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FISCAL IMPACT REPORT

ORIGINAL DATE 3/4/19

SPONSOR Tallman **LAST UPDATED** _____ **HB** _____

SHORT TITLE Broadband Access Unfair Trade Practices **SB** 233

ANALYST Torres

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
\$250.0		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Attorney General (NMAG)

Public Regulation Commission (PRC)

Department of Information Technology (DoIT)

SUMMARY

Synopsis of Bill

Senate Bill 233 proposes a new section of the Unfair Practices Act to prohibit and make certain acts “unfair and deceptive trade practices” subject to penalty. Acts prohibited include: blocking, impairing or degrading lawful content, applications, services or use of non-harmful devices; engaging in paid prioritization; unreasonably interfering with or unreasonably disadvantage and end users ability to select access and use broadband internet access; and failing to disclose upon request accurate information regarding network practices and performance so consumers can make an informed choice regarding services.

SB 233 appropriates \$250 thousand of general fund revenue to the NMAG for use in FY19 and FY20 to review the elimination of the Federal Communications Commission (FCC) rules regarding broadband and internet neutrality, and file or join a lawsuit to challenge the decision by the FCC to eliminate broadband internet neutrality.

FISCAL IMPLICATIONS

SB 233 appropriates \$250 thousand of general fund revenue to the New Mexico Attorney General in 2019 and 2020 to review the FCC's elimination of its 2015 net neutrality rule, and to file or join a lawsuit to challenge the FCC's elimination of the 2015 net neutrality rule.

It is unclear what fiscal implications this expansion of the Unfair Practices Act would have on DoIT. If DoIT is required to monitor local ISP services and ensure they are compliant with the expansion of the Unfair Trade Practices Act, DoIT may need to allocate resources.

SIGNIFICANT ISSUES

The New Mexico Attorney General has already joined in a lawsuit with 21 other attorneys general, and many other parties, against the FCC to prevent the elimination of net neutrality (D.C. Circuit Case No. 18-1051, scheduled for oral argument 2/1/19).

The Public Regulation Commission notes the following concerns:

On December 14, 2017, the FCC issued its Restoring Internet Freedom order reversing its decision in a prior Order of March 2015 classifying broadband internet access services as interstate telecommunications services subject to common carriage regulation under Title II. Previously, the FCC classified broadband internet access services as an information service subject to regulation under Title I. The FCC decided to forbear in its 2015 Open Internet Order from applying the majority of the Sections of Title II regulation, but did move to enforce rules to prevent internet access providers from engaging in behavior that would block, throttle, or allow paid prioritization of broadband internet access services as outlined in this bill.

The FCC's prior Open Internet Order of 2015 was challenged by a number of interests, including most of the major internet access provider (large local and wireless telecommunications providers and cable providers), but was upheld by the D.C. Circuit Court.

Those parties that supported the FCC's Open Internet Order of 2015 (Content providers such as Google, Amazon, consumer groups, and the National Association of Regulatory Utility Commissioners) challenged the FCC's 2017 Restoring Internet Freedom Order removing the Title II designation of broadband internet access services. The attorney general offices from 23 states joined in that legal challenge, including the New Mexico Attorney General's Office. Legal challenges were consolidated and assigned to the D.C. Court of appeals, where briefing was completed in 2018, and oral arguments before the D.C. circuit court are scheduled for February 1, 2019. Many parties argued for and against the FCC's Restoring Internet Freedom Order.

Those that support the classification of broadband internet access services as a telecommunications service argued that it will protect content providers in accessing consumers with their content, and will protect consumers' freedom to choose the content of their choice without threat of blocking, throttling, or paying more for the content of their choosing. Proponents fear that internet service providers will use their "gatekeeper" role to control the flow of information to consumers. They also argue that it will not deter

network investment by the internet network providers.

Those that support the repeal of Title II regulation of broadband internet access services argued that Title II regulation imposes costly regulation on internet service providers and disincentivizes those providers from investing in expanding their networks and developing cutting edge services. They also argue that internet service providers do not have the incentive to abuse their gatekeeper roles due to competition, and the Federal Trade Commission's complaint procedures are adequate to prevent those abuses which Title II proponents fear will come to pass.

Like New Mexico, many states are introducing net neutrality legislation in order to maintain or restore those Title II protections rescinded by the FCC in its December 2017 Internet Freedom Order. Given the fact that the FCC has determined that broadband internet access services are interstate in nature, there is a question whether state legislation would provide adequate protections for the blocking or throttling of internet access services, or for preventing paid prioritization of internet services should that legislation be challenged. The U.S. Department of Justice filed a lawsuit against the State of California challenging a net neutrality law passed by that state, stating that the State of California had overreached in its authority in attempting to enforce the provisions of that statute. The State of California stated that for now, it would not enforce the provisions of that law that went into effect January 1, 2019.

The ability of the state to enforce net neutrality rules through legislation may be questionable because the FCC has determined that broadband internet access service is interstate in nature, leaving the state with limited to no jurisdiction over those services.

ALTERNATIVES

Alternatives to accomplishing the intent of SB 233 would be to require state contracts only with internet providers that have been certified to meet or follow net neutrality requirements and standards.

IT/sb