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SENATE BILL NO. 334—SENATOR CANNIZZARO

MARCH 18, 2019

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JOINT SPONSOR: ASSEMBLYWOMAN BILBRAY-AXELROD

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Referred to Committee on Government Affairs

SUMMARY—Establishes provisions relating to net neutrality.  
(BDR 27-68)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to purchasing; prohibiting certain governmental entities, under certain circumstances, from contracting with broadband Internet access service providers who engage in certain practices; requiring broadband Internet access service providers to make certain disclosures; requiring the Public Utilities Commission of Nevada to adopt certain regulations; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes contracts between governing bodies of a local  
2 government or state agencies within the Executive Branch of the State Government  
3 and private contractors and sets forth requirements for the procurement of goods  
4 and services by those governing bodies and state agencies. (Chapters 332 and 333  
5 of NRS) **Sections 1 and 2** of this bill prohibit the governing body of a local  
6 government, the Administrator of the Purchasing Division of the Department of  
7 Administration, the Purchasing Division and any using agency from entering into a  
8 contract with a broadband Internet access service provider who: (1) manages its  
9 network to directly or indirectly favor some traffic on the network over other  
10 traffic; (2) blocks lawful content, applications or services or nonharmful devices;  
11 (3) impairs or degrades lawful Internet traffic for the purpose of discriminating  
12 against or favoring certain content, applications, services or devices; (4)  
13 unreasonably interferes with or unreasonably disadvantages an end user’s ability to  
14 select, access and use the broadband Internet access service or lawful Internet  
15 content, applications or services or devices of the end user’s choice; or (5)  
16 unreasonably interferes with or unreasonably disadvantages an edge provider’s  
17 ability to make devices or lawful content, applications or services available to end



18 users. **Sections 1 and 2** establish certain exceptions to this prohibition. **Sections 1**  
19 **and 2** require a broadband Internet access service provider who does enter into a  
20 contract with the governing body of a local government, the Administrator of the  
21 Purchasing Division of the Department of Administration, the Purchasing Division  
22 or any using agency to make certain disclosures regarding its services sufficient to  
23 demonstrate that those services comply with the requirements established by those  
24 sections. **Sections 1 and 2** also require the Public Utilities Commission of Nevada  
25 to adopt certain regulations.

26 Existing law prohibits the Public Utilities Commission of Nevada from  
27 regulating any broadband service, except in certain limited circumstances. (NRS  
28 704.684) **Section 3** of this bill provides that this prohibition does not limit or  
29 modify the authority of the Commission to act pursuant to the provisions of  
30 **sections 1 and 2**.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 332 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3 *1. Except as otherwise provided in subsection 2, on or after*  
4 *July 1, 2019, a governing body or its authorized representative*  
5 *shall not contract with a broadband Internet access service*  
6 *provider that:*

7 *(a) Engages in paid prioritization;*

8 *(b) Blocks lawful content, applications or services or*  
9 *nonharmful devices;*

10 *(c) Impairs or degrades lawful Internet traffic for the purpose*  
11 *of discriminating against or favoring certain Internet content,*  
12 *applications or services or the use of nonharmful devices;*

13 *(d) Unreasonably interferes with or unreasonably*  
14 *disadvantages an end user's ability to select, access and use the*  
15 *broadband Internet access service or lawful Internet content,*  
16 *applications or services or devices of the end user's choice; or*

17 *(e) Unreasonably interferes with or unreasonably*  
18 *disadvantages an edge provider's ability to make devices or lawful*  
19 *content, applications or services available to end users.*

20 *2. Notwithstanding the provisions of subsection 1, a*  
21 *governing body or its authorized representative may contract with*  
22 *a broadband Internet access service provider that:*

23 *(a) Is the sole provider of fixed broadband Internet access*  
24 *service to the geographic location subject to the contract.*

25 *(b) Engages in any of the activities described in subsection 1 in*  
26 *the process of addressing copyright infringement or other*  
27 *unlawful activity or the needs of emergency communications, law*  
28 *enforcement, public safety or national security authorities.*

29 *(c) Engages in paid prioritization if the Public Utilities*  
30 *Commission of Nevada determines that the broadband Internet*



1 *access service provider's paid prioritization provides significant*  
2 *public interest benefits and does not harm the open nature of the*  
3 *provided broadband Internet access service.*

