

116TH CONGRESS
1ST SESSION

S. 2658

To promote competition and reduce consumer switching costs in the provision of online communications services.

IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 2019

Mr. WARNER (for himself, Mr. HAWLEY, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To promote competition and reduce consumer switching costs in the provision of online communications services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Augmenting Compat-
5 ibility and Competition by Enabling Service Switching Act
6 of 2019” or the “ACCESS Act of 2019”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) COMMISSION.—The term “Commission”
10 means the Federal Trade Commission.

1 (2) COMMUNICATIONS PROVIDER.—The term
2 “communications provider” means a consumer-fac-
3 ing communications and information services pro-
4 vider.

5 (3) COMPETING COMMUNICATIONS PROVIDER.—
6 The term “competing communications provider”,
7 with respect to a large communications platform
8 provider, means another communications provider
9 offering, or planning to offer, similar products or
10 services to consumers.

11 (4) COMPETING COMMUNICATIONS SERVICE.—
12 The term “competing communications service”, with
13 respect to a large communications platform, means
14 a similar product or service provided by a competing
15 communications provider.

16 (5) CUSTODIAL THIRD-PARTY AGENT.—The
17 term “custodial third-party agent” means an entity
18 that is duly authorized by a user to interact with a
19 large communications platform provider on that
20 user’s behalf to manage the user’s online inter-
21 actions, content, and account settings.

22 (6) INTEROPERABILITY INTERFACE.—The term
23 “interoperability interface” means an electronic
24 interface maintained by a large communications
25 platform for purposes of achieving interoperability.

1 (7) LARGE COMMUNICATIONS PLATFORM.—The
2 term “large communications platform” means a
3 product or service provided by a communications
4 provider that—

5 (A) generates income, directly or indirectly,
6 from the collection, processing, sale, or sharing
7 of user data; and

8 (B) has more than 100,000,000 monthly
9 active users in the United States.

10 (8) LARGE COMMUNICATIONS PLATFORM PRO-
11 VIDER.—The term “large communications platform
12 provider” means a communications provider that
13 provides, manages, or controls a large communica-
14 tions platform.

15 (9) USER DATA.—

16 (A) IN GENERAL.—The term “user data”
17 means information that is—

18 (i) collected directly by a communica-
19 tions provider; and

20 (ii) linked, or reasonably linkable, to a
21 specific person.

22 (B) EXCLUSION.—The term “user data”
23 does not include information that is rendered
24 unusable, unreadable, de-identified, or
25 anonymized.

1 **SEC. 3. PORTABILITY.**

2 (a) GENERAL DUTY OF LARGE COMMUNICATIONS
3 PLATFORM PROVIDERS.—A large communications plat-
4 form provider shall, for each large communications plat-
5 form it operates, maintain a set of transparent, third-
6 party-accessible interfaces (including application program-
7 ming interfaces) to initiate the secure transfer of user data
8 to a user, or to a competing communications provider act-
9 ing at the direction of a user, in a structured, commonly
10 used, and machine-readable format.

11 (b) GENERAL DUTY OF COMPETING COMMUNICA-
12 TIONS PROVIDERS.—A competing communications pro-
13 vider that receives ported user data from a large commu-
14 nications platform provider shall reasonably secure any
15 user data it acquires.

16 (c) EXEMPTION FOR CERTAIN SERVICES.—The obli-
17 gations under this section shall not apply to a product or
18 service by which a large communications platform provider
19 does not generate any income or other compensation, di-
20 rectly or indirectly, from collecting, using, or sharing user
21 data.

22 **SEC. 4. INTEROPERABILITY.**

23 (a) GENERAL DUTY OF LARGE COMMUNICATIONS
24 PLATFORM PROVIDERS.—A large communications plat-
25 form provider shall, for each large communications plat-
26 form it operates, maintain a set of transparent, third-

1 party-accessible interfaces (including application program-
2 ming interfaces) to facilitate and maintain technically
3 compatible, interoperable communications with a user of
4 a competing communications provider.

5 (b) GENERAL DUTY OF COMPETING COMMUNICA-
6 TIONS PROVIDERS.—A competing communications pro-
7 vider that accesses an interoperability interface of a large
8 communications platform provider shall reasonably secure
9 any user data it acquires, processes, or transmits.

