

# STATE OF NEW YORK

3308

2021-2022 Regular Sessions

## IN SENATE

January 28, 2021

Introduced by Sens. PARKER, JACKSON -- read twice and ordered printed,  
and when printed to be committed to the Committee on Finance

AN ACT to amend the public service law, the general business law and the state finance law, in relation to requiring that internet service providers that are compliant with net neutrality and state contracts only be made with such compliant providers and establishing a revolving fund for the creation 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. Short title. This act shall be known and may be cited as  
2 the "NYS Net Neutrality Protection Act".

3 § 2. The public service law is amended by adding a new section 92-j to  
4 read as follows:

5 § 92-j. Reports by internet service providers. 1. Any telephone corpo-  
6 ration, as defined by subdivision seventeen of section two of this chap-  
7 ter, or cable television company, as defined by subdivision one of  
8 section two hundred twelve of this chapter, which is also a broadband  
9 internet service provider, as defined by paragraph (b) of subdivision  
10 one of section three hundred ninety-nine-zzzzz of the general business  
11 law, shall annually report to the department, and publicly disclose,  
12 accurate information regarding network management practices, perform-  
13 ance, and commercial terms of such company's or corporation's broadband  
14 internet access that is sufficient for consumers to make informed choic-  
15 es regarding the use of such services, and for content, application,  
16 service, and device providers to develop, market, and maintain internet  
17 offerings.

18 2. The publication of disclosures that comply with the federal commu-  
19 nications commission's transparency rule (47 C.F.R. 8.1) shall satisfy  
20 the requirements of subdivision one of this section.

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

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3. The commission shall annually prepare a report that lists the certification status for each broadband internet service provider qualified to do business in the state. Such report shall be published on the commission's website and updated at least annually. The commission shall notify the governor, the temporary president of the senate, and the speaker of the assembly of the publication of such report and of any updates to such report.

4. Except to the extent necessary to supervise the reporting and notice requirements of subdivisions one and two of this section, nothing in this section shall confer upon the commission any regulatory jurisdiction over internet service providers or internet broadband services.

§ 3. The general business law is amended by adding a new section 399-zzzzz to read as follows:

§ 399-zzzzz. Net neutrality. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Broadband internet access" shall mean a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but shall not include dial-up internet access service. Broadband internet access shall be considered to be an information service as such term is defined pursuant to 47 U.S.C. 153.

(b) "Broadband internet service provider" shall mean any person, business or organization qualified to do business in this state, including municipal broadband providers, to the extent that such individuals, corporations, or other entities provide other individuals, corporations or entities with broadband internet access.

(c) "End user" shall mean any individual or entity that utilizes broadband internet access.

(d) "Paid prioritization" shall mean the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic in a manner that materially harms competition and materially harms end users, including through the use of traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, which is either:

(i) in exchange for consideration, monetary or otherwise, from a third party; or

(ii) to benefit an affiliated entity.

(e) "Reasonable network management" shall mean a network management practice that is appropriate and tailored to achieving a legitimate network management purpose, including deterring or preventing cybersecurity threats and similar threats originating from equipment connected directly or indirectly to the network or otherwise, taking into account the particular network architecture and technology of the broadband internet access service.

(f) "Specialized services" shall mean service other than broadband internet access that is provided by broadband providers over last-mile capacity shared with broadband internet access.

2. Net neutrality. (a) Any broadband internet service provider shall not:

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

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

(iii) engage in paid prioritization, including, but not limited to, traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either:

(A) in exchange for any form of consideration from a third party, or

(B) to benefit an affiliated entity, unless the broadband internet service provider demonstrates that the practice would provide a significant public interest benefit and would not harm the open nature of the internet.

