

# STATE OF NEW YORK

3910

2021-2022 Regular Sessions

## IN ASSEMBLY

January 28, 2021

Introduced by M. of A. VANEL -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to Internet neutrality; and to amend the state finance law, the general municipal law, the public authorities law and the economic development law, in relation to requiring that procurement contracts require compliance with Internet neutrality requirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Legislative intent. The legislature finds and declares the  
2 following:
- 3 (a) This act is adopted pursuant to the police power inherent in the  
4 state of New York to protect and promote the safety, life, public  
5 health, public convenience, general prosperity, and well-being of society,  
6 and the welfare of the state's population and economy, that are  
7 increasingly dependent on an open and neutral Internet.
- 8 (b) Almost every sector of New York's economy, democracy, and society  
9 is dependent on the open and neutral Internet that supports vital functions  
10 regulated under the police power of the state, including, but not  
11 limited to, each of the following:
- 12 (1) police and emergency services;  
13 (2) health and safety services and infrastructure;  
14 (3) utility services and infrastructure;  
15 (4) transportation infrastructure and services, and the expansion of  
16 zero- and low-emission transportation options;  
17 (5) government services, voting, and democratic decision making processes;  
18 (6) education;  
19 (7) business and economic activity;  
20 (8) environmental monitoring and protection, and achievement of state  
21 environmental goals; and  
22

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

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1 (9) land use regulation.  
2 § 2. The public service law is amended by adding a new article 12 to  
3 read as follows:

4 ARTICLE 12

5 PROVISIONS RELATING TO INTERNET SERVICE PROVIDERS

6 Section 250. Definitions.

7 251. Internet neutrality.

8 252. Broadband Internet access evaluation.

9 253. Infrastructure awards.

10 254. Enforcement.

11 255. Application.

12 § 250. Definitions. For purposes of this article, the following defi-  
13 initions apply:

14 1. "Application-agnostic" means not differentiating on the basis of  
15 source, destination, Internet content, application, service, or device,  
16 or class of Internet content, application, service, or device.

17 2. "Application-specific differential pricing" means charging differ-  
18 ent prices for Internet traffic to customers on the basis of Internet  
19 content, application, service, or device, or class of Internet content,  
20 application, service, or device, but does not include zero-rating.

21 3. "Broadband Internet access service" means a mass-market retail  
22 service by wire or radio provided to customers in New York that provides  
23 the capability to transmit data to, and receive data from, all or  
24 substantially all Internet endpoints, including any capabilities that  
25 are incidental to and enable the operation of the communications  
26 service, but excluding dial-up Internet access service. "Broadband  
27 Internet access service" also encompasses any service provided to  
28 customers in New York that provides a functional equivalent of that  
29 service or that is used to evade the protections set forth in this chap-  
30 ter.

31 4. "Class of Internet content, application, service, or device" means  
32 Internet content, or a group of Internet applications, services, or  
33 devices, sharing a common characteristic, including, but not limited to,  
34 sharing the same source or destination, belonging to the same type of  
35 content, application, service, or device, using the same application- or  
36 transport-layer protocol, or having similar technical characteristics,  
37 including, but not limited to, the size, sequencing, or timing of pack-  
38 ets, or sensitivity to delay.

39 5. "Content, applications, or services" means all Internet traffic  
40 transmitted to or from end users of a broadband Internet access service,  
41 including traffic that may not fit clearly into any of these categories.

42 6. "Edge provider" means any individual or entity that provides any  
43 content, application, or service over the Internet, and any individual  
44 or entity that provides a device used for accessing any content, appli-  
45 cation, or service over the Internet.

46 7. "End user" means any individual or entity that uses a broadband  
47 Internet access service.

48 8. "Internet service provider" or "ISP" means a business that provides  
49 broadband Internet access service to an individual, corporation, govern-  
50 ment, or other customer in New York.

