

# HOUSE BILL 957

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CF SB 1005

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By: **Delegates Reznik, Carr, and Charkoudian**

Introduced and read first time: February 5, 2020

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Maryland Net Neutrality Act of 2020**

3 FOR the purpose of prohibiting fixed Internet service providers and mobile broadband  
4 Internet access service providers, in the course of providing certain services, from  
5 blocking certain content, applications, services, or devices, subject to a certain  
6 limitation, or impairing or degrading certain Internet traffic on a certain basis;  
7 prohibiting fixed Internet service providers and mobile broadband Internet access  
8 service providers, in the course of providing certain services, from requiring certain  
9 consideration from an edge provider; prohibiting fixed Internet service providers and  
10 mobile broadband Internet access service providers, in the course of providing  
11 certain services, from managing the Internet service provider's network to directly  
12 or indirectly favor certain Internet traffic over other Internet traffic under certain  
13 circumstances; prohibiting fixed Internet service providers and mobile broadband  
14 Internet access service providers, in the course of providing certain services, from  
15 engaging in zero-rating in exchange for consideration from a third party, zero-rating  
16 only certain Internet traffic, failing to publicly disclose certain information, or  
17 engaging in certain practices that have a certain purpose; prohibiting fixed Internet  
18 service providers and mobile Internet service providers, in the course of providing  
19 certain services, from unreasonably interfering with or disadvantaging an end user's  
20 ability to select, access, and use certain services, content, applications, or devices or  
21 an edge provider's ability to make certain content, applications, services, or devices  
22 available to end users; providing that it is not a violation of certain provisions of this  
23 Act to zero-rate Internet traffic in a certain manner under certain circumstances;  
24 prohibiting fixed Internet service providers and mobile Internet service providers  
25 from offering or providing certain services under certain circumstances; authorizing  
26 the State, political subdivisions, and units, agencies, or instrumentalities of the State  
27 or a political subdivision and certain other persons to use State funds to purchase  
28 broadband Internet access service only from a provider in compliance with certain  
29 provisions of this Act; requiring the State, political subdivisions, and certain other  
30 persons to certify to a certain division of the Public Service Commission that the  
31 State funds used to procure certain services were used only to procure certain

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



services offered by a certain provider in compliance with certain provisions of this Act; providing for the application of this Act; providing that a certain waiver is unenforceable and void; defining certain terms; stating the intent of the General Assembly; making the provisions of this Act severable; and generally relating to net neutrality.

BY adding to

Article – Commercial Law

Section 14–4201 through 14–4204 to be under the new subtitle “Subtitle 42. Maryland Net Neutrality Act”

Annotated Code of Maryland

(2013 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,

Article – General Provisions

Section 1–101 and 1–114

Annotated Code of Maryland

(2019 Replacement Volume)

BY adding to

Article – State Finance and Procurement

Section 2–901 and 2–902 to be under the new subtitle “Subtitle 9. Restrictions on the Use of State Funds”

Annotated Code of Maryland

(2015 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

### **Article – Commercial Law**

### **SUBTITLE 42. MARYLAND NET NEUTRALITY ACT.**

#### **14–4201.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “APPLICATION–AGNOSTIC” MEANS NOT DIFFERENTIATING ON THE BASIS OF SOURCE, DESTINATION, INTERNET CONTENT, APPLICATION, SERVICE, OR DEVICE, OR CLASS OF INTERNET CONTENT, APPLICATION, SERVICE, OR DEVICE.

(C) (1) “BROADBAND INTERNET ACCESS SERVICE” MEANS A MASS MARKET RETAIL SERVICE BY WIRE OR RADIO THAT PROVIDES THE CAPABILITY TO TRANSMIT DATA TO AND RECEIVE DATA FROM SUBSTANTIALLY ALL INTERNET ENDPOINTS.

