



Councilmember Elissa Silverman



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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To prohibit fixed and mobile internet service providers that provide broadband internet access service from engaging in specified actions concerning the treatment of lawful Internet traffic, among other things, such as blocking lawful content, applications, services, or nonharmful devices, impairing or degrading lawful internet traffic on the basis of internet content, application, or service, or use of a nonharmful device, and specified practices relating to zero-rating; and to prohibit fixed and mobile internet service providers from offering or providing services other than broadband internet access services that are delivered over the same last-mile connection as the broadband internet access service, if those services have the purpose or effect of evading the above-described prohibitions or negatively affecting performance or broadband internet access service.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Consumer Net Neutrality Protection Act of 2020".

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) "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.

39 (2) “Broadband Internet access service” means a mass-market retail service by
40 wire or radio provided to customers in Washington, D.C., that provides the capability to transmit
41 data to and receive data from, all or substantially all Internet endpoints, including, but not limited
42 to, any capabilities that are incidental to and enable the operation of the communications service,
43 but excluding dial-up Internet access service. This term also encompasses any service provided
44 to customers in Washington, D.C., that provides a functional equivalent of the service described
45 in the previous sentence, or that is used to evade the protections set forth in this title.

46 (3) “Class of Internet content, application, service, or device” means Internet
47 content, or a group of Internet applications, services, or devices, sharing common characteristics,
48 including:

49 (A) Sharing the same source or destination;

50 (B) Belonging to the same type of content, application, service, or device;

51 (C) Using the same application or transport-layer protocol; or

52 (D) Having similar technical characteristics, including the size,
53 sequencing, or timing of packets, or sensitivity to delay.

54 (4) “Content, applications, or services” means all Internet traffic transmitted to or
55 from end users of a broadband Internet access service, including traffic that may not fit clearly
56 into any of the categories of content, applications, or services.

57 (5) “Edge provider” means a person that provides any content, application, or
58 service over the Internet, and any person that provides a device used for accessing any content,
59 application, or service over the Internet.

60 (6) “End user” means a person that uses a broadband Internet access service.

61 (7) “Enterprise service offering” means an offering to larger organizations
62 through customized or individually negotiated arrangements or special access services.

63 (8) “Fixed broadband Internet access service” means a broadband Internet access
64 service that serves end users primarily at fixed endpoints using stationary equipment. Fixed
65 broadband Internet access service includes fixed wireless services including, fixed unlicensed
66 wireless service and fixed satellite services.

67 (9) “Fixed Internet service provider” means a business that provides fixed
68 broadband Internet access service to an individual, corporation, government, or other customer in
69 Washington, D.C.

70 (10) “Impairing or degrading lawful Internet traffic on the basis of Internet
71 content, application, or service, or use of a nonharmful device”:

72 (A) Means impairing or degrading any of the following:

- 73 (i) Particular content, applications, or services;
- 74 (ii) Particular classes of Internet content, applications, or services;
- 75 (iii) Lawful Internet traffic to particular nonharmful devices; or
- 76 (iv) Lawful Internet traffic to particular classes of nonharmful
77 devices; and

78 (B) Includes differentiating, positively or negatively, between any of the
79 following:

- 80 (i) Particular content, applications, or services;
- 81 (ii) Particular classes of Internet content, applications, or services;
- 82 (iii) Lawful Internet traffic to particular nonharmful devices; or

83 (iv) Lawful Internet traffic to particular classes of nonharmful
84 devices.

85 (11) “Internet service provider” means a business that provides broadband
86 Internet access service to an individual, corporation, government or other customer in
87 Washington, D.C.

88 (12) “ISP traffic exchange” means the exchange of Internet traffic destined for, or
89 originating from, an Internet service provider’s end users between the Internet service provider’s
90 network and another individual or entity, including, but not limited to, an edge provider, content
91 delivery network, or other network operator.

92 (13) “ISP traffic exchange agreement” means an agreement between an Internet
93 service provider and another individual or entity, including, but not limited to, an edge provider,
94 content delivery network, or other network operator, to exchange Internet traffic destined for, or
95 originating from, an Internet service provider’s end users between the Internet service provider’s
96 network and the other individual or entity.

97 (14) “Mass market service” means a service marketed and sold on a standardized
98 basis to residential customers, small businesses, and other customers, including schools,
99 institutions of higher learning, and libraries. Mass market services also include broadband
100 Internet access services purchased with support of the E-rate and Rural Health Care programs
101 and similar programs at the federal and state level, regardless of whether they are customized or
102 individually negotiated, as well as any broadband Internet access service offered using networks
103 supported by the Connect America Fund or similar programs at the federal and state level. Mass
104 market service does not include enterprise service offerings.

105 (15) “Mobile broadband Internet access service” means a broadband Internet
106 access service that serves end users primarily using mobile stations. Mobile broadband Internet
107 access services includes broadband Internet access services that use smartphones or mobile-
108 network-enabled tablets as the primary endpoints for connection to the Internet, as well as
109 mobile satellite broadband services.

110 (16) “Mobile Internet service provider” means a business that provides mobile
111 broadband Internet access service to an individual, corporation, government, or other customer in
112 Washington, D.C.

113 (17) “Mobile station” means a radio communication station capable of being
114 moved and which ordinarily does move.

115 (18) “Network management practice” is a practice that has a primarily technical
116 network management justification but does not include other business practices.

