

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 the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 * * * Legislative Findings * * *

9 Sec. 1. FINDINGS

10 The General Assembly finds and declares that:

11 (1) Our State has a compelling interest in preserving and promoting an
12 open Internet in Vermont.

13 (2) As Vermont is a rural state with many geographically remote
14 locations, broadband Internet access service is essential for supporting
15 economic and educational opportunities, strengthening health and public safety
16 networks, and reinforcing freedom of expression and democratic, social, and
17 civic engagement.

18 (3) The accessibility and quality of communications networks in
19 Vermont, specifically broadband Internet access service, will critically impact
20 our State’s future.

1 (4) Net neutrality is an important topic for many Vermonters. Nearly
2 50,000 comments attributed to Vermonters were submitted to the FCC during
3 the Notice of Proposed Rulemaking regarding the Restoring Internet Freedom
4 Order, WC Docket No. 17-108, FCC 17-166. Transparency with respect to the
5 network management practices of ISPs doing business in Vermont will
6 continue to be of great interest to many Vermonters.

7 (5) In 1996, Congress recognized that “[t]he Internet and other
8 interactive computer services offer a forum for a true diversity of political
9 discourse, unique opportunities for cultural development, and myriad avenues
10 for intellectual activity” and “[i]ncreasingly Americans are relying on
11 interactive media for a variety of political, educational, cultural, and
12 entertainment services.” 47 U.S.C. § 230(a)(3) and (5).

13 (6) Many Vermonters do not have the ability to choose easily between
14 Internet service providers (ISPs). This lack of a thriving competitive market,
15 particularly in isolated locations, disadvantages the ability of consumers and
16 businesses to protect their interests sufficiently.

17 (7) Without net neutrality, “ISPs will have the power to decide which
18 websites you can access and at what speed each will load. In other words,
19 they’ll be able to decide which companies succeed online, which voices are
20 heard – and which are silenced.” Tim Berners-Lee, founder of the World Wide

1 Web and Director of the World Wide Web Consortium (W3C), December 13,
2 2017.

3 (8) The Federal Communications Commission’s (FCC’s) recent repeal
4 of the federal net neutrality rules pursuant to its *Restoring Internet Freedom*
5 *Order* manifests a fundamental shift in policy.

6 (9) The FCC anticipates that a “light-touch” regulatory approach under
7 Title I of the Communications Act of 1934, rather than “utility-style”
8 regulation under Title II, will further advance the Congressional goals of
9 promoting broadband deployment and infrastructure investment.

10 (10) The FCC’s regulatory approach is unlikely to achieve the intended
11 results in Vermont. The policy does little, if anything, to overcome the
12 financial challenges of bringing broadband service to hard-to-reach locations
13 with low population density. However, it may result in degraded Internet
14 quality or service. The State has a compelling interest in preserving and
15 protecting consumer access to high quality Internet service.

16 (11) The economic theory advanced by the FCC in 2010 known as the
17 “virtuous circle of innovation” seems more relevant to the market conditions in
18 Vermont. See *In re Preserving the Open Internet*, 25 F.C.C.R. 17905, 17910-
19 11 (2010).

20 (12) As explained in the FCC’s 2010 Order, “The Internet’s openness...
21 enables a virtuous circle of innovation in which new uses of the network –

1 including new content, applications, services, and devices – lead to increased
2 end-user demand for broadband, which drives network improvements, which
3 in turn lead to further innovative network uses. Novel, improved, or lower-
4 cost offerings introduced by content, application, service, and device providers
5 spur end-user demand and encourage broadband providers to expand their
6 networks and invest in new broadband technologies.” 25 FCC Rcd. at 17910-
7 11, upheld by *Verizon v. FCC*, 740 F.3d 623, 644-45 (D.C. Circuit 2014).