10 (c) INTEROPERABILITY OBLIGATIONS FOR LARGE
11 COMMUNICATIONS PLATFORM PROVIDERS.—

12 (1) IN GENERAL.—In order to achieve inter-
13 operability under subsection (a), a large communica-
14 tions platform provider shall fulfill the duties under
15 paragraphs (2) through (6) of this subsection.

16 (2) NON-DISCRIMINATION.—

17 (A) IN GENERAL.—A large communica-
18 tions platform provider shall facilitate and
19 maintain interoperability with competing com-
20 munications services for each of its large com-
21 munications platforms through an interoper-
22 ability interface, based on fair, reasonable, and
23 nondiscriminatory terms.

24 (B) REASONABLE THRESHOLDS, ACCESS
25 STANDARDS, AND FEES.—

1 (i) IN GENERAL.—A large commu-
2 nications platform provider may establish
3 reasonable thresholds related to the fre-
4 quency, nature, and volume of requests by
5 a competing communications provider to
6 access resources maintained by the large
7 communications platform provider, beyond
8 which the large communications platform
9 provider may assess a reasonable fee for
10 such access.

11 (ii) USAGE EXPECTATIONS.—A large
12 communications platform provider may es-
13 tablish fair, reasonable, and nondiscrim-
14 inatory usage expectations to govern access
15 by competing communications providers,
16 including fees or penalties for providers
17 that exceed those usage expectations.

18 (iii) LIMITATION ON FEES AND USAGE
19 EXPECTATIONS.—Any fees, penalties, or
20 usage expectations assessed under clauses
21 (i) and (ii) shall be reasonably proportional
22 to the cost, complexity, and risk to the
23 large communications platform provider of
24 providing such access.

1 (iv) NOTICE.—A large communica-
2 tions platform provider shall provide public
3 notice of any fees, penalties, or usage ex-
4 pectations that may be established under
5 clauses (i) and (ii), including reasonable
6 advance notice of any changes.

7 (v) SECURITY AND PRIVACY STAND-
8 ARDS.—A large communications platform
9 provider shall, consistent with industry
10 best practices, set privacy and security
11 standards for access by competing commu-
12 nications services to the extent reasonably
13 necessary to address a threat to the large
14 communications platform or user data, and
15 shall report any suspected violations of
16 those standards to the Commission.

17 (C) PROHIBITED CHANGES TO INTER-
18 FACES.—A change to an interoperability inter-
19 face or terms of use made with the purpose, or
20 substantial effect, of unreasonably denying ac-
21 cess or undermining interoperability for com-
22 peting communications services shall be consid-
23 ered a violation of the duty under subparagraph
24 (A) to facilitate and maintain interoperability

1 based on fair, reasonable, and nondiscriminatory terms.

3 (3) FUNCTIONAL EQUIVALENCE.—A large communications platform provider that maintains interoperability between its own large communications platform and other products, services, or affiliated offerings of such provider shall offer a functionally equivalent version of that interface to competing communications services.

10 (4) INTERFACE INFORMATION.—

11 (A) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, a large communications platform provider shall disclose to competing communications providers complete and accurate documentation describing access to the interoperability interface required under this section.

18 (B) CONTENTS.—The documentation required under subparagraph (A)—

20 (i) is limited to interface documentation necessary to achieve development and operation of interoperable products and services; and

1 (ii) does not require the disclosure of
2 the source code of a large communications
3 platform.

4 (5) NOTICE OF CHANGES.—A large communica-
5 tions platform provider shall provide reasonable ad-
6 vance notice to a competing communications pro-
7 vider, which may be provided through public notice,
8 of any change to an interoperability interface main-
9 tained by the large communications platform pro-
10 vider that will affect the interoperability of a com-
11 peting communications service.

12 (6) NON-COMMERCIALIZATION BY A LARGE
13 COMMUNICATIONS PLATFORM PROVIDER.—A large
14 communications platform provider may not collect,
15 use, or share user data obtained from a competing
16 communications service through the interoperability
17 interface except for the purposes of safeguarding the
18 privacy and security of such information or main-
19 taining interoperability of services.

20 (d) NON-COMMERCIALIZATION BY A COMPETING
21 COMMUNICATIONS PROVIDER.—A competing communica-
22 tions provider that accesses an interoperability interface
23 may not collect, use, or share user data obtained from a
24 large communications platform provider through the inter-
25 operability interface except for the purposes of safe-

1 guarding the privacy and security of such information or
2 maintaining interoperability of services.

