

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Energy and Technology to which was referred Senate  
3 Bill No. 289 entitled “An act relating to protecting consumers and promoting  
4 an open Internet in Vermont” respectfully reports that it has considered the  
5 same and recommends that the House propose to the Senate that  
6 Sec. 1. 3 V.S.A. § 348 is added to read:

7 § 348. INTERNET SERVICE PROVIDERS; NET NEUTRALITY

8 COMPLIANCE

9 (a) The Secretary of Administration shall develop a process by which an  
10 Internet service provider may certify that it is in compliance with the consumer  
11 protection and net neutrality standards established in subsection (b) of this  
12 section.

13 (b) A certificate of net neutrality compliance shall be granted to an Internet  
14 service provider that demonstrates and the Secretary finds that the Internet  
15 service provider, insofar as the provider is engaged in the provision of  
16 broadband Internet access service:

17 (1) Does not engage in any of the following practices in Vermont:

18 (A) Blocking lawful content, applications, services, or nonharmful  
19 devices, subject to reasonable network management.

1           (B) Impairing or degrading lawful Internet traffic on the basis of  
2           Internet content, application, or service or the use of a nonharmful device,  
3           subject to reasonable network management.

4           (C) Engaging in paid prioritization, unless this prohibition is waived  
5           pursuant to subsection (c) of this section.

6           (D) Unreasonably interfering with or unreasonably disadvantaging  
7           either a customer’s ability to select, access, and use broadband Internet access  
8           service or lawful Internet content, applications, services, or devices of the  
9           customer’s choice or an edge provider’s ability to make lawful content,  
10           applications, services, or devices available to a customer. Reasonable network  
11           management shall not be considered a violation of this prohibition.

12           (E) Engaging in deceptive or misleading marketing practices that  
13           misrepresent the treatment of Internet traffic or content to its customers.

14           (2) Publicly discloses to consumers accurate information regarding the  
15           network management practices, performance, and commercial terms of its  
16           broadband Internet access services sufficient for consumers to make informed  
17           choices regarding use of such services and for content, application, service,  
18           and device providers to develop, market, and maintain Internet offerings.

19           (c) The Secretary may waive the ban on paid prioritization under  
20           subdivision (b)(1)(C) of this section only if the Internet service provider

1 demonstrates that the practice would provide some significant public interest  
2 benefit and would not harm the open nature of the Internet.

3 (d) As used in this section:

4 (1) “Broadband Internet access service” means a mass-market retail  
5 service by wire or radio in Vermont that provides the capability to transmit  
6 data to and receive data from all or substantially all Internet endpoints,  
7 including any capabilities that are incidental to and enable the operation of the  
8 communications service, but excluding dial-up Internet access service. The  
9 term also encompasses any service in Vermont that the Secretary finds to be  
10 providing a functional equivalent of the service described in this subdivision,  
11 or that is used to evade the protections established in this chapter.

12 (2) “Edge provider” means any person in Vermont that provides any  
13 content, application, or service over the Internet and any person in Vermont  
14 that provides a device used for accessing any content, application, or service  
15 over the Internet.

16 (3) “Internet service provider” or “provider” means a business that  
17 provides broadband Internet access service to any person in Vermont.

18 (4) “Paid prioritization” means the management of an Internet service  
19 provider’s network to favor directly or indirectly some traffic over other  
20 traffic, including through the use of techniques such as traffic shaping,  
21 prioritization, resource reservation, or other forms of preferential traffic

1 management, either in exchange for consideration, monetary or otherwise,  
2 from a third party or to benefit an affiliated entity, or both.

3 (5) “Reasonable network management” means a practice that has a  
4 primarily technical network management justification but does not include  
5 other business practices and that is primarily used for and tailored to achieving  
6 a legitimate network management purpose, taking into account the particular  
7 network architecture and technology of the broadband Internet access service.