117 (19) “Paid prioritization” means the management of an Internet service provider’s
118 network to directly or indirectly favor some traffic over other traffic, including through the use of
119 techniques such as traffic shaping, prioritization, resource reservation, or other forms of
120 preferential traffic management, either:

121 (A) In exchange for consideration, monetary or otherwise, from a third
122 party; or

123 (B) To benefit an affiliated entity.

124 (20) “Reasonable network management” means a network management practice
125 that is reasonable. A network management practice is reasonable if it is primarily used for, and
126 tailored to, achieving a legitimate network management purpose, taking into account the

127 particular network architecture and technology of the broadband Internet access service, and is as
128 application-agnostic as possible.

129 (21) “Zero-rating” means exempting some Internet traffic from a customer’s data
130 usage allowance.

131 Sec. 3. Net Neutrality Principles.

132 (a) It shall be unlawful for a fixed Internet service provider, insofar as the provider is
133 engaged in providing fixed broadband Internet access service, to engage in any of the following
134 activities:

135 (1) Blocking lawful content, applications services, or nonharmful devices, subject
136 to reasonable network management.

137 (2) Impairing or degrading lawful Internet traffic on the basis of Internet content,
138 application, or service, or use of a nonharmful device, subject to reasonable network
139 management.

140 (3) Requiring consideration, monetary or otherwise, from an edge provider,
141 including, but not limited to, in exchange for any of the following:

142 (A) Delivering Internet traffic to, and carrying Internet traffic from, the
143 Internet service provider’s end users;

144 (B) Avoiding having the edge provider’s content, application, service, or
145 nonharmful device blocked from reaching the Internet service provider’s end users;

146 (C) Avoiding having the edge provider’s content, application, service, or
147 nonharmful device impaired or degraded;

148 (4) Engaging in paid prioritization;

149 (5) Engaging in zero-rating in exchange for consideration, monetary or otherwise,
150 from a third party;

151 (6) Zero-rating some Internet content, applications, services, or devices in a
152 category of Internet content, applications, services, or devices, but not the entire category;

153 (7)(A) Unreasonably interfering with, or unreasonably disadvantaging, either an
154 end user's ability to select, access, and use broadband internet access service or the lawful
155 internet content, applications, services, or devices of the end user's choice, or an edge provider's
156 ability to make lawful content, applications, services, or devices available to end users.

157 Reasonable network management shall not be a violation of this paragraph;

158 (B) Zero-rating internet traffic in application-agnostic ways shall not be a
159 violation of subparagraph (A) provided that no consideration, monetary or otherwise, is provided
160 by any third party in exchange for the internet service provider's decision whether to zero-rate
161 traffic;

162 (8) Failing to publicly disclose accurate information regarding the network
163 management practices, performance, and commercial terms of its broadband internet access
164 services sufficient for consumers to make informed choices regarding use of those services and
165 for content, application, service, and device providers to develop, market and, maintain internet
166 offerings; or

167 (9) Engaging in practices, including agreements, with respect to, related to, or in
168 connection with, ISP traffic exchange that have the purpose or effect of evading the prohibitions
169 contained in this section. Nothing in this paragraph shall be construed to prohibit internet service
170 providers from entering into ISP traffic exchange agreements that do not evade the prohibitions
171 contained in this section.

172 (b) It shall be unlawful for a mobile internet service provider, insofar as the provider is
173 engaged in providing mobile broadband internet access service, to engage in any of the activities
174 described in subsection (a)(1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section.

175 (c) It shall be unlawful for a fixed internet service provider to offer or provide services
176 other than broadband internet access services that are delivered over the same last-mile
177 connections as the broadband internet access service, if those services satisfy any of the
178 following conditions:

179 (1) They are marketed, provided, or can be used as a functional equivalent of
180 broadband Internet access service.

181 (2) They have the purpose or effect of evading the prohibitions in subsections (a)
182 or (b) of this section; or

183 (3) They negatively affect the performance of broadband internet access service.

184 (d) It shall be unlawful for a mobile Internet service provider to offer or provide services
185 other than broadband Internet access service that are delivered over the same last-mile
186 connection as the broadband Internet access service, if those services satisfy any of the
187 conditions specified in paragraphs (1), (2) and (3) of subsection (c) of this section.

188 (e) Nothing in subsections (c) and (d) of this section shall be construed to prohibit a fixed
189 or mobile internet service provider from offering or providing services other than broadband
190 internet access service that are delivered over the same last-mile connection as the broadband
191 internet access service and do not violate subsections (c) and (d) of this section.

192 (f) Nothing in this act supersedes any obligation or authorization a fixed or mobile
193 internet service provider may have to address the needs of emergency communications or law

194 enforcement, public safety, or national security authorities, consistent with or as permitted by
195 applicable law, or limits the provider's ability to do so.

196 (g) Nothing in this act prohibits reasonable efforts by a fixed or mobile internet service
197 provider to address copyright infringement or other unlawful activity.

198 (h) Notwithstanding any other law, any waiver of the provisions of this act is contrary to
199 public policy and shall be unenforceable and void.

200 Sec. 4. Rulemaking.

201 The Public Service Commission, pursuant to Title I of the District of Columbia
202 Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §
203 2-501 *et seq.*), shall issue rules to implement the provisions of this act within 90 days of the
204 Mayor's signature.

205 Sec. 5. Fiscal impact statement.

206 The Council adopts the fiscal impact statement in the committee report as the fiscal
207 Impact statement required by section 602(c)(3) of the District of Columbia Home Rule
208 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

209 Sec. 6. Effective date.

210 This act shall take effect following approval by the Mayor (or in the event of veto by the
211 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
212 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
213 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
214 Columbia Register.