

STATE OF NEW YORK

7988

IN SENATE

March 6, 2020

Introduced by Sen. METZGER -- 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 quality standards for internet service providers

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:

ARTICLE 11

PROVISIONS RELATING TO CABLE TELEVISION COMPANIES AND INTERNET SERVICE PROVIDERS

7 § 2. Section 212 of the public service law is amended by adding a new
8 subdivision 15 to read as follows:

9 15. "Internet service provider" shall mean any person, business or
10 organization qualified to do business in this state that provides indi-
11 viduals, corporations, or other entities with the ability to connect to
12 the internet.

13 § 3. The public service law is amended by adding a new section 231 to
14 read as follows:

15 § 231. Service quality standards for internet service providers;
16 penalties. 1. The commission shall establish quality of service stand-
17 ards, minimum performance levels, customer-specific credits, and report-
18 ing requirements that shall apply to each internet service provider.

19 a. Service standards shall include, but not be limited to: (i) meas-
20 ures relating to repairs for service outages within forty-eight hours
21 unless a customer opts otherwise; (ii) a requirement that new installa-
22 tion orders be completed within five days unless a subscriber or custom-
23 er opts otherwise; (iii) a requirement that each internet service
24 provider develop procedures to prioritize service to subscribers and
25 customers who are special-needs subscribers and customers and for
26 customers who utilize a medical alert system or communications equip-
27 ment, in conjunction with medical devices, to monitor and transmit

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

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1 medical data to their treating physicians' medical sites; (iv) a
2 requirement that each internet service provider report to the commis-
3 sion, on an annual basis, the number of subscribers and customers who
4 report service issues or outages, and the percentage of those cases that
5 are resolved, and (v) a requirement that each internet service provider
6 provides the internet service speeds advertised to and paid for by each
7 subscriber and customer.

8 b. Minimum performance levels for each service standard shall be
9 developed to ensure that each internet service provider in the state
10 provides high quality subscriber and customer service and high quality
11 technical service to all their subscribers and customers.

12 c. The commission shall establish a schedule of subscriber and custom-
13 er credits or rebates, which shall be awarded to subscribers and custom-
14 ers that experience service outage conditions and for missed installa-
15 tion appointments. A system of graduated credits or rebates shall be
16 established for those subscribers and customers whose service outage
17 condition was not cleared within forty-eight hours or installation was
18 not completed within five business days unless a subscriber or customer
19 opts otherwise.

20 2. a. Every internet service provider shall adhere to every provision
21 of this section and every order or regulation adopted under authority of
22 this section so long as the same shall be in force.

23 b. (i) The commission shall have the authority to assess a civil
24 penalty against each internet service provider and the directors, offi-
25 cers, agents and employees thereof subject to the jurisdiction, super-
26 vision, or regulation pursuant to this section in an amount as set forth
27 in this subdivision. In determining the amount of any penalty to be
28 assessed pursuant to this subdivision, the commission shall consider:
29 (A) the seriousness of the violation for which a penalty is sought; (B)
30 the nature and extent of any previous violations for which penalties
31 have been assessed against the internet service provider or such direc-
32 tors, officers, agents and employees thereof; (C) the gross revenues and
33 financial status of the internet service provider; and (D) such other
34 factors as the commission may deem appropriate and relevant. The reme-
35 dies provided in this paragraph are in addition to any other remedies
36 provided by law.

37 (ii) Whenever the commission has reason to believe that an internet
38 service provider and such directors, officers, agents and employees
39 thereof may be subject to imposition of a civil penalty as set forth in
40 this subdivision, it shall provide notification and provide an opportu-
41 nity to be heard to such internet service provider or person. Such
42 notice shall include, but shall not be limited to: (A) the date and a
43 brief description of the facts and nature of each act or failure to act
44 for which such penalty is proposed; (B) a list of each statute, regu-
45 lation or order that the commission alleges has been violated; (C) the
46 amount of each penalty that the commission proposes to assess; and (D)
47 the option to request a hearing to demonstrate why the proposed penalty
48 or penalties should not be assessed against such internet service
49 provider or person.