4 *(d) Engages in any activities described in paragraphs (b), (c)*  
5 *and (d) of subsection 1, if the Public Utilities Commission of*  
6 *Nevada determines that the broadband Internet access service*  
7 *provider's engagement in the activity is reasonable network*  
8 *management. An activity is reasonable network management if the*  
9 *activity:*

10 *(1) Has a technical network management justification;*

11 *(2) Does not include other business practices; and*

12 *(3) Is narrowly tailored to achieve a legitimate network*  
13 *management purpose, taking into account the particular network*  
14 *architecture and technology of the broadband Internet access*  
15 *service.*

16 *(e) Engaged in any of the activities described in subsection 1 at*  
17 *any time on or after July 1, 2019, if:*

18 *(1) The broadband Internet access service provider certifies*  
19 *that it has ceased engaging in all of the activities described in*  
20 *subsection 1; and*

21 *(2) The Public Utilities Commission of Nevada determines*  
22 *that allowing a governing body or its authorized representative to*  
23 *contract with the broadband Internet access service provider*  
24 *provides significant public interest benefits.*

25 *3. For the purposes of this section, a governing body or its*  
26 *authorized representative contracts with a broadband Internet*  
27 *access service provider if the governing body or its authorized*  
28 *representative procures, or provides funding for the procurement*  
29 *of, broadband Internet access service, including fixed broadband*  
30 *Internet access service or mobile broadband Internet access*  
31 *service, from the broadband Internet access service provider.*

32 *4. A broadband Internet access service provider engaged in*  
33 *the provision of broadband Internet access service to a local*  
34 *government shall publicly disclose information regarding the*  
35 *provider's network management practices and performance*  
36 *characteristics and the commercial terms of the provider's*  
37 *broadband Internet access service sufficient for end users to verify*  
38 *that the service is provided in compliance with this section.*

39 *5. The Public Utilities Commission of Nevada shall adopt*  
40 *regulations:*

41 *(a) Establishing the manner and form in which disclosures*  
42 *required by subsection 4 must be made.*

43 *(b) Defining what types of devices are nonharmful to*  
44 *broadband Internet access services for the purposes of this section.*

45 *6. As used in this section:*



1 (a) *“Broadband Internet access service”:*

2 (1) *Means:*

3 (I) *A mass-market retail Internet access service provided*  
4 *by wire or radio that enables a person to transmit data to or*  
5 *receive data between the person’s customer premises equipment,*  
6 *including mobile devices, and all, or substantially all, Internet*  
7 *endpoints;*

8 (II) *Any service that the Public Utilities Commission of*  
9 *Nevada finds is providing a service that is the functional*  
10 *equivalent of the service described in sub-subparagraph (I); or*

11 (III) *Any service that is incidental to or that enables the*  
12 *operation of the service described in sub-subparagraph (I).*

13 (2) *Does not include dial-up Internet access service.*

14 (b) *“Broadband Internet access service provider” means a*  
15 *person or governmental entity that provides broadband Internet*  
16 *access service.*

17 (c) *“Content, applications or services” means all traffic*  
18 *transmitted to or from end users of a broadband Internet access*  
19 *service.*

20 (d) *“Edge provider” means any person that provides content,*  
21 *applications or services over the Internet, and any person that*  
22 *provides a device used for accessing content, applications or*  
23 *services over the Internet.*

24 (e) *“End user” means any person that uses a broadband*  
25 *Internet access service.*

26 (f) *“Fixed broadband Internet access service” means*  
27 *broadband Internet access service that serves end users primarily*  
28 *at fixed endpoints using stationary equipment, including fixed*  
29 *satellite services and licensed and unlicensed fixed wireless*  
30 *services.*

31 (g) *“Mobile broadband Internet access service” means*  
32 *broadband Internet access service that serves end users primarily*  
33 *using mobile stations.*

34 (h) *“Nonharmful device” means a device that is determined to*  
35 *be nonharmful to broadband Internet access services by the Public*  
36 *Utilities Commission of Nevada as established by the regulations*  
37 *adopted pursuant to paragraph (b) of subsection 5.*

38 (i) *“Paid prioritization” means a broadband Internet access*  
39 *service provider’s management of its network to directly or*  
40 *indirectly favor some traffic over other traffic, including through*  
41 *traffic shaping, prioritization, resource reservation or other forms*  
42 *of preferential traffic management, either in exchange for*  
43 *consideration from a third party or to benefit an affiliated entity.*