1           **(2) “BROADBAND INTERNET ACCESS SERVICE” INCLUDES:**

2                   **(I) ANY FUNCTIONALLY EQUIVALENT SERVICE;**

3                   **(II) ANY SERVICE THAT IS USED TO EVADE THE PROTECTIONS**  
4 **ESTABLISHED UNDER THIS SUBTITLE; AND**

5                   **(III) ANY CAPABILITIES THAT ARE INCIDENTAL TO AND ENABLE**  
6 **THE OPERATION OF THE COMMUNICATIONS SERVICE.**

7           **(3) “BROADBAND INTERNET ACCESS SERVICE” DOES NOT INCLUDE**  
8 **DIAL-UP INTERNET ACCESS SERVICE.**

9           **(D) “CLASS OF INTERNET CONTENT, APPLICATION, SERVICE, OR DEVICE”**  
10 **MEANS INTERNET CONTENT OR A GROUP OF INTERNET APPLICATIONS, SERVICES,**  
11 **OR DEVICES THAT SHARE A COMMON CHARACTERISTIC, INCLUDING:**

12                   **(1) SHARING THE SAME SOURCE OR DESTINATION;**

13                   **(2) BELONGING TO THE SAME TYPE OF CONTENT, APPLICATION,**  
14 **SERVICE, OR DEVICE;**

15                   **(3) USING THE SAME APPLICATION-LAYER PROTOCOL;**

16                   **(4) USING THE SAME TRANSPORT-LAYER PROTOCOL; AND**

17                   **(5) HAVING SIMILAR TECHNICAL CHARACTERISTICS INCLUDING**  
18 **SIZE, SEQUENCING, TIMING OF PACKETS, OR SENSITIVITY TO DELAY.**

19           **(E) (1) “CONTENT, APPLICATIONS, OR SERVICES” MEANS ALL INTERNET**  
20 **TRAFFIC TRANSMITTED TO OR FROM END USERS OF A BROADBAND INTERNET**  
21 **ACCESS SERVICE.**

22                   **(2) “CONTENT, APPLICATIONS, OR SERVICES” INCLUDES TRAFFIC**  
23 **THAT MAY CLEARLY FIT WITHIN THE CATEGORIES OF CONTENT, APPLICATIONS, OR**  
24 **SERVICES.**

25           **(F) “EDGE PROVIDER” MEANS A PERSON THAT PROVIDES:**

26                   **(1) ANY CONTENT, APPLICATIONS, OR SERVICES OVER THE**  
27 **INTERNET; OR**

**(2) A DEVICE USED FOR ACCESSING ANY CONTENT, APPLICATIONS, OR SERVICES THROUGH THE INTERNET.**

**(G) "END USER" MEANS A PERSON THAT USES A BROADBAND INTERNET ACCESS SERVICE.**

**(H) "ENTERPRISE SERVICE OFFERING" MEANS AN OFFERING TO LARGER ENTITIES THROUGH CUSTOMIZED OR INDIVIDUALLY NEGOTIATED ARRANGEMENTS OR SPECIAL ACCESS SERVICES.**

**(I) (1) "FIXED BROADBAND INTERNET ACCESS SERVICE" MEANS A BROADBAND INTERNET ACCESS SERVICE THAT SERVES END USERS PRIMARILY AT FIXED ENDPOINTS USING STATIONARY EQUIPMENT.**

**(2) "FIXED BROADBAND INTERNET ACCESS SERVICE" INCLUDES FIXED WIRELESS SERVICES INCLUDING FIXED UNLICENSED WIRELESS SERVICES AND FIXED SATELLITE SERVICES.**

**(J) "FIXED INTERNET SERVICE PROVIDER" MEANS AN ENTITY THAT PROVIDES FIXED INTERNET ACCESS SERVICE TO AN INDIVIDUAL, AN ENTITY, A GOVERNMENT, OR ANY OTHER CUSTOMER IN THE STATE.**

