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Amendment No. \_\_\_\_\_

\_\_\_\_\_  
Signature of Sponsor

**AMEND Senate Bill No. 969\***

**House Bill No. 1060**

by deleting all language after the caption and substituting the following:

WHEREAS, the General Assembly finds that the Federal Communications Commission has repealed net neutrality rules intended to protect consumers and to ensure fair and reasonable access to the internet; and

WHEREAS, the General Assembly finds that it is in the best interest of the State to ensure that corporations do not impede competition or engage in deceptive consumer practices, and that they offer service to broadband internet customers on a nondiscriminatory basis; and

WHEREAS, the General Assembly finds that it is in the best interest of the State to ensure the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer needs and encourages the ubiquitous availability of a wide choice of state-of-the-art services; and

WHEREAS, the General Assembly finds that it is in the best interest of the State to ensure the promotion of lower prices, broader consumer choice, and avoidance of anticompetitive conduct; and

WHEREAS, the General Assembly finds the removal of the barriers to open and competitive markets and the promotion of fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice is in the best interest of the State; and

WHEREAS, the General Assembly, in the interest of equity, fairness, and freedom, finds that it is in the best interest of the State to ensure that whatever is available on the internet is openly and equally accessible to all; and



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WHEREAS, this State has the police power to establish and enforce laws protecting the health, safety, and general welfare of its citizens; and

WHEREAS, almost every sector of Tennessee'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, but not limited to, police and emergency services; health and safety services and infrastructure; utility services and infrastructure; transportation infrastructure and services, and the expansion of zero- and low-emission transportation options; government services, voting, and democratic decisionmaking processes; education; business and economic activity; environmental monitoring and protection, and achievement of state environmental goals; and land use regulation; and

WHEREAS, in order to protect the health, safety, and general welfare, it is necessary for this State to ensure that all such public utilities, public safety services, transportation services, and other vital public services that are operated online via the internet remain open to the citizens of this State and free from interference or throttling; and

WHEREAS, it is the intent of the General Assembly that the State take all steps authorized under this act to protect the open market, as well as assure that necessary services in which the public relies and upon which are operated via the internet, remain available to all citizens of this State; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, is amended by adding the following new chapter:

**65-38-101.**

This chapter shall be known and may be cited as the "Tennessee Net Neutrality and Internet Consumer Protection Act."

**65-38-102.**

For purposes of this chapter:

(1) "Affiliated entity" means any entity that controls, is controlled by, or is under common control with another entity;

(2) "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;

(3) "Broadband internet access service" means a mass-market retail service by wire or radio in this state that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. "Broadband internet access service" includes any service in this state that provides a functional equivalent of that service or that is used to evade the protections set forth in this chapter, as determined by the commission;

(4) "Class of internet content, application, service, or device" means internet content, or a group of internet applications, services, or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service, or device, using the same application- or transport-layer protocol, or having similar technical characteristics, including, but not limited to, the size, sequencing, or timing of packets, or sensitivity to delay;

(5) "Commission" means the Tennessee public utility commission;

(6) "Content, applications, or services" means all internet traffic transmitted to or from end users of a broadband internet access service, including, but not limited to, traffic that may not fit clearly into any of these categories;

(7) "Edge provider" means any individual or entity in this state that provides any content, application, or service over the internet, and any individual

or entity in this state that provides a device used for accessing any content, application, or service over the internet;

(8) "End user" means any individual or entity that uses a broadband internet access service;

(9) "Enterprise service offering" means an offering to larger organizations through customized or individually negotiated arrangements or special access services;

(10) "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, but is not limited to, fixed wireless services, including, but not limited to, fixed unlicensed wireless services, and fixed satellite services;

(11) "Fixed internet service provider" means a business that provides fixed broadband internet access service to an individual, corporation, government, or other customer in this state;

(12) "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 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, without limitation, differentiating, positively or negatively, between any of the following:

- (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;

(13) "Internet service provider" means a business that provides broadband internet access service to an individual, corporation, government, or other customer in this state;

(14) "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;

(15) "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;

(16) "Mass market service" means a service marketed and sold on a standardized basis to residential customers, small businesses, and other customers, including, but not limited to, schools, institutions of higher learning, and libraries. "Mass market service" also includes 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;

(17) "Mobile broadband internet access service" means a broadband internet access service that serves end users primarily using mobile stations. "Mobile broadband internet access service" includes, but is not limited to, 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;

(18) "Mobile internet service provider" means a business that provides mobile broadband internet access service to an individual, corporation, government, or other customer in this state;

(19) "Mobile station" means a radio communication station capable of being moved and which ordinarily does move;

(20) "Paid prioritization" means the management of an internet service provider's network to directly or indirectly favor some traffic over other traffic, including, but not limited to, 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;

(21) "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; and

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

**65-38-103.**

(a) An internet service provider shall not 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; or

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

(4) Engaging in paid prioritization, or providing preferential treatment of some internet traffic to any internet customer;

(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) Engaging in deceptive or misleading marketing practices that misrepresent the treatment of internet traffic or content to a customer;

(8)

(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; and

(B) The following are not violations of this subdivision (a)(8):

(i) Reasonable network management; or

(ii) Zero-rating internet traffic in application-agnostic ways as long as 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;

(9) 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

(10) Engaging in practices, including, but not limited to, 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 and § 65-38-104. Nothing in this subdivision (a)(10) prohibits internet service providers from entering into ISP traffic exchange agreements that do not evade the prohibitions contained in this section and § 65-38-104.