1       **Sec. 2.** Chapter 333 of NRS is hereby amended by adding  
2       thereto a new section to read as follows:

3       1. *Except as otherwise provided in subsection 2, on or after*  
4       *July 1, 2019, the Administrator, the Purchasing Division or a*  
5       *using agency shall not contract with a broadband Internet access*  
6       *service provider that:*

7       (a) *Engages in paid prioritization;*

8       (b) *Blocks lawful content, applications or services or*  
9       *nonharmful devices;*

10       (c) *Impairs or degrades lawful Internet traffic for the purpose*  
11       *of discriminating against or favoring certain Internet content,*  
12       *applications or services or the use of nonharmful devices;*

13       (d) *Unreasonably interferes with or unreasonably*  
14       *disadvantages an end user's ability to select, access and use the*  
15       *broadband Internet access service or lawful Internet content,*  
16       *applications or services or devices of the end user's choice; or*

17       (e) *Unreasonably interferes with or unreasonably*  
18       *disadvantages an edge provider's ability to make devices or lawful*  
19       *content, applications or services available to end users.*

20       2. *Notwithstanding the provisions of subsection 1, the*  
21       *Administrator, the Purchasing Division or a using agency may*  
22       *contract with a broadband Internet access service provider that:*

23       (a) *Is the sole provider of fixed broadband Internet access*  
24       *service to the geographic location subject to the contract.*

25       (b) *Engages in any of the activities described in subsection 1 in*  
26       *the process of addressing copyright infringement or other*  
27       *unlawful activity or the needs of emergency communications, law*  
28       *enforcement, public safety or national security authorities.*

29       (c) *Engages in paid prioritization if the Public Utilities*  
30       *Commission of Nevada determines that the broadband Internet*  
31       *access service provider's paid prioritization provides significant*  
32       *public interest benefits and does not harm the open nature of the*  
33       *provided broadband Internet access service.*

34       (d) *Engages in any activities described in paragraphs (b), (c)*  
35       *and (d) of subsection 1, if the Public Utilities Commission of*  
36       *Nevada determines that the broadband Internet access service*  
37       *provider's engagement in the activity is reasonable network*  
38       *management. An activity is reasonable network management if the*  
39       *activity:*

40       (1) *Has a technical network management justification;*

41       (2) *Does not include other business practices; and*

42       (3) *Is narrowly tailored to achieve a legitimate network*  
43       *management purpose, taking into account the particular network*  
44       *architecture and technology of the broadband Internet access*  
45       *service.*



1 (e) Engaged in any of the activities described in subsection 1 at  
2 any time on or after July 1, 2019, if:

3 (1) The broadband Internet access service provider certifies  
4 that it has ceased engaging in all of the activities described in  
5 subsection 1; and

6 (2) The Public Utilities Commission of Nevada determines  
7 that allowing the Administrator, the Purchasing Division or a  
8 using agency to contract with the broadband Internet access  
9 service provider provides significant public interest benefits.

10 3. For the purposes of this section, the Administrator, the  
11 Purchasing Division or a using agency contracts with a  
12 broadband Internet access service provider if the Administrator,  
13 the Purchasing Division or a using agency procures, or provides  
14 funding for the procurement of, broadband Internet access  
15 service, including fixed broadband Internet access service or  
16 mobile broadband Internet access service, from the broadband  
17 Internet access service provider.

18 4. A broadband Internet access service provider engaged in  
19 the provision of broadband Internet access service pursuant to a  
20 contract entered into with the Administrator, the Purchasing  
21 Division or a using agency shall publicly disclose information  
22 regarding the provider's network management practices and  
23 performance characteristics and the commercial terms of the  
24 provider's broadband Internet access service sufficient for end  
25 users to verify that the service is provided in compliance with this  
26 section.

27 5. The Public Utilities Commission of Nevada shall adopt  
28 regulations:

29 (a) Establishing the manner and form in which disclosures  
30 required by subsection 4 must be made.

31 (b) Defining what types of devices are nonharmful to  
32 broadband Internet access services for the purposes of this section.