51 9. "ISP traffic exchange" means the exchange of Internet traffic  
52 destined for, or originating from, an Internet service provider's end  
53 users between the Internet service provider's network and another indi-  
54 vidual or entity, including, but not limited to, an edge provider,  
55 content delivery network, or other network operator.

1 10. "Mass market" means a service marketed and sold on a standardized  
2 basis to residential customers, small businesses, and other end-use  
3 customers, including, but not limited to, schools, institutions of high-  
4 er learning, and libraries. The term also includes broadband Internet  
5 access services purchased with support of the E-rate and Rural Health  
6 program and similar programs at the federal and state level, regardless  
7 of whether they are customized or individually negotiated, as well as  
8 any broadband Internet access service offered using networks supported  
9 by the Connect America Fund or similar programs at the federal and state  
10 level.

11 11. "Network management practice" means a practice that has a primari-  
12 ly technical network management justification, but does not include  
13 other business practices.

14 12. "Reasonable network management practice" means a network manage-  
15 ment practice that is primarily used for, and tailored to, achieving a  
16 legitimate network management purpose, taking into account the partic-  
17 ular network architecture and technology of the broadband Internet  
18 access service, and that is as application-agnostic as possible.

19 13. "Third-party paid prioritization" means the management of an  
20 Internet service provider's network to directly or indirectly favor some  
21 traffic over other traffic, including through the use of techniques such  
22 as traffic shaping, prioritization, resource reservation, or other forms  
23 of preferential traffic management, either: (a) in exchange for consid-  
24 eration, monetary or otherwise, from a third party; or (b) to benefit an  
25 affiliated entity.

26 14. "Zero-rating" means exempting some Internet traffic from a custom-  
27 er's data limitation.

28 § 251. Internet neutrality. 1. It shall be unlawful for an Internet  
29 service provider, insofar as the provider is engaged in providing broad-  
30 band Internet access service, to engage in any of the following activ-  
31 ities:

32 (a) Blocking lawful content, applications, services, or non-harmful  
33 devices, subject to reasonable network management practices.

34 (b) Speeding up, slowing down, altering, restricting, interfering  
35 with, or otherwise directly or indirectly favoring, disadvantaging, or  
36 discriminating between lawful Internet traffic on the basis of source,  
37 destination, Internet content, application, or service, or use of a  
38 non-harmful device, or of class of Internet content, application,  
39 service, or non-harmful device, subject to reasonable network management  
40 practices.

41 (c) Requiring consideration from edge providers, monetary or other-  
42 wise, in exchange for access to the Internet service provider's end  
43 users, including, but not limited to, requiring consideration for either  
44 of the following:

45 (i) transmitting Internet traffic to and from the Internet service  
46 provider's end users.

47 (ii) refraining from the activities prohibited in paragraphs (a) and  
48 (b) of this subdivision.

49 (d) Engaging in third-party paid prioritization.

50 (e) Engaging in application-specific differential pricing or zero-rat-  
51 ing in exchange for consideration, monetary or otherwise, by third  
52 parties.

53 (f) Zero-rating some Internet content, applications, services, or  
54 devices in a category of Internet content, applications, services, or  
55 devices, but not the entire category.

56 (g) Engaging in application-specific differential pricing.

1 (h) Unreasonably interfering with, or unreasonably disadvantaging,  
2 either an end user's ability to select, access, and use broadband Inter-  
3 net access service or lawful Internet content, applications, services,  
4 or devices of the end user's choice, or an edge provider's ability to  
5 make lawful content, applications, services, or devices available to an  
6 end user, subject to reasonable network management practices.

7 (i) Engaging in practices with respect to, related to, or in  
8 connection with, ISP traffic exchange that have the purpose or effect of  
9 circumventing or undermining the effectiveness of this section.

10 (j) Engaging in deceptive or misleading marketing practices that  
11 misrepresent the treatment of Internet traffic, content, applications,  
12 services, or devices by the Internet service provider, or that misrepre-  
13 sent the performance characteristics or commercial terms of the broad-  
14 band Internet access service to its customers.