(b) Nothing in this section shall:

(i) supersede any obligation or authorization a provider of broadband internet access may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limit the provider's ability to do so;

(ii) prohibit reasonable efforts by a provider of broadband internet access to address copyright infringement or other unlawful activity;

(iii) be construed to limit the choice of service plans available to consumers, or consumers' control over their chosen broadband internet access; and

(iv) be construed to limit the ability of broadband internet access providers to offer or provide specialized services, so long as the broadband internet service provider continues to offer broadband internet access in a manner consistent with the provisions of this section.

3. Reporting. Any person or entity engaged in providing broadband internet access within the state who are not covered by either of the definitions established pursuant to subdivision seventeen of section two or subdivision one of section two hundred twelve of the public service law, shall report to the commission, and publicly disclose at least annually, accurate information regarding the network management practices, performance, and commercial terms of such company's or corporation's broadband internet access that is sufficient for consumers to make informed choices regarding the use of such services, and for content, application, service, and device providers to develop, market, and maintain internet offerings.

4. Enforcement. A violation of the requirements of this section by a broadband internet service provider shall be enforceable solely through an action brought in a court of competent jurisdiction in this state by the attorney general.

5. Preemption. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing broadband internet service shall upon the effective date of this section, be preempted.

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

§ 148. Contracting for broadband internet access. 1. (a) Notwithstanding any other provision of law to the contrary, where a contract pertains to broadband internet access, as defined in section three hundred ninety-nine-zzzzz of the general business law, such contract shall be awarded by:

(i) a state agency, as defined in section one hundred sixty of this chapter, or any state or local authority, as such terms are defined in section two of the public authorities law; or

(ii) a municipal corporation as defined in section two of the general municipal law, or any public benefit corporation or municipality of the state; or

(iii) public library or association library, as such terms are defined in section two hundred fifty-three of the education law; or

1 (iv) the legislature, judiciary, state university of New York, or city  
2 university of New York.

3 (b) If such contract is formed pursuant to a competitive bidding proc-  
4 ess or a request for proposal process, whenever the responsive and  
5 responsible offerer having the lowest price or best value offer has not  
6 agreed to stipulate to the conditions set forth in this subdivision and  
7 another responsive and responsible offerer who has agreed to stipulate  
8 to such conditions has submitted an offer, the contract shall be awarded  
9 to the lowest price or best value offer for internet services from a  
10 source compliant with the internet service neutrality requirements  
11 established in section three hundred ninety-nine-zzzzz of the general  
12 business law.

13 (c) Provided, however, the entity awarding such contract may award  
14 such contract to a non-compliant broadband internet service provider,  
15 only if such entity determines that:

16 (i) there are no other broadband internet service providers available  
17 to contract with;

18 (ii) awarding such contract to a compliant broadband internet service  
19 provider would result in a significant financial hardship when compared  
20 to awarding such contract to a non-compliant broadband internet service  
21 provider; or

22 (iii) there is no need for the broadband internet service provider to  
23 meet such requirements in order to render the service required by such  
24 entity.

25 2. (a) In the case of contracts let by other than a competitive proc-  
26 ess which include internet services involving an expenditure of an  
27 amount greater than the discretionary buying threshold, as specified in  
28 section one hundred sixty-three of this chapter, the contracting entity  
29 shall not award to a proposed contractor who has not agreed to stipulate  
30 to the conditions set forth in this subdivision unless the entity seek-  
31 ing to use the internet services determines that:

32 (i) the internet services are necessary for the entity to perform its  
33 functions and there is no other responsible contractor who will supply  
34 internet services of comparable quality at a comparable price;

35 (ii) awarding such contract to a compliant broadband internet service  
36 provider would result in a significant financial hardship when compared  
37 to awarding such contract to a non-compliant broadband internet service  
38 provider; or

39 (iii) there is no need for the broadband internet service provider to  
40 meet such requirements in order to render the service required by such  
41 entity.

42 (b) Any determinations under paragraph (a) of this subdivision shall  
43 be made in writing and shall be public documents.

