A BILL  

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  

To prohibit fixed and mobile internet service providers that provide broadband internet access service from engaging in specified actions concerning the treatment of lawful Internet traffic, among other things, such as blocking lawful content, applications, services, or nonharmful devices, impairing or degrading lawful internet traffic on the basis of internet content, application, or service, or use of a nonharmful device, and specified practices relating to zero-rating; and to prohibit 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 access service, if those services have the purpose or effect of evading the above-described prohibitions or negatively affecting performance or broadband internet access service.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Consumer Net Neutrality Protection Act of 2021”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “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.
(2) "Broadband Internet access service" means a mass-market retail service by wire or radio provided to customers in Washington, D.C., that provides the capability to transmit data to and receive data from, all or substantially all Internet endpoints, including, but not limited to, any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service provided to customers in Washington, D.C., that provides a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this title.

(3) "Class of Internet content, application, service, or device" means Internet content, or a group of Internet applications, services, or devices, sharing common characteristics, including:

   (A) Sharing the same source or destination;
   (B) Belonging to the same type of content, application, service, or device;
   (C) Using the same application or transport-layer protocol; or
   (D) Having similar technical characteristics, including the size, sequencing, or timing of packets, or sensitivity to delay.

(4) "Content, applications, or services" means all Internet traffic transmitted to or from end users of a broadband Internet access service, including traffic that may not fit clearly into any of the categories of content, applications, or services.

(5) "Edge provider" means a person that provides any content, application, or service over the Internet, and any person that provides a device used for accessing any content, application, or service over the Internet.

(6) "End user" means a person that uses a broadband Internet access service.
(7) "Enterprise service offering" means an offering to larger organizations through customized or individually negotiated arrangements or special access services.

(8) "Fixed broadband Internet access service" means a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services including, fixed unlicensed wireless service and fixed satellite services.

(9) "Fixed Internet service provider" means a business that provides fixed broadband Internet access service to an individual, corporation, government, or other customer in Washington, D.C.

(10) "Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device":

(A) Means impairing or degrading any of the following:

(i) Particular content, applications, or services;

(ii) Particular classes of Internet content, applications, or services;

(iii) Lawful Internet traffic to particular nonharmful devices; or

(iv) Lawful Internet traffic to particular classes of nonharmful devices; and

(B) Includes differentiating, positively or negatively, between any of the following:

(i) Particular content, applications, or services;

(ii) Particular classes of Internet content, applications, or services;

(iii) Lawful Internet traffic to particular nonharmful devices; or
(iv) Lawful Internet traffic to particular classes of nonharmful
devices.

(11) "Internet service provider" means a business that provides broadband
Internet access service to an individual, corporation, government or other customer in
Washington, D.C.

(12) "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.

(13) "ISP traffic exchange agreement" means an agreement between an Internet
service provider and another individual or entity, including, but not limited to, an edge provider,
content delivery network, or 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.

(14) "Mass market service" means a service marketed and sold on a standardized
basis to residential customers, small businesses, and other customers, including schools,
institutions of higher learning, and libraries. Mass market services also include broadband
Internet access services 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, as well as any broadband Internet access service offered using networks
supported by the Connect America Fund or similar programs at the federal and state level. Mass
market service does not include enterprise service offerings.
(15) "Mobile broadband Internet access service” means a broadband Internet access service that serves end users primarily using mobile stations. Mobile broadband Internet access services includes broadband Internet access services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services.

(16) "Mobile Internet service provider” means a business that provides mobile broadband Internet access service to an individual, corporation, government, or other customer in Washington, D.C.

(17) "Mobile station” means a radio communication station capable of being moved and which ordinarily does move.

(18) “Network management practice” is a practice that has a primarily technical network management justification but does not include other business practices.

(19) “Paid prioritization” means the management of an Internet service provider’s network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either:

(A) In exchange for consideration, monetary or otherwise, from a third party; or

(B) To benefit an affiliated entity.

(20) “Reasonable network management” means a network management practice that is reasonable. 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.

(21) “Zero-rating” means exempting some Internet traffic from a customer’s data usage allowance.

Sec. 3. Net Neutrality Principles.

(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 Internet 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;

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

(7)(A) Unreasonably interfering with, or unreasonably disadvantaging, either an end user’s ability to select, access, and use broadband internet access service or the 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. Reasonable network management shall not be a violation of this paragraph;

(B) Zero-rating internet traffic in application-agnostically in ways shall not be a violation of subparagraph (A) provided that no consideration, monetary or otherwise, is provided by any third party in exchange for the internet service provider’s decision whether to zero-rate traffic;

(8) Failing to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient for consumers to make informed choices regarding use of those services and for content, application, service, and device providers to develop, market and, maintain internet offerings; or

(9) 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 contained in this section. Nothing in this paragraph shall be construed to prohibit internet service providers from entering into ISP traffic exchange agreements that do not evade the prohibitions contained in this section.
(b) It shall be unlawful for a mobile internet service provider, insofar as the provider is engaged in providing mobile broadband internet access service, to engage in any of the activities described in subsection (a)(1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section.

(c) It shall be unlawful for a fixed internet service provider to offer or provide services other than broadband internet access services that are delivered over the same last-mile connections as the broadband internet access service, if those services satisfy any of the following conditions:

1. They are marketed, provided, or can be used as a functional equivalent of broadband Internet access service.
2. They have the purpose or effect of evading the prohibitions in subsections (a) or (b) of this section; or
3. They negatively affect the performance of broadband internet access service.

(d) It shall be unlawful for a mobile Internet service provider to 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 those services satisfy any of the conditions specified in paragraphs (1), (2) and (3) of subsection (c) of this section.

(e) Nothing in subsections (c) and (d) of this section shall be construed to prohibit a fixed 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 subsections (c) and (d) of this section.

(f) Nothing in this act supersedes 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 national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.

(g) Nothing in this act prohibits reasonable efforts by a fixed or mobile internet service provider to address copyright infringement or other unlawful activity.

(h) Notwithstanding any other law, any waiver of the provisions of this act is contrary to public policy and shall be unenforceable and void.

Sec. 4. Rulemaking.

The Public Service Commission, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this act within 90 days of the Mayor's signature.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.