

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 Assem-
bly, do enact as follows:

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

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

5 § 92-i. Reports by internet service providers. 1. Any telephone corpo-
6 ration, as defined by subdivision seventeen of section two of this chap-
7 ter, or cable television company, as defined by subdivision one of
8 section two hundred twelve of this chapter, which is also a broadband
9 internet service provider, as defined by paragraph (b) of subdivision
10 one of section three hundred ninety-nine-zzzzz of the general business
11 law, shall annually report to the department, and publicly disclose,
12 accurate information regarding network management practices, perform-
13 ance, and commercial terms of such company's or corporation's broadband
14 internet access that is sufficient for consumers to make informed choic-
15 es regarding the use of such services, and for content, application,
16 service, and device providers to develop, market, and maintain internet
17 offerings.

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

21 3. The commission shall annually prepare a report that lists the
22 certification status for each broadband internet service provider quali-
23 fied 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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1 commission's website and updated at least annually. The commission shall
2 notify the governor, the temporary president of the senate, and the
3 speaker of the assembly of the publication of such report and of any
4 updates to such report.

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

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

11 § 399-zzzzz. Net neutrality. 1. Definitions. For the purposes of this
12 section, the following terms shall have the following meanings:

13 (a) "Broadband internet access" shall mean a mass-market retail
14 service by wire or radio that provides the capability to transmit data
15 to and receive data from all or substantially all internet endpoints,
16 including any capabilities that are incidental to and enable the opera-
17 tion of the communications service, but shall not include dial-up inter-
18 net access service. Broadband internet access shall be considered to be
19 an information service as such term is defined pursuant to 47 U.S.C.
20 153.

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

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

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

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

36 (ii) to benefit an affiliated entity.

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

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

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

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

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

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

1 (A) in exchange for any form of consideration from a third party, or
2 (B) to benefit an affiliated entity, unless the broadband internet
3 service provider demonstrates that the practice would provide a signif-
4 icant public interest benefit and would not harm the open nature of the
5 internet.

6 (b) Nothing in this section shall:

7 (i) supersede any obligation or authorization a provider of broadband
8 internet access may have to address the needs of emergency communi-
9 cations or law enforcement, public safety, or national security authori-
10 ties, consistent with or as permitted by applicable law, or limit the
11 provider's ability to do so;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 3. Nothing in this section shall:

43 (a) supersede any obligation or authorization a provider of broadband
44 internet access may have to address the needs of emergency communi-
45 cations or law enforcement, public safety, or national security authori-
46 ties, consistent with or as permitted by applicable law, or limit the
47 provider's ability to do so;

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

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

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

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

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

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

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

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

15 § 99-hh. Municipal internet service provider revolving loan fund. 1.
16 There is hereby established in the joint custody of the comptroller and
17 the public service commission a fund to be known as the "municipal
18 internet service provider revolving loan fund". Such fund shall consist
19 of moneys made available pursuant to appropriation and any other sources
20 in order to provide support for municipalities attempting to create
21 their own internet service provider.

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

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

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

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

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

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

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

54 (A) demonstrate the greatest need;

55 (B) are joint applications; and

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

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

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

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

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

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

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