
A BILL FOR AN ACT

RELATING TO BROADBAND INTERNET ACCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. In December 2017, the United States Federal
3 Communications Commission dismantled the previously existing net
4 neutrality rules governing broadband internet service providers.
5 Although the regulations requiring net neutrality have only been
6 in effect since 2015, net neutrality was the position of the
7 federal government for over a decade.

8 The 2015 rules required internet service providers to treat
9 all websites equally. Internet service providers could not use
10 their power over the internet infrastructure to serve their own
11 interests or restrict access to certain information by blocking
12 content or altering the speed that specific information could be
13 uploaded or downloaded. The net neutrality rules prevented
14 internet service providers from creating choke points for the
15 flow of information between internet users.

16 The end of net neutrality gives rise to legitimate
17 concerns. First, internet service providers will be able to



1 prioritize their profit-seeking interests over individuals'
2 choices regarding the type of information to consume. Second,
3 internet service providers may be able to manipulate
4 individuals' political, social, and economic decision-making by
5 shaping the information that is disseminated for public
6 consumption. Third, internet service providers, with their
7 significant leverage as information gate-keepers, may be able to
8 force higher prices upon both content creators and content
9 consumers in exchange for the transmittal of information.

10 Although the Federal Communications Commission claimed
11 preemptive power over the Internet and stated in its December
12 2017 ruling that state and local governments could not create
13 their own net neutrality rules, states across the nation have
14 pushed back. Lawmakers in California, New York, Massachusetts,
15 Nebraska, Rhode Island, and Washington have introduced bills in
16 their respective state legislatures that would forbid internet
17 service providers from blocking or slowing down internet sites
18 or online services.

19 For example, a Washington representative has introduced a
20 bill in that state's legislature that would authorize the
21 state's attorney general to enforce net neutrality. In



1 addition, the bill prohibits internet service providers from
2 blocking lawful content, applications, services, or non-harmful
3 devices; impairing or degrading traffic on the basis of content,
4 application, service, or use of non-harmful devices, an action
5 known as "throttling" within the internet industry; and favoring
6 some traffic over other traffic in exchange for consideration or
7 benefit for itself or an affiliated company, also known as "paid
8 prioritization."

9 The Internet is embedded in most people's lives and, for
10 some, serves as the primary method of obtaining and sharing
11 information. The end of net neutrality gives internet service
12 providers tremendous influence over what people learn, how
13 people communicate with each other, and what decisions people
14 make. Allowing corporations unfettered discretion to restrict
15 information is antithetical to the free exchange of ideas, which
16 has always been the bedrock of American ideals and Hawaii's
17 political, social, and economic advancement.

18 Therefore, the legislature finds that that the Internet
19 should be equal and open to all to ensure that a few
20 corporations do not become the sole arbiters of the information
21 people are able to access. Accordingly, the legislature urges



1 the United States Congress to reverse the Federal Communications
2 Commission's ruling against net neutrality and finds that it
3 serves the State's interests to mitigate any harm done by the
4 ruling so long as it remains in force.

5 The purpose of this Act is to explore methods to mitigate
6 the negative impact of the Federal Communications Commission's
7 ruling against net neutrality on the State by regulating
8 providers of broadband internet access and establishing a task
9 force to examine the benefit and feasibility of the State
10 classifying internet service as a public utility and providing
11 internet service to consumers in Hawaii through a state-owned
12 internet service provider company.

13 PART II

14 SECTION 2. The legislature finds that it is essential to
15 ensure that people can access websites and information freely
16 and fairly over the Internet, which provides worldwide
17 communication and a platform for a global marketplace where even
18 the smallest businesses can participate.

19 The purpose of this part is to ensure that the Internet
20 remains free and open in the State by requiring providers of
21 broadband internet access services to be transparent with



1 network management practices, performance, and commercial terms
2 of its broadband internet access services; and prohibiting
3 providers of broadband internet access services from blocking
4 lawful websites; impairing or degrading lawful internet traffic;
5 engaging in paid prioritization; or unreasonably interfering
6 with or unreasonably disadvantaging users of broadband internet
7 access services.

8 SECTION 3. The Hawaii Revised Statutes is amended by
9 adding a new chapter to be appropriately designated and to read
10 as follows:

11 **"CHAPTER**

12 **BROADBAND INTERNET ACCESS SERVICE**

13 § -1 **Definitions.** As used in this chapter, unless the
14 context otherwise requires:

15 "Broadband internet access service" means a mass-market
16 retail communications service, including any service that the
17 Federal Communications Commission finds to be functionally
18 equivalent, by wire or radio that provides the capability to
19 transmit data to and receive data from all or substantially all
20 internet endpoints, including any capabilities that are



1 incidental to and enable the operation of the communications
2 service, but excluding dial-up internet access service.

