

First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 19-0485.01 Jennifer Berman x3286

SENATE BILL 19-078

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SENATE SPONSORSHIP

Donovan,

HOUSE SPONSORSHIP

Hansen and Herod,

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Senate Committees

State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE PROTECTION OF THE OPEN INTERNET, AND, IN  
102 CONNECTION THEREWITH, DISQUALIFYING AN INTERNET  
103 SERVICE PROVIDER FROM RECEIVING HIGH COST SUPPORT  
104 MECHANISM MONEY OR OTHER MONEY RECEIVED TO FINANCE  
105 BROADBAND DEPLOYMENT IF THE INTERNET SERVICE PROVIDER  
106 ENGAGES IN CERTAIN PRACTICES THAT INTERFERE WITH THE  
107 OPEN INTERNET, REQUIRING AN INTERNET SERVICE PROVIDER  
108 THAT ENGAGES IN SUCH PRACTICES TO REFUND ANY SUCH  
109 MONEY RECEIVED, AND REQUIRING A GOVERNMENTAL BODY  
110 CONTRACTING FOR BROADBAND INTERNET ACCESS SERVICE TO  
111 GIVE PREFERENCE TO AN INTERNET SERVICE PROVIDER THAT  
112 CERTIFIES THAT IT WILL NOT ENGAGE IN PRACTICES THAT  
113 INTERFERE WITH THE OPEN INTERNET.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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## Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

**Section 1** of the bill disqualifies an internet service provider (ISP) from receiving money from the high cost support mechanism if the ISP engages in any of the following practices:

- ! Blocking lawful internet content, applications, services, or devices unless such blocking is conducted in a manner consistent with reasonable network management practices;
- ! Engaging in paid prioritization of internet content;
- ! Regulating network traffic by throttling bandwidth or otherwise impairing or degrading lawful internet traffic on the basis of internet content, application, service, or use of a device unless the impairment or degradation is conducted in a manner consistent with reasonable network management practices; or
- ! Not providing reasonable transparency regarding its network management practices.

Section 1 also requires that, if an ISP is found to have engaged in any of the practices listed above, the ISP must refund any money that it received in the prior 24 months from the high cost support mechanism or from any other state support mechanism or other state funding source established to help finance broadband deployment.

**Section 2** requires the broadband deployment board (board) to periodically review the federal trade commission's and federal communications commission's websites to identify any actions the federal agencies may have taken against an ISP that seeks or has received broadband deployment grant money from the board. If the board determines from a review of the federal agency action that the ISP engaged in one of the practices listed above, the board shall deny the application or inform the public utilities commission of the action.

**Section 3** requires the attorney general or the attorney general's designee, in collaboration with the board, to develop guidance for consumers on how to file a complaint with the federal trade commission to allege that an ISP has engaged in any of the practices that violate federal law regarding interference with the open internet. The department of law shall post the guidance on its website.

**Section 4** requires a governmental body, when contracting for broadband internet access service, to give preference to an ISP that

certifies to the governmental body that it will not engage in any of the practices listed in section 1.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 40-15-209 as  
3 follows:

4 **40-15-209. Net neutrality conditions for internet service**  
5 **providers to receive high cost support mechanism money -**  
6 **definitions.** (1) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS  
7 SECTION, AN INTERNET SERVICE PROVIDER THAT IS OTHERWISE ELIGIBLE  
8 TO RECEIVE MONEY THROUGH A GRANT FROM THE BROADBAND  
9 DEPLOYMENT BOARD PURSUANT TO SECTION 40-15-509.5, THROUGH  
10 REIMBURSEMENT FROM THE HIGH COST SUPPORT MECHANISM  
11 ESTABLISHED IN SECTION 40-15-208, OR THROUGH ANY OTHER SUPPORT  
12 MECHANISM OR OTHER FUNDING SOURCE ESTABLISHED IN COLORADO TO  
13 HELP FINANCE BROADBAND DEPLOYMENT IS NOT ELIGIBLE TO RECEIVE  
14 THAT MONEY IF THE INTERNET SERVICE PROVIDER:

15 (a) BLOCKS ANY LAWFUL INTERNET CONTENT, APPLICATIONS,  
16 SERVICES, OR DEVICES UNLESS THE BLOCKING IS CONDUCTED IN A MANNER  
17 CONSISTENT WITH REASONABLE NETWORK MANAGEMENT PRACTICES;

18 (b) ENGAGES IN PAID PRIORITIZATION OF INTERNET CONTENT;