15 (k) Advertising, offering for sale, or selling broadband Internet  
16 access service without prominently disclosing with specificity all  
17 aspects of the service advertised, offered for sale, or sold.

18 (l) Failing to publicly disclose accurate information regarding the  
19 network management practices, performance, and commercial terms of its  
20 broadband Internet access services sufficient for consumers to make  
21 informed choices regarding use of those services and for content, appli-  
22 cation, service, and device providers to develop, market, and maintain  
23 Internet offerings.

24 (m) Offering or providing services other than broadband Internet  
25 access service that are delivered over the same last-mile connection as  
26 the broadband Internet access service, if those services satisfy any of  
27 the following conditions:

28 (i) they are marketed, provide, or can be used as a functional equiv-  
29 alent of broadband Internet access service.

30 (ii) they have the purpose or effect of circumventing or undermining  
31 the effectiveness of this section.

32 (iii) they negatively affect the performance of broadband Internet  
33 access service.

34 2. (a) An Internet service provider may offer different types of techni-  
35 cal treatment to end users as part of its broadband Internet access  
36 service, without violating the provisions of subdivision one of this  
37 section, if all of the following conditions exist:

38 (i) The different types of technical treatment are equally available  
39 to all Internet content, applications, services, and devices, and all  
40 classes of Internet content, applications, services, and devices, and  
41 the Internet service provider does not discriminate in the provision of  
42 the different types of technical treatment on the basis of Internet  
43 content, application, service, or device, or class of Internet content,  
44 application, service, or device.

45 (ii) The Internet service provider's end users are able to choose  
46 whether, when, and for which Internet content, applications, services,  
47 or devices, or classes of Internet content, applications, services, or  
48 devices, to use each type of technical treatment.

49 (iii) The Internet service provider charges only its own broadband  
50 Internet access service customers for the use of the different types of  
51 technical treatment.

52 (b) Any Internet service provider offering different types of techni-  
53 cal treatment pursuant to this subdivision shall notify the commission  
54 and provide the commission with a specimen of any service contract that  
55 it offers to customers in New York.

1 (c) If an Internet service provider offers different types of techni-  
2 cal treatment pursuant to this subdivision, the commission shall monitor  
3 the quality of the basic default service and establish minimum quality  
4 requirements if the offering of the different types of technical treat-  
5 ment degrades the quality of the basic default service.

6 3. An Internet service provider may zero-rate Internet traffic in  
7 application-agnostic ways, without violating the provisions of subdivi-  
8 sion one of this section, provided that no consideration, monetary or  
9 otherwise, is provided by any third party in exchange for the provider's  
10 decision to zero-rate or to not zero-rate traffic.

11 § 252. Broadband Internet access evaluation. The commission, in  
12 consultation with the power authority of the state of New York, the NYS  
13 Broadband Program Office and electrical corporations, shall evaluate the  
14 role broadband Internet access and tools, especially as they relate to  
15 private consumers, will play in the future operation of the state's  
16 power grid. The evaluation should consider at least the following:

17 1. the reliance of electrical corporations on consumer broadband  
18 services to manage energy resources;

19 2. the impact that paid prioritization, throttling, and blocking in  
20 consumer broadband Internet service would have on resource management  
21 and grid reliability; and

22 3. the future cost to the state and agencies if state agencies need to  
23 enter into long-term paid prioritization contracts if net neutrality  
24 principles are no longer in place.

25 § 253. Infrastructure awards. 1. An award of moneys by the NYS Broad-  
26 band Program Office for the building of infrastructure for broadband  
27 communications shall require the awardee to prevent any Internet service  
28 provider that provides broadband Internet access service utilizing that  
29 infrastructure from violating the provisions of section two hundred  
30 fifty-one of this article.

31 2. An award of moneys by the NYS Broadband Program Office for access  
32 to the Internet shall prohibit any Internet service provider that  
33 receives those moneys from violating the provisions of section two  
34 hundred fifty-one of this article.

