

# STATE OF NEW YORK

8882--C

2017-2018 Regular Sessions

## IN ASSEMBLY

December 22, 2017

Introduced by M. of A. FAHY, MORELLE, BARRETT, ORTIZ, MAGNARELLI, GOTTFRIED, ENGLEBRIGHT, THIELE, SIMON, D'URSO, GLICK, LUPARDO, JAFFEE, ZEBROWSKI, SANTABARBARA, COLTON, CAHILL, JENNE, GALEF, MOSLEY, ARROYO, SEAWRIGHT, PICHARDO, LIFTON, TITONE, BRABENEC, BRINDISI, DINOWITZ, VANEL, STIRPE, L. ROSENTHAL, STECK, ABINANTI, RICHARDSON, WRIGHT, WALLACE, O'DONNELL, TAYLOR, NIOU, QUART, CARROLL, SEPULVEDA, DE LA ROSA -- Multi-Sponsored by -- M. of A. CROUCH, HOOPER, McDONALD -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and the state finance law, in relation to instituting internet service neutrality

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

1 Section 1. The article heading of article 11 of the public service  
2 law, as added by chapter 83 of the laws of 1995, is amended to read as  
3 follows:

4 PROVISIONS RELATING TO CABLE TELEVISION COMPANIES AND BROADBAND  
5 INTERNET SERVICE PROVIDERS

6 § 2. Section 212 of the public service law is amended by adding two  
7 new subdivisions 15 and 16 to read as follows:

8 15. "Broadband internet access service" shall mean a mass-market  
9 retail service that provides the capability to transmit data to and  
10 receive data from all or substantially all internet endpoints, including  
11 any capabilities that are incidental to and enable the operation of the

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

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1 communications service, but shall not include dial-up internet access  
2 service.

3 16. "Broadband internet service provider" shall mean any person, busi-  
4 ness or organization qualified to do business in this state, including  
5 municipal broadband providers, that provides individuals, corporations,  
6 or other entities with broadband internet access service.

7 § 3. The section heading of section 215 of the public service law, as  
8 added by chapter 83 of the laws of 1995, is amended and a new subdivi-  
9 sion 14 is added to read as follows:

10 Duties of the commission in respect to cable television companies and  
11 broadband internet service providers.

12 14. Develop and maintain a statewide plan for the monitoring of broad-  
13 band internet service providers, including the annual certification that  
14 broadband internet service providers comply with the internet service  
15 neutrality requirements established in section two hundred thirty-one of  
16 this article.

17 § 4. The state finance law is amended by adding a new section 148 to  
18 read as follows:

19 § 148. Internet service neutrality requirements in certain procurement  
20 contracts. Notwithstanding any other provision of law to the contrary,  
21 where a contract that includes broadband internet access services is to  
22 be awarded by a state agency as defined in section one hundred sixty of  
23 this chapter or any state or local authority as such terms are defined  
24 in section two of public authorities law, municipal corporation as  
25 defined in section two of the general municipal law, public library or  
26 association library, as such terms are defined in section two hundred  
27 fifty-three of the education law, the legislature, judiciary, state  
28 university of New York, or city university of New York pursuant to a  
29 competitive bidding process or a request for proposal process, such  
30 competitive bidding process or request for proposal and the subsequent  
31 awarded contract shall require that such broadcast internet access  
32 services are compliant with the internet service neutrality requirements  
33 established in section two hundred thirty-one of the public service law.  
34 Provided, however, the entity awarding such contract may award such  
35 contract to any broadband internet service provider that is not certi-  
36 fied by the public service commission pursuant to subdivision two of  
37 section two hundred thirty-one of the public service law only if such  
38 entity demonstrates to the public service commission that either (i)  
39 there are no other broadband internet service providers available to  
40 contract with, or (ii) awarding such contract to a certified broadband  
41 internet service provider would result in a significant financial hard-  
42 ship when compared to awarding the contract to a broadband internet  
43 service provider not certified by the public service commission.

44 § 5. The public service law is amended by adding a new section 231 to  
45 read as follows:

46 § 231. Internet service neutrality. 1. For purposes of this section,  
47 "network management practice" shall mean a practice that has a primarily  
48 technical network management justification, but does not include other  
49 business practices. A "reasonable network management practice" shall  
50 mean a network management practice that is primarily used for and  
51 tailored to achieving a legitimate network management purpose, taking  
52 into account the particular network architecture and technology of the  
53 broadband internet access service.

54 2. The commission shall certify annually that any broadband internet  
55 service provider qualified to do business in this state, does not:

1 (a) block lawful content, applications, services, or non-harmful  
2 devices, subject to reasonable network management.

3 (b) impair or degrade lawful internet traffic on the basis of internet  
4 content, application, or service, or use of a non-harmful device,  
5 subject to reasonable network management.

6 (c) engage in paid prioritization, including, but not limited to,  
7 traffic shaping, prioritization, resource reservation, or other forms of  
8 preferential traffic management, either (i) in exchange for any form of  
9 consideration from a third party, or (ii) to benefit an affiliated enti-  
10 ty, unless the broadband internet service provider demonstrates that the  
11 practice would provide a significant public interest benefit and would  
12 not harm the open nature of the internet.

13 3. The commission shall annually prepare a report that lists the  
14 certification status for every broadband internet service provider qual-  
15 ified to do business in this state. Such report shall be published on  
16 the commission's website and updated at least annually. The commission  
17 shall notify the governor, the temporary president of the senate, and  
18 the speaker of the assembly of the publication of such report and any  
19 updates.

20 § 6. This act shall take effect on the one hundred eightieth day after  
21 it shall have become a law.