SENATE, No. 1180

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:
Senator NILSA CRUZ-PEREZ
District 5 (Camden and Gloucester)

SYNOPSIS
Establishes “New Jersey Net Neutrality Act.”

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning Internet service providers and supplementing
Title 56 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. This act shall be known and may be cited as the “New Jersey
Net Neutrality Act.”

2. The Legislature finds and declares that:
   a. It is the public policy of the State to ensure that all New
      Jersey customers of Internet service providers have access to an
      open and neutral Internet.
   b. The prioritization of lawful Internet network traffic, except
      for reasonable Internet network management, may impede
      competition in the Internet marketplace by permitting Internet
      service providers to exert undue influence and potentially usurp the
      customer’s privilege to dictate success in the marketplace.
   c. The prioritization of lawful Internet network traffic, except
      for reasonable Internet network management, may stifle innovation
      by providing large and established companies enhanced access to
      customers and, in turn, degrading the access of small businesses,
      entrepreneurs, and start-up companies to customers.
   d. The prioritization of lawful Internet network traffic, except
      for reasonable Internet network management, may lead to increased
      costs for customers as content providers are likely to pass along to
      their customers any increase in operating costs caused by any fee
      that allows for that prioritization.
   e. The prioritization of lawful Internet network traffic, except
      for Internet reasonable network management, may inhibit the free
      exchange of ideas on the Internet by allowing Internet service
      providers to give selected content providers enhanced access to the
      Internet user community.

3. As used in P.L. , c. (C. ) (pending before the
   Legislature as this bill):
   “Content provider” means any person, business or organization
   that owns or operates a website or creates, develops, promotes, or
   owns any content, including, but not limited to video, audio and
   text, that is available via the Internet.
   “Director” means the Director of the Division of Consumer
   Affairs in the Department of Law and Public Safety.
   “Division” means the Division of Consumer Affairs in the
   Department of Law and Public Safety.
   “Internet” means the international computer network of both
   federal and non-federal interoperable packet switched data
   networks.
“Internet service provider” means any person, business, or organization qualified to do business in this State that provides individuals, corporations, or other entities with the ability to connect to the Internet through equipment that is located in this State.

“Reasonable Internet network management” means an Internet network management practice that is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the Internet access service, or that is for emergency communication, law enforcement, public safety, or national security purposes.

4. Except where deemed necessary for reasonable Internet network management, an Internet service provider shall provide all customers in this State:
   a. access to any lawful Internet content of their choice;
   b. the ability to attach or connect any lawful device to the network on the customer’s end connection, provided that the device does not harm the network;
   c. the ability to run any lawful application and use any lawful service of their choice; and
   d. access to an open and neutral Internet, free of any attempt by any Internet service provider to privilege, degrade, prioritize, or block any data transmitted across its network based upon the type, content, source, ownership, or destination of the data.

5. An Internet service provider shall provide all customers in this State:
   a. full disclosure, at the time they become customers of that provider, of the Internet service provider’s policies relating to, or any action taken by the Internet service provider having the effect of, the privileging, degrading, prioritizing, or blocking of any Internet traffic.
   b. prior written notification at least 30 days before the implementation of, or any change in, any of their Internet service provider’s policies or actions after they become customers of that provider that will result in the privileging, degrading, prioritizing, or blocking of any Internet traffic except where necessary for reasonable Internet network management.
   c. disclosure of all agreements made by the Internet service provider and a content provider that provide the content provider’s Internet traffic with any form of preferential treatment over any other lawful Internet traffic.
   d. a comprehensive list, within their monthly or other periodic billing statement, of any and all fees charged by the Internet service provider, separately itemized for each fee and, if applicable, for each instance in which that fee is charged, including, but not limited to, all fees charged by the Internet service provider for accessing a
particular website, with each occurrence of such access for which
the customer has incurred a charge listed separately, together with
the time and date of access.

6. a. There is established in the Division of Consumer Affairs
in the Department of Law and Public Safety the “New Jersey
Internet Service Provider Registry” for the purpose of making
Internet service quality and pricing information readily available to
customers within the State.

b. The division shall promulgate regulations that require all
Internet service providers with New Jersey customers to
affirmatively disclose the following information to the division:
(1) the material terms of any agreement with any content
provider that will result in the privileging or prioritization of a
content provider’s Internet traffic. Disclosure of this information
shall occur before the Internet service provider takes any action
which would result in the privileging or prioritization of the content
provider’s Internet traffic;
(2) all of the Internet service provider’s policies relating to, or
any action taken by the Internet service provider that will result in,
the privileging, degrading, prioritizing, or blocking of any Internet
traffic. Disclosure of this information shall occur before the Internet
service provider takes any actions which would result in the
privileging, degrading, prioritizing, or blocking of any Internet
traffic, except that the disclosure may occur within seven calendar
days after any action is taken if the action is necessary for
reasonable Internet network management; and
(3) the material terms of all basic agreements entered into with
all of its customers for Internet service, including a full accounting
of any and all fees charged by the Internet service provider to its
customers and any promises or assertions made regarding the
connectivity speed of the Internet service.

c. The division shall conduct verification tests, on its own or
through a third-party, to determine the average connectivity speed
experienced by actual users for each Internet service provider
within the State.

d. The division shall compile the information disclosed by all
of the Internet service providers within the State pursuant to P.L. ,
( ) (pending before the Legislature as this bill) and from
the division’s own verification tests, conducted pursuant to this
section, into an “Internet Service Provider Registry.” The director
shall organize the registry in a format that is conducive to review
and comparison by customers and prospective customers of Internet
service. At a minimum, the registry shall include for each Internet
service provider:
(1) all fees charged by the Internet service provider;
(2) the connectivity speed that the Internet service provider
promises or claims to provide to its customers;
(3) the average connectivity speed found during the division’s verification tests;

(4) a full list of any content providers that have entered into an agreement with each Internet service provider for the privileging or prioritizing of the content provider’s Internet traffic; and

(5) a simple explanation of the Internet service provider’s policies relating to privileging, degrading, prioritizing, or blocking of any Internet traffic, and any impact those policies may have on the Internet service provider’s customers.

e. The division shall make available electronically on its Internet website in English and Spanish the information contained in the registry, and shall provide the information to customers and prospective customers upon request by means of a toll-free telephone service operated by the division.