19 (c) REGULATES NETWORK TRAFFIC BY THROTTLING BANDWIDTH  
20 OR OTHERWISE IMPAIRS OR DEGRADES LAWFUL INTERNET TRAFFIC ON THE  
21 BASIS OF INTERNET CONTENT, APPLICATION, SERVICE, OR USE OF A DEVICE  
22 UNLESS THE IMPAIRMENT OR DEGRADATION RESULTS SOLELY FROM THE  
23 EVENHANDED APPLICATION OF REASONABLE NETWORK MANAGEMENT  
24 PRACTICES; OR

25 (d) FAILS OR REFUSES TO DISCLOSE, SUBJECT TO REASONABLE

1 CONDITIONS TO PROTECT PROPRIETARY INFORMATION, ITS NETWORK  
2 MANAGEMENT PRACTICES.

3 (2) (a) IF THE COMMISSION LEARNS THAT A FEDERAL AGENCY HAS  
4 ISSUED A FINAL ORDER OR ENTERED INTO A SETTLEMENT OR CONSENT  
5 DECREE REGARDING, OR A COURT OF COMPETENT JURISDICTION HAS  
6 ISSUED A FINAL JUDGMENT AGAINST, AN INTERNET SERVICE PROVIDER AND  
7 THE COMMISSION DETERMINES FROM THE ORDER, DECREE, OR JUDGMENT  
8 THAT THE INTERNET SERVICE PROVIDER HAS ENGAGED IN CONDUCT  
9 SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE COMMISSION SHALL  
10 ISSUE A WRITTEN ORDER TO THE INTERNET SERVICE PROVIDER REQUIRING  
11 THE INTERNET SERVICE PROVIDER TO FULLY REFUND ANY MONEY THAT  
12 THE INTERNET SERVICE PROVIDER RECEIVED IN THE TWENTY-FOUR  
13 MONTHS PRECEDING THE COMMISSION'S DETERMINATION FROM ANY OF  
14 THE FOLLOWING SOURCES:

15 (I) MONEY DISBURSED AT THE DIRECTION OF THE COMMISSION  
16 FROM THE HIGH COST SUPPORT MECHANISM:

17 (A) FOR BASIC SERVICE PURSUANT TO SECTION 40-15-208; OR

18 (B) PURSUANT TO A GRANT AWARDED BY THE BROADBAND  
19 DEPLOYMENT BOARD PURSUANT TO SECTION 40-15-509.5; OR

20 (II) MONEY DISBURSED BY OR AT THE DIRECTION OF THE  
21 COMMISSION FROM ANY OTHER STATE SUPPORT MECHANISM OR OTHER  
22 STATE FUNDING SOURCE ESTABLISHED TO HELP FINANCE BROADBAND  
23 DEPLOYMENT.

24 (b) AN ORDER ISSUED BY THE COMMISSION PURSUANT TO  
25 SUBSECTION (2)(a) OF THIS SECTION MUST INCLUDE AN ITEMIZED  
26 STATEMENT OF THE AMOUNT OF MONEY THAT THE INTERNET SERVICE  
27 PROVIDER IS REQUIRED TO REFUND AND INSTRUCTIONS ON HOW TO REFUND

1 THE MONEY.

2 (c) THE THIRD-PARTY CONTRACTOR THAT MAINTAINS THE HIGH  
3 COST SUPPORT MECHANISM SHALL ALLOCATE ANY MONEY REFUNDED TO  
4 THE HIGH COST SUPPORT MECHANISM PURSUANT TO THIS SUBSECTION (2)  
5 TO THE HIGH COST SUPPORT MECHANISM ACCOUNT DEDICATED TO  
6 BROADBAND DEPLOYMENT, WHICH ACCOUNT IS DESCRIBED IN SECTION  
7 40-15-509.5 (3).

8 (d) A REQUIREMENT THAT AN INTERNET SERVICE PROVIDER  
9 REFUND MONEY TO THE HIGH COST SUPPORT MECHANISM PURSUANT TO  
10 THIS SECTION DOES NOT RELIEVE THE INTERNET SERVICE PROVIDER OF ANY  
11 PROVIDER-OF-LAST-RESORT OBLIGATIONS THAT THE INTERNET SERVICE  
12 PROVIDER OTHERWISE HAS PURSUANT TO THIS ARTICLE 15.

