

EXHIBIT 5



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Susanne R. Young, Secretary

MEMORANDUM

TO: All Members of Senate Committee on Finance

FROM: Susanne Young, Secretary, Agency of Administration
John Quinn, Secretary, Agency of Digital Services
Clay Purvis, Director of Telecom and Connectivity, Department of Public Service

DATE: February 1, 2018

SUBJECT: S.289 – Net Neutrality

The Administration believes maintaining Vermont's open and unrestricted access to the value and economic opportunity the Internet offers is important, and the Administration is concerned about the impact that the FCC's *Restoring Internet Freedom* order will have on Vermont consumers and businesses. The FCC's order limits how states can respond, but the Administration is monitoring the issue, and exploring ways we can ensure equitable access to information on the internet continues. In response to the Senate Committee on Finance's inquiry to the Department of Finance and Management, we would like to take this opportunity to highlight a few concerns for consideration in S.289.

S.289 would require all state contracts for broadband internet access services to include a provision that the internet service provider adheres to net neutrality principles for all consumers in Vermont. The bill would impact all government contracts for data in all branches of government, including wired and wireless services. Compliant companies would be prohibited from throttling, blocking, or paid prioritization of content. The Bill proposes to require the Agency of Administration to develop a process by which internet service providers may certify compliance with consumer protection and net neutrality standards. S.289 could have adverse impacts for state government IT operations, especially for district offices located in exchanges with only one provider. Without an appropriate safety valve in law some state offices could be left with no connectivity, while others will have insufficient competition for services.

Currently, the State of Vermont purchases broadband internet service for its offices and hundreds of cell phones for its state workers. These services would be subject to the requirements of S.289. The State of Vermont purchases data services from multiple vendors, and in some cases, there is only one available vendor at a state office. Although the bill would allow exceptions for network management and paid prioritization that the Secretary of AOA finds to be in the best interest of the state, the law would by-and-large impose net neutrality on any vendor doing business with the State of Vermont. Vendors who

choose not to certify compliance with net neutrality rules would be prohibited from bidding on state contracts for these services. This will reduce the number of eligible vendors and in some cases leave state offices and employees without adequate service. For instance, some telephone rural local exchange carriers (RLECs) operate in monopoly areas and have no competition. Should these companies choose not to adhere to state net neutrality principles, state offices in those exchanges could be left without any viable alternative for landline data. In competitive areas, the loss of potential vendors could increase prices for service. S.289 leaves the Secretary of Administration with no opportunity to ensure connectivity in these places at reasonable prices.

Several important functions of state government could be adversely impacted. Public Safety first responders, including DPS and E911, rely heavily on wired and wireless internet services. The State of Vermont's data centers require redundant circuits to maintain connectivity in an outage. Most data centers have only two providers available and should the centers lose one provider, they will lose redundancy. Many state employees rely on cell phones, both as an office phone and for remote working. These employees could lose those services under this scheme, unless the two major Vermont cell providers, Verizon and AT&T, certify compliance. The bill could negatively impact essential government functions, including emergency operations, and leave many state employees without essential telecommunications services.

Lastly, the bill could lead to costly litigation. The FCC's recent net neutrality order made clear that the new rules preempt any state attempts to regulate internet traffic. Although this bill may ultimately evade the scope of the FCC's preemption decision, it will likely still lead to lawsuits with providers. It is also possible that the bill would be challenged on alternate constitutional grounds.
