

# STATE OF NEW YORK

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Introduced by Sens. HOYLMAN-SIGAL, BAILEY, COMRIE, JACKSON, KRUEGER, LIU, MAYER, MYRIE, PERSAUD, SALAZAR, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to Internet neutrality; and to amend the state finance law, the general municipal law, the public authorities law and the economic development law, in relation to requiring that procurement contracts require compliance with Internet neutrality requirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Legislative intent. The legislature finds and declares the  
2 following:
- 3 (a) This act is adopted pursuant to the police power inherent in the  
4 state of New York to protect and promote the safety, life, public  
5 health, public convenience, general prosperity, and well-being of socie-  
6 ty, and the welfare of the state's population and economy, that are  
7 increasingly dependent on an open and neutral Internet.
- 8 (b) Almost every sector of New York's economy, democracy, and society  
9 is dependent on the open and neutral Internet that supports vital func-  
10 tions regulated under the police power of the state, including, but not  
11 limited to, each of the following:
- 12 (1) police and emergency services;  
13 (2) health and safety services and infrastructure;  
14 (3) utility services and infrastructure;  
15 (4) transportation infrastructure and services, and the expansion of  
16 zero- and low-emission transportation options;  
17 (5) government services, voting, and democratic decision making proc-  
18 esses;  
19 (6) education;  
20 (7) business and economic activity;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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(8) environmental monitoring and protection, and achievement of state environmental goals; and  
(9) land use regulation.  
§ 2. The public service law is amended by adding a new article 12 to read as follows:

## ARTICLE 12

### PROVISIONS RELATING TO INTERNET SERVICE PROVIDERS

#### Section 250. Definitions.

##### 251. Internet neutrality.

##### 252. Broadband Internet access evaluation.

##### 253. Infrastructure awards.

##### 254. Enforcement.

##### 255. Application.

§ 250. Definitions. For purposes of this article, the following definitions apply:

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. "Application-specific differential pricing" means charging different prices for Internet traffic to customers on the basis of Internet content, application, service, or device, or class of Internet content, application, service, or device, but does not include zero-rating.

3. "Broadband Internet access service" means a mass-market retail service by wire or radio provided to customers in New York 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" also encompasses any service provided to customers in New York that provides a functional equivalent of that service or that is used to evade the protections set forth in this chapter.

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. "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 these categories.

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

7. "End user" means any individual or entity that uses a broadband Internet access service.

8. "Internet service provider" or "ISP" means a business that provides broadband Internet access service to an individual, corporation, government, or other customer in New York.

9. "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 indi-

vidual or entity, including, but not limited to, an edge provider, content delivery network, or other network operator.

10. "Mass market" means a service marketed and sold on a standardized basis to residential customers, small businesses, and other end-use customers, including, but not limited to, schools, institutions of higher learning, and libraries. The term also includes broadband Internet access services purchased with support of the E-rate and Rural Health program 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.

11. "Network management practice" means a practice that has a primarily technical network management justification, but does not include other business practices.

12. "Reasonable network management practice" means a network management practice that 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 that is as application-agnostic as possible.

13. "Third-party 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.

14. "Zero-rating" means exempting some Internet traffic from a customer's data limitation.

§ 251. Internet neutrality. 1. It shall be unlawful for an Internet service provider, insofar as the provider is engaged in providing broadband Internet access service, to engage in any of the following activities:

(a) Blocking lawful content, applications, services, or non-harmful devices, subject to reasonable network management practices.

(b) Speeding up, slowing down, altering, restricting, interfering with, or otherwise directly or indirectly favoring, disadvantaging, or discriminating between lawful Internet traffic on the basis of source, destination, Internet content, application, or service, or use of a non-harmful device, or of class of Internet content, application, service, or non-harmful device, subject to reasonable network management practices.

(c) Requiring consideration from edge providers, monetary or otherwise, in exchange for access to the Internet service provider's end users, including, but not limited to, requiring consideration for either of the following:

(i) transmitting Internet traffic to and from the Internet service provider's end users.

(ii) refraining from the activities prohibited in paragraphs (a) and (b) of this subdivision.

(d) Engaging in third-party paid prioritization.

(e) Engaging in application-specific differential pricing or zero-rating in exchange for consideration, monetary or otherwise, by third parties.

1 (f) Zero-rating some Internet content, applications, services, or  
2 devices in a category of Internet content, applications, services, or  
3 devices, but not the entire category.

4 (g) Engaging in application-specific differential pricing.

