

# STATE OF NEW YORK

3990

2023-2024 Regular Sessions

## IN ASSEMBLY

February 8, 2023

Introduced by M. of A. FAHY, BARRETT, MAGNARELLI, SIMONE, THIELE, SANTA-BARBARA, 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:

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.

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

LBD04060-01-3

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

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

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

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

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

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

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

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

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

1     3. The commission shall annually prepare a report that lists the  
2     certification status for every broadband internet service provider qual-  
3     ified to do business in this state. Such report shall be published on  
4     the commission's website and updated at least annually. The commission  
5     shall notify the governor, the temporary president of the senate, and  
6     the speaker of the assembly of the publication of such report and any  
7     updates.

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