The information available on the Internet website shall:

(1) be organized to meet the requirements of subsection d. of this section and be designed so that the customer or prospective customer may download and print the displayed information;

(2) include a statement drafted by the director which explains the potential negative impact that non-neutral treatment of Internet traffic can have upon customers of Internet service and, more generally, on the Internet marketplace, competition, innovation and the free exchange of ideas, which shall be prominently displayed at the top of each of the website’s pages;

(3) include the full text of section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill) and the disclosures required pursuant to section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill);

(4) include Internet web links to other governmental resources that provide information relating to Internet network neutrality, the regulation of the Internet, how a complaint may be filed with the Federal Communications Commission for a violation of any of its open Internet regulations including, but not limited to, regulations under Part 8 of Title 47 of the Code of Federal Regulations, and how a complaint may be filed with the division for a violation of P.L. , c. (C. ) (pending before the Legislature as this bill); and

(5) contain clear language that is designed to assist customers and prospective customers in understanding the content of, and how to access, the information made available on the website.

f. The division may contract with a public or private entity for the purpose of developing, administering, and maintaining the registry established pursuant to this section. The contract shall specify the duties and responsibilities of the entity with respect to the development, administration, and maintenance of the registry. The division shall monitor the work of the entity to ensure that the registry is developed, administered, and maintained pursuant to the
requirements of P.L. , c. (C. ) (pending before the Legislature as this bill).

7. a. An Internet service provider that conducts business in this State and that privileges, degrades, prioritizes, or blocks any Internet traffic, except where necessary for reasonable Internet network management, shall provide to all New Jersey customers, upon entering into an agreement for service and annually thereafter, a document containing the following information:

   (1) the full text of section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill) and the disclosures required pursuant to section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), set forth by the division as the “New Jersey Net Neutrality Act”

   (2) a statement detailing any of the Internet service provider’s policies that may result in the privileging, degrading, prioritizing, or blocking of any Internet traffic;

   (3) a statement describing any actions regularly taken by the Internet service provider that result in the privileging, degrading, prioritizing, or blocking of any Internet traffic;

   (4) a full list of content providers that have entered into an agreement with the Internet service provider for the privileging or prioritizing of its Internet traffic; and

   (5) the network traffic prioritization notification statement, which shall read as follows, “The Internet service you receive has been prioritized by [name of Internet service provider] and therefore, discriminates against non-prioritized content. It is possible that a particular website or content that you wish to view may load more slowly or fail to properly load on your computer or Internet access device as a result of network prioritization.” The Internet service provider shall insert, in place of the name designated by bracketed text above, the name of the company that is contracted to provide Internet service to the customer receiving the notification.

b. An Internet service provider offering services to a New Jersey customer that privileges, degrades, prioritizes, or blocks any Internet traffic, except where necessary for reasonable Internet network management, shall include, in a prominent location and in 12-point boldface type, the network traffic prioritization notification statement, as required pursuant to subsection a. of this section, in every bill or statement sent to each customer receiving Internet services within New Jersey.

8. It shall be an unlawful practice and a violation of P.L.1960, c.39 46 (C.56:8-1 et seq.) to violate any provision of P.L. , c. (C. ) (pending before the Legislature as this bill).
9. This act shall take effect on the first day of the third month next following the date of enactment, but the Director of the Division of Consumer Affairs may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

The bill entitled the “New Jersey Net Neutrality Act,” establishes a system to ensure that all New Jersey customers of Internet Service Providers (ISPs) are able to receive proper Internet service. The bill addresses concerns over the Federal Communications Commission’s (FCC) proposed plan to repeal regulations that ensure equal access to the Internet and prevent ISPs from charging customers higher fees or stopping or slowing down Internet service. Under the bill, ISPs are to provide customers access to any lawful Internet content of their choice, the ability to attach any lawful, non-harmful device to their end connection, the ability to run any lawful application or use any lawful service of their choice, and access to an open, neutral and non-prioritized Internet.

The bill provides that ISPs provide customers prior written notification of any change in their policies that will result in the prioritization of Internet traffic, except in circumstances involving reasonable Internet network management. ISPs are required to disclose to their customers prioritization policies generally, and any agreement the ISP has entered into with a content provider for the prioritization of the content provider’s Internet traffic. ISPs are also required to permit customers to receive itemized bills, and if an ISP charges for accessing particular websites, the bill shall list the time and date the customer accessed those websites.

The bill directs the Division of Consumer Affairs (the division) to establish the “New Jersey Internet Service Provider Registry,” and promulgate regulations requiring all ISPs to affirmatively disclose to the division any prioritization policies, agreements with content providers for prioritization, and the material terms for their agreements with their customers, including all fees to be charged and any promises or assertions regarding connectivity speed. The division is also directed to test each ISP’s connectivity speed. This information is to be posted online, in an understandable format, so that customers may compare the costs, prioritization policies, promised or asserted connectivity speeds, and actual connectivity speeds of ISPs within the State.

A violation of this bill is an unlawful practice under the consumer fraud act, which is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for a subsequent offense.