

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred Senate Bill No. 289
3 entitled “An act relating to the Vermont Broadband Internet Privacy Act”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

8 § 348. CONTRACTS FOR INTERNET SERVICE; NET NEUTRALITY

9 COMPLIANCE

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

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

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

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

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 practices that are disclosed to its
4 customers;

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

8 (D) unreasonably interfering with or unreasonably disadvantaging
9 either:

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

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

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

17 (2) Publicly discloses accurate information regarding the network
18 management practices, performance, and commercial terms of its broadband
19 Internet access services sufficient to enable consumers to make informed
20 choices regarding the purchase and use of such services and to enable
21 entrepreneurs and other small businesses to develop, market, and maintain

1 Internet offerings. Such disclosure shall be made via a publicly available,
2 easily accessible website.

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

8 (d) As used in this section:

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

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

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

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

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

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

15 § 349. STATE CONTRACTING; INTERNET SERVICE

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

1 Sec. 3. 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)(3), 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. 4. 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)(3), 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. 5. 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)(3), 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. 6. EFFECTIVE DATE

9 This act shall take effect on passage.

10 and that after passage the title of the bill be amended to read: “An act relating
11 to protecting consumers and promoting an open Internet in Vermont”

12

13

14 (Committee vote: _____)

15

16

Senator _____

17

FOR THE COMMITTEE