35 § 254. Enforcement. In addition to the authority granted to the  
36 commission pursuant to this chapter, the attorney general may enforce  
37 the provisions of this article to the extent permitted under section  
38 sixty-three of the executive law.

39 § 255. Application. Nothing in this article supersedes or limits any  
40 obligation, authorization, or ability of an Internet service provider to  
41 address the needs of emergency communications or law enforcement, public  
42 safety, or national security authorities.

43 § 3. Section 219 of the public service law is amended by adding a new  
44 subdivision 4 to read as follows:

45 4. (a) For purposes of this section, "application-agnostic," "applica-  
46 tion-specific differential pricing," "broadband Internet access  
47 service," "class of Internet content, application, service, or device,"  
48 "content, applications, or services," "edge provider," "end user,"  
49 "Internet service provider," "ISP," "ISP traffic exchange," "mass  
50 market," "network management practice," "reasonable network management  
51 practice," "third-party paid prioritization," and "zero-rating" have the  
52 same meanings as defined in section two hundred fifty of this chapter.

53 (b) A cable operator or video service provider that has been granted a  
54 franchise, and any affiliate, insofar as the provider is engaged in  
55 providing broadband Internet access service, shall not engage in any of  
56 the following activities:

1 (i) Blocking lawful content, applications, services, or non-harmful  
2 devices, subject to reasonable network management practices.

3 (ii) Speeding up, slowing down, altering, restricting, interfering  
4 with, or otherwise directly or indirectly favoring, disadvantaging, or  
5 discriminating between lawful Internet traffic on the basis of source,  
6 destination, Internet content, application, or service, or use of a  
7 non-harmful device, or of class of Internet content, application,  
8 service, or non-harmful device, subject to reasonable network management  
9 practices.

10 (iii) Requiring consideration from edge providers, monetary or other-  
11 wise, in exchange for access to the Internet service provider's end  
12 users, including, but not limited to, requiring consideration for either  
13 of the following:

14 (A) transmitting Internet traffic to and from the Internet service  
15 provider's end users; and

16 (B) refraining from the activities prohibited in subparagraphs (i) and  
17 (ii) of this paragraph.

18 (iv) Engaging in third-party paid prioritization.

19 (v) Engaging in application-specific differential pricing or zero-rat-  
20 ing in exchange for consideration, monetary or otherwise, by third  
21 parties.

22 (vi) Zero-rating some Internet content, applications, services, or  
23 devices in a category of Internet content, applications, services, or  
24 devices, but not the entire category.

25 (vii) Engaging in application-specific differential pricing.

26 (viii) Unreasonably interfering with, or unreasonably disadvantaging,  
27 either an end user's ability to select, access, and use broadband Inter-  
28 net access service or lawful Internet content, applications, services,  
29 or devices of the end user's choice, or an edge provider's ability to  
30 make lawful content, applications, services, or devices available to an  
31 end user, subject to reasonable network management practices.

32 (ix) Engaging in practices with respect to, related to, or in  
33 connection with, ISP traffic exchange that have the purpose or effect of  
34 circumventing or undermining the effectiveness of this subdivision.

35 (x) Engaging in deceptive or misleading marketing practices that  
36 misrepresent the treatment of Internet traffic, content, applications,  
37 services, or devices by the Internet service provider, or that misrepre-  
38 sent the performance characteristics or commercial terms of the broad-  
39 band Internet access service to its customers.

40 (xi) Advertising, offering for sale, or selling broadband Internet  
41 access service without prominently disclosing with specificity all  
42 aspects of the service advertised, offered for sale, or sold.

43 (xii) Failing to publicly disclose accurate information regarding the  
44 network management practices, performance, and commercial terms of its  
45 broadband Internet access services sufficient for consumers to make  
46 informed choices regarding use of those services and for content, appli-  
47 cation, service, and device providers to develop, market, and maintain  
48 Internet offerings.

