

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0485.01 Jennifer Berman x3286

SENATE BILL 19-078

SENATE SPONSORSHIP

Donovan and Bridges,

HOUSE SPONSORSHIP

Hansen and Herod,

Senate Committees

State, Veterans, & Military Affairs

House Committees

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.*

SENATE
Amended 2nd Reading
March 5, 2019

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.

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 OR THROUGH
10 ANY STATE FUND ESTABLISHED TO HELP FINANCE BROADBAND
11 DEPLOYMENT IS NOT ELIGIBLE TO RECEIVE THAT MONEY IF THE INTERNET
12 SERVICE PROVIDER:

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

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

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

23 (d) FAILS OR REFUSES TO DISCLOSE, SUBJECT TO REASONABLE
24 CONDITIONS TO PROTECT PROPRIETARY INFORMATION, ITS NETWORK
25 MANAGEMENT PRACTICES.

1 (2) (a) IF THE COMMISSION LEARNS FROM THE BROADBAND
2 DEPLOYMENT BOARD THAT A FEDERAL AGENCY HAS ISSUED A FINAL
3 ORDER OR ENTERED INTO A SETTLEMENT OR CONSENT DECREE REGARDING,
4 OR A COURT OF COMPETENT JURISDICTION HAS ISSUED A FINAL JUDGMENT
5 AGAINST, AN INTERNET SERVICE PROVIDER AND THAT THE BOARD HAS
6 DETERMINED FROM THE ORDER, DECREE, OR JUDGMENT THAT THE
7 INTERNET SERVICE PROVIDER HAS ENGAGED IN CONDUCT SPECIFIED IN
8 SUBSECTION (1) OF THIS SECTION, THE COMMISSION SHALL ISSUE A
9 WRITTEN ORDER TO THE INTERNET SERVICE PROVIDER REQUIRING THE
10 INTERNET SERVICE PROVIDER TO FULLY REFUND ANY MONEY THAT THE
11 INTERNET SERVICE PROVIDER RECEIVED IN THE TWENTY-FOUR MONTHS
12 PRECEDING THE BOARD'S DETERMINATION FROM THE HIGH COST SUPPORT
13 MECHANISM PURSUANT TO A GRANT AWARDED BY THE BROADBAND
14 DEPLOYMENT BOARD UNDER SECTION 40-15-509.5.

15 (b) AN ORDER ISSUED BY THE COMMISSION PURSUANT TO
16 SUBSECTION (2)(a) OF THIS SECTION MUST INCLUDE AN ITEMIZED
17 STATEMENT OF THE AMOUNT OF MONEY THAT THE INTERNET SERVICE
18 PROVIDER IS REQUIRED TO REFUND AND INSTRUCTIONS ON HOW TO REFUND
19 THE MONEY.

20 (c) THE THIRD-PARTY CONTRACTOR THAT MAINTAINS THE HIGH
21 COST SUPPORT MECHANISM SHALL ALLOCATE ANY MONEY REFUNDED TO
22 THE HIGH COST SUPPORT MECHANISM PURSUANT TO THIS SUBSECTION (2)
23 TO THE HIGH COST SUPPORT MECHANISM ACCOUNT DEDICATED TO
24 BROADBAND DEPLOYMENT, WHICH ACCOUNT IS DESCRIBED IN SECTION
25 40-15-509.5 (3).

26 (d) A REQUIREMENT THAT AN INTERNET SERVICE PROVIDER
27 REFUND MONEY TO THE HIGH COST SUPPORT MECHANISM PURSUANT TO

1 THIS SECTION DOES NOT RELIEVE THE INTERNET SERVICE PROVIDER OF ANY
2 PROVIDER-OF-LAST-RESORT OBLIGATIONS THAT THE INTERNET SERVICE
3 PROVIDER OTHERWISE HAS PURSUANT TO THIS ARTICLE 15.

4 (3) AN INTERNET SERVICE PROVIDER IS EXEMPT FROM THE
5 OBLIGATIONS SET FORTH IN SUBSECTIONS (1) AND (2) OF THIS SECTION IF
6 THE INTERNET SERVICE PROVIDER ENGAGES IN ANY OF THE PRACTICES
7 LISTED IN SUBSECTIONS (1)(a) TO (1)(d) OF THIS SECTION IN THE COURSE
8 OF:

9 (a) PROVIDING, FACILITATING THE PROVISION OF, OR ADDRESSING
10 EMERGENCY COMMUNICATIONS, AS PERMITTED OR REQUIRED BY LAW OR
11 AT THE REQUEST OR DIRECTION OF AUTHORITIES SERVING IN LAW
12 ENFORCEMENT, PUBLIC SAFETY, OR NATIONAL SECURITY; OR

13 (b) ADDRESSING COPYRIGHT INFRINGEMENT OR OTHER UNLAWFUL
14 ACTIVITY.

15 (4) AS USED IN THIS SECTION:

16 (a) (I) "BROADBAND INTERNET ACCESS SERVICE" MEANS A
17 MASS-MARKET RETAIL SERVICE THAT PROVIDES THE CAPABILITY TO
18 TRANSMIT AND RECEIVE DATA FROM ALL OR SUBSTANTIALLY ALL
19 INTERNET ENDPOINTS, INCLUDING ANY CAPABILITIES THAT ARE
20 INCIDENTAL TO AND ENABLE THE OPERATION OF THE SERVICE, BUT
21 EXCLUDING DIAL-UP INTERNET ACCESS SERVICE.

22 (II) "BROADBAND INTERNET ACCESS SERVICE" INCLUDES SERVICES
23 PROVIDED OVER ANY TECHNOLOGY PLATFORM, INCLUDING WIRE,
24 TERRESTRIAL WIRELESS, AND SATELLITE.

