STATE OF NEW YORK

10777

IN ASSEMBLY

July 9, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Fahy) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, the general business law and the state finance law, in relation to requiring that internet service providers that are compliant with net neutrality and state contracts only be made with such compliant providers and establishing a revolving fund for the creation of municipal internet service providers; and making an appropriation therefor

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

Section 1. Short title. This act shall be known and may be cited as the "NYS Net Neutrality Protection Act".

§ 2. The public service law is amended by adding a new section 92-i to read as follows:

§ 92-i. Reports by internet service providers. 1. Any telephone corporation, as defined by subdivision seventeen of section two of this chapter, or cable television company, as defined by subdivision one of section two hundred twelve of this chapter, which is also a broadband internet service provider, as defined by paragraph (b) of subdivision one of section three hundred ninety-nine-zzzzz of the general business law, shall annually report to the department, and publicly disclose, accurate information regarding network management practices, performance, and commercial terms of such company's or corporation's broadband internet access that is sufficient for consumers to make informed choices regarding the use of such services, and for content, application, service, and device providers to develop, market, and maintain internet offerings.

2. The publication of disclosures that comply with the federal communications commission's transparency rule (47 C.F.R. 8.1) shall satisfy the requirements of subdivision one of this section.

3. The commission shall annually prepare a report that lists the certification status for each broadband internet service provider qualified to do business in the state. Such report shall be published on the

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

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commission's website and updated at least annually. The commission shall notify the governor, the temporary president of the senate, and the speaker of the assembly of the publication of such report and of any updates to such report.

4. Except to the extent necessary to supervise the reporting and notice requirements of subdivisions one and two of this section, nothing in this section shall confer upon the commission any regulatory jurisdiction over internet service providers or internet broadband services.

§ 3. The general business law is amended by adding a new section 399-zzzzz to read as follows:

§ 399-zzzzz. Net neutrality. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Broadband internet access" shall mean a mass-market retail service by wire or radio 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 shall not include dial-up internet access service. Broadband internet access shall be considered to be an information service as such term is defined pursuant to 47 U.S.C. 153.

(b) "Broadband internet service provider" shall mean any person, business or organization qualified to do business in this state, including municipal broadband providers, to the extent that such individuals, corporations, or other entities provide other individuals, corporations or entities with broadband internet access.

(c) "End user" shall mean any individual or entity that utilizes broadband internet access.

(d) "Paid prioritization" shall mean the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic in a manner that materially harms competition and materially harms end users, including through the use of traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, which is either:

(i) in exchange for consideration, monetary or otherwise, from a third party; or

(ii) to benefit an affiliated entity.

(e) "Reasonable network management" shall mean a network management practice that is appropriate and tailored to achieving a legitimate network management purpose, including deterring or preventing cybersecurity threats and similar threats originating from equipment connected directly or indirectly to the network or otherwise, taking into account the particular network architecture and technology of the broadband internet access service.

(f) "Specialized services" shall mean service other than broadband internet access that is provided by broadband providers over last-mile capacity shared with broadband internet access.

2. Net neutrality. (a) Any broadband internet service provider shall not:

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

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

(iii) engage in paid prioritization, including, but not limited to, traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either:

(A) in exchange for any form of consideration from a third party, or

(B) to benefit an affiliated entity, unless the broadband internet service provider demonstrates that the practice would provide a significant public interest benefit and would not harm the open nature of the internet.

(b) Nothing in this section shall:

(i) supersede any obligation or authorization a provider of broadband internet access 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 limit the provider's ability to do so;

(ii) prohibit reasonable efforts by a provider of broadband internet access to address copyright infringement or other unlawful activity;

(iii) be construed to limit the choice of service plans available to consumers, or consumers' control over their chosen broadband internet access; and

(iv) be construed to limit the ability of broadband internet access providers to offer or provide specialized services, so long as the broadband internet service provider continues to offer broadband internet access in a manner consistent with the provisions of this section.

3. Reporting. Any person or entity engaged in providing broadband internet access within the state who are not covered by either of the definitions established pursuant to subdivision seventeen of section two or subdivision one of section two hundred twelve of the public service law, shall report to the commission, and publicly disclose at least annually, accurate information regarding the network management practices, performance, and commercial terms of such company's or corporation's broadband internet access that is sufficient for consumers to make informed choices regarding the use of such services, and for content, application, service, and device providers to develop, market, and maintain internet offerings.

4. Enforcement. A violation of the requirements of this section by a broadband internet service provider shall be enforceable solely through an action brought in a court of competent jurisdiction in this state by the attorney general.

5. Preemption. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing broadband internet service shall upon the effective date of this section, be preempted.

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

§ 148. Contracting for broadband internet access. 1. (a) Notwithstanding any other provision of law to the contrary, where a contract pertains to broadband internet access, as defined in section three hundred ninety-nine-zzzzz of the general business law, such contract shall be awarded by:

(i) a state agency, as defined in section one hundred sixty of this chapter, or any state or local authority, as such terms are defined in section two of the public authorities law; or

(ii) a municipal corporation as defined in section two of the general municipal law, or any public benefit corporation or municipality of the state; or

(iii) public library or association library, as such terms are defined in section two hundred fifty-three of the education law; or

(iv) the legislature, judiciary, state university of New York, or city university of New York.