3 (e) EXEMPTION FOR CERTAIN SERVICES.—The obli-
4 gations under this section shall not apply to a product or
5 service by which a large communications platform provider
6 does not generate any income or other compensation, di-
7 rectly or indirectly, from collecting, using, or sharing user
8 data.

9 **SEC. 5. DELEGATABILITY.**

10 (a) GENERAL DUTY OF LARGE COMMUNICATIONS
11 PLATFORM PROVIDERS.—A large communications plat-
12 form provider shall maintain a set of transparent third-
13 party-accessible interfaces by which a user may delegate
14 a custodial third-party agent to manage the user’s online
15 interactions, content, and account settings on a large com-
16 munications platform on the same terms as a user.

17 (b) AUTHENTICATION.—Not later than 180 days
18 after the date of enactment of this Act, the Commission
19 shall establish rules and procedures to facilitate a custo-
20 dial third-party agent’s ability to obtain access pursuant
21 to subsection (a) in a way that ensures that a request for
22 access on behalf of a user is a verifiable request.

23 (c) REGISTRATION WITH THE COMMISSION.—A cus-
24 todial third-party agent shall register with the Commission

1 as a condition of, and prior to, accessing an interface de-
2 scribed in subsection (a).

3 (d) DEREGISTRATION BY THE COMMISSION.—The
4 Commission shall establish rules and procedures to
5 deregister a custodial third-party agent that the Commis-
6 sion determines has violated the duties established in this
7 section.

8 (e) REVOCATION OF ACCESS RIGHTS.—A large com-
9 munications platform provider may revoke or deny access
10 for any custodial third-party agent that—

11 (1) fails to register with the Commission; or

12 (2) repeatedly facilitates fraudulent or mali-
13 cious activity.

14 (f) DUTIES OF A CUSTODIAL THIRD-PARTY
15 AGENT.—A custodial third-party agent—

16 (1) shall reasonably safeguard the privacy and
17 security of user data provided to it by a user, or
18 accessed on a user's behalf;

19 (2) shall not access or manage a user's online
20 interactions, content, or account settings in any way
21 that—

22 (A) will benefit the custodial third-party
23 agent to the detriment of the user;

24 (B) will result in any reasonably foresee-
25 able harm to the user; or

1 (C) is inconsistent with the directions or
2 reasonable expectations of the user; and

3 (3) shall not collect, use, or share any user data
4 provided to it by a user, or accessed on a user's be-
5 half, for the commercial benefit of the custodial
6 third-party agent.

7 (g) FEES.—A custodial third-party agent may charge
8 users a fee for the provision of the products or services
9 described in subsection (a).

10 (h) EXTENT OF ACCESS RIGHTS.—Nothing in this
11 section shall be construed to confer greater rights of ac-
12 cess for a custodial third-party agent to a large commu-
13 nications platform than are accessible to a user.

14 **SEC. 6. IMPLEMENTATION AND ENFORCEMENT.**

15 (a) REGULATIONS.—Not later than 1 year after the
16 date of enactment of this Act, the Commission shall pro-
17 mulgate regulations to implement section 4(c)(2)(B)(v)
18 and subsections (b), (c), and (d) of section 5.

19 (b) AUTHENTICATION.—Not later than 180 days
20 after the date of enactment of this Act, the Commission,
21 in consultation with relevant industry stakeholders, shall
22 establish rules and procedures to facilitate the verification
23 of the validity of requests from users and competing com-
24 munications providers to obtain user data under sections
25 3(a) and 4(a).

1 (c) TECHNICAL STANDARDS.—Not later than 180
2 days after the date of enactment of this Act, the Director
3 of the National Institute of Standards and Technology
4 shall develop and publish model technical standards by
5 which to make interoperable popular classes of commu-
6 nications or information services, including—

- 7 (1) online messaging;
8 (2) multimedia sharing; and
9 (3) social networking.

10 (d) COMPLIANCE ASSESSMENT.—The Commission
11 shall regularly assess compliance by large communications
12 platform providers with the provisions of this Act.

13 (e) COMPLAINTS.—The Commission shall establish
14 procedures under which a user, a large communications
15 platform provider, a competing communications provider,
16 and a custodial third-party agent may file a complaint al-
17 leging that a large communications platform provider, a
18 competing communication provider, or a custodial third-
19 party agent has violated this Act.