8 (e) It is the intent of the General Assembly in enacting this section to  
9 incorporate into statute certain provisions of the Federal Communications  
10 Commission’s 2015 Open Internet Order, “Protecting and Promoting the Open  
11 Internet,” WC Docket No. 14-28, Report and Order on Remand, Declaratory  
12 Ruling and Order, 30 FCC Rcd 5601. The terms and requirements of this  
13 section shall be interpreted broadly and any exceptions interpreted narrowly,  
14 using the 2015 Open Internet Order and relevant FCC advisory opinions,  
15 rulings, and regulations as persuasive guidance.

16 Sec. 2. 3 V.S.A. § 349 is added to read:

17 § 349. STATE CONTRACTING; INTERNET SERVICE

18 The Secretary of Administration shall include in Administrative Bulletin 3.5  
19 a requirement that State procurement contracts for broadband Internet access  
20 service, as defined in subdivision 348(d)(3) of this title, include terms and  
21 conditions requiring that the Internet service provider certify that it is in

1 compliance with the consumer protection and net neutrality standards  
2 established in section 348 of this title.

3 Sec. 3. 22 V.S.A. § 901 is amended to read:

4 § 901. ~~DEPARTMENT OF INFORMATION AND INNOVATION~~  
5 AGENCY OF DIGITAL SERVICES

6 (a) The ~~Department of Information and Innovation~~ Agency of Digital  
7 Services, created in 3 V.S.A. § 2283b, shall have all the responsibilities  
8 assigned to it by law, including the following:

9 \* \* \*

10 (15) To ensure that any State government contract for broadband  
11 Internet access service, as defined in 3 V.S.A. § 348(d)(3), contains terms and  
12 conditions requiring that the Internet service provider certify that it is in  
13 compliance with the consumer protection and net neutrality standards  
14 established in 3 V.S.A. § 348.

15 (b) As used in this section, “State government” means the agencies of the  
16 Executive Branch of State government.

17 Sec. 4. 2 V.S.A. § 754 is added to read:

18 § 754. CONTRACTS FOR INTERNET SERVICE

19 Every contract for broadband Internet access service, as defined in 3 V.S.A.  
20 § 348(d)(3), for the Legislative Branch shall include terms and conditions  
21 requiring that the Internet service provider certify that it is in compliance with

1 the consumer protection and net neutrality standards established in 3 V.S.A.  
2 § 348.

3 Sec. 5. 4 V.S.A. § 27a is added to read:

4 § 27a. CONTRACTS FOR INTERNET SERVICE

5 Every contract to provide broadband Internet access service, as defined in  
6 3 V.S.A. § 348(d)(3), for the Judicial Branch shall include terms and  
7 conditions requiring that the Internet service provider certify that it is in  
8 compliance with the consumer protection and net neutrality standards  
9 established in 3 V.S.A. § 348.

10 Sec. 6. APPLICATION; GOVERNMENT CONTRACTS

11 The requirements of Secs. 2 – 5 of this Act shall apply to all government  
12 contracts for Internet service entered into or renewed on or after July 1, 2018.

13 Sec. 7. 9 V.S.A. § 2466c is added to read:

14 § 2466c. INTERNET SERVICE; NETWORK MANAGEMENT

15 DISCLOSURE; NET NEUTRALITY COMPLIANCE

16 (a) Beginning January 31, 2019, an Internet service provider that provides  
17 broadband Internet access service, as defined in 3 V.S.A. § 348(d)(1), shall  
18 disclose whether or not its practices comply with the consumer protection and  
19 net neutrality standards in 3 V.S.A. § 348(b)(1) and (2). The disclosure shall  
20 be in a form and manner prescribed by the Attorney General. The Attorney

1 General or DPS shall post the disclosures required by this section on a  
2 publicly available, easily accessible website maintained by his or her office.

3 (b) A violation of this section constitutes an unfair and deceptive act in  
4 trade and commerce under section 2453 of this chapter.

5 Sec. 8. EFFECTIVE DATE

6 This act shall take effect on passage.

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13 (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

FOR THE COMMITTEE