STATE OF NEW YORK

3990

2023-2024 Regular Sessions

IN ASSEMBLY

February 8, 2023

Introduced by M. of A. FAHY, BARRETT, MAGNARELLI, SIMONE, THIELE, SANTABARBARA, LUPARDO, GLICK, COLTON, SEAWRIGHT, DINOWITZ, VANEL, STIRPE, STECK, D. ROSENTHAL, WALLACE, TAYLOR, CARROLL, DE LOS SANTOS, REYES, JACOBSON -- read once and referred to the Committee on People with Disabilities

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:

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:

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

§ 2. Section 212 of the public service law is amended by adding two new subdivisions 15 and 16 to read as follows:

15. "Broadband internet access service" shall mean a mass-market retail service 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.

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

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

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

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

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14. Develop and maintain a statewide plan for the monitoring of broadband internet service providers, including the annual certification that broadband internet service providers comply with the internet service neutrality requirements established in section two hundred thirty-one of this article.

§ 4. The state finance law is amended by adding a new section 149 to read as follows:

§ 149. Internet service neutrality requirements in certain procurement contracts. Notwithstanding any other provision of law to the contrary, where a contract that includes broadband internet access services is to be awarded by 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 public authorities law, municipal corporation as defined in section two of the general municipal law, public library or association library, as such terms are defined in section two hundred fifty-three of the education law, the legislature, judiciary, state university of New York, or city university of New York pursuant to a competitive bidding process or a request for proposal process, such competitive bidding process or request for proposal and the subsequent awarded contract shall require that such broadcast internet access services are compliant with the internet service neutrality requirements established in section two hundred thirty-one of the public service law. Provided, however, the entity awarding such contract may award such contract to any broadband internet service provider that is not certified by the public service commission pursuant to subdivision two of section two hundred thirty-one of the public service law only if such entity demonstrates to the public service commission that either (i) there are no other broadband internet service providers available to contract with, or (ii) awarding such contract to a certified broadband internet service provider would result in a significant financial hardship when compared to awarding the contract to a broadband internet service provider not certified by the public service commission.

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

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

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

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

(b) 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.

(c) engage in paid prioritization, including, but not limited to, traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (i) in exchange for any form of consideration from a third party, or (ii) 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.

3. The commission shall annually prepare a report that lists the certification status for every broadband internet service provider qualified to do business in this 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 any updates.

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