

JAN 17 2025

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 SECTION 1. The legislature finds that the State has a duty
2 to protect and promote the safety, life, public health, public
3 convenience, general prosperity, and well-being of its
4 residents. Almost every sector of the State's economy,
5 democracy, and society is dependent on the open and neutral
6 internet that supports vital functions regulated under the power
7 of the State, including but not limited to each of the
8 following:

9 (1) Police and emergency services;

10 (2) Health and safety services and infrastructure;

11 (3) Utility services and infrastructure;

12 (4) Transportation infrastructure and services and the
13 expansion of zero and low emission transportation
14 options;

15 (5) Government services, voting, and democratic decision-
16 making processes;

17 (6) Education;



(7) Business and economic activity;

(8) Environmental monitoring and protection, and
achievement of state environmental goals; and

(9) Land use regulation.

Accordingly, the purpose of this Act is to ensure that the
provision of broadband internet services is safely and fairly
delivered to all users in the State by prohibiting:

(1) Fixed and mobile internet service providers that
provide broadband internet access service from
engaging in certain actions concerning the treatment
of internet traffic;

(2) Among other things, blocking lawful content,
applications, services, or nonharmful devices,
impairing or degrading lawful internet traffic on the
basis of content or application or service, use of a
nonharmful device, and certain practices relating to
zero-rating, as defined; and

(3) 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



1 access service if those services have the purpose or
2 effect of evading prohibitions or negatively affect
3 the performance of broadband internet access service.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 **"CHAPTER**

8 **INTERNET NEUTRALITY**

9 § -1 **Definitions.** As used in this chapter:

10 "Application-agnostic" means not differentiating on the
11 basis of source, destination, internet content, application,
12 service, or device, or class or internet content, application,
13 service, or device.

14 "Broadband internet access service" means a mass-market
15 retail service by wire or radio provided to customers in the
16 State that provides the capability to transmit data to and
17 receive data from all or substantively all internet endpoints,
18 including but not limited to any capabilities that are
19 incidental to and enable the operation of the communications
20 service, but excluding dial-up internet access service.

21 "Broadband internet access service" also encompasses any service



1 provided to customers in the State that provides a functional
2 equivalent of that service or is used to evade the protections
3 described in this chapter.

4 "Class of internet content, application, service, or
5 device" means internet content or a group of internet
6 applications, services, or devices, sharing a common
7 characteristic, including but not limited to sharing the same
8 source or destination, belonging to the same application- or
9 transport-layer protocol, or having similar technical
10 sequencing, or timing of packets, or sensitivity to delay.

11 "Content, applications, or services" means all internet
12 traffic transmitted to or from end users of a broadband internet
13 access service, including but not limited to traffic that may
14 not fit clearly into any of these categories.

15 "Edge provider" means any individual or entity that
16 provides any content, application, or service over the Internet,
17 and any individual or entity that provides a device used for
18 accessing any content, application, or service over the
19 Internet.

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



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2 "Enterprise service offering" means an offering to larger
3 organizations through customized or individually negotiated
4 arrangements or special access services.

5 "Fixed broadband internet access service" means a broadband
6 internet access service that serves end users primarily at fixed
7 endpoints using stationary equipment. Fixed broadband internet
8 access service includes, but is not limited to fixed wireless
9 services such as fixed unlicensed wireless services and fixed
10 satellite services.

11 "Fixed internet service provider" means a business that
12 provides fixed broadband internet access service to an
13 individual, corporation, government, or other customer in the
14 State.

15 "Impairing or degrading lawful internet traffic on the
16 basis of internet content, application, or service, or use of a
17 nonharmful device" means impairing or degrading any of the
18 following:

- 19 (1) Particular content, applications, or services;
20 (2) Particular classes of content, applications, or
21 services;



(3) Lawful internet traffic to particular nonharmful devices; or

(4) Lawful internet traffic to particular classes of nonharmful devices; and

includes differentiating, positively or negatively and without limitation, between any of the following:

(1) Particular content, applications, or services or particular classes of content, applications, or services; or

(2) Lawful internet traffic to particular nonharmful devices or particular classes of nonharmful devices.

"Internet service provider" means a business that provides broadband internet access service to an individual, corporation, government, or other customer in the State.

"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 but not limited to an edge provider, content delivery network, or other network operator.



1 "ISP traffic exchange agreement" means an agreement between
2 an internet service provider and another individual or entity,
3 including but not limited to an edge provider, content delivery
4 network, or other network operator, to exchange internet traffic
5 destined for, or originating from, an internet service
6 provider's end users between the internet service provider's
7 network and the other individual or entity.

8 "Mass market service" means a service marketed and sold on
9 a standardized basis to residential customers, small businesses,
10 and other customers, including but not limited to schools,
11 institutions of higher learning, and libraries. "Mass market
12 services" also includes broadband internet access services
13 purchased with support of the federal E-Rate Program and the
14 Rural Health Care Program and similar programs at the federal
15 and state level, regardless of whether they are customized or
16 individually negotiated, as well as any broadband internet
17 access service offered using networks supported by the federal
18 Connect America Fund or similar programs at the federal and
19 state level. "Mass market" service does not include enterprise
20 service offerings.