**(K) (1) "IMPAIRING OR DEGRADING LAWFUL INTERNET TRAFFIC ON THE BASIS OF INTERNET CONTENT, APPLICATION, OR SERVICE, OR USE OF A NONHARMFUL DEVICE" MEANS IMPAIRING OR DEGRADING:**

**(I) PARTICULAR CONTENT, APPLICATIONS, OR SERVICES;**

**(II) PARTICULAR CLASSES OF CONTENT, APPLICATIONS, OR SERVICES;**

**(III) LAWFUL INTERNET TRAFFIC TO PARTICULAR NONHARMFUL DEVICES; OR**

**(IV) LAWFUL INTERNET TRAFFIC TO PARTICULAR CLASSES OF NONHARMFUL DEVICES.**

**(2) "IMPAIRING OR DEGRADING LAWFUL INTERNET TRAFFIC ON THE BASIS OF INTERNET CONTENT, APPLICATION, OR SERVICE, OR USE OF A NONHARMFUL DEVICE" INCLUDES DIFFERENTIATING, POSITIVELY OR NEGATIVELY, BETWEEN:**

**(I) PARTICULAR CONTENT, APPLICATIONS, OR SERVICES;**

(II) PARTICULAR CLASSES OF CONTENT, APPLICATIONS, OR SERVICES;

(III) LAWFUL INTERNET TRAFFIC TO PARTICULAR NONHARMFUL DEVICES; OR

(IV) LAWFUL INTERNET TRAFFIC TO PARTICULAR CLASSES OF NONHARMFUL DEVICES.

(L) "INTERNET SERVICE PROVIDER" MEANS A PERSON THAT PROVIDES SERVICES FOR ACCESSING, USING, OR PARTICIPATING IN THE INTERNET TO AN INDIVIDUAL, AN ENTITY, A GOVERNMENT, OR ANY OTHER CONSUMER IN THE STATE.

(M) "LAST-MILE CONNECTION" MEANS THE PORTION OF THE TELECOMMUNICATIONS NETWORK CHAIN THAT PHYSICALLY REACHES THE END USER.

(N) (1) "MASS MARKET SERVICE" MEANS A SERVICE MARKETED AND SOLD ON A STANDARDIZED BASIS TO RESIDENTIAL CUSTOMERS, SMALL BUSINESSES, AND OTHER CUSTOMERS INCLUDING SCHOOLS, INSTITUTIONS OF HIGHER EDUCATION, AND LIBRARIES.

(2) "MASS MARKET SERVICE" INCLUDES ANY BROADBAND INTERNET ACCESS SERVICE THAT IS:

(I) PURCHASED WITH SUPPORT OF THE E-RATE AND RURAL HEALTH CARE PROGRAMS AND SIMILAR PROGRAMS AT THE FEDERAL AND STATE LEVEL, REGARDLESS OF WHETHER THEY ARE CUSTOMIZED OR INDIVIDUALLY NEGOTIATED; AND

(II) OFFERED USING NETWORKS SUPPORTED BY THE CONNECT AMERICA FUND OR SIMILAR PROGRAMS AT THE FEDERAL AND STATE LEVEL.

(3) "MASS MARKET SERVICE" DOES NOT INCLUDE ENTERPRISE SERVICE OFFERINGS.

(O) (1) "MOBILE BROADBAND INTERNET ACCESS SERVICE" MEANS A BROADBAND INTERNET ACCESS SERVICE THAT SERVES END USERS PRIMARILY USING A RADIO COMMUNICATION STATION THAT IS CAPABLE OF BEING MOVED AND THAT ORDINARILY MOVES.

(2) "MOBILE BROADBAND INTERNET ACCESS SERVICE" INCLUDES

BROADBAND INTERNET ACCESS SERVICE THAT USES SMARTPHONES OR MOBILE-NETWORK-ENABLED TABLETS AS THE PRIMARY ENDPOINTS FOR CONNECTION TO THE INTERNET AND MOBILE SATELLITE BROADBAND SERVICES.

