

Compilation on Net Neutrality responses by the State [prepared by CLPR]

Net neutrality responses by state

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Background

[Net neutrality](#), or network neutrality, is the concept that internet service providers (ISPs) should treat all internet traffic equally. Tim Wu, a professor at Columbia School of Law who coined the term in 2002, argued that ISPs should not be allowed to block or slow web traffic or provide paid internet fast lanes that allow certain content to load more quickly than other content.^{[3][4]}

Instituted during the Obama administration, the 2015 Open Internet Order, also referred to as net neutrality rules, considered internet service providers (ISPs) a public utility, and they were regulated like gas, water, electric, and phone service companies. ISPs were prohibited from blocking or slowing web traffic or providing paid internet fast lanes. In 2018, the 2015 Open Internet Order was repealed. Under the 2018 rules, ISPs will not be regulated as a public utility. ISPs will have to disclose their practices, and the FCC and Federal Trade Commission will investigate any anti-competitive behavior.^[5] The Republican members of the commission—Ajit Pai, Michael O'Reilly, and Brendan Carr—voted for the new rules, while the Democratic members—Jessica Rosenworcel and Mignon Clyburn—voted to keep the 2015 rules.^[6]

In addition to repealing the 2015 Open Internet Order, the FCC sought to preempt state and local laws that imposed net neutrality regulations.^{[7][8]} The FCC wrote:

“ We therefore preempt any state or local measures that would effectively impose rules or requirements that we have repealed or decided to refrain from imposing in this order or that would impose more stringent requirements for any aspect of broadband service that we address in this order. Among other things, we thereby preempt any so-called 'economic' or 'public utility-type' regulations, including common-carriage requirements akin to those found in Title II of the Act and its implementing rules, as well as other rules or requirements that we repeal or refrain from imposing today because they could pose an obstacle to or place an undue burden on the provision of broadband Internet access service and conflict with the deregulatory approach we adopt today...Although we preempt state and local laws that interfere with the federal deregulatory policy restored in this order, we do not disturb or displace the states' traditional role in generally policing such matters as fraud, taxation, and general commercial dealings, so long as the administration of such general state laws does not interfere with federal regulatory objectives.^{[7][9]}

Legal challenges to the FCC's ruling

On January 16, 2018, the attorneys general of 21 states and the [District of Columbia](#) filed a legal challenge to the FCC's ruling repealing the 2015 Open Internet Order.^[10] Those states include [New York](#), [California](#), [Connecticut](#), [Delaware](#), [Hawaii](#), [Illinois](#), [Iowa](#), [Kentucky](#), [Maine](#), [Maryland](#), [Massachusetts](#), [Minnesota](#), [Mississippi](#), [New Mexico](#), [North Carolina](#), [Oregon](#), [Pennsylvania](#), [Rhode Island](#), [Vermont](#), [Virginia](#), and [Washington](#).^[11] They requested a determination by the court that the FCC's ruling violated the Administrative Procedures Act, the [United States Constitution](#), the Communications Act of 1934, FCC regulations, and rulemaking requirements.^[12] You can read the petition [here](#). All of the states that joined the suit have [Democratic](#) attorneys general.

In addition to the states' challenge, several corporations and advocacy groups filed separate challenges to the ruling.^[12]

The [United States Court of Appeals for the District of Columbia Circuit](#) heard oral arguments in the case on February 1, 2019.^[13]

On August 20, 2018, attorneys general from 22 states and the District of Columbia [filed a brief](#) asking the [United States Court of Appeals for the District of Columbia Circuit](#) to reinstate the Obama administration's net neutrality regulations. The states involved included New Jersey in addition to the 21 states that filed a legal challenge in January 2018.^[14]

The attorneys general argued two main points. First, the brief argued that the FCC's repeal of net neutrality was "arbitrary and capricious" and would harm consumers, public safety, and existing regulations. Second, the attorneys general claimed the FCC was not authorized to preempt state and local laws and asked the court to declare the repeal invalid.^[15]

On October 1, 2019, the [United States Court of Appeals for the District of Columbia Circuit](#) delivered an opinion upholding the FCC's 2018 net neutrality repeal but striking down the agency's preemption of state and local net neutrality regulations. The court also directed the agency to consider how the repeal would affect public safety, broadband subsidies, and the regulation of cable pole attachments.^[16]

Executive orders

As of October 3, 2019, the governors of six states had signed executive orders requiring ISPs doing business with the state to comply with net neutrality rules: [Montana](#), [New York](#), [Hawaii](#), [New Jersey](#), [Rhode Island](#), and [Vermont](#). The orders exclusively apply to ISPs that directly contract with state government agencies; they do not apply to every ISP doing business in the state.

