SENATE BILL 233

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

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

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;

.211279.1
(2) impair or degrade lawful internet traffic on the basis of internet content, applications, services or use of a nonharmful device, except as necessary for reasonable network management;

(3) engage in paid prioritization;

(4) unreasonably interfere with or unreasonably disadvantage:

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

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

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

B. As used in this section:

(1) "broadband internet access service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or
substantially all internet endpoints, including a capability that is incidental to and enables the operation of the communications service, or any service that the federal communications commission finds to be providing a functional equivalent of those services, but does not include a dial-up internet access service;

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

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

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

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

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

   (a) in exchange for consideration from a
third party; or

    (b) to benefit an affiliated entity; and

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

SECTION 2. APPROPRIATION.--

    A. Two hundred fifty thousand dollars ($250,000) is appropriated from the general fund to the office of the attorney general for expenditure in fiscal years 2019 and 2020 to:

        (1) review the elimination of federal communications commission rules requiring broadband internet neutrality; and

        (2) file or join a lawsuit to challenge the decision by the federal communications commission to eliminate federal broadband internet neutrality.

    B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2020 shall revert to the general fund.