8 (13) As affirmed by the FCC five years later, “[t]he key insight of the
9 virtuous cycle is that broadband providers have both the incentive and the
10 ability to act as gatekeepers standing between edge providers and consumers.
11 As gatekeepers, they can block access altogether; they can target competitors,
12 including competitors in their own video services; and they can extract unfair
13 tolls.” *Open Internet Order*, 30 FCC Rcd at para. 20.

14 (14) The State may exercise its traditional role in protecting consumers
15 from potentially unfair and anticompetitive business practices. Doing so will
16 provide critical protections for Vermont individuals, entrepreneurs, and small
17 businesses that do not have the financial clout to negotiate effectively with
18 commercial providers, some of whom may provide services and content that
19 directly compete with Vermont companies or companies with whom
20 Vermonters do business.

1 (15) The FCC’s most recent order expressly contemplates state exercise
2 of traditional police powers on behalf of consumers: “we do not disturb or
3 displace the states’ traditional role in generally policing such matters as fraud,
4 taxation, and general commercial dealings, so long as the administration of
5 such general state laws does not interfere with federal regulatory objectives.”
6 *Restoring Internet Freedom Order*, WC Docket No. 17-108, FCC 17-166,
7 para. 196.

8 (16) The benefits of State measures designed to protect the ability of
9 Vermonters to have unfettered access to the Internet far outweigh the benefits
10 of allowing ISPs to manipulate Internet traffic for pecuniary gain.

11 (17) The most recent order of the FCC contemplates federal and local
12 enforcement agencies preventing harm to consumers: “In the unlikely event
13 that ISPs engage in conduct that harms Internet openness... we find that
14 utility-style regulation is unnecessary to address such conduct. Other legal
15 regimes – particularly antitrust law and the FTC’s authority under Section 5 of
16 the FTC Act to prohibit unfair and deceptive practices – provide protections to
17 consumers.” para. 140. The Attorney General enforces antitrust violations or
18 violations of the Consumer Protection Act in Vermont.

19 (18) The consumer protection and net neutrality disclosure and
20 procurement policies put forward in this act are consistent with federal law and
21 fall squarely within the State’s police powers. The standards proposed in this

1 act protect consumers from unfair and anticompetitive business practices;
2 promote innovation and Internet usage; and promote consumer confidence in
3 broadband investment and deployment in our State.

4 (19) The State has a compelling interest in knowing with certainty what
5 services it receives pursuant to State contracts. Accordingly, a State
6 procurement policy extending consumer protection and net neutrality
7 certification to ISPs complying with State standards so the State may know
8 with certainty the services it will receive as a purchaser of broadband Internet
9 access service protects its status as a “market participant” or consumer of
10 goods and services.

11 (20) Procurement laws are for the benefit of the State. When acting as a
12 market participant, the government enjoys unrestricted power to contract with
13 whomever it deems appropriate and purchase only those goods or services it
14 desires.

15 (21) The State enjoys similar authority to condition the receipt of State
16 funds on compliance with State standards deemed to be in the public interest.

17 (22) The ISP disclosures required by this act are a reasonable exercise of
18 the State’s traditional police powers and such disclosures will support the
19 State’s efforts to monitor consumer protection and economic factors in
20 Vermont, particularly with regard to competition, business practices, and
21 consumer choice.

1 (23) The State is in the best position to balance the needs of its
2 constituencies with policies that best serve the public interest. The State has a
3 compelling interest in promoting Internet consumer protection and net
4 neutrality standards. Any incidental burden on interstate commerce resulting
5 from the requirements of this act is far outweighed by the compelling interests
6 the State advances.

7 * * * Certificate of Net Neutrality Compliance * * *

8 Sec. 2. 3 V.S.A. § 348 is added to read:

9 § 348. INTERNET SERVICE PROVIDERS; NET NEUTRALITY

10 COMPLIANCE

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

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

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

20 (A) Blocking lawful content, applications, services, or nonharmful
21 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 in Vermont.

