

STATE OF NEW YORK

138

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL, COLTON, QUART, JAFFEE, HYNDMAN, LAVINE, ENGLEBRIGHT, ZEBROWSKI, CRESPO, WRIGHT, D. ROSENTHAL, D'URSO, HEVESI, MOSLEY, SIMON, BRONSON, GUNTHER, MONTESANO, AUBRY, BICHOTTE, PEOPLES-STOKES, NIOU, HUNTER -- Multi-Sponsored by -- M. of A. DE LA ROSA, LENTOL, THIELE -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law and the state finance law, in relation to state contracts being only with internet service providers compliant with net neutrality and establishes a revolving fund for the establishment 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:

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

3 § 2. Subdivision 1 of section 5 of the public service law is amended
4 by adding a new paragraph i to read as follows:

5 i. To every broadband internet line which lies wholly within the state
6 and that part within the state of New York of every broadband internet
7 line which lies partly within and partly without the state and to the
8 persons or corporations owning, leasing or operating any such broadband
9 internet line.

10 § 3. Section 5 of the public service law is amended by adding a new
11 subdivision 7 to read as follows:

12 7. The commission shall require any person engaged in the provision of
13 broadband internet access service in New York state to report to the
14 commission, and publicly disclose annually, accurate information regard-
15 ing the network management practices, performance, and commercial terms
16 of its broadband internet access services sufficient for consumers to
17 make informed choices regarding use of such services and for content,

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

LBD03122-01-9

1 application, service, and device providers to develop, market, and main-
2 tain internet offerings.

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

5 f. A "net neutral source of internet services" shall mean an internet
6 service provider who adheres to the principles of net neutrality.

7 g. A "non-net neutral source of internet services" shall mean an
8 internet service provider who violates any of the principles of net
9 neutrality.

10 h. "The principles of net neutrality" shall mean the rules and regu-
11 lations under the open internet report and order on remand, declaratory
12 ruling, and order by the federal communications commission released
13 March twelfth, two thousand fifteen, GN Docket No. 14-28.

14 § 5. Section 165 of the state finance law is amended by adding a new
15 subdivision 9 to read as follows:

16 9. Prohibition on purchase of internet services from a non-net neutral
17 source of internet services.

18 a. (i) With respect to contracts described in subparagraphs (ii) and
19 (iii) of this paragraph, and in accordance with such subparagraphs, the
20 state and any governmental agency or political subdivision or public
21 benefit corporation or municipality of the state shall not contract for
22 the supply of internet services with any contractor who does not agree
23 to stipulate to the following, if there is another contractor who will
24 contract to supply internet services of comparable quality at a compara-
25 ble price or cost, the contractor and any individual or legal entity in
26 which the contractor holds a ten percent or greater ownership interest
27 and any individual or legal entity that holds a ten percent or greater
28 ownership interest in the contractor shall make lawful steps in good
29 faith to conduct any business operations as a net neutral source of
30 internet services.

31 (ii) In the case of contracts let by a competitive process, whenever
32 the responsive and responsible offerer having the lowest price or best
33 value offer has not agreed to stipulate to the conditions set forth in
34 this subdivision and another responsive and responsible offerer who has
35 agreed to stipulate to such conditions has submitted an offer shall
36 determine that the contract be awarded to the lowest price or best value
37 offer for internet services from a net neutral source of internet
38 services.

39 (iii) In the case of contracts let by other than a competitive process
40 internet services involving an expenditure of an amount greater than the
41 discretionary buying threshold as specified in section one hundred
42 sixty-three of this article, the contracting entity shall not award to a
43 proposed contractor who has not agreed to stipulate to the conditions
44 set forth in this subdivision unless the entity seeking to use the
45 internet services determines that the internet services are necessary
46 for the entity to perform its functions and there is no other responsi-
47 ble contractor who will supply internet services of comparable quality
48 at a comparable price. Such determinations shall be made in writing and
49 shall be public documents.

50 b. Upon receiving information that a contractor who has made the stip-
51 ulation required by this subdivision is in violation thereof, the
52 contracting entity shall review such information and offer the contrac-
53 tor an opportunity to respond. If the contracting entity finds that a
54 violation has occurred, it shall take such action as may be appropriate
55 and provided for by law, rule or contract, including, but not limited

1 to, imposing sanctions, seeking compliance, recovering damages or
2 declaring the contractor in default.

3 c. As used in this subdivision, the term "contract" shall not include
4 contracts with governmental and non-profit organizations, contracts
5 awarded pursuant to emergency procurement procedures or contracts,
6 resolutions, indentures, declarations of trust or other instruments
7 authorizing or relating to the authorization, issuance, award, sale or
8 purchase of bonds, certificates of indebtedness, notes or other fiscal
9 obligations, provided that the policies of this subdivision shall be
10 considered when selecting a contractor to provide financial or legal
11 advice, and when selecting managing underwriters in connection with such
12 activities.

13 d. The provisions of this subdivision shall not apply to contracts for
14 which the state or other contracting entity receives funds administered
15 by the United States, except to the extent congress has directed to not
16 withhold funds from states and localities that choose to implement
17 selective purchasing policies based on an agreement to comply with the
18 principles of net neutrality, or to the extent that such funds are not
19 otherwise withheld by congress.

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

22 § 99-ff. Municipal internet service provider revolving loan fund. 1.
23 There is hereby established in the joint custody of the comptroller and
24 the public service commission a fund to be known as the "municipal
25 internet service provider revolving loan fund". Such fund shall consist
26 of moneys made available pursuant to appropriation and any other sources
27 in order to provide support for municipalities attempting to create
28 their own internet service provider.

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

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

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

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

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

54 (b) Every application shall be in a form acceptable to the public
55 service commission. Every application shall accurately reflect the
56 conditions which give rise to the proposed expenditure and accurately

1 reflect the ability of the applicant to make such an expenditure without
2 the proceeds of a loan under this section.

3 (c) (i) The public service commission shall give preference to those
4 applications which demonstrate the greatest need, joint applications,
5 and to those applications the proceeds of which will be applied toward
6 attaining compliance with federal and state laws and may disapprove any
7 application which contains no adequate demonstration of need or which
8 would result in inequitable or inefficient use of the moneys in the
9 account.

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

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

18 § 7. The sum of two hundred fifty million dollars (\$250,000,000), or
19 so much thereof as may be necessary, is hereby appropriated from any
20 moneys in the state treasury in the general fund to the credit of the
21 state purposes account for the initial capital of the municipal internet
22 service provider revolving loan fund in carrying out the provisions of
23 this act. Such sum shall be payable on the audit and warrant of the
24 state comptroller on vouchers certified or approved in the manner
25 provided by law. No expenditure shall be made from this appropriation
26 until a certificate of approval of availability shall have been issued
27 by the director of the budget and filed with the state comptroller and a
28 copy filed with the chairman of the senate finance committee and the
29 chairman of the assembly ways and means committee. Such certificate may
30 be amended from time to time by the director of the budget and a copy of
31 each such amendment shall be filed with the state comptroller, the
32 chairman of the senate finance committee and the chairman of the assem-
33 bly ways and means committee.

34 § 8. This act shall take effect immediately.