(P) "MOBILE INTERNET SERVICE PROVIDER" MEANS AN ENTITY THAT PROVIDES MOBILE BROADBAND INTERNET ACCESS SERVICE TO AN INDIVIDUAL, AN ENTITY, A GOVERNMENT, OR ANY OTHER CUSTOMER IN THE STATE.

(Q) "REASONABLE NETWORK MANAGEMENT" MEANS A PRACTICE THAT:

(1) HAS A PRIMARILY FOR TECHNICAL NETWORK MANAGEMENT JUSTIFICATION;

(2) DOES NOT INCLUDE OTHER BUSINESS PRACTICES;

(3) 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; AND

(4) IS AS APPLICATION-AGNOSTIC AS POSSIBLE.

(R) "ZERO-RATING" MEANS THE PRACTICE OF EXEMPTING CERTAIN INTERNET TRAFFIC FROM A CUSTOMER'S DATA USAGE ALLOWANCE.

14-4202.

(A) THIS SUBTITLE APPLIES ONLY TO BROADBAND INTERNET ACCESS SERVICE PROVIDED TO CUSTOMERS IN THE STATE.

(B) THIS SUBTITLE DOES NOT APPLY TO BROADBAND INTERNET ACCESS SERVICE MARKETED OR OFFERED THROUGH ENTERPRISE SERVICE OFFERINGS.

(C) THIS SUBTITLE MAY NOT BE CONSTRUED TO PROHIBIT OR LIMIT:

(1) A FIXED INTERNET SERVICE PROVIDER OR MOBILE INTERNET SERVICE PROVIDER FROM SATISFYING ANY LEGAL OBLIGATION OR AUTHORIZATION TO ADDRESS THE NEEDS OF EMERGENCY COMMUNICATIONS OR THE PURPOSES OF LAW ENFORCEMENT, PUBLIC SAFETY, OR NATIONAL SECURITY; OR

(2) REASONABLE EFFORTS TO ADDRESS COPYRIGHT INFRINGEMENT OR OTHER UNLAWFUL ACTIVITY.

(D) ANY WAIVER OF THE PROVISIONS OF THIS SUBTITLE SHALL BE UNENFORCEABLE AND VOID.

14-4203.

(A) A FIXED INTERNET SERVICE PROVIDER, IN THE COURSE OF PROVIDING FIXED BROADBAND INTERNET ACCESS SERVICE, MAY NOT:

(1) SUBJECT TO REASONABLE NETWORK MANAGEMENT, BLOCK LAWFUL CONTENT, APPLICATIONS, OR SERVICES, OR NONHARMFUL DEVICES;

(2) IMPAIR OR DEGRADE LAWFUL INTERNET TRAFFIC ON THE BASIS OF INTERNET CONTENT, APPLICATION, OR SERVICE, OR THE USE OF A NONHARMFUL DEVICE;

(3) REQUIRE CONSIDERATION, MONETARY OR OTHERWISE, FROM AN EDGE PROVIDER, INCLUDING IN EXCHANGE FOR:

(I) DELIVERING INTERNET TRAFFIC TO AND CARRYING INTERNET TRAFFIC FROM THE INTERNET SERVICE PROVIDER'S END USERS;

(II) AVOIDING HAVING THE EDGE PROVIDER'S CONTENT, APPLICATION, SERVICE, OR NONHARMFUL DEVICE BLOCKED FROM REACHING THE INTERNET SERVICE PROVIDER'S END USERS; OR

(III) AVOIDING HAVING THE EDGE PROVIDER'S CONTENT, APPLICATION, SERVICE, OR NONHARMFUL DEVICE IMPAIRED OR DEGRADED;