Gov. [Steve Bullock](#) (D) of Montana signed the first executive order on net neutrality following the FCC's December ruling. Bullock's order required the state's Department of Administration "to incorporate into the state procurement process for internet, data, and telecommunications services (collectively, 'telecommunications services') criteria requiring that successful recipients of state contracts adhere to internet neutrality principles."^[17] The order also requires ISPs that contract with Montana to disclose information on their services to all Montana residents they serve. You can read the full order [here](#).

In his executive order, Gov. [Andrew Cuomo](#) (D) of New York directed "New York State's government...not to enter into any contracts for internet service unless the ISPs agree to adhere to net neutrality principles." Cuomo directed state agencies "to incorporate into the State's procurement process for internet, data, and telecommunications services criteria requiring that recipients of state contracts adhere to internet neutrality principles."^[18] You can read the full order [here](#).

In his executive order, Gov. [David Ige](#) (D) of Hawaii directed "all State government agencies to contract Internet-related services only with ISPs who demonstrate and contractually agree to support and practice net neutrality principles where all Internet traffic is treated equally." The order also requires state agencies "to add contract language and provisions to State

procurement requirements that suppliers of telecommunications, Internet, broadband, and data communication services shall abide by net neutrality principles."^[19] You can read the full order [here](#).

In his executive order, Gov. [Phil Murphy](#) (D) of New Jersey directed that all state agencies entering into contracts with ISPs "shall require that all future contracts for Internet, data, and telecommunications be awarded only to ISPs that adhere to 'net neutrality' principles." Murphy required that any ISP contracting with the state adhere to net neutrality principles throughout the state, not only in its business with the state government.^[20]

In his executive order, Gov. [Phil Scott](#) (R) of Vermont directed that all state agencies' contracts with ISPs "shall include net neutrality protections." Specifically, Scott prohibited ISPs contracting with the state from blocking lawful content, impairing internet traffic, or providing paid preferential treatment to some content.^[21]

In her executive order, Gov. [Gina Raimondo](#) (D) of Rhode Island directed that all state agencies' ISP contracts "be awarded only to service providers that adhere to 'net neutrality principles.'"^[22]

Legislative Action

As of October 3, 2019, legislators in 29 states had introduced bills in response to the FCC's ruling during the 2019 legislative session: California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina,

Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and West Virginia. Net neutrality legislation had failed in four of the 29 states as of October 3, 2019: Connecticut, Montana, New Hampshire, and Utah.^[23]

During the 2018 legislative session, 34 states introduced bills or resolutions relating to net neutrality: Alaska, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin.^{[24][25][26][27][28]}

As of October 3, 2019, net neutrality legislation had passed in six states: [California](#), [Colorado](#), [Maine](#), [Oregon](#), [Vermont](#), and [Washington](#).^{[23][29]}

- California: On September 30, 2018, Gov. [Jerry Brown](#) (D) signed [SB 822](#). Introduced by Sen. [Scott Wiener](#) (D), SB 822 prohibits ISPs from blocking websites, slowing web traffic, or charging more for faster service.^[30] SB 822 passed the state Senate [May 30](#) but was amended in an Assembly committee in June. The committee removed provisions that were intended to deter discriminatory internet service. Bill sponsor Sen. [Scott Wiener](#) (D) said the amendments "eviscerated the bill—it is no longer a net neutrality bill."^[31] After committee Chairman [Miguel Santiago](#) (D) and Wiener were able to reach a deal, Santiago reintroduced the bill in August.^[32] It passed the state Assembly [August 30](#).