25 (b) "INTERNET SERVICE PROVIDER" MEANS A PROVIDER OF
26 BROADBAND INTERNET ACCESS SERVICE IN COLORADO.

27 (c) "PAID PRIORITIZATION" MEANS THE MANAGEMENT OF AN

1 INTERNET SERVICE PROVIDER'S NETWORK TO DIRECTLY OR INDIRECTLY
2 FAVOR SOME TRAFFIC OVER OTHER TRAFFIC, INCLUDING THROUGH THE USE
3 OF TECHNIQUES SUCH AS TRAFFIC SHAPING, PRIORITIZATION, RESOURCE
4 RESERVATION, OR OTHER FORMS OF PREFERENTIAL TRAFFIC MANAGEMENT,
5 EITHER:

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

8 (II) TO BENEFIT AN AFFILIATED ENTITY; OR

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

10 (d) "REASONABLE NETWORK MANAGEMENT" MEANS A NETWORK
11 MANAGEMENT PRACTICE THAT IS APPROPRIATE AND TAILORED TO
12 ACHIEVING A LEGITIMATE NETWORK MANAGEMENT PURPOSE, TAKING INTO
13 ACCOUNT THE PARTICULAR NETWORK ARCHITECTURE AND TECHNOLOGY
14 OF THE BROADBAND INTERNET ACCESS SERVICE.

15 (e) "THROTTLING" MEANS THE INTENTIONAL SLOWING OF
16 BROADBAND INTERNET ACCESS SERVICE.

17 **SECTION 2.** In Colorado Revised Statutes, 40-15-509.5, **add**
18 (8.3) as follows:

19 **40-15-509.5. Broadband service - report - broadband**
20 **deployment board - broadband administrative fund - creation -**
21 **repeal.** (8.3) (a) THE BOARD SHALL PERIODICALLY REVIEW THE WEBSITES
22 OF THE FEDERAL TRADE COMMISSION AND THE FCC TO DETERMINE
23 WHETHER EITHER OF THOSE FEDERAL AGENCIES HAS ISSUED A FINAL
24 ORDER OR ENTERED INTO A SETTLEMENT OR CONSENT DECREE REGARDING
25 ANY:

26 (I) APPLICANT SEEKING BROADBAND DEPLOYMENT GRANT MONEY
27 FROM THE BOARD; OR

1 (II) INTERNET SERVICE PROVIDER, AS DEFINED IN SECTION
2 40-15-209 (4)(b), TO WHICH THE BOARD HAS AWARDED BROADBAND
3 DEPLOYMENT GRANT MONEY.

4 (b) THE BOARD SHALL REVIEW ANY ORDER OR DECREE DESCRIBED
5 IN SUBSECTION (8.3)(a) OF THIS SECTION TO DETERMINE WHETHER THE
6 INTERNET SERVICE PROVIDER THAT IS THE SUBJECT OF THE ORDER OR
7 DECREE HAS ENGAGED IN CONDUCT PROHIBITED BY SECTION 40-15-209
8 (1)(a) TO (1)(d). THE BOARD SHALL DENY THE APPLICATION OF ANY
9 APPLICANT SUBJECT TO SUCH A FEDERAL ORDER OR DECREE AND SHALL
10 INFORM THE COMMISSION PURSUANT TO SECTION 40-15-209 (2)(a) ABOUT
11 ANY INTERNET SERVICE PROVIDER AWARDED BROADBAND DEPLOYMENT
12 GRANT MONEY THAT IS SUBJECT TO SUCH AN ORDER OR DECREE.

13 **SECTION 3.** In Colorado Revised Statutes, **add** article 26 to title
14 6 as follows:

15 **ARTICLE 26**

16 **Internet Service Providers**

17 **6-26-101. Complaints to federal trade commission - attorney**
18 **general to provide guidance.** (1) THE ATTORNEY GENERAL OR THE
19 ATTORNEY GENERAL'S DESIGNEE, IN COLLABORATION WITH THE
20 BROADBAND DEPLOYMENT BOARD CREATED IN SECTION 40-15-509.5 (5),
21 SHALL DEVELOP WRITTEN GUIDANCE FOR CONSUMERS SEEKING TO FILE A
22 COMPLAINT WITH THE FEDERAL TRADE COMMISSION TO ALLEGE THAT AN
23 INTERNET SERVICE PROVIDER, AS DEFINED IN SECTION 40-15-209 (4)(b),
24 HAS ENGAGED IN ANY PRACTICE THAT VIOLATES FEDERAL LAW REGARDING
25 INTERFERENCE WITH THE OPEN INTERNET.

26 (2) ON OR BEFORE OCTOBER 1, 2019, THE DEPARTMENT OF LAW
27 SHALL POST THE WRITTEN GUIDANCE DEVELOPED PURSUANT TO

1 SUBSECTION (1) OF THIS SECTION ON ITS PUBLIC WEBSITE.

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

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

7 **24-103-911. Preference for internet service providers that**
8 **certify compliance with open internet protections - definitions.**

9 (1) WHEN CONTRACTING FOR BROADBAND INTERNET ACCESS SERVICE, A
10 GOVERNMENTAL BODY SHALL GIVE PREFERENCE TO AN INTERNET SERVICE
11 PROVIDER THAT CERTIFIES TO THE GOVERNMENTAL BODY THAT, EXCEPT
12 AS ALLOWED UNDER SECTION 40-15-209 (3), THE INTERNET SERVICE
13 PROVIDER WILL NOT ENGAGE IN ANY OF THE PRACTICES SET FORTH IN
14 SECTION 40-15-209 (1).

15 (2) AS USED IN THIS SECTION:

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

18 (b) "INTERNET SERVICE PROVIDER" HAS THE MEANING SET FORTH
19 IN SECTION 40-15-209 (4)(b).

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

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