5 (h) Unreasonably interfering with, or unreasonably disadvantaging,  
6 either an end user's ability to select, access, and use broadband Inter-  
7 net access service or lawful Internet content, applications, services,  
8 or devices of the end user's choice, or an edge provider's ability to  
9 make lawful content, applications, services, or devices available to an  
10 end user, subject to reasonable network management practices.

11 (i) Engaging in practices with respect to, related to, or in  
12 connection with, ISP traffic exchange that have the purpose or effect of  
13 circumventing or undermining the effectiveness of this section.

14 (j) Engaging in deceptive or misleading marketing practices that  
15 misrepresent the treatment of Internet traffic, content, applications,  
16 services, or devices by the Internet service provider, or that misrepre-  
17 sent the performance characteristics or commercial terms of the broad-  
18 band Internet access service to its customers.

19 (k) Advertising, offering for sale, or selling broadband Internet  
20 access service without prominently disclosing with specificity all  
21 aspects of the service advertised, offered for sale, or sold.

22 (l) Failing to publicly disclose accurate information regarding the  
23 network management practices, performance, and commercial terms of its  
24 broadband Internet access services sufficient for consumers to make  
25 informed choices regarding use of those services and for content, appli-  
26 cation, service, and device providers to develop, market, and maintain  
27 Internet offerings.

28 (m) Offering or providing services other than broadband Internet  
29 access service that are delivered over the same last-mile connection as  
30 the broadband Internet access service, if those services satisfy any of  
31 the following conditions:

32 (i) they are marketed, provide, or can be used as a functional equiv-  
33 alent of broadband Internet access service.

34 (ii) they have the purpose or effect of circumventing or undermining  
35 the effectiveness of this section.

36 (iii) they negatively affect the performance of broadband Internet  
37 access service.

38 2. (a) An Internet service provider may offer different types of tech-  
39 nical treatment to end users as part of its broadband Internet access  
40 service, without violating the provisions of subdivision one of this  
41 section, if all of the following conditions exist:

42 (i) The different types of technical treatment are equally available  
43 to all Internet content, applications, services, and devices, and all  
44 classes of Internet content, applications, services, and devices, and  
45 the Internet service provider does not discriminate in the provision of  
46 the different types of technical treatment on the basis of Internet  
47 content, application, service, or device, or class of Internet content,  
48 application, service, or device.

49 (ii) The Internet service provider's end users are able to choose  
50 whether, when, and for which Internet content, applications, services,  
51 or devices, or classes of Internet content, applications, services, or  
52 devices, to use each type of technical treatment.

53 (iii) The Internet service provider charges only its own broadband  
54 Internet access service customers for the use of the different types of  
55 technical treatment.

1 (b) Any Internet service provider offering different types of techni-  
2 cal treatment pursuant to this subdivision shall notify the commission  
3 and provide the commission with a specimen of any service contract that  
4 it offers to customers in New York.

5 (c) If an Internet service provider offers different types of techni-  
6 cal treatment pursuant to this subdivision, the commission shall monitor  
7 the quality of the basic default service and establish minimum quality  
8 requirements if the offering of the different types of technical treat-  
9 ment degrades the quality of the basic default service.

10 3. An Internet service provider may zero-rate Internet traffic in  
11 application-agnostic ways, without violating the provisions of subdivi-  
12 sion one of this section, provided that no consideration, monetary or  
13 otherwise, is provided by any third party in exchange for the provider's  
14 decision to zero-rate or to not zero-rate traffic.

15 § 252. Broadband Internet access evaluation. The commission, in  
16 consultation with the power authority of the state of New York, the NYS  
17 Broadband Program Office and electrical corporations, shall evaluate the  
18 role broadband Internet access and tools, especially as they relate to  
19 private consumers, will play in the future operation of the state's  
20 power grid. The evaluation should consider at least the following:

21 1. the reliance of electrical corporations on consumer broadband  
22 services to manage energy resources;

23 2. the impact that paid prioritization, throttling, and blocking in  
24 consumer broadband Internet service would have on resource management  
25 and grid reliability; and

26 3. the future cost to the state and agencies if state agencies need to  
27 enter into long-term paid prioritization contracts if net neutrality  
28 principles are no longer in place.

29 § 253. Infrastructure awards. 1. An award of moneys by the NYS Broad-  
30 band Program Office for the building of infrastructure for broadband  
31 communications shall require the awardee to prevent any Internet service  
32 provider that provides broadband Internet access service utilizing that  
33 infrastructure from violating the provisions of section two hundred  
34 fifty-one of this article.

35 2. An award of moneys by the NYS Broadband Program Office for access  
36 to the Internet shall prohibit any Internet service provider that  
37 receives those moneys from violating the provisions of section two  
38 hundred fifty-one of this article.