- Colorado: On May 17, 2019, Gov. [Jared Polis](#) (D) signed [SB19-078](#).^[33] Introduced by Sen. [Kerry Donovan](#) (D), SB19-078 prohibits ISPs from throttling, blocking otherwise legal content, services, and apps, and establishing internet fast lanes. Providers violating the law would be required to repay the state for any funding received for rural broadband initiatives.^[34]
- Maine: On June 24, 2019, Gov. [Janet Mills](#) (D) signed [L.D. 1364](#) into law. The bill prohibits state entities from committing state funds to an internet service provider unless the provider agrees in writing to conform to the requirements of the Obama administration's 2015 Open Internet Order.^[23]
- Oregon: Gov. [Kate Brown](#) (D) signed a net neutrality-related bill into law April 9, 2018. [The bill](#) requires government bodies in Oregon to contract with ISPs that operate under net neutrality guidelines. A press release on the governor's website said ISPs must "enable equal access for all web traffic, regardless of the source" in order to contract with the government.^[35] The bill was passed by the [Oregon House of Representatives](#) February 26 and by the [Oregon State Senate](#) March 1.
- Vermont: On May 22, 2018, Gov. [Phil Scott](#) (R) signed [legislation](#) requiring ISPs doing business with the state to follow net neutrality principles. The bill passed the state Senate February 2 and the state House April 19. Both chambers agreed to amendments May 12.
- Washington: Washington state became the first in the nation to sign a net neutrality bill into law when Gov. [Jay Inslee](#) (D) signed HB 2282 March 5, 2018. HB 2282 broadly prohibits ISPs from favoring particular sites or blocking access to sites across the state. The bill passed the Washington House February 9 by a vote of 93-5, and the Washington Senate February 27 on a 35-14 vote.^[36]

Justice Department sues California over SB 822

October 1, 2019: D.C. Circuit Court of Appeals ruling

On October 1, 2019, the [United States Court of Appeals for the District of Columbia Circuit](#) delivered an opinion upholding the FCC's 2018 net neutrality repeal but striking down the agency's preemption of state and local net neutrality regulations. According to the Los Angeles Times, the D.C. Circuit Court of Appeals' ruling "might be appealed, though experts said it's too early to know for sure. Once the appeals process — which could take at least another year — is completed, California would be free to enforce its law."^[37]

October 26, 2018: Lawsuit and implementation delayed

On October 26, 2018, the DOJ agreed to delay the lawsuit against California and [Attorney General Xavier Becerra](#) agreed to delay SB 822's implementation until the resolution of pending litigation in the [United States Court of Appeals for the District of Columbia Circuit](#). The law was initially scheduled to go into effect January 1, 2019.^{[38][39]} The DOJ and Becerra agreed to the delay pending a lawsuit brought by Mozilla and the attorneys general from 22 states arguing against the FCC's net neutrality repeal. According to *Tech Spot*, "If the judge in that case finds that the FCC was erroneous in removing net neutrality, then California needn't introduce their own bill. If the result is in the FCC's favour, however, then it will be harder for California to introduce their bill."^[40]

FCC Chairman Pai said the delay "reflects the strength of the case made by the United States" in October 2018 and "also demonstrates, contrary to the claims of the law's supporters, that there is no urgent problem that these regulations are needed to address."^[38]

Sen. Wiener, the bill's sponsor, tweeted the following statement: [Sen. Weiner's tweet](#).

September 30, 2018: Governor signs bill, DOJ files lawsuit

On September 30, 2018, Gov. [Jerry Brown](#) (D) signed [SB 822](#). The state Senate approved the bill [May 30](#) and the state Assembly approved it [August 30](#).

SB 822 established guidelines for internet service providers (ISPs), prohibiting them from blocking or slowing web traffic, providing paid internet fast lanes, or participating in zero rating.^[41]

The [U.S. Department of Justice](#) (DOJ) filed a lawsuit arguing SB 822 was unconstitutional and preempted by federal law. The DOJ asked the court for a preliminary injunction against SB 822.^[30] [Click here](#) to read the department's petition. FCC Chairman [Ajit Pai](#) supported the DOJ's challenge.^[30]

[U.S. Attorney General Jeff Sessions](#) (R) said in a statement, "Under the Constitution, states do not regulate interstate commerce—the federal government does. Once again the California legislature has enacted an extreme and illegal state law attempting to frustrate federal policy."^[42]

