

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 18-0746.01 Jennifer Berman x3286

HOUSE BILL 18-1312

HOUSE SPONSORSHIP

Hansen and Herod, Arndt, Bridges, Buckner, Coleman, Esgar, Foote, Garnett,
McLachlan, Michaelson Jenet, Pettersen, Roberts, Weissman, Winter, Young, Duran

SENATE SPONSORSHIP

Donovan,

House Committees

State, Veterans, & Military Affairs

Senate 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 AND REQUIRING AN INTERNET SERVICE**
108 **PROVIDER THAT ENGAGES IN SUCH PRACTICES TO REFUND ANY**
109 **SUCH MONEY RECEIVED.**

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

*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.*

HOUSE
Amended 2nd Reading
April 16, 2018

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 from receiving money from the high cost support mechanism if the internet service provider 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 such impairment or degradation is conducted in a manner consistent with reasonable network management practices; or
- ! Not providing transparency of its reasonable network management practices.

Section 1 also requires that, if an internet service provider has been found to have engaged in any of the practices listed above, the internet service provider must refund any money that the internet service provider 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 attorney general or the attorney general's designee, in collaboration with the broadband deployment board, to develop guidance for consumers on how to file a complaint with the federal trade commission to allege that an internet service provider has engaged in any of the practices listed above.

Section 3 requires a governmental body, when contracting for broadband internet access service, to give a preference to an internet service provider that certifies to the governmental body that it will not engage in any of the practices listed above 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

1 SECTION, AN INTERNET SERVICE PROVIDER THAT IS OTHERWISE ELIGIBLE
2 TO RECEIVE MONEY THROUGH A GRANT FROM THE BROADBAND
3 DEPLOYMENT BOARD PURSUANT TO SECTION 40-15-509.5, THROUGH
4 REIMBURSEMENT FROM THE HIGH COST SUPPORT MECHANISM
5 ESTABLISHED IN SECTION 40-15-208, OR THROUGH ANY OTHER SUPPORT
6 MECHANISM OR OTHER FUNDING SOURCE ESTABLISHED IN COLORADO TO
7 HELP FUND BROADBAND DEPLOYMENT, IS NOT ELIGIBLE TO RECEIVE SUCH
8 MONEY IF THE INTERNET SERVICE PROVIDER:

9 (a) BLOCKS ANY LAWFUL INTERNET CONTENT, APPLICATIONS,
10 SERVICES, OR DEVICES UNLESS SUCH BLOCKING IS CONDUCTED IN A
11 MANNER CONSISTENT WITH REASONABLE NETWORK MANAGEMENT
12 PRACTICES;

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

14 (c) REGULATES NETWORK TRAFFIC BY THROTTLING BANDWIDTH
15 OR OTHERWISE IMPAIRS OR DEGRADES LAWFUL INTERNET TRAFFIC ON THE
16 BASIS OF INTERNET CONTENT, APPLICATION, SERVICE, OR USE OF A DEVICE
17 UNLESS SUCH IMPAIRMENT OR DEGRADATION IS CONDUCTED IN A MANNER
18 CONSISTENT WITH REASONABLE NETWORK MANAGEMENT PRACTICES; OR

19 (d) DOES NOT PROVIDE TRANSPARENCY OF ITS REASONABLE
20 NETWORK MANAGEMENT PRACTICES.

21 (2) (a) IF THE COMMISSION LEARNS, THROUGH ITS OWN
22 INVESTIGATION OR THROUGH INFORMATION RECEIVED FROM THE
23 BROADBAND DEPLOYMENT BOARD OR FROM A COLORADO CONSUMER,
24 THAT A FEDERAL AGENCY HAS ISSUED A FINAL ORDER OR ENTERED INTO
25 A SETTLEMENT OR CONSENT DECREE REGARDING, OR A COURT OF
26 COMPETENT JURISDICTION HAS ISSUED A FINAL DECISION AGAINST, AN
27 INTERNET SERVICE PROVIDER AND THE COMMISSION DETERMINES FROM

1 THE ORDER, DECREE, OR DECISION THAT THE INTERNET SERVICE PROVIDER
2 HAS ENGAGED IN CONDUCT THAT CONSTITUTES ENGAGING IN ONE OF THE
3 PRACTICES LISTED IN SUBSECTIONS (1)(a) TO (1)(d) OF THIS SECTION, THE
4 COMMISSION SHALL ISSUE A WRITTEN ORDER TO THE INTERNET SERVICE
5 PROVIDER DIRECTING THE INTERNET SERVICE PROVIDER TO FULLY REFUND
6 ANY MONEY THAT THE INTERNET SERVICE PROVIDER RECEIVED IN THE
7 TWENTY-FOUR MONTHS PRECEDING THE COMMISSION'S DETERMINATION
8 FROM ANY OF THE FOLLOWING SOURCES:

9 (I) MONEY DISBURSED AT THE DIRECTION OF THE COMMISSION
10 FROM THE HIGH COST SUPPORT MECHANISM, CREATED IN SECTION
11 40-15-208, FOR:

12 (A) BASIC VOICE SERVICE PURSUANT TO SECTION 40-15-208; OR

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

15 (II) MONEY DISBURSED BY OR AT THE DIRECTION OF THE
16 COMMISSION FROM ANY OTHER STATE SUPPORT MECHANISM OR OTHER
17 STATE FUNDING SOURCE ESTABLISHED TO HELP FINANCE BROADBAND
18 DEPLOYMENT.

