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SENATE BILL 39

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Howie C. Morales

AN ACT

RELATING TO TRADE PRACTICES; ENACTING A SECTION OF THE UNFAIR PRACTICES ACT TO PROHIBIT AND MAKE SUBJECT TO PENALTY CERTAIN ACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Unfair Practices Act is enacted to read:

"[NEW MATERIAL] PROHIBITED ACTS IN PROVIDING BROADBAND INTERNET ACCESS SERVICES.--

A. It is an unfair and deceptive trade practice within the meaning of the Unfair Practices Act for any person providing broadband internet access services to:

- (1) block lawful content, applications, services or use of a nonharmful device, except as necessary for reasonable network management;

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1 (2) impair or degrade lawful internet traffic
2 on the basis of internet content, applications, services or use
3 of a nonharmful device, except as necessary for reasonable
4 network management;

5 (3) engage in paid prioritization;

6 (4) unreasonably interfere with or
7 unreasonably disadvantage:

8 (a) an end user's ability to select,
9 access and use broadband internet access service or lawful
10 internet content, applications, services or a nonharmful device
11 of the end user's choice; or

12 (b) an edge provider's ability to make
13 lawful content, applications, services or a nonharmful device
14 available to end users; or

15 (5) fail to disclose upon request accurate
16 information regarding the network management practices,
17 performance, and commercial terms of its broadband internet
18 access services sufficient to allow consumers to make informed
19 choices regarding use of the services, and for content,
20 application, service and device providers to develop, market
21 and maintain internet offerings.

22 B. As used in this section:

23 (1) "broadband internet access service" means
24 a mass-market retail service by wire or radio that provides the
25 capability to transmit data to and receive data from all or

1 substantially all internet endpoints, including a capability
2 that is incidental to and enables the operation of the
3 communications service, or any service that the federal
4 communications commission finds to be providing a functional
5 equivalent of those services, but does not include a dial-up
6 internet access service;

7 (2) "content, application and service" means
8 traffic transmitted to or from end users of a broadband
9 internet access service;

10 (3) "edge provider" means a person that
11 provides content, an application or service over the internet,
12 or a person that provides a device used for accessing content,
13 an application or service over the internet;

14 (4) "end user" means a person that uses a
15 broadband internet access service;

16 (5) "mobile broadband internet access service"
17 means a broadband internet access service that serves an end
18 user primarily using mobile stations;

19 (6) "paid prioritization" means the management
20 of a broadband internet access service provider's network to
21 directly or indirectly favor some traffic over other traffic,
22 including through use of techniques such as traffic shaping,
23 prioritization, resource reservation or other forms of
24 preferential traffic management:

25 (a) in exchange for consideration from a

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1 third party; or

2 (b) to benefit an affiliated entity; and

3 (7) "reasonable network management" means a
4 network management practice that has a primarily technical
5 network management justification, is primarily used for and
6 tailored to achieve a legitimate network management purpose,
7 taking into account the particular network architecture and
8 technology of the broadband internet access service, but does
9 not include other business practices."

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