[California Attorney General Xavier Becerra](#) (D) said in a statement, "While the Trump Administration continues to ignore the millions of Americans who voiced strong support for net neutrality rules, California—home to countless start-ups, tech giants and nearly 40 million consumers—will not allow a handful of power brokers to dictate sources for information or the speed at which websites load."^[30]

Footnotes

1. [High Country News, "Western states lead the fight to maintain net neutrality," February 6, 2018](#)
2. [↑ The Hill, "States pursue net neutrality rules after FCC rollback," January 3, 2018](#)
3. [↑ Law.Columbia.edu, "Tim Wu in the Center of the Net Neutrality Debate," November 28, 2017](#)
4. [↑ Paper.SSRN.com, "Network Neutrality, Broadband Discrimination," June 5, 2003](#)
5. [↑ ABC News, "What is net neutrality?" December 11, 2017](#)
6. [↑ The Hill, "FCC votes to repeal net neutrality rules," December 14, 2017](#)
7. [↑ ^{Jump up to:7.0 7.1 7.2} Federal Communications Commission, "Restoring Internet Freedom Declaratory Ruling, Report and Order, and Order - WC Docket No. 17-108," accessed February 11, 2018](#)
8. [↑ ars Technica, "FCC will also order states to scrap plans for their own net neutrality laws," November 12, 2017](#)
9. [↑ Note: This text is quoted verbatim from the original source. Any inconsistencies are attributable to the original source.](#)
10. [↑ ars Technica, "21 states sue FCC to restore net neutrality rules," January 16, 2018](#)
11. [↑ United States Court of Appeals for the District of Columbia Circuit, "New York et al. v. FCC," January 16, 2018](#)
12. [↑ New York Times, "Flurry of Lawsuits Filed to Fight Repeal of Net Neutrality," January 16, 2018](#)
13. [↑ ARL Policy Notes, "Oral Arguments in Mozilla v. FCC," accessed April 3, 2019](#)
14. [↑ Reuters, "Twenty-two states ask U.S. appeals court to reinstate 'net neutrality' rules," August 21, 2018](#)

15. [↑ Jurist, "22 states urge appeals court to reinstate net neutrality rules," August 21, 2018](#)
16. [↑ The Hill, "Appeals court upholds net neutrality repeal but rules FCC can't block state laws," accessed October 2, 2019](#)
17. [↑ Office of the Governor, "Executive Order providing for net neutrality principles in state procurement," January 22, 2018](#)
18. [↑ State of New York Executive Chamber, "Executive order ensuring net neutrality protections for New Yorkers," January 24, 2018](#)
19. [↑ Governor of Hawaii, "Executive Order No. 18-02," February 5, 2018](#)
20. [↑ Office of the Governor, "Executive Order No. 9," February 5, 2018](#)
21. [↑ State of Vermont Executive Department, "Executive Order No. 2-18," February 15, 2018](#)
22. [↑ State of Rhode Island and Providence Plantations, "Executive Order 18-02: Internet Neutrality and States Procurement," April 24, 2018](#)
23. [↑ ^{Jump up to:23.0} ^{23.1} ^{23.2} National Conference of State Legislatures, "Net Neutrality Legislation in States," accessed October 3, 2019](#)
24. [↑ National Conference of State Legislatures, "Net Neutrality Legislation in States," accessed October 3, 2019](#)
25. [↑ freepress, "Net Neutrality Politics Is Local," February 14, 2018](#)
26. [↑](#) *As with the executive orders, many of the bills focus on net neutrality requirements for ISPs who do business directly with the state. Some bills directly regulate ISPs. Although the FCC's ruling specifically preempted state laws, some state legislators stated that they believe the FCC does not have the legal authority to prevent states from creating their own net neutrality rules.*

