



TO: The Honorable Dereck E. Davis, Chair  
Members, House Economic Matters Committee  
The Honorable Kirill Reznik

FROM: Richard A. Tabuteau  
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DATE: February 26, 2020

RE: **OPPOSE** – House Bill 957 – *Commercial Law – Maryland Net Neutrality Act of 2020*

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The Maryland Tech Council is a collaborative community, actively engaged in building stronger life science and technology companies by supporting the efforts of our individual members who are saving and improving lives through innovation. We support our member companies who are driving innovation through advocacy, education, workforce development, cost savings programs, and connecting entrepreneurial minds. The valuable resources we provide to our members help them reach their full potential making Maryland a global leader in the life sciences and technology industries. On behalf of MTC, we submit this letter of **opposition** for House Bill 957.

House Bill 957 attempts to regulate broadband internet access service provided to Maryland customers. However, every major ISP has pledged its support for net neutrality and data privacy. In fact, ISP's are actually required to fully disclose their net neutrality and data privacy practices to customers. State-by-state regulation, such as what is proposed in House Bill 957, will result in confusing and conflicting rules, regulations and definitions that will harm consumers and businesses. For example, if a consumer moves from state to state, it is unclear which jurisdiction has authority over their internet usage. House Bill 957 will discourage investment in broadband, new technology, and services that consumers and businesses want and need, which would otherwise lead to the creation of new Maryland jobs. It will also discourage ISPs from building out broadband in unserved and rural areas of the state.

Furthermore, the Ninth Circuit Court recently affirmed that the Federal Trade Commission has full authority to regulate privacy and open internet rules, including ensuring that ISPs protect consumer's online privacy and data security. *See Federal Trade Commission v. AT&T Mobility*, 883 F.3d 848 (9<sup>th</sup> Cir. 2018). In addition, House Bill 957 raises multiple unanswered questions, such as what will be the process to investigate these allegations; what is the appeal process if a company is found in violation; and how will the investigating state agency enforce the bill without violating the Interstate Commerce Clause?

Lastly, the bill requires a state agency to regulate whether a company is in compliance with net neutrality rules before they can qualify to bid on a state contract, which is expressly prohibited by federal law. According to the Supreme Court and multiple federal circuit courts, a state may not use its procurement laws to enforce an otherwise preempted policy goal, such as the regulation of open internet rules. *See Wisconsin Dept. of Industry v. Gould, Inc.*, 475 U.S. 282, 289 (1986); *Bldg. Indus. Elec.*

*Contractors Ass'n v. City of New York*, 678 F.3d 184, 189 (2d Cir. 2012); *Cardinal Towing & Auto Repair, Inc. v. City of Bedford*, 180 F.3d 686, 693 (5th Cir. 1999).

State-by-state regulation of net neutrality and data privacy is impractical and preempted by federal law. Any attempt at state legislation will likely embroil the state in costly litigation. There should be comprehensive, reasonable federal regulation that protects consumer's personal information and encourages continued investment in the internet, broadband, new technologies, and services. As such, the Maryland Tech Council urges the House Economic Matters Committee to give House Bill 957 an unfavorable report.

**For more information call:**

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