20 (f) ENFORCEMENT.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of this Act, or regulations en-
23 acted pursuant to this Act, shall be treated as a vio-
24 lation of a rule defining an unfair or deceptive act
25 or practice prescribed under section 18(a)(1)(B) of

1 the Federal Trade Commission Act (15 U.S.C.
2 57a(a)(1)(B)).

3 (2) POWERS OF COMMISSION.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (C), the Commission shall enforce
6 this Act in the same manner, by the same
7 means, and with the same jurisdiction, powers,
8 and duties as though all applicable terms and
9 provisions of the Federal Trade Commission
10 Act (15 U.S.C. 41 et seq.) were incorporated
11 into and made a part of this Act.

12 (B) PRIVILEGES AND IMMUNITIES.—Ex-
13 cept as provided in subparagraph (C), any per-
14 son who violates section 3 shall be subject to
15 the penalties and entitled to the privileges and
16 immunities provided in the Federal Trade Com-
17 mission Act (15 U.S.C. 41 et seq.).

18 (C) NONPROFIT ORGANIZATIONS AND COM-
19 MON CARRIERS.—Notwithstanding section 4 or
20 5(a)(2) of the Federal Trade Commission Act
21 (15 U.S.C. 44, 45(a)(2)) or any jurisdictional
22 limitation of the Commission, the Commission
23 shall also enforce this Act, in the same manner
24 provided in subparagraphs (A) and (B) of this
25 paragraph, with respect to common carriers

1 subject to the Communications Act of 1934 (47
2 U.S.C. 151 et seq.).

3 (D) FINES.—In assessing any fine for a
4 violation of this Act, the Commission shall con-
5 sider each individual user affected by a violation
6 of this Act as an individual violation.

7 (g) RELIANCE ON OPEN STANDARDS.—Any large
8 communications platform provider that establishes and
9 maintains interoperability through an open standard es-
10 tablished under subsection (c) shall be entitled to a rebut-
11 table presumption of providing access on fair, reasonable,
12 and nondiscriminatory terms.

13 (h) PREEMPTION.—The provisions of this Act shall
14 preempt any State law only to the extent that such State
15 law is inconsistent with the provisions of this Act.

16 (i) EFFECTIVE DATE.—This Act shall take effect on
17 the date on which the Commission promulgates regula-
18 tions under subsection (a).

19 **SEC. 7. RELATION TO OTHER LAWS.**

20 Nothing in this Act shall be construed to modify,
21 limit, or supersede the operation of any privacy or security
22 provision in—

23 (1) section 552a of title 5, United States Code
24 (commonly known as the “Privacy Act of 1974”);

1 (2) the Right to Financial Privacy Act of 1978
2 (12 U.S.C. 3401 et seq.);

3 (3) the Fair Credit Reporting Act (15 U.S.C.
4 1681 et seq.);

5 (4) the Fair Debt Collection Practices Act (15
6 U.S.C. 1692 et seq.);

7 (5) the Children’s Online Privacy Protection
8 Act of 1998 (15 U.S.C. 6501 et seq.);

9 (6) title V of the Gramm-Leach-Bliley Act (15
10 U.S.C. 6801 et seq.);

11 (7) chapters 119, 123, and 206 of title 18,
12 United States Code;

13 (8) section 444 of the General Education Provi-
14 sions Act (20 U.S.C. 1232g) (commonly referred to
15 as the “Family Educational Rights and Privacy Act
16 of 1974”);

17 (9) section 445 of the General Education Provi-
18 sions Act (20 U.S.C. 1232h);

19 (10) the Privacy Protection Act of 1980 (42
20 U.S.C. 2000aa et seq.);

21 (11) the regulations promulgated under section
22 264(c) of the Health Insurance Portability and Ac-
23 countability Act of 1996 (42 U.S.C. 1320d–2 note),
24 as those regulations relate to—

1 (A) a person described in section 1172(a)
2 of the Social Security Act (42 U.S.C. 1320d-
3 1(a)); or

4 (B) transactions referred to in section
5 1173(a)(1) of the Social Security Act (42
6 U.S.C. 1320d-2(a)(1));

7 (12) the Communications Assistance for Law
8 Enforcement Act (47 U.S.C. 1001 et seq.);

9 (13) sections 222 and 227 of the Communica-
10 tions Act of 1934 (47 U.S.C. 222, 227); or

11 (14) any other privacy or security provision of
12 Federal law.

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