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:

Section 1. The article heading of article 11 of the public service law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

ARTICLE 11

PROVISIONS RELATING TO CABLE TELEVISION COMPANIES **AND INTERNET SERVICE PROVIDERS**

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

15. "Internet service provider" shall mean any person, business or organization qualified to do business in this state that provides individuals, corporations, or other entities with the ability to connect to the internet.

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

§ 231. Service quality standards for internet service providers; penalties. 1. The commission shall establish quality of service standards, minimum performance levels, customer-specific credits, and reporting requirements that shall apply to each internet service provider.

a. Service standards shall include, but not be limited to: (i) measures relating to repairs for service outages within forty-eight hours unless a customer opts otherwise; (ii) a requirement that new installation orders be completed within five days unless a subscriber or customer opts otherwise; (iii) a requirement that each internet service provider develop procedures to prioritize service to subscribers and customers who are special-needs subscribers and customers and for customers who utilize a medical alert system or communications equipment, 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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medical data to their treating physicians' medical sites; (iv) a requirement that each internet service provider report to the commission, on an annual basis, the number of subscribers and customers who report service issues or outages, and the percentage of those cases that are resolved, and (v) a requirement that each internet service provider provides the internet service speeds advertised to and paid for by each subscriber and customer.

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

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

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

b. (i) The commission shall have the authority to assess a civil penalty against each internet service provider and the directors, officers, agents and employees thereof subject to the jurisdiction, supervision, or regulation pursuant to this section in an amount as set forth in this subdivision. In determining the amount of any penalty to be assessed pursuant to this subdivision, the commission shall consider: (A) the seriousness of the violation for which a penalty is sought; (B) the nature and extent of any previous violations for which penalties have been assessed against the internet service provider or such directors, officers, agents and employees thereof; (C) the gross revenues and financial status of the internet service provider; and (D) such other factors as the commission may deem appropriate and relevant. The remedies provided in this paragraph are in addition to any other remedies provided by law.

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

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

in the case of a continuing violation, each day shall be deemed a separate and distinct offense.

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

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

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

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

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

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

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

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

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

§ 5. This act shall take effect immediately.