A BILL FOR AN ACT

CONCERNING THE PROTECTION OF THE OPEN INTERNET, AND, IN
CONNECTION THEREWITH, DISQUALIFYING AN INTERNET
SERVICE PROVIDER FROM RECEIVING HIGH COST SUPPORT
MECHANISM MONEY OR OTHER MONEY RECEIVED TO FINANCE
BROADBAND DEPLOYMENT IF THE INTERNET SERVICE PROVIDER
ENGAGES IN CERTAIN PRACTICES THAT INTERFERE WITH THE
OPEN INTERNET AND REQUIRING AN INTERNET SERVICE
PROVIDER THAT ENGAGES IN SUCH PRACTICES TO REFUND ANY
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.)
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.
SECTION, AN INTERNET SERVICE PROVIDER THAT IS OTHERWISE ELIGIBLE TO RECEIVE MONEY THROUGH A GRANT FROM THE BROADBAND DEPLOYMENT BOARD PURSUANT TO SECTION 40-15-509.5, THROUGH REIMBURSEMENT FROM THE HIGH COST SUPPORT MECHANISM ESTABLISHED IN SECTION 40-15-208, OR THROUGH ANY OTHER SUPPORT MECHANISM OR OTHER FUNDING SOURCE ESTABLISHED IN COLORADO TO HELP FUND BROADBAND DEPLOYMENT, IS NOT ELIGIBLE TO RECEIVE SUCH MONEY IF THE INTERNET SERVICE PROVIDER:

(a) Blocks any lawful internet content, applications, services, or devices unless such blocking is conducted in a manner consistent with reasonable network management practices;

(b) Engages in paid prioritization of internet content;

(c) Regulates network traffic by throttling bandwidth or otherwise impairs or degrades 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

(d) Does not provide transparency of its reasonable network management practices.

(2) (a) If the commission learns, through its own investigation or through information received from the broadband deployment board or from a Colorado consumer, that a federal agency has issued a final order or entered into a settlement or consent decree regarding, or a court of competent jurisdiction has issued a final decision against, an internet service provider and the commission determines from
THE ORDER, DECREE, OR DECISION THAT THE INTERNET SERVICE PROVIDER HAS ENGAGED IN CONDUCT THAT CONSTITUTES ENGAGING IN ONE OF THE PRACTICES LISTED IN SUBSECTIONS (1)(a) TO (1)(d) OF THIS SECTION, THE COMMISSION SHALL ISSUE A WRITTEN ORDER TO THE INTERNET SERVICE PROVIDER DIRECTING THE INTERNET SERVICE PROVIDER TO FULLY REFUND ANY MONEY THAT THE INTERNET SERVICE PROVIDER RECEIVED IN THE TWENTY-FOUR MONTHS PRECEDEING THE COMMISSION’S DETERMINATION FROM ANY OF THE FOLLOWING SOURCES:

(I) Money disbursed at the direction of the commission from the high cost support mechanism, created in section 40-15-208, for:

(A) Basic voice service pursuant to section 40-15-208; or

(B) A grant awarded by the broadband deployment board pursuant to section 40-15-509.5; or

(II) Money disbursed by or at the direction of the commission from any other state support mechanism or other state funding source established to help finance broadband deployment.

(b) An order issued by the commission pursuant to subsection (2)(a) of this section must include an itemized statement of the amount of money that the internet service provider is required to refund and instructions on how to refund the money.

(c) The high cost support mechanism third-party contractor that maintains the high cost support mechanism shall allocate any money refunded to the high cost support mechanism pursuant to this subsection (2) to the high cost
SUPPORT MECHANISM ACCOUNT DEDICATED TO BROADBAND DEPLOYMENT, WHICH ACCOUNT IS DESCRIBED IN SECTION 40-15-509.5 (3).

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

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

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

(b) ADDRESSING COPYRIGHT INFRINGEMENT OR OTHER UNLAWFUL ACTIVITY.

(4) AS USED IN THIS SECTION:

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

(II) "BROADBAND INTERNET ACCESS SERVICE" INCLUDES SERVICES PROVIDED OVER ANY TECHNOLOGY PLATFORM, INCLUDING WIRE, TERRESTRIAL WIRELESS, AND SATELLITE.
(b) "INTERNET SERVICE PROVIDER" MEANS A PROVIDER OF
BROADBAND INTERNET ACCESS SERVICE IN COLORADO.

(c) "NETWORK MANAGEMENT" MEANS BUSINESS PRACTICES
ENGAGED IN PRIMARILY FOR THE PURPOSE OF TECHNICAL MANAGEMENT.
The term does not include other business practices.

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

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

(II) TO BENEFIT AN AFFILIATED ENTITY.

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

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

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

40-15-509.5. Broadband service - report - broadband
deployment board - broadband administrative fund - creation -
repeal. (8.3) The board shall periodically review the websites of
the federal trade commission and the federal communications
COMMISSION to determine if either of the federal agencies has issued a final order or entered into a settlement or consent decree regarding any applicant seeking broadband deployment grant money from the board or a provider to which the board has awarded broadband deployment grant money. The board shall review any such order or decree to determine if the provider that is the subject of the order or decree has engaged in conduct that constitutes engaging in one of the practices listed in section 40-15-209 (1)(a) to (1)(d). The board shall deny the application of any applicant subject to such a federal order or decree and shall inform the commission pursuant to section 40-15-209 (2)(a) about any provider awarded broadband deployment grant money that is subject to such an order or decree.

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

ARTICLE 26

Internet Service Providers

6-26-101. Complaints to federal trade commission - attorney general to provide guidance. (1) The attorney general or the attorney general's designee, in collaboration with the broadband deployment board created in section 40-15-509.5 (5), shall develop written guidance for consumers seeking to file a complaint with the federal trade commission to allege that an internet service provider has engaged in any practice that violates federal law regarding interference with the open internet.
(2) **On or before October 1, 2018, the Department of Law shall post the written guidance developed pursuant to subsection (1) of this section on its public website.**

(3) **The Attorney General, in collaboration with the Broadband Deployment Board, shall update the written guidance as needed.**

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

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

(1) **When contracting for broadband internet access service, a governmental body shall give preference to an internet service provider that certifies to the governmental body that, except as allowed under section 40-15-209 (3), the internet service provider will not engage in any of the practices set forth in section 40-15-209 (1).**

(2) **As used in this section:**

(a) "**BROADBAND INTERNET ACCESS SERVICE**" has the meaning set forth in section 40-15-209 (4)(a).

(b) "**INTERNET SERVICE PROVIDER**" has the meaning set forth in section 40-15-209 (4)(b).

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

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