(b) If such contract is formed pursuant to a competitive bidding process or a request for proposal process, whenever the responsive and responsible offerer having the lowest price or best value offer has not agreed to stipulate to the conditions set forth in this subdivision and another responsive and responsible offerer who has agreed to stipulate to such conditions has submitted an offer, the contract shall be awarded to the lowest price or best value offer for internet services from a source compliant with the internet service neutrality requirements established in section three hundred ninety-nine-zzzzz of the general business law.

(c) Provided, however, the entity awarding such contract may award such contract to a non-compliant broadband internet service provider, only if such entity determines that:

(i) there are no other broadband internet service providers available to contract with;

(ii) awarding such contract to a compliant broadband internet service provider would result in a significant financial hardship when compared to awarding such contract to a non-compliant broadband internet service provider; or

(iii) there is no need for the broadband internet service provider to meet such requirements in order to render the service required by such entity.

2. (a) In the case of contracts let by other than a competitive process which include internet services involving an expenditure of an amount greater than the discretionary buying threshold, as specified in section one hundred sixty-three of this article, the contracting entity shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in this subdivision unless the entity seeking to use the internet services determines that:

(i) the internet services are necessary for the entity to perform its functions and there is no other responsible contractor who will supply internet services of comparable quality at a comparable price;

(ii) awarding such contract to a compliant broadband internet service provider would result in a significant financial hardship when compared to awarding such contract to a non-compliant broadband internet service provider; or

(iii) there is no need for the broadband internet service provider to meet such requirements in order to render the service required by such entity.

(b) Any determinations under paragraph (a) of this subdivision shall be made in writing and shall be public documents.

3. Nothing is this section shall:

(a) supersede any obligation or authorization a provider of broadband internet access 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 limit the provider's ability to do so;

(b) prohibit reasonable efforts by a provider of broadband internet access to address copyright infringement or other unlawful activity;

(c) be construed to limit the choice of service plans available to consumers, or consumers' control over their chosen broadband internet access; and

(d) be construed to limit the ability of broadband internet access providers to offer or provide specialized services, so long as the broadband internet service provider continues to offer broadband inter-

net access in a manner consistent with section three hundred ninety-nine-zzzzz of the general business law.

§ 5. Subdivision 1 of section 165 of the state finance law is amended by adding two new paragraphs f and g to read as follows:

f. "Net neutral source of internet services" shall mean an internet service provider that adheres to the principles of net neutrality as described in section three hundred ninety-nine-zzzzz of the general business law.

g. "Non-net neutral source of internet services" shall mean an internet service provider that violates any of the principles of net neutrality as described in section three hundred ninety-nine-zzzzz of the general business law.

§ 6. The state finance law is amended by adding a new section 99-hh to read as follows:

§ 99-hh. Municipal internet service provider revolving loan fund. 1. There is hereby established in the joint custody of the comptroller and the public service commission a fund to be known as the "municipal internet service provider revolving loan fund". Such fund shall consist of moneys made available pursuant to appropriation and any other sources in order to provide support for municipalities attempting to create their own internet service provider.

2. The account shall consist of all moneys appropriated for its purpose, all moneys transferred to such account pursuant to law, and all moneys required by this section or any other law to be paid into or credited to this account, including all moneys received by the account or donated to it, payments of principal and interest on loans made from the account, and any interest earnings which may accrue from the investment or reinvestment of moneys from the account.

3. Moneys of the account, when allocated, shall be available to the public service commission to make loans as provided in this section. Up to five percent of the moneys of the account or two hundred fifty thousand dollars, whichever is less, may be used to pay the expenses, including personal service and maintenance and operation, in connection with the administration of such loans.

4. (a) The public service commission may make, upon application duly made, up to the amounts available by appropriation, loans for any and all costs associated with the creation of a municipally owned broadband internet service provider.

(b) The public service commission shall have the power to make such rules and regulations as may be necessary and proper to effectuate the purposes of this section.

5. (a) Application for loans may be made by a town, village, city or county provided that the application is otherwise consistent with its respective powers. Applications may also be submitted jointly by multiple applicants provided that the application is otherwise consistent with each applicant's respective powers.

(b) Every application shall be in a form acceptable to the public service commission. Every application shall accurately reflect the conditions which give rise to the proposed expenditure and accurately reflect the ability of the applicant to make such an expenditure without the proceeds of a loan under this section.

(c) (i) The public service commission shall give preference to those applications which:

(A) demonstrate the greatest need;

(B) are joint applications; and

(C) apply the proceeds towards attaining compliance with federal and state laws.

(ii) The public service commission may disapprove any application which contains no adequate demonstration of need or which would result in inequitable or inefficient use of the moneys in the account.

(iii) In making determinations on loan applications, the public service commission shall assure that loan fund moneys are equitably distributed among all geographical areas of the state.

(d) The public service commission shall, to the maximum extent feasible, and consistent with the other provisions of this section, seek to provide that loans authorized by this section reflect an appropriate geographic distribution, are distributed equitably and encourage regional cooperation.

§ 7. The sum of two hundred fifty million dollars ($250,000,000), or so much thereof as may be necessary, is hereby appropriated to the municipal internet service provider revolving loan fund from any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated for services and expenses of the municipal internet service provider revolving loan fund for the purposes of carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the public service commission in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 8. Separability. If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to part or provision thereof directly involved in the controversy in which such judgment shall have been rendered.

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