27. [↑ arstechnica, "To kill net neutrality, FCC might have to fight more than half of US states," February 16, 2018](#)
28. [↑ Route Fifty, "Statehouses Are the New Arena in the Battle for Net Neutrality," February 1, 2018](#)
29. [↑ New Jersey passed a legislative resolution on February 1, 2018 asking the president and Congress to restore net neutrality laws at the federal level. That bill was not included in this list, since it was not passed as a bill \(the governor did not sign it\), and it contained no rules or regulations.](#)
30. [↑ Jump up to:30.0 30.1 30.2 30.3 Deadline, "California Gov. Jerry Brown Signs Nation's Strongest Net-Neutrality Law; Trump Administration Files Suit," September 30, 2018](#)
31. [↑ San Francisco Chronicle, "California net neutrality bill 'eviscerated' in Assembly committee meeting," June 20, 2018](#)
32. [↑ San Francisco Chronicle, "California net neutrality bill easily passes Assembly," August 30, 2018](#)
33. [↑ Colorado Politics, "Polis signs Colorado net neutrality bill," May 17, 2019](#)
34. [↑ Gizmodo, "Colorado Governor Reportedly Set to Sign Net Neutrality Bill Into Law," April 5, 2019](#)
35. [↑ Oregon.gov, "Governor Kate Brown to Sign Net Neutrality Bill Into Law," April 6, 2018](#)
36. [↑ Washington State Legislature, "HB 2282 - 2017-18," accessed March 6, 2018](#)
37. [↑ Los Angeles Times, "Upholding FCC's repeal of net neutrality rules, court opens door for California to enforce its own," accessed October 4, 2019](#)
38. [↑ Jump up to:38.0 38.1 The Verge, "California strikes deal with FCC to delay state net neutrality law," October 26, 2018](#)

39. ↑ [Governing, "Net Neutrality on Pause: California Agrees Not to Enforce New Rules as States Fight FCC in Court," October 29, 2018](#)
40. ↑ [Tech Spot, "California's net neutrality law has been put on hold," October 28, 2018](#)
41. ↑ [Dayton Daily News, "California governor signs tough net neutrality bill," September 30, 2018](#)
42. ↑ [NBC News, "California enacts net neutrality bill, DOJ counters with lawsuit," October 1, 2018](#)

Excerpts from the National Regulatory Research Institute Report, “State Responses on Net Neutrality” by Kathryn J. Kline

Kline, K. J. (2019). *State Responses to Net Neutrality*. Retrieved from

<https://pubs.naruc.org/pub/45ACE3A2-AAEA-417D-2416-B6862C9D4435>

IV. The State Response

The FCC *Restoring Internet Freedom* order was released in December 2017 and published in the Federal Register on February 22, 2018. States quickly responded to the FCC’s *Restoring Internet Freedom* order by issuing executive orders and proposing resolutions and bills. In 2018, 36 states took some action to support net neutrality protection at the state level by either proposing a bill or resolution, or enacting an executive order. Additionally, many state attorneys general have joined the Mozilla v. FCC suit, arguing that the FCC did not adhere to the Administrative Procedures Act when it issued the *Restoring Internet Freedom* order (for more information on ongoing legal action, see section 4). An overview of state actions on net neutrality is provided in Figure 4.