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) The terms and definitions of this section shall be interpreted broadly
9 and any exceptions interpreted narrowly, using relevant Federal
10 Communications Commission orders, advisory opinions, rulings, and
11 regulations as persuasive guidance.

12 * * * Executive, Legislative, Judicial Branches; Contracts for Internet Service;

13 Certification of Net Neutrality Compliance * * *

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

15 § 349. STATE CONTRACTING; INTERNET SERVICE

16 (a) Certification. The Secretary of Administration shall include in
17 Administrative Bulletin 3.5 a requirement that State procurement contracts for
18 broadband Internet access service, as defined in subdivision 348(d)(3) of this
19 title, include terms and conditions requiring that the Internet service provider
20 certify that it is in compliance with the consumer protection and net neutrality
21 standards established in section 348 of this title.

1 (b) Waiver. Notwithstanding the certification requirement in subsection (a)
2 of this section, the Secretary may waive such requirement if he or she
3 determines that a waiver is the sole option available to mitigate an imminent
4 threat to the continuity of critical government operations, that the waiver is in
5 the best interests of the State, and that the waiver is first approved by the
6 Emergency Board.

7 (c) Intent. It is the intent of the General Assembly that the Secretary will
8 not seek a waiver under subsection (b) of this section until after he or she has
9 made all reasonable efforts to enter into a contract consistent with the terms
10 and conditions specified in subsection (a) of this section and has determined
11 that, without a waiver, critical functions of government will be at risk.

12 (d) Publication. The Secretary shall disclose on a publicly available
13 website the names of all Internet service providers awarded government
14 contracts under this section and whether the provider is in compliance with the
15 consumer protection and net neutrality standards in section 348 of this title. If
16 a provider is granted a waiver under subsection (b) of this section, the
17 Secretary shall provide the reasons for granting the waiver.

1 Sec. 4. 22 V.S.A. § 901 is amended to read:

2 § 901. ~~DEPARTMENT OF INFORMATION AND INNOVATION~~

3 AGENCY OF DIGITAL SERVICES

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

7 * * *

8 (15) To ensure that any State government contract for broadband
9 Internet access service, as defined in 3 V.S.A. § 348(d)(1), contains terms and
10 conditions requiring that the Internet service provider certify that it is in
11 compliance with the consumer protection and net neutrality standards
12 established in 3 V.S.A. § 348.

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

15 Sec. 5. 2 V.S.A. § 754 is added to read:

16 § 754. CONTRACTS FOR INTERNET SERVICE

17 Every contract for broadband Internet access service, as defined in 3 V.S.A.
18 § 348(d)(1), for the Legislative Branch shall include terms and conditions
19 requiring that the Internet service provider certify that it is in compliance with
20 the consumer protection and net neutrality standards established in 3 V.S.A.
21 § 348.

1 Sec. 6. 4 V.S.A. § 27a is added to read:

2 § 27a. CONTRACTS FOR INTERNET SERVICE

3 Every contract to provide broadband Internet access service, as defined in
4 3 V.S.A. § 348(d)(1), for the Judicial Branch shall include terms and
5 conditions requiring that the Internet service provider certify that it is in
6 compliance with the consumer protection and net neutrality standards
7 established in 3 V.S.A. § 348.

8 Sec. 7. APPLICATION; GOVERNMENT CONTRACTS

9 The requirements of Secs. 3–6 of this Act shall apply to all government
10 contracts for Internet service entered into or renewed on or after July 1, 2018.

11 * * * Universal Service Fund; Eligibility * * *

12 Sec. 8. 30 V.S.A. § 7511 is amended to read:

13 § 7511. DISTRIBUTION GENERALLY

14 (a)(1) As directed by the Commissioner of Public Service, funds collected
15 by the fiscal agent, and interest accruing thereon, shall be distributed as
16 follows:

17 (A) to pay costs payable to the fiscal agent under its contract with the
18 Commissioner;

19 (B) to support the Vermont telecommunications relay service in the
20 manner provided by section 7512 of this title;

1 (C) to support the Vermont Lifeline program in the manner provided
2 by section 7513 of this title;

3 (D) to support Enhanced 911 services in the manner provided by
4 section 7514 of this title; and

5 (E) to support the Connectivity Fund established in section 7516 of
6 this title; and

7 (2) for fiscal year 2016 only, any personnel or administrative costs
8 associated with the Connectivity Initiative shall come from the Connectivity
9 Fund, as determined by the Commissioner in consultation with the
10 Connectivity Board.

