

Amend **CSHB 789** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS as appropriate:

SECTION \_\_\_\_\_. Chapter 64, Utilities Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. PROTECTIONS RELATED TO BROADBAND

NETWORKS AND ADVANCED SERVICES

Sec. 64.201. POLICY. It is the policy of this state to foster free market intermodal communications competition, including providing incentives to invest in advanced communications infrastructure, while still maintaining the "end to end" concept that facilitated the creation and growth of the Internet and still preserving customer choice in the Internet-enabled applications customers employ in association with broadband service.

Sec. 64.202. PROHIBITION ON PREVENTION OR INHIBITION. A network provider that deploys broadband networks and provides advanced services may not prevent or inhibit the use of any application or product by customers in association with the use of an advanced service by blocking transmission and delivery of traffic to and from a particular port, Internet address, or Internet site, by limiting the speed available for use by any particular application, or by instituting technical limitations on the use of any Internet-enabled application. However, a network provider may take reasonable and necessary actions to protect the network from harm and to prevent degradation of service to its general body of customers. This section does not prohibit a network provider from offering or supporting a service or application, including adware, spyware, malware, antivirus, antispam, content filtering, or parental controls or protections, if the customer has a choice between the network provider's service or application and those of an unaffiliated vendor.

Sec. 64.203. PROHIBITION ON BLOCKING AND REDIRECTING. A network provider that deploys broadband networks and provides advanced services or an Internet service may not knowingly or intentionally block or redirect a customer's attempt to access an Internet application or advanced service without notice to the

customer unless the:

(1) blocking or redirecting is necessary to comply with the Digital Millennium Copyright Act (Pub. L. No. 105-304), any other federal or state law, a court order, a request from a law enforcement official, or a lawful process or is necessary for reasons of national security;

(2) owner or others in control of the application or advanced service request the blocking or redirecting of traffic;

(3) blocking or redirecting is necessary for the protection of the advanced services provider's or Internet service provider's customers, network, facilities, or business reputation or is the consequence of the advanced services provider's or Internet service provider's activities with respect to maintenance, monitoring, repair, network, reconfiguration, software or hardware changes, or network outages;

(4) blocking or redirecting occurs as a result of software changes, incompatibility of software used by the customer, or any other reason attributable to a third party or not within the reasonable control of the advanced services provider or Internet service provider;

(5) blocking or redirecting is done to provide notice to the customer of:

(A) network conditions;

(B) conditions pertaining to the customer's system or software; or

(C) changes to prices, features, functions, operations, or terms of service; or

(6) action taken is incident to the enforcement of, or allowed by, the posted terms of service, privacy policy or acceptable use policies, or conditions that apply to use of the service.

Sec. 64.204. JURISDICTION. The commission has jurisdiction to enforce this subchapter.

SECTION \_\_\_\_\_. The Public Utility Commission of Texas shall conduct a study to determine whether Title 2, Utilities Code, adequately preserves customer choice in the Internet-enabled applications employed in association with broadband service and

report its conclusions and recommendations to the legislature not later than January 1, 2007. The study must include consultation with and comment from all interested parties.