

## Comparison of Net Neutrality Government Contract Proposals for House Energy and Technology

March 27, 2018

H.680 as Introduced – Secs. 1, 2, 9, 10, 11, 12	S.289 as Passed Senate	Executive Order No. 2-18
Findings – general		Findings – general and specific <ul style="list-style-type: none"> <li>• E.g., critical government services offered online</li> </ul>
Public Utility Commission <ul style="list-style-type: none"> <li>• Adopts by rule process for ISPs to certify compliance with consumer protection and net neutrality standards</li> </ul>	Secretary of Administration <ul style="list-style-type: none"> <li>• Develops process</li> <li>• ISP certifies compliance with consumer protection and net neutrality standards</li> <li>• Requirement included in Administrative Bulletin 3.5</li> </ul>	Secretary of Admin., BGS, and ADS <ul style="list-style-type: none"> <li>• State agencies must receive approval from ADS and Secretary before procuring Internet services</li> </ul>
Applies to: <ul style="list-style-type: none"> <li>• Executive contracts</li> <li>• Legislative contracts</li> <li>• Judicial contracts (<i>An argument could be made that the Legislature cannot control the Judiciary’s internal administrative functions; but ADS may use ADS for its primary Internet contract anyway.</i>)</li> </ul>	Applies to: <ul style="list-style-type: none"> <li>• Executive contracts</li> <li>• Legislative contracts</li> <li>• Judicial contracts (<i>An argument could be made that the Legislature cannot control the Judiciary’s internal administrative functions; but ADS may use ADS for its primary Internet contract anyway.</i>)</li> </ul>	Applies to: <ul style="list-style-type: none"> <li>• Executive contracts, only</li> <li>• <i>However</i>, currently the Legislature uses the Agency of Digital Services for its primary Internet contract. Presumably same is true for Judiciary, but need to confirm</li> </ul>
Prohibited conduct: <ul style="list-style-type: none"> <li>• No blocking, subject to reasonable network management determined by PUC</li> <li>• No throttling, subject to reasonable network management determined by PUC</li> <li>• No paid prioritization</li> <li>• No unreasonable interference, etc.</li> <li>• No deceptive or misleading marketing practices</li> </ul> ( <i>Note: The 2015 Open Internet Order</i> )	Prohibited conduct: <ul style="list-style-type: none"> <li>• No blocking, subject to reasonable network management disclosed to customers</li> <li>• No throttling, subject to reasonable network management disclosed to customers</li> <li>• No paid prioritization (unless waived because the practice would serve a legitimate and significant public interest; e.g., public safety communications)</li> <li>• No unreasonable interference, etc.</li> </ul>	Prohibited conduct: <ul style="list-style-type: none"> <li>• Essentially same, except no specific waiver for paid prioritization, but see “general exception” below</li> <li>• Also, there is not a specific ban on “deceptive or misleading marketing practices,” however this conduct would likely be prohibited under VT’s Consumer Protection Act already</li> </ul>

<i>includes a waiver provision for paid prioritization as well as reasonable network management exceptions for blocking, throttling, and the interference/disadvantage standard)</i>	<ul style="list-style-type: none"> <li>No deceptive or misleading marketing practices</li> </ul>	
BIAS is defined as a service in VT; ISP means a business that provides BIAS to any person in VT; Edge provider defined as a Vermonter	<p>Same as House, plus clear statement that the ISP cannot engage in any of the prohibited practices “in Vermont”</p> <p><i>This clarifies that (1) the law does not extend to beyond VT’s borders, and (2) applies to all Internet services offered in VT, not just to State contracts for Internet service.</i></p>	Would likely be read to have the same application, but it is not as clear
Public disclosure of management practices and commercial terms of service via publicly available, and easily accessible website or through transmittal to the PUC who will post on a website	Public disclosure of management practices and commercial terms of service via publicly available, and easily accessible website	<p>Disclosure “may” be required upon recommendation of DPS and ADS</p> <p>However, this likely would be required under the new federal rule, regardless</p>
N/A	N/A	DPS and ADS shall evaluate and advise the Governor on potential actions to promote net neutrality in order to protect Vermonter’s access to a free and open Internet
No waiver for paid prioritization	There is only the above-referenced waiver to the ban on paid prioritization	An exception to the contracting requirements, generally, may be granted upon receipt of written justification that it would serve the best interest of the State
Terms are defined in the bill. <i>(Note: Committee could also reference federal orders, regs, and opinions for interpretation purposes.)</i>	Terms are defined in the bill	DPS shall resolve any dispute over the definition of terminology used in the E.O.
Effective November 15, 2018. There is no “application” section	Effective on passage. Applies to all contracts entered into or renewed on or after July 1, 2018	Effective upon signing. Applies “as soon as practicable” but no later than April 1, 2018