1 "Mobile broadband internet access service" means a
2 broadband internet access service that serves end users
3 primarily using mobile stations. Mobile broadband internet
4 access service includes but is not limited to broadband internet
5 access services that use smartphones or mobile network enabled
6 tablets as the primary endpoints for connection to the Internet,
7 as well as mobile satellite broadband services.

8 "Mobile internet service provider" means a business that
9 provides mobile broadband internet access service to an
10 individual, corporation, government, or other customer in the
11 State.

12 "Mobile station" means a radio communication station
13 capable of being moved and ordinarily does move.

14 "Paid prioritization" means the management of an internet
15 service provider's network to directly or indirectly favor some
16 traffic over other traffic, including but not limited to the use
17 of techniques such as traffic shaping, prioritization, resource
18 reservation, or other forms of preferential traffic management
19 that is:

- 20 (1) In exchange for consideration, monetary or otherwise,
21 from a third party; or



(2) To benefit an affiliated entity.

"Reasonable network management" means a network management practice that is reasonable. A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it 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 service, and is as application-agnostic as possible.

"Zero-rating" means exempting some internet traffic from a customer's data usage allowance.

§ -2 Obligations of fixed service providers. (a) It shall be unlawful for a fixed internet service provider, insofar as the provider is engaged in providing fixed broadband internet access service, to engage in any of the following activities:

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

(2) Impairing or degrading lawful internet traffic on the basis of content, application or service, or use of a



nonharmful device, subject to reasonable network management;

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

(A) Delivering internet traffic to, and carrying internet traffic from, the internet service provider's end users;

(B) Avoiding having the edge provider's content, application, service, or nonharmful device blocked from reaching the internet service provider's end users; or

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

(4) Engaging in paid prioritization;

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

(6) Zero-rating some internet content, applications, services, or devices in a category of internet



1 content, applications, services, or devices but not
2 the entire category;

3 (7) Unreasonably interfering with or unreasonably
4 disadvantaging an end user's ability to select,
5 access, and use broadband internet access service or
6 lawful internet content, applications, services, or
7 devices available to end users, provided that:

8 (A) Reasonable network management shall not be a
9 violation of this paragraph; and

10 (B) Zero-rating internet traffic in application-
11 agnostic ways shall not be a violation of this
12 paragraph if no consideration, monetary or
13 otherwise, is provided by any third party in
14 exchange for the internet service provider's
15 decision whether to zero-rate traffic;

16 (8) Failing to publicly disclose accurate information
17 regarding the network management practices,
18 performances, and commercial term of its broadband
19 internet access services sufficient for consumers to
20 make informed choices regarding use of those services
21 and for content, application, service, and device



1 providers to develop, market, and maintain internet
2 offerings; or

3 (9) Engaging in practices, including but not limited to
4 agreements with respect to or in connection with ISP
5 traffic exchange that have the purpose or effect of
6 evading the prohibitions contained in this section and
7 section -3; provided that nothing in this paragraph
8 shall be construed to prohibit internet service
9 providers from entering into ISP traffic exchange
10 agreements that do not evade the prohibitions
11 contained in this section and section -3.

12 (b) It shall be unlawful for a mobile internet service
13 provider, insofar as the provider is engaged in providing mobile
14 broadband internet access service, to engage in any of the
15 activities described in subsection (a).

16 § -3 **Last-mile service provision requirements.** (a) It
17 shall be unlawful for a fixed internet service provider to offer
18 or provide services other than broadband internet access
19 services that are delivered over the same last-mile connection
20 as the broadband internet access service if those services:



(1) Have the purpose or effect of evading the prohibitions
in section -2; or

(2) Negatively affect the performance of broadband
internet access service.

(b) It shall be unlawful for a mobile internet service
provider to offer or provide 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 include any of the activities specified in
subsection (a)(1) and (2).

(c) Nothing in this section shall be construed to prohibit
a fixed or mobile internet service provider 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 and do not otherwise violate
this section.

§ -4 Exemptions. (a) Nothing in this chapter shall
supersede any obligation or authorization a fixed or mobile
internet service provider may have to address the needs of
emergency communications or law enforcement, public safety, or



1 national security authorities, consistent with or as permitted
2 by applicable law, or limit the provider's ability to do so.

3 (b) Nothing in this chapter shall prohibit reasonable
4 efforts by a fixed or mobile internet service provider to
5 address copyright infringement or other unlawful activity.

6 (c) Notwithstanding any other law, any waiver of the
7 provisions of this chapter shall be contrary to public policy
8 and shall be unenforceable and void."

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 5. This Act shall take effect upon its approval.

19
INTRODUCED BY: _____



S.B. NO. 1036

Report Title:

Net Neutrality Principles; Broadband Internet Access Service; Communications; Internet Service Providers; Protections

Description:

Codifies net neutrality principles by prohibiting fixed and mobile internet service providers that provide broadband internet access service from engaging in certain practices concerning the treatment of internet traffic. Among other things, prohibits internet service providers from blocking internet traffic on the basis of internet content, application, or service, engaging in paid prioritization or zero-rating internet traffic in exchange for consideration, monetary or otherwise.

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