13 (3) AN INTERNET SERVICE PROVIDER IS EXEMPT FROM THE  
14 OBLIGATIONS SET FORTH IN SUBSECTIONS (1) AND (2) OF THIS SECTION IF  
15 THE INTERNET SERVICE PROVIDER ENGAGES IN ANY OF THE PRACTICES  
16 LISTED IN SUBSECTIONS (1)(a) TO (1)(d) OF THIS SECTION IN THE COURSE  
17 OF:

18 (a) PROVIDING, FACILITATING THE PROVISION OF, OR ADDRESSING  
19 EMERGENCY COMMUNICATIONS, AS PERMITTED OR REQUIRED BY LAW OR  
20 AT THE REQUEST OR DIRECTION OF AUTHORITIES SERVING IN LAW  
21 ENFORCEMENT, PUBLIC SAFETY, OR NATIONAL SECURITY; OR

22 (b) ADDRESSING COPYRIGHT INFRINGEMENT OR OTHER UNLAWFUL  
23 ACTIVITY.

24 (4) AS USED IN THIS SECTION:

25 (a) (I) "BROADBAND INTERNET ACCESS SERVICE" MEANS A  
26 MASS-MARKET RETAIL SERVICE THAT PROVIDES THE CAPABILITY TO  
27 TRANSMIT AND RECEIVE DATA FROM ALL OR SUBSTANTIALLY ALL

1 INTERNET ENDPOINTS, INCLUDING ANY CAPABILITIES THAT ARE  
2 INCIDENTAL TO AND ENABLE THE OPERATION OF THE SERVICE, BUT  
3 EXCLUDING DIAL-UP INTERNET ACCESS SERVICE.

4 (II) "BROADBAND INTERNET ACCESS SERVICE" INCLUDES SERVICES  
5 PROVIDED OVER ANY TECHNOLOGY PLATFORM, INCLUDING WIRE,  
6 TERRESTRIAL WIRELESS, AND SATELLITE.

7 (b) "INTERNET SERVICE PROVIDER" MEANS A PROVIDER OF  
8 BROADBAND INTERNET ACCESS SERVICE IN COLORADO.

9 (c) "PAID PRIORITIZATION" MEANS THE MANAGEMENT OF AN  
10 INTERNET SERVICE PROVIDER'S NETWORK TO DIRECTLY OR INDIRECTLY  
11 FAVOR SOME TRAFFIC OVER OTHER TRAFFIC, INCLUDING THROUGH THE USE  
12 OF TECHNIQUES SUCH AS TRAFFIC SHAPING, PRIORITIZATION, RESOURCE  
13 RESERVATION, OR OTHER FORMS OF PREFERENTIAL TRAFFIC MANAGEMENT,  
14 EITHER:

15 (I) IN EXCHANGE FOR CONSIDERATION, MONETARY OR OTHERWISE,  
16 FROM A THIRD PARTY;

17 (II) TO BENEFIT AN AFFILIATED ENTITY; OR

18 (III) TO DISADVANTAGE A COMPETING ENTITY OR ITS AFFILIATES.

19 (d) "REASONABLE NETWORK MANAGEMENT" MEANS A NETWORK  
20 MANAGEMENT PRACTICE THAT IS APPROPRIATE AND TAILORED TO  
21 ACHIEVING A LEGITIMATE NETWORK MANAGEMENT PURPOSE, TAKING INTO  
22 ACCOUNT THE PARTICULAR NETWORK ARCHITECTURE AND TECHNOLOGY  
23 OF THE BROADBAND INTERNET ACCESS SERVICE.

24 (e) "THROTTLING" MEANS THE INTENTIONAL SLOWING OF  
25 BROADBAND INTERNET ACCESS SERVICE.

26 **SECTION 2.** In Colorado Revised Statutes, 40-15-509.5, **add**  
27 (8.3) as follows:

1           **40-15-509.5. Broadband service - report - broadband**  
2 **deployment board - broadband administrative fund - creation -**  
3 **repeal.** (8.3) (a) THE BOARD SHALL PERIODICALLY REVIEW THE WEBSITES  
4 OF THE FEDERAL TRADE COMMISSION AND THE FCC TO DETERMINE  
5 WHETHER EITHER OF THOSE FEDERAL AGENCIES HAS ISSUED A FINAL  
6 ORDER OR ENTERED INTO A SETTLEMENT OR CONSENT DECREE REGARDING  
7 ANY:

8           (I) APPLICANT SEEKING BROADBAND DEPLOYMENT GRANT MONEY  
9 FROM THE BOARD; OR

10          (II) INTERNET SERVICE PROVIDER, AS DEFINED IN SECTION  
11 40-15-209 (4)(b), TO WHICH THE BOARD HAS AWARDED BROADBAND  
12 DEPLOYMENT GRANT MONEY.