49 (xiii) Offering or providing services other than broadband Internet  
50 access services that are delivered over the same last-mile connection as  
51 the broadband Internet access service, if those services satisfy any of  
52 the following conditions:

53 (A) they are marketed, provide, or can be used as a functional equiv-  
54 alent of broadband Internet access service; or

55 (B) they have the purpose or effect of circumventing or undermining  
56 the effectiveness of this section; or

1 (C) they negatively affect the performance of broadband Internet  
2 access service.

3 (c) (i) An Internet service provider may offer different types of  
4 technical treatment to end users as part of its broadband Internet  
5 access service if it meets the conditions specified in paragraph (a) of  
6 subdivision two of section two hundred fifty-one of this chapter.

7 (ii) An Internet service provider may zero-rate Internet traffic in  
8 application-agnostic ways, provided that no consideration, monetary or  
9 otherwise, is provided by any third party in exchange for the provider's  
10 decision to zero-rate or to not zero-rate traffic.

11 (d) In addition to the authority granted the commission pursuant to  
12 this chapter, the attorney general may enforce the provisions of this  
13 article to the extent permitted under section sixty-three of the execu-  
14 tive law.

15 § 4. Section 119-a of the public service law, as added by chapter 703  
16 of the laws of 1978, is amended to read as follows:

17 § 119-a. Attachments to utility poles; use of utility ducts, trenches  
18 and conduits. 1. The commission shall prescribe just and reasonable  
19 rates, terms and conditions for attachments to utility poles and the use  
20 of utility ducts, trenches and conduits. A just and reasonable rate  
21 shall assure the utility of the recovery of not less than the additional  
22 cost of providing a pole attachment or of using a trench, duct or  
23 conduit nor more than the actual operating expenses and return on capi-  
24 tal of the utility attributed to that portion of the pole, duct, trench  
25 or conduit used. With respect to cable television or internet service  
26 attachments and use, such portion shall be the percentage of total  
27 usable space on a pole or the total capacity of the duct or conduit that  
28 is occupied by the facilities of the user. Usable space shall be the  
29 space on a utility pole above the minimum grade level which can be used  
30 for the attachment of wires and cables.

31 2. No permission shall be granted to a cable television or Internet  
32 service provider for attachments on utility poles as provided in this  
33 section unless such Internet service provider is in compliance with the  
34 provisions of section two hundred fifty-one of this chapter.

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

37 9. Internet neutrality. a. For purposes of this subdivision:

38 (i) "broadband Internet access service," "Internet service provider,"  
39 "network management practice," and "reasonable network management prac-  
40 tice" shall have the same meanings as defined in section two hundred  
41 fifty of the public service law; and

42 (ii) "the state" includes the state and any governmental agency or  
43 political subdivision or public benefit corporation of the state.

44 b. (i) The state shall not purchase any fixed or mobile broadband  
45 Internet access services from an Internet service provider that is in  
46 violation of the provisions of section two hundred fifty-one of the  
47 public service law.

48 (ii) The state shall not provide funding for the purchase of any fixed  
49 or mobile broadband Internet access services from an Internet service  
50 provider that is in violation of the provisions of section two hundred  
51 fifty-one of the public service law.

52 c. (i) Every contract between the state and an Internet service  
53 provider for broadband Internet access service shall require that the  
54 service be rendered consistent with the requirements of section two  
55 hundred fifty-one of the public service law.

1 (ii) If, after execution of a contract for broadband Internet access  
2 service the state determines that the Internet service provider has  
3 violated the provisions of section two hundred fifty-one of the public  
4 service law in providing service to the state, the state may declare the  
5 contract void from the time it was entered into and require repayment of  
6 any payments made to the Internet service provider pursuant to the  
7 contract. The remedies available pursuant to this section are in addi-  
8 tion to any remedy available pursuant to article twenty-two-A of the  
9 general business law.

10 d. It shall not be a violation of this article for the state to  
11 purchase or fund fixed or mobile broadband Internet access services in a  
12 geographical area where Internet access services are only available from  
13 a single broadband Internet access service provider.