39 § 254. Enforcement. In addition to the authority granted to the  
40 commission pursuant to this chapter, the attorney general may enforce  
41 the provisions of this article to the extent permitted under section  
42 sixty-three of the executive law.

43 § 255. Application. Nothing in this article supersedes or limits any  
44 obligation, authorization, or ability of an Internet service provider to  
45 address the needs of emergency communications or law enforcement, public  
46 safety, or national security authorities.

47 § 3. Section 219 of the public service law is amended by adding a new  
48 subdivision 4 to read as follows:

49 4. (a) For purposes of this section, "application-agnostic," "applica-  
50 tion-specific differential pricing," "broadband Internet access  
51 service," "class of Internet content, application, service, or device,"  
52 "content, applications, or services," "edge provider," "end user,"  
53 "Internet service provider," "ISP," "ISP traffic exchange," "mass  
54 market," "network management practice," "reasonable network management  
55 practice," "third-party paid prioritization," and "zero-rating" have the  
56 same meanings as defined in section two hundred fifty of this chapter.

(b) A cable operator or video service provider that has been granted a franchise, and any affiliate, insofar as the provider is engaged in providing broadband Internet access service, shall not engage in any of the following activities:

(i) Blocking lawful content, applications, services, or non-harmful devices, subject to reasonable network management practices.

(ii) Speeding up, slowing down, altering, restricting, interfering with, or otherwise directly or indirectly favoring, disadvantaging, or discriminating between lawful Internet traffic on the basis of source, destination, Internet content, application, or service, or use of a non-harmful device, or of class of Internet content, application, service, or non-harmful device, subject to reasonable network management practices.

(iii) Requiring consideration from edge providers, monetary or otherwise, in exchange for access to the Internet service provider's end users, including, but not limited to, requiring consideration for either of the following:

(A) transmitting Internet traffic to and from the Internet service provider's end users; and

(B) refraining from the activities prohibited in subparagraphs (i) and (ii) of this paragraph.

(iv) Engaging in third-party paid prioritization.

(v) Engaging in application-specific differential pricing or zero-rating in exchange for consideration, monetary or otherwise, by third parties.

(vi) Zero-rating some Internet content, applications, services, or devices in a category of Internet content, applications, services, or devices, but not the entire category.

(vii) Engaging in application-specific differential pricing.

(viii) Unreasonably interfering with, or unreasonably disadvantaging, either an end user's ability to select, access, and use broadband Internet access service or 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 an end user, subject to reasonable network management practices.

(ix) Engaging in practices with respect to, related to, or in connection with, ISP traffic exchange that have the purpose or effect of circumventing or undermining the effectiveness of this subdivision.

(x) Engaging in deceptive or misleading marketing practices that misrepresent the treatment of Internet traffic, content, applications, services, or devices by the Internet service provider, or that misrepresent the performance characteristics or commercial terms of the broadband Internet access service to its customers.

(xi) Advertising, offering for sale, or selling broadband Internet access service without prominently disclosing with specificity all aspects of the service advertised, offered for sale, or sold.

(xii) 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.

(xiii) 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 satisfy any of the following conditions:

1 (A) they are marketed, provide, or can be used as a functional equiv-  
2 alent of broadband Internet access service; or

3 (B) they have the purpose or effect of circumventing or undermining  
4 the effectiveness of this section; or

5 (C) they negatively affect the performance of broadband Internet  
6 access service.

7 (c) (i) An Internet service provider may offer different types of  
8 technical treatment to end users as part of its broadband Internet  
9 access service if it meets the conditions specified in paragraph (a) of  
10 subdivision two of section two hundred fifty-one of this chapter.

11 (ii) An Internet service provider may zero-rate Internet traffic in  
12 application-agnostic ways, provided that no consideration, monetary or  
13 otherwise, is provided by any third party in exchange for the provider's  
14 decision to zero-rate or to not zero-rate traffic.

15 (d) In addition to the authority granted the commission pursuant to  
16 this chapter, the attorney general may enforce the provisions of this  
17 article to the extent permitted under section sixty-three of the execu-  
18 tive law.

19 § 4. Section 119-a of the public service law is amended by adding a  
20 new subdivision 6 to read as follows:

21 6. No permission shall be granted to a cable television or Internet  
22 service provider for attachments on utility poles as provided in this  
23 section unless such Internet service provider is in compliance with the  
24 provisions of section two hundred fifty-one of this chapter.

25 § 5. Section 165 of the state finance law is amended by adding a new  
26 subdivision 10 to read as follows:

27 10. Internet neutrality. a. For purposes of this subdivision:

28 (i) "broadband Internet access service," "Internet service provider,"  
29 "network management practice," and "reasonable network management prac-  
30 tice" shall have the same meanings as defined in section two hundred  
31 fifty of the public service law; and

32 (ii) "the state" includes the state and any governmental agency or  
33 political subdivision or public benefit corporation of the state.