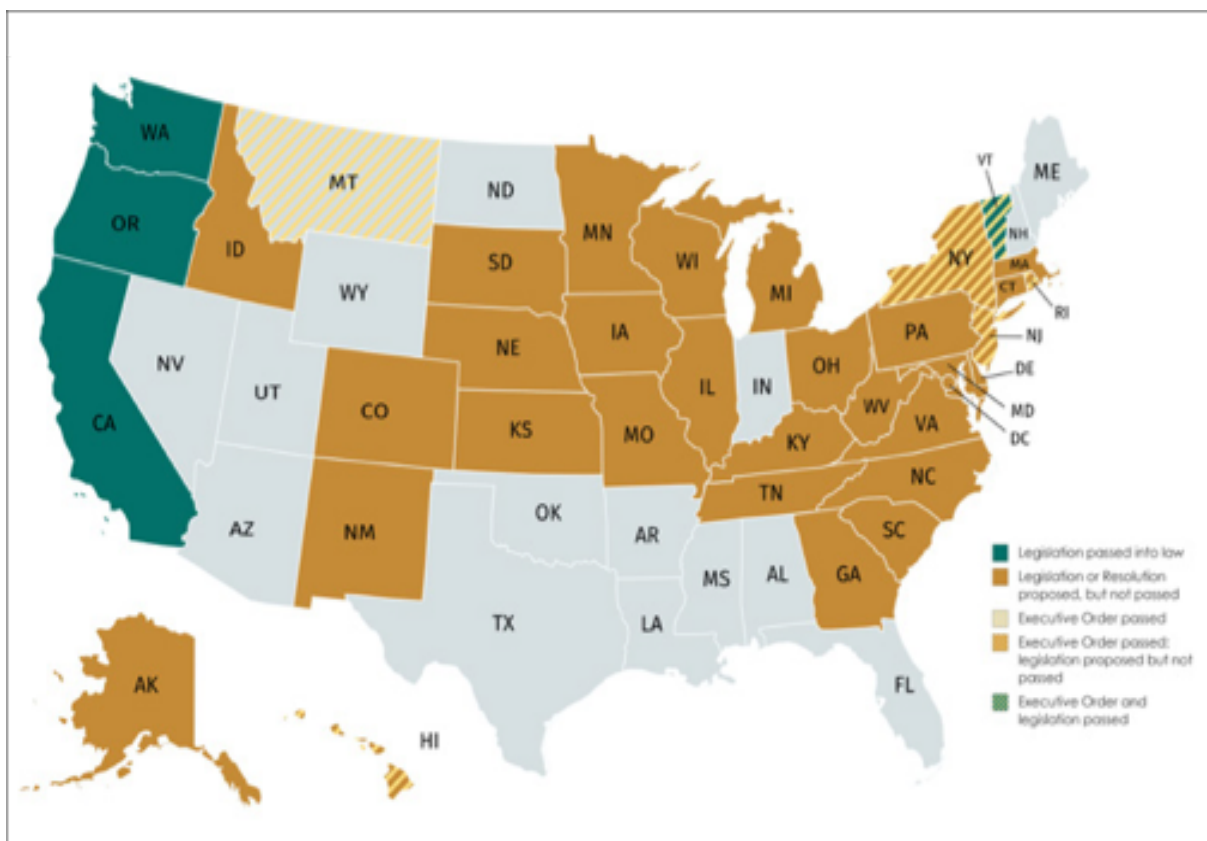
Proposed state actions on net neutrality policies were introduced in many regions of the country. The West Coast region instituted the most net neutrality laws in 2018, and another cluster of executive orders on net neutrality were enacted in the northeastern section of the United States.

A. Executive Orders on Net Neutrality

Six governors have signed executive orders related to net neutrality (Hawaii, Montana, New Jersey, New York, Rhode Island, and Vermont). These orders uniformly mandate that state contracts be awarded solely to ISPs that adhere to net neutrality principles.

All of the executive orders signed so far have included a description of net neutrality, and although they differ slightly, define net neutrality as no blocking, throttling, or paid prioritization.

Review of the executive orders identified four key features (contracting requirements, public disclosure requirements, emergency clauses, and further evaluation) that some or all governors included in their net neutrality provisions. Table 1 provides an overview of the different provisions of each state's executive order on net neutrality. Executive orders on net neutrality generally included one or more of the following elements.



1. State procurement requirements to adhere to net neutrality principles: All six state executive orders on net neutrality require state entities to contract only with ISP providers that adhere to net neutrality rules.

2. Public disclosure requirements: Public disclosure requirements about network management practices were included in the executive orders on net neutrality for Montana and New Jersey. These executive orders require ISPs contracting with state entities to publicly disclose their network management practices. This includes accurate information about cellular data and wireless broadband transport.
3. Emergency clause: Two states (Montana and Rhode Island) include emergency clauses that specify that these executive orders do not supersede any “obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications of 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” (Montana Executive Order No. 6-2018).
4. Tasks PUCs with evaluating or providing input on potential actions: New York and Rhode Island⁴) include provisions in the states’ executive orders that request the PUCs to evaluate and advise the governor on other potential actions that could be taken by the state to promote net neutrality.

Table 1: Elements of Net Neutrality Executive Orders				
	State procurement requirements	Public disclosure requirements	Emergency clause about public safety	Tasks PUCs with evaluating or providing input
Hawaii	•			
Montana	•	•	•	
New Jersey	•	•		
New York	•			•
Rhode Island	•		•	•
Vermont	•			
Source: Author’s construct				