(4) MANAGE THE INTERNET SERVICE PROVIDER'S NETWORK TO DIRECTLY OR INDIRECTLY FAVOR CERTAIN INTERNET TRAFFIC OVER OTHER INTERNET TRAFFIC, INCLUDING THROUGH THE USE OF TECHNIQUES SUCH AS TRAFFIC SHAPING, PRIORITIZATION, RESOURCE RESERVATION, OR OTHER FORMS OF PREFERENTIAL TRAFFIC MANAGEMENT, EITHER:

(I) IN EXCHANGE FOR CONSIDERATION, MONETARY OR OTHERWISE, FROM A THIRD PARTY; OR

(II) TO BENEFIT AN AFFILIATED ENTITY;

(5) ENGAGE IN ZERO-RATING IN EXCHANGE FOR CONSIDERATION, MONETARY OR OTHERWISE, FROM A THIRD PARTY;

(6) ZERO-RATE ONLY CERTAIN INTERNET CONTENT, APPLICATIONS,

SERVICES, OR DEVICES IN A CATEGORY OF INTERNET CONTENT, APPLICATIONS,  
SERVICES, OR DEVICES;

(7) FAIL TO PUBLICLY DISCLOSE ACCURATE INFORMATION  
REGARDING THE NETWORK MANAGEMENT PRACTICES, PERFORMANCE, AND  
COMMERCIAL TERMS OF ITS BROADBAND INTERNET ACCESS SERVICES SUFFICIENT  
TO ALLOW:

(I) A CONSUMER TO MAKE AN INFORMED CHOICE REGARDING  
THE USE OF THE BROADBAND INTERNET ACCESS SERVICES; AND

(II) CONTENT, APPLICATION, SERVICE, AND DEVICE  
PROVIDERS TO DEVELOP, MARKET, AND MAINTAIN INTERNET OFFERINGS; OR

(8) ENGAGE IN PRACTICES, INCLUDING AGREEMENTS, WITH  
RESPECT TO, RELATED TO, OR IN CONNECTION WITH INTERNET SERVICE PROVIDER  
TRAFFIC EXCHANGE, THAT HAVE THE PURPOSE OR EFFECT OF EVADING THE  
PROHIBITIONS ESTABLISHED UNDER THIS SECTION AND § 14-4204 OF THIS  
SUBTITLE.

(B) (1) A FIXED INTERNET SERVICE PROVIDER, IN THE COURSE OF  
PROVIDING FIXED BROADBAND INTERNET ACCESS SERVICE, MAY NOT  
UNREASONABLY INTERFERE WITH OR UNREASONABLY DISADVANTAGE:

(I) AN END USER'S ABILITY TO SELECT, ACCESS, AND USE  
BROADBAND INTERNET ACCESS SERVICE OR LAWFUL INTERNET CONTENT,  
APPLICATIONS, SERVICES, OR DEVICES OF THE END USER'S CHOICE; OR

(II) SUBJECT TO REASONABLE NETWORK MANAGEMENT, AN  
EDGE PROVIDER'S ABILITY TO MAKE LAWFUL CONTENT, APPLICATIONS, SERVICES,  
OR DEVICES AVAILABLE TO END USERS.

(2) IT IS NOT A VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION  
FOR AN INTERNET SERVICE PROVIDER TO ZERO-RATE INTERNET TRAFFIC IN AN  
APPLICATION-AGNOSTIC MANNER, IF NO CONSIDERATION, MONETARY OR  
OTHERWISE, WAS PROVIDED BY A THIRD PARTY IN EXCHANGE FOR THE INTERNET  
SERVICE PROVIDER'S DECISION TO ZERO-RATE INTERNET TRAFFIC.

(C) A MOBILE INTERNET SERVICE PROVIDER, IN THE COURSE OF  
PROVIDING MOBILE BROADBAND INTERNET ACCESS SERVICE, MAY NOT ENGAGE IN  
ANY OF THE ACTIVITIES DESCRIBED IN SUBSECTION (A) OR (B) OF THIS SECTION.

14-4204.