50 c. Any internet service provider that violates any provision of this
51 section, regulation or order adopted under authority of this section so
52 long as the same shall be in force, or who fails to provide safe and
53 adequate service shall forfeit a sum not exceeding the greater of one
54 hundred thousand dollars or two one-hundredths of one percent of the
55 annual intrastate gross operating revenue of the internet service
56 provider, constituting a civil penalty for each and every offense and,

1 in the case of a continuing violation, each day shall be deemed a sepa-
2 rate and distinct offense.

3 d. Notwithstanding the provisions of paragraph c of this subdivision,
4 any such internet service provider that violates a provision of this
5 section, or any order or regulation adopted under the authority of this
6 section specifically for the protection of human safety or prevention of
7 significant damage to real property, including, but not limited to death
8 or personal injury and damage to real property in excess of fifty thou-
9 sand dollars, shall forfeit a sum not to exceed the greater of: (i) two
10 hundred fifty thousand dollars or three one-hundredths of one percent of
11 the annual intrastate gross operating revenue of the internet service
12 provider, whichever is greater, constituting a civil penalty for each
13 separate and distinct offense, provided, however, that for purposes of
14 this subparagraph, each day of a continuing violation shall not be
15 deemed a separate and distinct offense. The total period of a continuing
16 violation, as well as every distinct violation, shall be similarly
17 treated as a separate and distinct offense for purposes of this para-
18 graph; or (ii) the maximum forfeiture determined in accordance with
19 paragraph c of this subdivision.

20 e. Notwithstanding the provisions of paragraphs c and d of this subdi-
21 vision, an internet service provider that violates a provision of this
22 section, or any order or regulation adopted under authority of this
23 section, designed to protect the overall reliability and continuity of
24 service, including but not limited to the restoration of service follow-
25 ing a major outage event or emergency, shall forfeit a sum not to exceed
26 the greater of: (i) five hundred thousand dollars or four one-hundredths
27 of one percent of the annual intrastate gross operating revenue of the
28 internet service provider, whichever is greater, constituting a civil
29 penalty for each separate and distinct offense; provided, however, that
30 for purposes of this subparagraph each day of a continuing violation
31 shall not be deemed a separate and distinct offense. The total period of
32 a continuing violation, as well as every distinct violation shall be
33 similarly treated as a separate and distinct offense for purposes of
34 this subparagraph; or

35 (ii) the maximum forfeiture determined in accordance with paragraph c
36 of this subdivision.

37 f. Any director, officer, agent, or employee of any internet service
38 provider determined by the commission to have violated the provisions of
39 paragraph c, d, or e of this subdivision, and who knowingly violates a
40 provision of this section, regulation or an order adopted under authori-
41 ty of this section so long as the same shall be in force, including a
42 failure to provide safe and adequate service, shall forfeit a sum not to
43 exceed one hundred thousand dollars constituting a civil penalty for
44 each and every offense and, in the case of a continuing violation, each
45 day shall be deemed a separate and distinct offense.

46 g. Any such assessment may be compromised or discontinued by the
47 commission. All moneys recovered pursuant to this subdivision, together
48 with the costs thereof, shall be remitted to, or for the benefit of, the
49 subscribers or customers of the internet service provider in a manner to
50 be determined by the commission.

51 h. Upon a failure by an internet service provider to remit any penalty
52 assessed by the commission pursuant to this subdivision, the commission,
53 through its counsel or other appropriate designee, may institute an
54 action or special proceeding to collect the penalty in a court of compe-
55 tent jurisdiction.

1 i. Any payment made by an internet service provider and the directors,
2 officers, agents and employees thereof, as a result of an assessment as
3 provided in this subdivision, and the cost of litigation and investi-
4 gation related to any such assessment, shall not be recoverable from
5 subscribers or customers.

6 j. In construing and enforcing the provisions of this section relating
7 to penalties, the act of any director, officer, agent or employee of an
8 internet service provider acting within the scope of his or her official
9 duties or employment shall be deemed to be the act of such internet
10 service provider.

11 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-
12 sion, section or part of this act shall be adjudged by any court of
13 competent jurisdiction to be invalid, such judgment shall not affect,
14 impair, or invalidate the remainder thereof, but shall be confined in
15 its operation to the clause, sentence, paragraph, subdivision, section
16 or part thereof directly involved in the controversy in which such judg-
17 ment shall have been rendered. It is hereby declared to be the intent of
18 the legislature that this act would have been enacted even if such
19 invalid provisions had not been included herein.

20 § 5. This act shall take effect immediately.