STATE OF NEW YORK

4594--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 17, 2023

Introduced by M. of A. BICHOTTE HERMELYN, COLTON, HYNDMAN, LAVINE, ZEBROWSKI, HEVESI, SIMON, BRONSON, GUNTHER, AUBRY, PEOPLES-STOKES, HUNTER -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and the state finance law, in relation to state contracts being only with internet service providers compliant with net neutrality

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

Section 1. This act shall be known and may be cited as the "NYS Net Neutrality Protection Act".

§ 2. Subdivision 1 of section 5 of the public service law is amended by adding a new paragraph j to read as follows:

j. To every broadband internet line which lies wholly within the state and that part within the state of New York of every broadband internet line which lies partly within and partly without the state and to the persons or corporations owning, leasing or operating any such broadband internet line.

§ 3. Section 5 of the public service law is amended by adding a new subdivision 7 to read as follows:

7. The commission shall require any person engaged in the provision of broadband internet access service in New York state to report to the commission, and publicly disclose annually, accurate information regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient for consumers to make informed choices regarding use of such services and for content,

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

LBD07720-02-4

application, service, and device providers to develop, market, and maintain internet offerings.

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

f. A "net neutral source of internet services" shall mean an internet service provider who adheres to the principles of net neutrality.

g. A "non-net neutral source of internet services" shall mean an internet service provider who violates any of the principles of net neutrality.

h. "The principles of net neutrality" shall mean the rules and regulations under the open internet report and order on remand, declaratory ruling, and order by the federal communications commission released March twelfth, two thousand fifteen, GN Docket No. 14-28.

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

9. Prohibition on purchase of internet services from a non-net neutral source of internet services.

a. (i) With respect to contracts described in subparagraphs (ii) and (iii) of this paragraph, and in accordance with such subparagraphs, the state and any governmental agency or political subdivision or public benefit corporation or municipality of the state shall not contract for the supply of internet services with any contractor who does not agree to stipulate to the following, if there is another contractor who will contract to supply internet services of comparable quality at a comparable price or cost, the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor shall make lawful steps in good faith to conduct any business operations as a net neutral source of internet services.

(ii) In the case of contracts let by a competitive process, whenever the responsive and responsible offerer having the lowest price or best value offer has not agreed to stipulate to the conditions set forth in this subdivision and another responsive and responsible offerer who has agreed to stipulate to such conditions has submitted an offer shall determine that the contract be awarded to the lowest price or best value offer for internet services from a net neutral source of internet services.

(iii) In the case of contracts let by other than a competitive process internet services involving an expenditure of an amount greater than the discretionary buying threshold as specified in section one hundred sixty-three of this article, the contracting entity shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in this subdivision unless the entity seeking to use the internet services determines that the internet services are necessary for the entity to perform its functions and there is no other responsible contractor who will supply internet services of comparable quality at a comparable price. Such determinations shall be made in writing and shall be public documents.

b. Upon receiving information that a contractor who has made the stipulation required by this subdivision is in violation thereof, the contracting entity shall review such information and offer the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, it shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited

to, imposing sanctions, seeking compliance, recovering damages or declaring the contractor in default.

c. As used in this subdivision, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to emergency procurement procedures or contracts, resolutions, indentures, declarations of trust or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations, provided that the policies of this subdivision shall be considered when selecting a contractor to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.

d. The provisions of this subdivision shall not apply to contracts for which the state or other contracting entity receives funds administered by the United States, except to the extent congress has directed to not withhold funds from states and localities that choose to implement selective purchasing policies based on an agreement to comply with the principles of net neutrality, or to the extent that such funds are not otherwise withheld by congress.

§ 6. This act shall take effect immediately.