11 (b) If insufficient funds exist to support all of the purposes contained in
12 subsection (a) of this section, the Commissioner shall allocate the available
13 funds, giving priority in the order listed in subsection (a).

14 (c) Notwithstanding any other provision of law to the contrary, funds to
15 support broadband Internet access service, as defined in 3 V.S.A. § 348(d)(1),
16 in whole or in part, shall be awarded under this chapter only to Internet service
17 providers who have obtained a certificate of net neutrality compliance under 3
18 V.S.A. § 348. This subsection shall apply to all awards made on or after July
19 1, 2018.

1 * * * State Telecommunications Policy and Planning * * *

2 Sec. 9. 30 V.S.A. § 202c is amended to read:

3 § 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

4 (a) The General Assembly finds that advances in telecommunications
5 technology and changes in federal regulatory policy are rapidly reshaping
6 telecommunications services, thereby promising the people and businesses of
7 the State communication and access to information, while creating new
8 challenges for maintaining a robust, modern telecommunications network in
9 Vermont.

10 (b) Therefore, to direct the benefits of improved telecommunications
11 technology to all Vermonters, it is the purpose of this section and section 202d
12 of this title to:

13 (1) strengthen the State’s role in telecommunications planning;

14 (2) support the universal availability of appropriate infrastructure and
15 affordable services for transmitting voice and high-speed data;

16 (3) support the availability of modern mobile wireless
17 telecommunications services along the State’s travel corridors and in the
18 State’s communities;

19 (4) provide for high-quality, reliable telecommunications services for
20 Vermont businesses and residents;

1 (5) provide the benefits of future advances in telecommunications
2 technologies to Vermont residents and businesses;

3 (6) support competitive choice for consumers among
4 telecommunications service providers and promote open access among
5 competitive service providers on nondiscriminatory terms to networks over
6 which broadband and telecommunications services are delivered;

7 (7) support the application of telecommunications technology to
8 maintain and improve governmental and public services, public safety, and the
9 economic development of the State;

10 (8) support deployment of broadband infrastructure that:

11 (A) uses the best commercially available technology;

12 (B) does not negatively affect the ability of Vermont to take
13 advantage of future improvements in broadband technology or result in
14 widespread installation of technology that becomes outmoded within a short
15 period after installation;

16 (9) in the deployment of broadband infrastructure, encourage the use of
17 existing facilities, such as existing utility poles and corridors and other
18 structures, in preference to the construction of new facilities or the replacement
19 of existing structures with taller structures; ~~and~~

20 (10) support consumer protection and net neutrality standards applicable
21 to broadband Internet access service; and

1 (11) support measures designed to ensure that by the end of the year
2 2024 every E-911 business and residential location in Vermont has
3 infrastructure capable of delivering Internet access with service that has a
4 minimum download speed of 100 Mbps and is symmetrical.

5 * * * Consumer Protection; Disclosure; Net Neutrality Compliance * * *

6 Sec. 10. 9 V.S.A. § 2466c is added to read:

7 § 2466c. INTERNET SERVICE; NETWORK MANAGEMENT

8 DISCLOSURE; NET NEUTRALITY COMPLIANCE

9 (a) Beginning on January 31, 2019, an Internet service provider that
10 provides broadband Internet access service, as defined in 3 V.S.A. § 348(d)(1),
11 shall disclose whether or not its practices comply with the consumer protection
12 and net neutrality standards in 3 V.S.A. § 348(b)(1) and (2). The disclosure
13 shall be in a form and manner prescribed by the Commissioner of Public
14 Service. The Commissioner shall post the disclosures required by this section
15 on a publicly available, easily accessible website maintained by that agency.

