 646A.628.

(10) Violates ORS 646A.808 (2).

(11) Violates ORS 336.184.

(12) Publishes on a website related to the person's business, or in a consumer agreement related to a consumer transaction, a statement or representation of fact in which the person asserts that the person, in a particular manner or for particular purposes, will use, disclose, collect, maintain, delete or dispose of information that the person requests, requires or receives from a consumer and the person uses, discloses, collects, maintains, deletes or disposes of the information in a manner that is materially inconsistent with the person's statement or representation.

(13) Violates ORS 646A.813 (2).

Credits

Added by Laws 1977, c. 195, § 4. Amended by Laws 1979, c. 505, § 1; Laws 2003, c. 759, § 9; Laws 2003, c. 759, § 10, operative Jan. 1, 2006; Laws 2007, c. 223, § 6, eff. May 30, 2007; Laws 2008, c. 19 (1st Sp. Sess.), § 16, eff. March 11, 2008; Laws 2008, c. 31 (1st Sp. Sess.), § 4, eff. May 1, 2008; Laws 2009, c. 60, § 1, eff. Jan. 1, 2010; Laws 2013, c. 304, § 13, eff. June 4, 2013, operative Aug. 4, 2013; Laws 2013, c. 433, § 2, eff. Jan. 1, 2014; Laws 2015, c. 128, § 2, eff. May 21, 2015; Laws 2015, c. 357, § 4, eff. Jan. 1, 2016; Laws 2015, c. 528, § 3, eff. July 1, 2016; Laws 2017, c. 145, § 1, eff. Jan. 1, 2018; Laws 2019, c. 193, § 2, eff. Jan. 1, 2020.

O. R. S. § 646.607, OR ST § 646.607

Current through laws enacted in the 2020 Regular Session of the 80th Legislative Assembly, which adjourned sine die March 3, 2020; laws enacted in the First Special Session of the 80th Legislative Assembly, which adjourned sine die June 26, 2020; laws enacted during the Second Special Session of the 80th Legislative Assembly, which adjourned sine die August 10, 2020; ballot measures approved by the electorate in the November 3, 2020 General Election; and laws enacted in the Third Special Session of the 80th Legislative Assembly, which adjourned sine die December 21, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160.

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CERTIFICATE OF SERVICE

Case Name: ***ACA Connects, et al v. Xavier Becerra*** Case No. **21-15430**

I hereby certify that on May 4, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **ANSWERING BRIEF**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 4, 2021, at San Francisco, California.

M. Mendiola
Declarant

M. Mendiola
Signature

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