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

24 (c) THE HIGH COST SUPPORT MECHANISM THIRD-PARTY
25 CONTRACTOR THAT MAINTAINS THE HIGH COST SUPPORT MECHANISM
26 SHALL ALLOCATE ANY MONEY REFUNDED TO THE HIGH COST SUPPORT
27 MECHANISM PURSUANT TO THIS SUBSECTION (2) TO THE HIGH COST

1 SUPPORT MECHANISM ACCOUNT DEDICATED TO BROADBAND DEPLOYMENT,
2 WHICH ACCOUNT IS DESCRIBED IN SECTION 40-15-509.5 (3).

3 (d) A REQUIREMENT THAT AN INTERNET SERVICE PROVIDER
4 REFUND MONEY TO THE HIGH COST SUPPORT MECHANISM PURSUANT TO
5 THIS SECTION DOES NOT RELIEVE THE INTERNET SERVICE PROVIDER OF ANY
6 PROVIDER-OF-LAST-RESORT OBLIGATIONS THAT THE INTERNET SERVICE
7 PROVIDER OTHERWISE HAS PURSUANT TO THIS ARTICLE 15.

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

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

16 (b) ADDRESSING COPYRIGHT INFRINGEMENT OR OTHER UNLAWFUL
17 ACTIVITY.

18 (4) AS USED IN THIS SECTION:

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

25 (II) "BROADBAND INTERNET ACCESS SERVICE" INCLUDES SERVICES
26 PROVIDED OVER ANY TECHNOLOGY PLATFORM, INCLUDING WIRE,
27 TERRESTRIAL WIRELESS, AND SATELLITE.

1 (b) "INTERNET SERVICE PROVIDER" MEANS A PROVIDER OF
2 BROADBAND INTERNET ACCESS SERVICE IN COLORADO.

3 (c) "NETWORK MANAGEMENT" MEANS BUSINESS PRACTICES
4 ENGAGED IN PRIMARILY FOR THE PURPOSE OF TECHNICAL MANAGEMENT.
5 THE TERM DOES NOT INCLUDE OTHER BUSINESS PRACTICES.

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

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

14 (II) TO BENEFIT AN AFFILIATED ENTITY.

15 (e) "REASONABLE NETWORK MANAGEMENT" MEANS A NETWORK
16 MANAGEMENT PRACTICE THAT IS PRIMARILY USED FOR AND TAILORED TO
17 ACHIEVING A LEGITIMATE NETWORK MANAGEMENT PURPOSE, TAKING INTO
18 ACCOUNT THE PARTICULAR NETWORK ARCHITECTURE AND TECHNOLOGY
19 OF THE BROADBAND SERVICE.

20 (f) "THROTTLING" MEANS THE INTENTIONAL SLOWING OF
21 BROADBAND INTERNET ACCESS SERVICE.

22 **SECTION 2.** In Colorado Revised Statutes, 40-15-509.5, **add**
23 **(8.3) as follows:**

24 **40-15-509.5. Broadband service - report - broadband**
25 **deployment board - broadband administrative fund - creation -**
26 **repeal.** (8.3) THE BOARD SHALL PERIODICALLY REVIEW THE WEBSITES OF
27 THE FEDERAL TRADE COMMISSION AND THE FEDERAL COMMUNICATIONS

1 COMMISSION TO DETERMINE IF EITHER OF THE FEDERAL AGENCIES HAS
2 ISSUED A FINAL ORDER OR ENTERED INTO A SETTLEMENT OR CONSENT
3 DECREE REGARDING ANY APPLICANT SEEKING BROADBAND DEPLOYMENT
4 GRANT MONEY FROM THE BOARD OR A PROVIDER TO WHICH THE BOARD
5 HAS AWARDED BROADBAND DEPLOYMENT GRANT MONEY. THE BOARD
6 SHALL REVIEW ANY SUCH ORDER OR DECREE TO DETERMINE IF THE
7 PROVIDER THAT IS THE SUBJECT OF THE ORDER OR DECREE HAS ENGAGED
8 IN CONDUCT THAT CONSTITUTES ENGAGING IN ONE OF THE PRACTICES
9 LISTED IN SECTION 40-15-209 (1)(a) TO (1)(d). THE BOARD SHALL DENY
10 THE APPLICATION OF ANY APPLICANT SUBJECT TO SUCH A FEDERAL ORDER
11 OR DECREE AND SHALL INFORM THE COMMISSION PURSUANT TO SECTION
12 40-15-209 (2)(a) ABOUT ANY PROVIDER AWARDED BROADBAND
13 DEPLOYMENT GRANT MONEY THAT IS SUBJECT TO SUCH AN ORDER OR
14 DECREE.

15 **SECTION 3.** In Colorado Revised Statutes, **add** article 26 to title
16 6 as follows:

17 **ARTICLE 26**

18 **Internet Service Providers**

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

1 (2) ON OR BEFORE OCTOBER 1, 2018, THE DEPARTMENT OF LAW
2 SHALL POST THE WRITTEN GUIDANCE DEVELOPED PURSUANT TO
3 SUBSECTION (1) OF THIS SECTION ON ITS PUBLIC WEBSITE.

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

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

9 **24-103-911. Preference for internet service providers that**
10 **certify compliance with open internet protections - definitions.**

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

17 (2) AS USED IN THIS SECTION:

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

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

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

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