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

18 * * * Net Neutrality Study; Attorney General * * *

19 Sec. 11. NET NEUTRALITY STUDY

20 On or before December 15, 2018, the Attorney General, in consultation
21 with the Commissioner of Public Service and with input from industry and

1 consumer stakeholders, shall submit findings and recommendations in the form
2 of a report or draft legislation to the Senate Committees on Finance and on
3 Economic Development, Housing and General Affairs and the House
4 Committees on Energy and Technology and on Commerce and Economic
5 Development reflecting whether and to what extent the State should enact net
6 neutrality rules applicable to Internet service providers offering broadband
7 Internet access service in Vermont. Among other things, the Attorney General
8 shall consider:

9 (1) the scope and status of federal law related to net neutrality and ISP
10 regulation;

11 (2) the scope and status of net neutrality rules proposed or enacted in
12 state and local jurisdictions;

13 (3) methods for and recommendations pertaining to the enforcement of
14 net neutrality requirements;

15 (4) the economic impact of federal or state changes to net neutrality
16 policy, including to the extent practicable methods for and recommendations
17 pertaining to tracking broadband investment and deployment in Vermont and
18 otherwise monitoring market conditions in the State;

19 (5) proposed courses of action that balance the benefits to society that
20 the communications industry brings with actual and potential harms the
21 industry may pose to consumers; and

1 (6) any other factors and considerations the Attorney General deems
2 relevant to making recommendations pursuant to this section.

3 *** Connectivity Initiative; Grant Eligibility ***

4 Sec. 12. 30 V.S.A. § 7515b is amended to read:

5 § 7515b. CONNECTIVITY INITIATIVE

6 (a) The purpose of the Connectivity Initiative is to provide each service
7 location in Vermont access to Internet service that is capable of speeds of at
8 least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements
9 established under Connect America Fund Phase II, whichever is higher,
10 beginning with locations not served as of December 31, 2013 according to the
11 minimum technical service characteristic objectives applicable at that time.
12 Within this category of service locations, priority shall be given first to
13 unserved and then to underserved locations. As used in this section,
14 “unserved” means a location having access to only satellite or dial-up Internet
15 service and “underserved” means a location having access to Internet service
16 with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps
17 download and 1 Mbps upload. Any new services funded in whole or in part by
18 monies from this Initiative shall be capable of being continuously upgraded to
19 reflect the best available, most economically feasible service capabilities.

20 (b) The Department of Public Service shall publish annually a list of census
21 blocks eligible for funding based on the Department’s most recent broadband

1 mapping data. The Department annually shall solicit proposals from service
2 providers to deploy broadband to eligible census blocks. Funding shall be
3 available for capital improvements only, not for operating and maintenance
4 expenses. The Department shall give priority to proposals that reflect the
5 lowest cost of providing services to unserved and underserved locations;
6 however, the Department also shall consider:

- 7 (1) the proposed data transfer rates and other data transmission
8 characteristics of services that would be available to consumers;
- 9 (2) the price to consumers of services;
- 10 (3) the proposed cost to consumers of any new construction, equipment
11 installation service, or facility required to obtain service;
- 12 (4) whether the proposal would use the best available technology that is
13 economically feasible;
- 14 (5) the availability of service of comparable quality and speed; and
- 15 (6) the objectives of the State’s Telecommunications Plan.

16 * * * Severability * * *

17 **Sec. 13.** SEVERABILITY OF PROVISIONS

18 The provisions of this act are severable. If any provision of this act is
19 invalid, or if any application thereof to any person or circumstance is invalid,
20 the invalidity shall not affect other provisions or applications that can be given
21 effect without the invalid provision or application.

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* * * Effective Date * * *

Sec. 14. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE