HOUSE BILL 1064

By: Delegate Reznik
Introduced and read first time: February 5, 2021
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Commercial Law – Maryland Net Neutrality Act of 2021

FOR the purpose of prohibiting fixed Internet service providers and mobile broadband Internet access service providers, in the course of providing certain services and subject to a certain limitation, from blocking certain content, applications, services, or devices, or impairing or degrading certain Internet traffic on a certain basis; prohibiting fixed Internet service providers and mobile broadband Internet access service providers, in the course of providing certain services, from requiring certain consideration from an edge provider; prohibiting fixed Internet service providers and mobile broadband Internet access service providers, in the course of providing certain services, from managing the Internet service provider’s network to directly or indirectly favor certain Internet traffic over other Internet traffic under certain circumstances; prohibiting fixed Internet service providers and mobile broadband Internet access service providers, in the course of providing certain services, from engaging in zero-rating in exchange for consideration from a third party, zero-rating only certain Internet traffic, failing to publicly disclose certain information, or engaging in certain practices that have a certain purpose; prohibiting fixed Internet service providers and mobile Internet service providers, in the course of providing certain services and subject to a certain limitation, from unreasonably interfering with or disadvantaging an end user’s ability to select, access, and use certain services, content, applications, or devices or an edge provider’s ability to make certain content, applications, services, or devices available to end users; providing that it is not a violation of certain provisions of this Act to zero-rate Internet traffic in a certain manner under certain circumstances; prohibiting fixed Internet service providers and mobile Internet service providers from offering or providing certain services under certain circumstances; prohibiting fixed Internet service providers and mobile Internet providers from engaging in certain practices related to certain traffic exchange; authorizing the State, political subdivisions, and units, agencies, or instrumentalities of the State or a political subdivision and certain other persons to use State funds to purchase broadband Internet access service only from a provider in compliance with certain provisions of this Act; requiring the State, political

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
subdivisions, and certain other persons to certify to a certain division of the Public
Service Commission that the State funds used to procure certain services were used
only to procure certain 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 14–4301 through 14–4305 to be under the new subtitle “Subtitle 43.
Maryland Net Neutrality Act”
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – General Provisions
Section 1–101 and 1–114
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

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 2020 Supplement)

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

Article – Commercial Law

SUBTITLE 43. MARYLAND NET NEUTRALITY ACT.

14–4301.

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

(I) ANY FUNCTIONALLY EQUIVALENT SERVICE;

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

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

(3) “BROADBAND INTERNET ACCESS SERVICE” DOES NOT INCLUDE DIAL–UP INTERNET ACCESS SERVICE.

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

(1) SHARING THE SAME SOURCE OR DESTINATION;

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

(3) USING THE SAME APPLICATION–LAYER PROTOCOL;

(4) USING THE SAME TRANSPORT–LAYER PROTOCOL; AND

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

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

(2) “CONTENT, APPLICATIONS, OR SERVICES” INCLUDES TRAFFIC THAT MAY NOT CLEARLY FIT WITHIN THE CATEGORIES OF CONTENT, APPLICATIONS, OR SERVICES.

(F) “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.

(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 broadband Internet access service to an individual, an entity, a government, or any other customer in the State.

(K) (1) “Impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device” means to impair or degrade:

(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) “Impair or degrade 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 AN ENTITY THAT PROVIDES BROADBAND INTERNET ACCESS SERVICE TO AN INDIVIDUAL, AN ENTITY, A GOVERNMENT, OR ANY OTHER CUSTOMER IN THE STATE.

(M) “ISP TRAFFIC EXCHANGE” MEANS THE EXCHANGE OF INTERNET TRAFFIC DESTINED FOR, OR ORIGINATING FROM, AN INTERNET SERVICE PROVIDER’S END USERS BETWEEN THE INTERNET SERVICE PROVIDER’S NETWORK AND ANOTHER INDIVIDUAL OR ENTITY, INCLUDING AN EDGE PROVIDER, CONTENT DELIVERY NETWORK, OR OTHER NETWORK OPERATOR.

