

# STATE OF NEW YORK

3663

2019-2020 Regular Sessions

## IN SENATE

February 12, 2019

Introduced by Sen. CARLUCCI -- 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 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  
12 communications service, but shall not include dial-up internet access  
13 service.

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

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

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

23 14. Develop and maintain a statewide plan for the monitoring of broad-  
24 band internet service providers, including the annual certification that

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

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1 broadband internet service providers comply with the internet service  
2 neutrality requirements established in section two hundred thirty-one of  
3 this article.

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

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

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

33 § 231. Internet service neutrality. 1. For purposes of this section,  
34 "network management practice" shall mean a practice that has a primarily  
35 technical network management justification, but does not include other  
36 business practices. A "reasonable network management practice" shall  
37 mean a network management practice that is primarily used for and  
38 tailored to achieving a legitimate network management purpose, taking  
39 into account the particular network architecture and technology of the  
40 broadband internet access service.

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

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

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

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

55 3. The commission shall annually prepare a report that lists the  
56 certification status for every broadband internet service provider qual-

1 ified to do business in this state. Such report shall be published on  
2 the commission's website and updated at least annually. The commission  
3 shall notify the governor, the temporary president of the senate, and  
4 the speaker of the assembly of the publication of such report and any  
5 updates.

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