

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1064
Economic Matters

(Delegate Reznik)

Commercial Law - Maryland Net Neutrality Act of 2021

This bill establishes a framework for “net neutrality” in the State by generally prohibiting fixed and mobile Internet service providers (ISPs) from blocking lawful content, applications, services, or devices. Among other things, the bill also generally (1) prohibits ISPs from impairing or degrading lawful Internet traffic; (2) establishes that State funds may be used only to procure Internet access from an ISP that complies with the bill; and (3) expresses legislative intent that, if the State, a county, or a municipality provides broadband Internet access service, it may not impose use restrictions that prohibit the exercise of free speech. **The bill takes effect June 1, 2021.**

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

The bill defines various terms related to the provision of Internet services, including the terms listed below.

- “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.
- “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.
- “Edge provider” means a person that provides (1) any content, applications, or services over the Internet or (2) a device used for accessing any content, applications, or services through the Internet.
- “ISP traffic exchange” means the exchange of Internet traffic destined for (or originating from) an ISP’s end users between the ISP’s network and another individual or entity, including an edge provider, content delivery network, or other network operator.
- “Zero rating” means the practice of exempting certain Internet traffic from a customer’s data usage allowance.

Applicability

The bill applies only to broadband Internet access service provided to customers in the State. The bill may not be construed to prohibit or limit (1) a fixed or mobile ISP 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.

Net Neutrality Provisions

The bill prohibits a fixed ISP that is providing fixed broadband Internet access service from:

- blocking lawful content, applications, or services, or nonharmful devices (subject to reasonable network management);

- 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);
- requiring consideration (monetary or otherwise) from an edge provider, as specified;
- managing the ISP's network to directly or indirectly favor certain Internet traffic over other Internet traffic, as specified;
- engaging in zero rating in exchange for consideration (monetary or otherwise) from a third party;
- zero rating only certain Internet content, applications, services, or devices within each of those categories; or
- failing to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service sufficient to allow (1) a consumer to make an informed choice regarding the use of the broadband Internet access services and (2) content, application, service, and device providers to develop, market, and maintain Internet offerings.

The bill also prohibits a fixed or mobile ISP, in the course of providing either service, from engaging in practices, including agreements, with respect to, related to, or in connection with ISP traffic exchange, that have the purpose or effect of evading the prohibitions established by the bill. These specific prohibitions may not be construed to prohibit fixed or mobile ISPs from entering into ISP traffic exchange agreements that do not have the purpose (or effect) of evading the bill's prohibitions.

In addition (and subject to reasonable network management), the bill prohibits a fixed ISP (in the course of providing fixed broadband Internet access service) from unreasonably interfering with (or unreasonably disadvantaging):

- 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
- an edge provider's ability to make lawful content, applications, services, or devices available to end users.

However, it is not a violation for an ISP to zero rate Internet traffic in an application agnostic manner, if no consideration (monetary or otherwise) is provided by a third party in exchange for the ISP's decision to zero rate Internet traffic.

A mobile ISP, in the course of providing mobile broadband Internet access service, may not engage in any of the above activities.

Last-mile Connections

The bill prohibits both a fixed and mobile ISP 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 if the services (1) have the purpose or effect of evading the bill's prohibitions or (2) negatively affect the performance of broadband Internet access service.

Restrictions on the Use of State Funds

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 any such entity (1) may use State funds to procure broadband Internet access service only from an ISP that is, at all times, in compliance with the requirements of the bill and (2) by March 31 each year, must certify to the Public Service Commission that the State funds were used pursuant to the bill's requirements.

Current Law: There is no State law establishing or regulating net neutrality.

Additional Comments: In December 2017, the Federal Communications Commission (FCC) approved a repeal of existing net neutrality regulations that had been in place for two years and that barred ISPs from restricting Internet traffic on their services. FCC also reclassified broadband Internet service as an "information service" rather than a "telecommunications service," thereby limiting FCC's authority to regulate broadband service in the future. The order included a preemption clause that prevents states from adopting their own net neutrality rules, although some states disputed whether the preemption clause was valid.

The repeal took effect on June 11, 2018. With the repeal of the net neutrality rules, ISPs can slow down or block access to some websites. They can also accept fees from companies to make their content load faster than other sites.

Additional Information

Prior Introductions: HB 957 of 2020, a similar bill, received a hearing in the House Economic Matters Committee, but no further action was taken. Its cross file, SB 1005, was referred to the Senate Rules Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Department of Information Technology; Maryland Institute for Emergency Medical Services Systems; Maryland Municipal League; Department of Budget and Management; Department of General Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Public Service Commission; National Conference of State Legislatures; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2021
rh/mcr

Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510