

1 **Proposal from Rep. Sibia for Committee’s Consideration**

2 TO THE HOUSE OF REPRESENTATIVES:

3 The Committee on Energy and Technology to which was referred Senate
4 Bill No. 289 entitled “An act relating to protecting consumers and promoting
5 an open Internet in Vermont” respectfully reports that it has considered the
6 same and recommends that the House propose to the Senate that the bill be
7 amended by striking out all after the enacting clause and inserting in lieu
8 thereof the following:

9 * * * Legislative Findings * * *

10 Sec. 1. FINDINGS

11 The General Assembly finds and declares that:

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

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

19 (3) The accessibility and quality of communications networks in
20 Vermont, specifically broadband Internet access service, will critically impact
21 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 **(18) The Governor’s Executive Order No. 2-18, requiring all State**
5 **agency contracts with Internet service providers to include net neutrality**
6 **protections, manifests a significant and reasonable step towards**
7 **preserving an open Internet in Vermont.**

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

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

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

1 (22) The ISP disclosures required by this act are a reasonable exercise of
2 the State’s traditional police powers and such disclosures will support the
3 State’s efforts to monitor consumer protection and economic factors in
4 Vermont, particularly with regard to competition, business practices, and
5 consumer choice, and will also enable consumers to stay apprised of the
6 network management practices of ISPs offering service in Vermont.

7 (22) The State is in the best position to balance the needs of its
8 constituencies with policies that best serve the public interest. The State has a
9 compelling interest in promoting Internet consumer protection and net
10 neutrality standards. Any incidental burden on interstate commerce resulting
11 from the requirements of this act is far outweighed by the compelling interests
12 the State advances.

13 * * * Certificate of Net Neutrality Compliance * * *

14 [Deleted]

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

16 Certification of Net Neutrality Compliance * * *

17 [Deleted]

18 * * * Universal Service Fund; Eligibility * * *

19 [Deleted]

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

2 [Deleted]

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

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

5 § 2466c. INTERNET SERVICE; NETWORK MANAGEMENT

6 DISCLOSURE; NET NEUTRALITY COMPLIANCE;

7 ATTORNEY GENERAL REVIEW AND DISCLOSURE

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

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

17 (a) The Attorney General shall review the network management
18 practices of Internet service providers in Vermont and, to the extent
19 possible, make a determination as to whether the provider's broadband
20 Internet access service complies with the open Internet rules contained in
21 the Federal Communications Commission's 2015 Open Internet Order,

1 **“Protecting and Promoting the Open Internet,” WC Docket No. 14-28,**
2 **Report and Order on Remand, Declaratory Ruling and Order, 30 FCC**
3 **Rcd 5601.**

4 **(b) The Attorney General shall disclose his or her findings under this**
5 **section on a publicly available, easily accessible website maintained by his**
6 **or her Office.**

7 * * * Net Neutrality Study; Attorney General * * *

8 Sec. 11. NET NEUTRALITY STUDY

9 On or before December 15, 2018, the Attorney General, in consultation
10 with the Commissioner of Public Service and with input from industry and
11 consumer stakeholders, shall submit findings and recommendations in the form
12 of a report or draft legislation to the Senate Committees on Finance and on
13 Economic Development, Housing and General Affairs and the House
14 Committees on Energy and Technology and on Commerce and Economic
15 Development reflecting whether and to what extent the State should enact net
16 neutrality rules applicable to Internet service providers offering broadband
17 Internet access service in Vermont. Among other things, the Attorney General
18 shall consider:

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

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

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

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

9 (5) the efficacy of the Governor’s Executive Order No. 2-18, requiring
10 all State agency contracts with Internet service providers to include net
11 neutrality protections.

12 (6) proposed courses of action that balance the benefits to society that
13 the communications industry brings with actual and potential harms the
14 industry may pose to consumers; and

15 (7) any other factors and considerations the Attorney General deems
16 relevant to making recommendations pursuant to this section.

17 * * * Connectivity Initiative; Grant Eligibility; H.581 * * *

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

19 § 7515b. CONNECTIVITY INITIATIVE

20 (a) The purpose of the Connectivity Initiative is to provide each service
21 location in Vermont access to Internet service that is capable of speeds of at

1 least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements
2 established under Connect America Fund Phase II, whichever is higher,
3 beginning with locations not served as of December 31, 2013 according to the
4 minimum technical service characteristic objectives applicable at that time.

5 Within this category of service locations, priority shall be given first to
6 unserved and then to underserved locations. As used in this section,
7 “unserved” means a location having access to only satellite or dial-up Internet
8 service and “underserved” means a location having access to Internet service
9 with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps
10 download and 1 Mbps upload. Any new services funded in whole or in part by
11 monies from this Initiative shall be capable of being continuously upgraded to
12 reflect the best available, most economically feasible service capabilities.

13 (b) The Department of Public Service shall publish annually a list of census
14 blocks eligible for funding based on the Department’s most recent broadband
15 mapping data. The Department annually shall solicit proposals from service
16 providers to deploy broadband to eligible census blocks. Funding shall be
17 available for capital improvements only, not for operating and maintenance
18 expenses. The Department shall give priority to proposals that reflect the
19 lowest cost of providing services to unserved and underserved locations;
20 however, the Department also shall consider:

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

10 * * * Severability * * *

11 [Deleted]

12 * * * Effective Date * * *

13 Sec. 14. EFFECTIVE DATE

14 This act shall take effect on passage.

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16
17
18 (Committee vote: _____)

19 _____

20 Representative _____

21 FOR THE COMMITTEE