34 b. (i) The state shall not purchase any fixed or mobile broadband  
35 Internet access services from an Internet service provider that is in  
36 violation of the provisions of section two hundred fifty-one of the  
37 public service law.

38 (ii) The state shall not provide funding for the purchase of any fixed  
39 or mobile broadband Internet access services from an Internet service  
40 provider that is in violation of the provisions of section two hundred  
41 fifty-one of the public service law.

42 c. (i) Every contract between the state and an Internet service  
43 provider for broadband Internet access service shall require that the  
44 service be rendered consistent with the requirements of section two  
45 hundred fifty-one of the public service law.

46 (ii) If, after execution of a contract for broadband Internet access  
47 service the state determines that the Internet service provider has  
48 violated the provisions of section two hundred fifty-one of the public  
49 service law in providing service to the state, the state may declare the  
50 contract void from the time it was entered into and require repayment of  
51 any payments made to the Internet service provider pursuant to the  
52 contract. The remedies available pursuant to this section are in addi-  
53 tion to any remedy available pursuant to article twenty-two-A of the  
54 general business law.

55 d. It shall not be a violation of this article for the state to  
56 purchase or fund fixed or mobile broadband Internet access services in a

geographical area where Internet access services are only available from a single broadband Internet access service provider.

e. An Internet service provider that provides fixed or mobile broadband Internet access service purchased or funded by the state shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service that is sufficient to enable end users of those purchased or funded services, including the state, to fully and accurately ascertain if the service is conducted in a lawful manner pursuant to the provisions of section two hundred fifty-one of the public service law.

§ 6. The general municipal law is amended by adding a new section 104-e to read as follows:

§ 104-e. Internet neutrality. 1. For purposes of this section, "broadband Internet access service," "Internet service provider," "network management practice," and "reasonable network management practice" shall have the same meanings as defined in section two hundred fifty of the public service law.

2. a. A municipal corporation shall not purchase any fixed or mobile broadband Internet access services from an Internet service provider that is in violation of the provisions of section two hundred fifty-one of the public service law.

b. A municipal corporation shall not provide funding for the purchase of any fixed or mobile broadband Internet access services from an Internet service provider that is in violation of the provisions of section two hundred fifty-one of the public service law.

3. a. Every contract between a municipal corporation and an Internet service provider for broadband Internet access service shall require that the service be rendered consistent with the requirements of section two hundred fifty-one of the public service law.

b. If, after execution of a contract for broadband Internet access service, a municipal corporation determines that the Internet service provider has violated the provisions of section two hundred fifty-one of the public service law in providing service to the municipal corporation, the municipal corporation may declare the contract void from the time it was entered into and require repayment of any payments made to the Internet service provider pursuant to the contract. The remedies available pursuant to this section are in addition to any remedy available pursuant to article twenty-two-A of the general business law.

4. It shall not be a violation of this article for a municipal corporation to purchase or fund fixed or mobile broadband Internet access services in a geographical area where Internet access services are only available from a single broadband Internet access service provider.

5. An Internet service provider that provides fixed or mobile broadband Internet access service purchased or funded by a municipal corporation shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service that is sufficient to enable end users of those purchased or funded services, including a municipal corporation, to fully and accurately ascertain if the service is conducted in a lawful manner pursuant to the provisions of section two hundred fifty-one of the public service law.

§ 7. Subdivision 3 of section 2879 of the public authorities law is amended by adding a new paragraph (n-1) to read as follows:

(n-1) Requirements to conduct procurements in a manner that complies with the provisions of section two hundred fifty-one of the public service law.

1     § 8. Section 143 of the economic development law is amended by adding  
2 a new subdivision 6 to read as follows:

3     6. Each agency shall conduct procurements in a manner that complies  
4 with the provisions of section two hundred fifty-one of the public  
5 service law.

6     § 9. Severability. If any provision of this act, or the application  
7 thereof to any person or circumstances, is held invalid or unconstitu-  
8 tional, that invalidity or unconstitutionality shall not affect other  
9 provisions or applications of this act that can be given effect without  
10 the invalid or unconstitutional provision or application, and to this  
11 end the provisions of this act are severable.

12     § 10. This act shall take effect on the sixtieth day after it shall  
13 have become a law. Effective immediately, the addition, amendment  
14 and/or repeal of any rule or regulation necessary for the implementation  
15 of this act on its effective date are authorized to be made and  
16 completed on or before such effective date.