3 "Edge provider" means any individual or entity that
4 provides any content, application, or service over the Internet,
5 and any individual or entity that provides a device used for
6 accessing any content, application, or service over the
7 Internet.

8 "End user" means any individual or entity that uses a
9 broadband internet access service.

10 "Mobile broadband internet access service" means a
11 broadband internet access service that serves end users
12 primarily using mobile stations.

13 "Paid prioritization" means the management of a broadband
14 provider's network to directly or indirectly favor some traffic
15 over other traffic, including through the use of techniques such
16 as traffic shaping, prioritization, resource reservation, or
17 other forms of preferential traffic management, either:

18 (1) In exchange for consideration, monetary or otherwise,
19 from a third party; or

20 (2) To benefit an affiliated entity.



1 "Reasonable network management" means a practice that has a
2 primarily technical network management justification, but does
3 not include other business practices. A network management
4 practice is reasonable if it is primarily used for and tailored
5 to achieving a legitimate network management purpose, taking
6 into account the particular network architecture and technology
7 of the broadband internet access service.

8 § -2 Broadband internet access service; disclosure;
9 protections. (a) A person engaged in the provision of
10 broadband internet access service in the State shall publicly
11 disclose accurate information regarding the network management
12 practices, performance, and commercial terms of its broadband
13 internet access services sufficient for consumers to make
14 informed choices regarding use of such services and for edge
15 providers to develop, market, and maintain internet offerings.

16 (b) A person engaged in the provision of broadband
17 internet access service in the State, insofar as such a person
18 is so engaged, shall not:

- 19 (1) Block lawful content, applications, services, or
20 nonharmful devices, subject to reasonable network
21 management;



(2) Impair or degrade lawful internet traffic on the basis of internet content, application, or service, or use of a nonharmful device, subject to reasonable network management;

(3) Engage in paid prioritization; or

(4) Unreasonably interfere with or unreasonably disadvantage:

(A) End users' ability to select, access, and use broadband internet access service or the lawful internet content, applications, services, or devices of their choice; or

(B) Edge providers' ability to make lawful content, applications, services, or devices available to end users;

provided that paid prioritization otherwise prohibited pursuant to paragraph (3) of this subsection may be permitted if a petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet in the State."



PART III

SECTION 4. The legislature finds that it is in the State's interest to explore the possibility of establishing a state-owned public utility company to provide broadband internet service.

In several jurisdictions, internet service providers have stymied efforts to establish public utility companies to provide internet service through aggressive lobbying and litigation. However, the success of public companies providing internet service in municipalities such as Chattanooga, Tennessee and Sandy, Oregon demonstrates there are concrete, societal benefits to treating internet service like a public utility.

The purpose of this part is to establish a task force to examine the costs and benefits for the State to supply broadband internet service through a state-owned public utility company.

SECTION 5. (a) There is established for administrative purposes within the department of business, economic development, and tourism a task force on the establishment of a state-owned public utility company to provide internet service to users in Hawaii.



1 (b) The task force shall provide guidance to the
2 legislature on the costs and benefits of state-provided internet
3 service through a public utility company, including but not
4 limited to:

5 (1) The financial cost of building and managing an
6 internet service network, and the number of internet
7 service subscribers that would be necessary to offset
8 outlay costs;

9 (2) Options to mitigate the costs associated with setting
10 up or managing an internet service network;

11 (3) The effect of a public utility internet service
12 provider on competition and the price paid by
13 consumers for internet service;

14 (4) The effect of a public utility internet service
15 provider on users' access to the Internet,
16 particularly for users' accessing the Internet in
17 communities that are unserved or underserved by
18 private internet service providers;

19 (5) The regulatory framework that would allow the public
20 utility company to operate without discouraging
21 private sector job creation and investment; and



(6) The industries that would benefit from having both public and private internet service providers available within the State.

(c) The director of business, economic development, and tourism shall serve as the chair of the task force, and shall invite the appropriate stakeholders to participate in the task force.

The members of the task force shall serve without compensation and shall not be subject to the requirements of chapter 84, Hawaii Revised Statutes, solely due to participation in the task force.

(d) The task force shall serve until June 30, 2019; provided that the members of the task force may represent themselves as task force members after June 30, 2019, when testifying or commenting on the actions or recommendations of the task force.

(e) The task force shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2019. The report shall contain the task force's recommendations, including any proposed legislation,



1 related to cost, benefits, feasibility, and scope to ensure that
2 consumers in Hawaii have free and open access to the Internet.

3 PART IV

4 SECTION 6. This Act shall take effect upon its approval.
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Report Title:

Broadband Internet Service; Public Utility; Net Neutrality

Description:

Regulates broadband internet service providers to ensure a free and open Internet. Establishes a task force to examine the costs and benefits of creating a state-owned public utility company to provide broadband internet service.

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