(b) It is 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).

**65-38-104.**

(a) It is unlawful for a fixed 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 either of the following conditions:

(1) They have the purpose or effect of evading the prohibitions in § 65-38-103; or

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

(b) It is 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 either of the conditions specified in subdivisions (a)(1) and (2).

(c) Nothing in this section prohibits 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 this section.

**65-38-105.**

(a) Nothing in this chapter 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.

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

**65-38-106.**

A person engaged in the provision of broadband internet access service in this state shall publicly disclose in a manner reasonably understood and noticeable by a member of the general public, accurate information regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient for:

(1) A consumer to make informed choices regarding use of the services;

and

(2) Content, application, service, and device providers to develop, market, and maintain internet offerings.

**65-38-107.**

The commission may waive the prohibition set forth in § 65-38-103(a)(4) if a provider demonstrates to the commission's satisfaction that paid prioritization would provide some significant public interest benefit and would not harm the open nature of the internet. Any proceedings to obtain a waiver under this section must be pursuant to chapter 2, part 1 of this title.

**65-38-108.**

(a) After the effective date of this act:

(1) A state governmental entity or local government shall not contract with an internet service provider unless the provider is compliant with this chapter; and

(2) An internet service provider shall not enter into a contract to supply goods or services to a state governmental entity or local government without first attesting in writing that the provider will comply with this chapter.

(b)

(1) If an internet service provider that contracts to supply internet service to a state governmental entity or submits a response to contract to supply

internet service to a state governmental entity is discovered to have knowingly violated this chapter in the performance of the contract, then the chief procurement officer must declare that internet service provider to be prohibited from contracting for or submitting a response for any contract to supply goods or services to a state governmental entity for a period of one (1) year from the date of discovery of the violation of this chapter.

(2) An internet service provider that is prevented from contracting for or submitting a response for a contract to supply goods or services to a state governmental entity for one (1) year pursuant to subdivision (b)(1) may appeal the imposition of the one-year prohibition by utilizing an appeals process to be established by the chief procurement officer and approved by the procurement commission.

(c) The chief procurement officer is authorized to promulgate rules to effectuate the purposes of this section. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**65-38-109.**

The commission shall promulgate rules that establish a process whereby an internet service provider certifies to the commission that it is providing broadband internet access service in accordance with this chapter. The commission is authorized to promulgate rules necessary to implement and effectuate all other provisions of this chapter except § 65-38-108.

**65-38-110.**

(a) Any party injured by a violation of this chapter or the consumer advocate division in the office of the attorney general and reporter exercising authority pursuant to § 65-4-118 may bring a contested case pursuant to chapter 2 of this title. The commission is authorized to issue a cease and desist order, issue an order imposing a

civil penalty up to a maximum of two thousand dollars (\$2,000) for each day a violation occurs, and seek additional relief in any court of competent jurisdiction.

(b) A violation of this chapter is:

(1) A violation of the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1; and

(2) An unjust practice in violation of § 65-4-115.

(c) This chapter does not limit any person's right to pursue any additional civil remedy otherwise allowed by law.

**65-38-111.**

(a) There is created a fund to be known as the internet consumer fund. Any penalty collected pursuant to § 65-38-110(a) must be deposited in the fund. Moneys in the fund must be invested by the state treasurer in accordance with § 9-4-603. The commission shall administer the fund.

(b) All costs of the commission associated with the administration of this chapter must be paid from the fund. Moneys remaining in the fund after such payment may be expended, subject to appropriation by the general assembly.

(c) Any amount in the fund at the end of any fiscal year must not revert to the general fund, but remain available for the purposes set forth in subsection (b). Interest accruing on investments and deposits of the fund must be credited to such account, do not revert to the general fund, and must be carried forward into each subsequent fiscal year.

**65-38-112.**

If any provision of this chapter or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it, and shall apply to actions taken on or after that date.

Amendment No. \_\_\_\_\_

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Signature of Sponsor

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**AMEND Senate Bill No. 210**

**House Bill No. 172\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 65-25-128, is amended by deleting the section.

SECTION 2. Tennessee Code Annotated, Section 65-25-134(c)(2), is amended by deleting the language "an existing telephone cooperative" and substituting instead the language "an entity in existence and operating as a telephone cooperative on April 24, 2017".

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.



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