44 3. Nothing in this section shall:

45 (a) supersede any obligation or authorization a provider of broadband  
46 internet access may have to address the needs of emergency communi-  
47 cations or law enforcement, public safety, or national security authori-  
48 ties, consistent with or as permitted by applicable law, or limit the  
49 provider's ability to do so;

50 (b) prohibit reasonable efforts by a provider of broadband internet  
51 access to address copyright infringement or other unlawful activity;

52 (c) be construed to limit the choice of service plans available to  
53 consumers, or consumers' control over their chosen broadband internet  
54 access; and

55 (d) be construed to limit the ability of broadband internet access  
56 providers to offer or provide specialized services, so long as the

1 broadband internet service provider continues to offer broadband inter-  
2 net access in a manner consistent with section three hundred ninety-  
3 nine-zzzzz of the general business law.

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

6 f. "Net neutral source of internet services" shall mean an internet  
7 service provider that adheres to the principles of net neutrality as  
8 described in section three hundred ninety-nine-zzzzz of the general  
9 business law.

10 g. "Non-net neutral source of internet services" shall mean an inter-  
11 net service provider that violates any of the principles of net neutral-  
12 ity as described in section three hundred ninety-nine-zzzzz of the  
13 general business law.

14 § 6. The state finance law is amended by adding a new section 99-ii to  
15 read as follows:

16 § 99-ii. Municipal internet service provider revolving loan fund. 1.  
17 There is hereby established in the joint custody of the comptroller and  
18 the public service commission a fund to be known as the "municipal  
19 internet service provider revolving loan fund". Such fund shall consist  
20 of moneys made available pursuant to appropriation and any other sources  
21 in order to provide support for municipalities attempting to create  
22 their own internet service provider.

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

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

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

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

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

48 (b) Every application shall be in a form acceptable to the public  
49 service commission. Every application shall accurately reflect the  
50 conditions which give rise to the proposed expenditure and accurately  
51 reflect the ability of the applicant to make such an expenditure without  
52 the proceeds of a loan under this section.

53 (c) (i) The public service commission shall give preference to those  
54 applications which:

55 (A) demonstrate the greatest need;

56 (B) are joint applications; and

1 (C) apply the proceeds towards attaining compliance with federal and  
2 state laws.

3 (ii) The public service commission may disapprove any application  
4 which contains no adequate demonstration of need or which would result  
5 in inequitable or inefficient use of the moneys in the account.

6 (iii) In making determinations on loan applications, the public  
7 service commission shall assure that loan fund moneys are equitably  
8 distributed among all geographical areas of the state.

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

14 § 7. The sum of two hundred fifty million dollars (\$250,000,000), or  
15 so much thereof as may be necessary, is hereby appropriated to the  
16 municipal internet service provider revolving loan fund from any moneys  
17 in the state treasury in the general fund to the credit of the state  
18 purposes account not otherwise appropriated for services and expenses of  
19 the municipal internet service provider revolving loan fund for the  
20 purposes of carrying out the provisions of this act. Such sum shall be  
21 payable on the audit and warrant of the state comptroller on vouchers  
22 certified or approved by the public service commission in the manner  
23 provided by law. No expenditure shall be made from this appropriation  
24 until a certificate of approval of availability shall have been issued  
25 by the director of the budget and filed with the state comptroller and a  
26 copy filed with the chairman of the senate finance committee and the  
27 chairman of the assembly ways and means committee. Such certificate may  
28 be amended from time to time by the director of the budget and a copy of  
29 each such amendment shall be filed with the state comptroller, the  
30 chairman of the senate finance committee and the chairman of the assem-  
31 bly ways and means committee.

32 § 8. Separability. If any part or provision of this article or the  
33 application thereof to any person or circumstance be adjudged invalid by  
34 any court of competent jurisdiction, such judgment shall not affect,  
35 impair or invalidate the remainder thereof, but shall be confined in its  
36 operation to part or provision thereof directly involved in the contro-  
37 versy in which such judgment shall have been rendered.

38 § 9. This act shall take effect on the one hundred eightieth day after  
39 it shall have become a law.