

Augmenting Compatibility and Competition by Enabling Service Switching (ACCESS) Act

Section-by-Section Summary

Section 1 – Short Title

Section 2 – Definitions

- Commission
- Communications Provider
- Competing Communications Provider
- Competing Communications Service
- Custodial Third-Party Agent
- Interoperability Interface
- Large Communications Platform
- Large Communications Platform Provider
- User Data

Section 3- Portability

- Large communications platform providers – i.e. providers operating communications platforms with over 100 million monthly active users in the U.S. – must operate transparent, third-party accessible interfaces that allow users to safely transfer their data (directly to the user or to a competing communications provider acting at the direct of a user)
- Competing providers that receive ported data must properly secure ported data
- Products or services that do not generate income from the collection, use, or sharing of user data are exempt from the Act’s portability obligation

Section 4 – Interoperability

- Large communications platform providers must operate transparent, third-party accessible interfaces (“interoperability interfaces”) that facilitate and maintain compatible communications with competing providers
- Competing providers that receive data through an interoperability interface must properly secure all data accessed via that interface
- The bill sets forth terms of service under which a large communications platform provider must maintain interoperability, including:
 - non-discrimination, by which a platform provider must facilitate interoperability based on fair, reasonable, and nondiscriminatory terms
 - reasonable fees and access terms, by which a platform can:
 - establish reasonable thresholds on the frequency, nature, and volume of requests, including assessing a reasonable fee for such access

- establish reasonable usage expectations to govern access by competing providers
 - provide advanced public notice of any fees, penalties, or usage expectations associated with access (or changes) to an interoperability interface
- privacy and security standards, which a platform provider must set consistent with industry best practices, as well as an obligation to report suspected violations to the Federal Trade Commission
- prohibiting changes to interfaces, or to terms of use, which would undermine interoperability by competing communications services
- If a large communications platform provider uses an interoperability interface between its own platforms and services, it must offer an equivalent interface to competitors
- In the context of communications between a user of a large communications platform provider and a user of a competing communication provider, neither provider may collect, use or share the data associated with the other service provider's users
- Products or services that do not generate income from the collection, use, or sharing of user data are exempt from the interoperability obligation

Section 5 – Delegatability

- Users of a large communications platform may delegate the management of their online interactions, content, and account settings to a custodial third-party agent
- The FTC must establish rules to authenticate access by custodial third-party agents
- Custodial third-party agents must register with the FTC and abide by a list of rules governing their access to large communications platforms. If custodial third-party agents do not, they are subject to a range of penalties, including revocation of access rights
- Custodial third-party agents:
 - must reasonably safeguard the privacy and security of any user data provided by a user or accessed on a user's behalf
 - may not collect, use, or share user data for the commercial benefit of the custodial third-party agent
 - do not gain greater access rights than the user has to a large communications platform, and
 - cannot access or manage user's online interactions in any way that:
 - benefits the third-party agent and harms the user,
 - will result in foreseeable harm to the user, or
 - is inconsistent with the directions or reasonable expectations of the user

Section 6 – Implementation and Enforcement

- The FTC must promulgate regulations no later than 1 year after the enactment date
- No later than 180 days after enactment, the FTC, in consultation with industry stakeholders, shall establish rules for verifying user portability and interoperability requests

- No later than 180 days after enactment, the National Institute of Standards and Technology must develop and publish model technical standards for interoperability among popular services, including:
 - online messaging,
 - multimedia sharing, and
 - social networking
- Large communications providers who maintain interoperability through open standards, such as those established by NIST, are entitled to a rebuttable presumption of providing access on fair, reasonable, and non-discriminatory terms
- The FTC must regularly assess compliance by large communications platform providers
- The FTC will establish procedures so users and competing platform providers may file complaints alleging that a large communications provider, competing provider, or third-party agent has violated this Act
- The FTC is empowered to treat violations of the Act as violations of a rule defining an unfair or deceptive act or practice – allowing the FTC to directly assess fines or related penalties for violations
- The Act shall supersede conflicting state laws and regulations

Section 7 – Relation to Other Laws

Nothing in the Act modifies, limits, or supersedes the operation of any privacy or security provision in—

- the Privacy Act of 1974;
- the Right to Financial Privacy Act of 1978;
- the Fair Debt Collection Practices Act;
- the Children’s Online Privacy Protection Act of 1998;
- title V of the Gramm-Leach-Bliley Act;
- chapters 119, 123, and 206 of title 18, United States Code;
- the Family Educational Rights and Privacy Act of 1974;
- section 445 of the General Education Provisions Act;
- the Privacy Protection Act of 1980;
- the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note), as those regulations relate to—
 - a person described in section 1172(a) of the Social Security Act; or
 - transactions referred to in section 1173(a)(1) of the Social Security Act;
- the Communications Assistance for Law Enforcement Act;
- sections 222 and 227 of the Communications Act of 1934; or
- any other privacy or security provision of Federal law