13          (b) THE BOARD SHALL REVIEW ANY ORDER OR DECREE DESCRIBED  
14 IN SUBSECTION (8.3)(a) OF THIS SECTION TO DETERMINE WHETHER THE  
15 INTERNET SERVICE PROVIDER THAT IS THE SUBJECT OF THE ORDER OR  
16 DECREE HAS ENGAGED IN CONDUCT PROHIBITED BY SECTION 40-15-209  
17 (1)(a) TO (1)(d). THE BOARD SHALL DENY THE APPLICATION OF ANY  
18 APPLICANT SUBJECT TO SUCH A FEDERAL ORDER OR DECREE AND SHALL  
19 INFORM THE COMMISSION PURSUANT TO SECTION 40-15-209 (2)(a) ABOUT  
20 ANY INTERNET SERVICE PROVIDER AWARDED BROADBAND DEPLOYMENT  
21 GRANT MONEY THAT IS SUBJECT TO SUCH AN ORDER OR DECREE.

22           **SECTION 3.** In Colorado Revised Statutes, **add** article 26 to title  
23 6 as follows:

24                                   **ARTICLE 26**

25                                   **Internet Service Providers**

26           **6-26-101. Complaints to federal trade commission - attorney**  
27 **general to provide guidance.** (1) THE ATTORNEY GENERAL OR THE

1 ATTORNEY GENERAL'S DESIGNEE, IN COLLABORATION WITH THE  
2 BROADBAND DEPLOYMENT BOARD CREATED IN SECTION 40-15-509.5 (5),  
3 SHALL DEVELOP WRITTEN GUIDANCE FOR CONSUMERS SEEKING TO FILE A  
4 COMPLAINT WITH THE FEDERAL TRADE COMMISSION TO ALLEGE THAT AN  
5 INTERNET SERVICE PROVIDER, AS DEFINED IN SECTION 40-15-209 (4)(b),  
6 HAS ENGAGED IN ANY PRACTICE THAT VIOLATES FEDERAL LAW REGARDING  
7 INTERFERENCE WITH THE OPEN INTERNET.

8 (2) ON OR BEFORE OCTOBER 1, 2019, THE DEPARTMENT OF LAW  
9 SHALL POST THE WRITTEN GUIDANCE DEVELOPED PURSUANT TO  
10 SUBSECTION (1) OF THIS SECTION ON ITS PUBLIC WEBSITE.

11 (3) THE ATTORNEY GENERAL, IN COLLABORATION WITH THE  
12 BROADBAND DEPLOYMENT BOARD, SHALL UPDATE THE WRITTEN  
13 GUIDANCE AS NEEDED.

14 **SECTION 4.** In Colorado Revised Statutes, **add** 24-103-911 as  
15 follows:

16 **24-103-911. Preference for internet service providers that**  
17 **certify compliance with open internet protections - definitions.**

18 (1) WHEN CONTRACTING FOR BROADBAND INTERNET ACCESS SERVICE, A  
19 GOVERNMENTAL BODY SHALL GIVE PREFERENCE TO AN INTERNET SERVICE  
20 PROVIDER THAT CERTIFIES TO THE GOVERNMENTAL BODY THAT, EXCEPT  
21 AS ALLOWED UNDER SECTION 40-15-209 (3), THE INTERNET SERVICE  
22 PROVIDER WILL NOT ENGAGE IN ANY OF THE PRACTICES SET FORTH IN  
23 SECTION 40-15-209 (1).

24 (2) AS USED IN THIS SECTION:

25 (a) "BROADBAND INTERNET ACCESS SERVICE" HAS THE MEANING  
26 SET FORTH IN SECTION 40-15-209 (4)(a).

27 (b) "INTERNET SERVICE PROVIDER" HAS THE MEANING SET FORTH



1 IN SECTION 40-15-209 (4)(b).

2           **SECTION 5. Applicability.** This act applies to conduct occurring  
3 on or after the effective date of this act.

4           **SECTION 6. Safety clause.** The general assembly hereby finds,  
5 determines, and declares that this act is necessary for the immediate  
6 preservation of the public peace, health, and safety.