(A) A FIXED INTERNET SERVICE PROVIDER MAY NOT OFFER OR PROVIDE SERVICES OTHER THAN BROADBAND INTERNET ACCESS SERVICE THAT ARE DELIVERED OVER THE SAME LAST-MILE CONNECTION AS THE BROADBAND INTERNET ACCESS SERVICE IF THE SERVICES:

(1) HAVE THE PURPOSE OR EFFECT OF EVADING THE PROHIBITIONS ESTABLISHED UNDER § 14-4203 OF THIS SUBTITLE; OR

(2) NEGATIVELY AFFECT THE PERFORMANCE OF BROADBAND INTERNET ACCESS SERVICE.

(B) A MOBILE INTERNET SERVICE PROVIDER MAY NOT OFFER OR PROVIDE SERVICES OTHER THAN BROADBAND INTERNET ACCESS SERVICE THAT ARE DELIVERED OVER THE SAME LAST-MILE CONNECTION AS THE BROADBAND INTERNET ACCESS SERVICE IF THE SERVICES:

(1) HAVE THE PURPOSE OR EFFECT OF EVADING THE PROHIBITIONS ESTABLISHED UNDER § 14-4203 OF THIS SUBTITLE; OR

(2) NEGATIVELY AFFECT THE PERFORMANCE OF BROADBAND INTERNET ACCESS SERVICE.

(C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A FIXED INTERNET SERVICE PROVIDER OR MOBILE INTERNET SERVICE PROVIDER FROM OFFERING OR PROVIDING SERVICES OTHER THAN BROADBAND INTERNET ACCESS SERVICE THAT ARE DELIVERED OVER THE SAME LAST-MILE CONNECTION AS THE BROADBAND INTERNET ACCESS SERVICE AND DO NOT VIOLATE THIS SECTION.

#### Article – General Provisions

1-101.

Except as otherwise provided in this Code, in this Code the following words have the meanings indicated.

1-114.

“Person” includes an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, corporation, partnership, business trust, statutory trust, limited liability company, firm, association, or other nongovernmental entity.

#### Article – State Finance and Procurement

**SUBTITLE 9. RESTRICTIONS ON THE USE OF STATE FUNDS.**

**2-901.**

IN THIS SUBTITLE, "BROADBAND INTERNET ACCESS SERVICE" HAS THE MEANING STATED IN § 14-4201 OF THE COMMERCIAL LAW ARTICLE.

**2-902.**

THE STATE, A POLITICAL SUBDIVISION, OR A UNIT, AN AGENCY, OR ANY INSTRUMENTALITY OF THE STATE OR A POLITICAL SUBDIVISION OR A PERSON AWARDED A CONTRACT OR GRANT BY THE STATE, A POLITICAL SUBDIVISION, OR A UNIT, AN AGENCY, OR ANY INSTRUMENTALITY OF THE STATE OR A POLITICAL SUBDIVISION:

(1) MAY USE STATE FUNDS TO PROCURE BROADBAND INTERNET ACCESS SERVICE ONLY FROM AN INTERNET SERVICE PROVIDER THAT IS, AT ALL TIMES, IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 14, SUBTITLE 42 OF THE COMMERCIAL LAW ARTICLE.

(2) ON OR BEFORE MARCH 31 EACH YEAR, SHALL CERTIFY TO THE TELECOMMUNICATIONS DIVISION OF THE PUBLIC SERVICE COMMISSION THAT THE STATE FUNDS USED TO PROCURE BROADBAND INTERNET ACCESS SERVICE WERE USED ONLY TO PROCURE BROADBAND INTERNET ACCESS SERVICE OFFERED BY AN INTERNET SERVICE PROVIDER IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 14, SUBTITLE 42 OF THE COMMERCIAL LAW ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that, if the State, a county, or a municipality provides broadband Internet access service, the State, the county, or the municipality may not impose use restrictions that prohibit the exercise of free speech.

SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2020.