(N) “ISP TRAFFIC EXCHANGE AGREEMENT” MEANS AN AGREEMENT BETWEEN AN INTERNET SERVICE PROVIDER AND ANOTHER INDIVIDUAL OR ENTITY, INCLUDING AN EDGE PROVIDER, A CONTENT DELIVERY NETWORK, OR ANY OTHER NETWORK OPERATOR, TO EXCHANGE INTERNET TRAFFIC DESTINED FOR, OR ORIGINATING FROM, AN INTERNET SERVICE PROVIDER’S END USERS BETWEEN THE INTERNET SERVICE PROVIDER’S NETWORK AND THE OTHER INDIVIDUAL OR ENTITY.

(O) (1) “MASS MARKET RETAIL 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 RETAIL 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; OR

(II) OFFERED USING NETWORKS SUPPORTED BY THE CONNECT AMERICA FUND OR SIMILAR PROGRAMS AT THE FEDERAL AND STATE LEVEL.
(3) “Mass market retail service” does not include enterprise service offerings.

(p) (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.

(q) “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.

(r) “Reasonable network management” means a practice that:

(1) Has a primarily 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.

(s) “Zero–rating” means the practice of exempting certain Internet traffic from a customer’s data usage allowance.

(a) The General Assembly finds that almost every sector of the State’s economy, democracy, and society is dependent on the open and neutral Internet that supports vital functions regulated under the police power of the State, including:

(1) Police and emergency services;
(2) Health and safety services and infrastructure;

(3) Utility services and infrastructure;

(4) Transportation infrastructure and services, and the expansion of zero–emission and low–emission transportation options;

(5) Government services, voting, and democratic decision–making processes;

(6) Education, business, and economic activity;

(7) Environmental monitoring and protection and achievement of State environmental goals; and

(8) Land use regulation.

(B) The General Assembly declares that this subtitle is enacted in accordance with the inherent police power of the State to protect and promote the safety, life, public health, public convenience, general prosperity, and well–being of society and welfare of the State’s population and economy that are increasingly dependent on an open and neutral Internet.

14–4303.

(A) This subtitle applies only to broadband Internet access service provided to customers in the State.

(B) 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.

(C) Any waiver of the provisions of this subtitle shall be unenforceable and void.
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14–4304.

(A) A fixed Internet service provider, in the course of providing fixed broadband Internet access service, may not:

(1) Subject to reasonable network management:

   (i) Block lawful content, applications, or services, or nonharmful devices; or

   (ii) Impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or the use of a nonharmful device;

(2) Require consideration, monetary or otherwise, from an edge provider, 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;

(3) 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;

(4) Engage in zero-rating in exchange for consideration, monetary or otherwise, from a third party;

(5) Zero-rate only certain Internet content, applications, services, or devices in a category of Internet content, applications,
SERVICES, OR DEVICES; OR

(6) Fail to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service sufficient to allow:

(i) A consumer to make an informed choice regarding the use of the broadband Internet access service; and

(ii) Content, application, service, and device providers to develop, market, and maintain Internet offerings.

(B) (1) The following entities may not engage 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 under this section and § 14–4305 of this subtitle:

(i) A fixed Internet service provider, in the course of providing fixed broadband Internet access service; or

(ii) A mobile Internet service provider, in the course of providing mobile broadband Internet access service.

(2) This subsection may not be construed to prohibit fixed Internet service providers or mobile Internet service providers from entering into ISP traffic exchange agreements that do not have the purpose or effect of evading the prohibitions established under this section and § 14–4305 of this subtitle.

(C) (1) A fixed Internet service provider, in the course of providing fixed broadband Internet access service, may not:

(i) Subject to reasonable network management, unreasonably interfere with or unreasonably disadvantage 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, unreasonably interfere with or unreasonably disadvantage 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, is provided by a third party in exchange for the Internet service provider’s decision to zero-rate Internet traffic.

(D) 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), (B)(1), or (C)(1) of this section.

14–4305.

(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 § 14–4304 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 § 14–4304 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 § 14–4301 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 43 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 43 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 theinvalid 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, 2021.