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Introduced by Sens. HOYLMAN-SIGAL, BAILEY, COMRIE, JACKSON, KRUEGER, LIU, MAYER, MYRIE, PERSAUD, SALAZAR, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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 soci-
6 ety, 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 func-
10 tions 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 proc-
18 esses;
19 (6) education;
20 (7) business and economic activity;

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

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1 (8) environmental monitoring and protection, and achievement of state
2 environmental goals; and
3 (9) land use regulation.

4 § 2. The public service law is amended by adding a new article 12 to
5 read as follows:

6 ARTICLE 12

7 PROVISIONS RELATING TO INTERNET SERVICE PROVIDERS

8 Section 250. Definitions.

9 251. Internet neutrality.

10 252. Broadband Internet access evaluation.

11 253. Infrastructure awards.

12 254. Enforcement.

13 255. Application.

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

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

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

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

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

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

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

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

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

53 9. "ISP traffic exchange" means the exchange of Internet traffic
54 destined for, or originating from, an Internet service provider's end
55 users between the Internet service provider's network and another indi-

1 vidual or entity, including, but not limited to, an edge provider,
2 content delivery network, or other network operator.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (f) Zero-rating some Internet content, applications, services, or
2 devices in a category of Internet content, applications, services, or
3 devices, but not the entire category.

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

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

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

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

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

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

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

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

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

36 (iii) they negatively affect the performance of broadband Internet
37 access service.

38 2. (a) An Internet service provider may offer different types of tech-
39 anical treatment to end users as part of its broadband Internet access
40 service, without violating the provisions of subdivision one of this
41 section, if all of the following conditions exist:

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

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

53 (iii) The Internet service provider charges only its own broadband
54 Internet access service customers for the use of the different types of
55 technical treatment.

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

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

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

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

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

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

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

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

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

39 § 254. Enforcement. In addition to the authority granted to the
40 commission pursuant to this chapter, the attorney general may enforce
41 the provisions of this article to the extent permitted under section
42 sixty-three of the executive law.

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

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

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

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

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

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

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

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

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

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

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

26 (vi) Zero-rating some Internet content, applications, services, or
27 devices in a category of Internet content, applications, services, or
28 devices, but not the entire category.

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

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

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

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

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

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

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

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

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

5 (C) they negatively affect the performance of broadband Internet
6 access service.

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

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

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

19 § 4. Section 119-a of the public service law is amended by adding a
20 new subdivision 6 to read as follows:

21 6. No permission shall be granted to a cable television or Internet
22 service provider for attachments on utility poles as provided in this
23 section unless such Internet service provider is in compliance with the
24 provisions of section two hundred fifty-one of this chapter.

25 § 5. Section 165 of the state finance law is amended by adding a new
26 subdivision 10 to read as follows:

27 10. Internet neutrality. a. For purposes of this subdivision:

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

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

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

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

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

46 (ii) If, after execution of a contract for broadband Internet access
47 service the state determines that the Internet service provider has
48 violated the provisions of section two hundred fifty-one of the public
49 service law in providing service to the state, the state may declare the
50 contract void from the time it was entered into and require repayment of
51 any payments made to the Internet service provider pursuant to the
52 contract. The remedies available pursuant to this section are in addi-
53 tion to any remedy available pursuant to article twenty-two-A of the
54 general business law.

55 d. It shall not be a violation of this article for the state to
56 purchase or fund fixed or mobile broadband Internet access services in a

1 geographical area where Internet access services are only available from
2 a single broadband Internet access service provider.

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

11 § 6. The general municipal law is amended by adding a new section
12 104-e to read as follows:

13 § 104-e. Internet neutrality. 1. For purposes of this section, "broad-
14 band Internet access service," "Internet service provider," "network
15 management practice," and "reasonable network management practice" shall
16 have the same meanings as defined in section two hundred fifty of the
17 public service law.

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

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

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

30 b. If, after execution of a contract for broadband Internet access
31 service, a municipal corporation determines that the Internet service
32 provider has violated the provisions of section two hundred fifty-one of
33 the public service law in providing service to the municipal corpo-
34 ration, the municipal corporation may declare the contract void from the
35 time it was entered into and require repayment of any payments made to
36 the Internet service provider pursuant to the contract. The remedies
37 available pursuant to this section are in addition to any remedy avail-
38 able pursuant to article twenty-two-A of the general business law.

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

43 5. An Internet service provider that provides fixed or mobile broad-
44 band Internet access service purchased or funded by a municipal corpo-
45 ration shall publicly disclose accurate information regarding the
46 network management practices, performance, and commercial terms of its
47 broadband Internet access service that is sufficient to enable end users
48 of those purchased or funded services, including a municipal corpo-
49 ration, to fully and accurately ascertain if the service is conducted in
50 a lawful manner pursuant to the provisions of section two hundred
51 fifty-one of the public service law.

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

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

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

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

6 § 9. Severability. If any provision of this act, or the application
7 thereof to any person or circumstances, is held invalid or unconstitu-
8 tional, that invalidity or unconstitutionality shall not affect other
9 provisions or applications of this act that can be given effect without
10 the invalid or unconstitutional provision or application, and to this
11 end the provisions of this act are severable.

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