14 e. An Internet service provider that provides fixed or mobile broad-  
15 band Internet access service purchased or funded by the state shall  
16 publicly disclose accurate information regarding the network management  
17 practices, performance, and commercial terms of its broadband Internet  
18 access service that is sufficient to enable end users of those purchased  
19 or funded services, including the state, to fully and accurately ascer-  
20 tain if the service is conducted in a lawful manner pursuant to the  
21 provisions of section two hundred fifty-one of the public service law.

22 § 6. The general municipal law is amended by adding a new section  
23 104-d to read as follows:

24 § 104-d. Internet neutrality. 1. For purposes of this section, "broad-  
25 band Internet access service," "Internet service provider," "network  
26 management practice," and "reasonable network management practice" shall  
27 have the same meanings as defined in section two hundred fifty of the  
28 public service law.

29 2. a. A municipal corporation shall not purchase any fixed or mobile  
30 broadband Internet access services from an Internet service provider  
31 that is in violation of the provisions of section two hundred fifty-one  
32 of the public service law.

33 b. A municipal corporation shall not provide funding for the purchase  
34 of any fixed or mobile broadband Internet access services from an Inter-  
35 net service provider that is in violation of the provisions of section  
36 two hundred fifty-one of the public service law.

37 3. a. Every contract between a municipal corporation and an Internet  
38 service provider for broadband Internet access service shall require  
39 that the service be rendered consistent with the requirements of section  
40 two hundred fifty-one of the public service law.

41 b. If, after execution of a contract for broadband Internet access  
42 service, a municipal corporation determines that the Internet service  
43 provider has violated the provisions of section two hundred fifty-one of  
44 the public service law in providing service to the municipal corpo-  
45 ration, the municipal corporation may declare the contract void from the  
46 time it was entered into and require repayment of any payments made to  
47 the Internet service provider pursuant to the contract. The remedies  
48 available pursuant to this section are in addition to any remedy avail-  
49 able pursuant to article twenty-two-A of the general business law.

50 4. It shall not be a violation of this article for a municipal corpo-  
51 ration to purchase or fund fixed or mobile broadband Internet access  
52 services in a geographical area where Internet access services are only  
53 available from a single broadband Internet access service provider.

54 5. An Internet service provider that provides fixed or mobile broad-  
55 band Internet access service purchased or funded by a municipal corpo-  
56 ration shall publicly disclose accurate information regarding the

1 network management practices, performance, and commercial terms of its  
2 broadband Internet access service that is sufficient to enable end users  
3 of those purchased or funded services, including a municipal corpo-  
4 ration, to fully and accurately ascertain if the service is conducted in  
5 a lawful manner pursuant to the provisions of section two hundred  
6 fifty-one of the public service law.

7 § 7. Subdivision 3 of section 2879 of the public authorities law is  
8 amended by adding a new paragraph (n-1) to read as follows:

9 (n-1) Requirements to conduct procurements in a manner that complies  
10 with the provisions of section two hundred fifty-one of the public  
11 service law.

12 § 8. Section 143 of the economic development law is amended by adding  
13 a new subdivision 6 to read as follows:

14 6. Each agency shall conduct procurements in a manner that complies  
15 with the provisions of section two hundred fifty-one of the public  
16 service law.

17 § 9. Severability. If any provision of this act, or the application  
18 thereof to any person or circumstances, is held invalid or unconstitu-  
19 tional, that invalidity or unconstitutionality shall not affect other  
20 provisions or applications of this act that can be given effect without  
21 the invalid or unconstitutional provision or application, and to this  
22 end the provisions of this act are severable.

23 § 10. This act shall take effect on the sixtieth day after it shall  
24 have become a law. Effective immediately, the addition, amendment  
25 and/or repeal of any rule or regulation necessary for the implementation  
26 of this act on its effective date are authorized to be made on or before  
27 such effective date.