

S.289

An act relating to protecting consumers and promoting an open Internet in Vermont.

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 3 V.S.A. § 348 is added to read:

§ 348. CONTRACTS FOR INTERNET SERVICE; NET NEUTRALITY

COMPLIANCE

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

(b) An Internet service provider is in compliance with the consumer protection and net neutrality standards of this section if it demonstrates and the Secretary finds that the Internet service provider:

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

(A) blocking lawful content, applications, services, or nonharmful devices, subject to reasonable network management practices that are disclosed to its customers;

(B) impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service or the use of a nonharmful device,

subject to reasonable network management practices that are disclosed to its customers;

(C) engaging in paid prioritization or providing preferential treatment of some Internet traffic to any Internet customer, unless these prohibitions are waived pursuant to subsection (c) of this section;

(D) unreasonably interfering with or unreasonably disadvantaging either:

(i) a customer's ability to select, access, and use broadband Internet access service or lawful Internet content, applications, services, or devices of the customer's choice; or

(ii) an edge provider's ability to make lawful content, applications, services, or devices available to a customer; or

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

(2) Publicly discloses accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and to enable entrepreneurs and other small businesses to develop, market, and maintain Internet offerings. Such disclosure shall be made via a publicly available, easily accessible website.

(c) The Secretary of Administration may waive the prohibition on paid prioritization and preferential treatment under subdivision (b)(1)(C) of this section if the Internet service provider demonstrates and the Secretary finds that the practice would serve a legitimate and significant public interest and would not harm the open nature of the Internet in Vermont.

(d) As used in this section:

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

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

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

(4) “Paid prioritization” means the management of an Internet service provider’s network to favor directly or indirectly some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either in exchange for consideration, monetary or otherwise, from a third party or to benefit an affiliated entity, or both.

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

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

§ 349. STATE CONTRACTING; INTERNET SERVICE

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

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

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

AGENCY OF DIGITAL SERVICES

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

* * *

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

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

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

§ 754. CONTRACTS FOR INTERNET SERVICE

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

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

§ 27a. CONTRACTS FOR INTERNET SERVICE

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

Sec. 6. APPLICATION

This act shall apply to all contracts for Internet service entered into or renewed on or after July 1, 2018.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.