33 6. As used in this section:

34 (a) "Broadband Internet access service":

35 (1) Means:

36 (I) A mass-market retail Internet access service provided  
37 by wire or radio that enables a person to transmit data to or  
38 receive data between the person's customer premises equipment,  
39 including mobile devices, and all, or substantially all, Internet  
40 endpoints;

41 (II) Any service that the Public Utilities Commission of  
42 Nevada finds is providing a service that is the functional  
43 equivalent of the service described in sub-subparagraph (I); or

44 (III) Any service that is incidental to or that enables the  
45 operation of the service described in sub-subparagraph (I).



1           (2) *Does not include dial-up Internet access service.*

2           (b) *“Broadband Internet access service provider” means a*  
3 *person or governmental entity that provides broadband Internet*  
4 *access service.*

5           (c) *“Content, applications or services” means all traffic*  
6 *transmitted to or from end users of a broadband Internet access*  
7 *service.*

8           (d) *“Edge provider” means any person that provides content,*  
9 *applications or services over the Internet, and any person that*  
10 *provides a device used for accessing content, applications or*  
11 *services over the Internet.*

12           (e) *“End user” means any person that uses a broadband*  
13 *Internet access service.*

14           (f) *“Fixed broadband Internet access service” means*  
15 *broadband Internet access service that serves end users primarily*  
16 *at fixed endpoints using stationary equipment, including fixed*  
17 *satellite services and licensed and unlicensed fixed wireless*  
18 *services.*

19           (g) *“Mobile broadband Internet access service” means*  
20 *broadband Internet access service that serves end users primarily*  
21 *using mobile stations.*

22           (h) *“Nonharmful device” means a device that is determined to*  
23 *be nonharmful to broadband Internet access services by the Public*  
24 *Utilities Commission of Nevada as established by the regulations*  
25 *adopted pursuant to paragraph (b) of subsection 5.*

26           (i) *“Paid prioritization” means a broadband Internet access*  
27 *service provider’s management of its network to directly or*  
28 *indirectly favor some traffic over other traffic, including through*  
29 *traffic shaping, prioritization, resource reservation or other forms*  
30 *of preferential traffic management, either in exchange for*  
31 *consideration from a third party or to benefit an affiliated entity.*

32           **Sec. 3.** NRS 704.684 is hereby amended to read as follows:

33           704.684 1. Except as otherwise provided in this section, the  
34 Commission shall not regulate any broadband service, including  
35 imposing any requirements relating to the terms, conditions, rates or  
36 availability of broadband service.

37           2. The provisions of subsection 1 do not limit or modify the  
38 authority of the Commission to:

39           (a) Consider any revenues, costs and expenses that a small-scale  
40 provider of last resort derives from providing a broadband service, if  
41 the Commission is determining the rates of the provider under a  
42 general rate application that is filed pursuant to subsection 3 of  
43 NRS 704.110;



1 (b) Act on a complaint filed pursuant to NRS 703.310, if the  
2 complaint relates to a broadband service that is provided by a public  
3 utility;

4 (c) Include any appropriate gross operating revenue that a public  
5 utility derives from providing broadband service when the  
6 Commission calculates the gross operating revenue of the public  
7 utility for the purposes of levying and collecting the annual  
8 assessment in accordance with the provisions of NRS 704.033; or

9 (d) Determine the rates, pricing, terms and conditions of  
10 intrastate switched or special access services provided by a  
11 telecommunication provider.

12 3. The provisions of subsection 1 do not:

13 (a) Apply to the Commission in connection with any actions or  
14 decisions required or permitted by the Telecommunications Act of  
15 1996, Public Law 104-104, 110 Stat. 56-161;

16 (b) Prevent the Commission from exercising its authority  
17 pursuant to 47 U.S.C. § 214(e) or § 254(f) relating to the  
18 implementation of the federal universal service program, including,  
19 without limitation, taking any action within the scope of that  
20 authority because of a regulation or order of the Federal  
21 Communications Commission; or

22 (c) Limit or modify:

23 (1) The duties of a telecommunication provider regarding the  
24 provision of network interconnection, unbundled network elements  
25 and resold services under the provisions of the Telecommunications  
26 Act of 1996, Public Law 104-104, 110 Stat. 56-161; or

27 (2) The authority of the Commission to act pursuant to NRS  
28 704.6881 and 704.6882 ~~§~~ *and sections 1 and 2 of this act.*

29 4. As used in this section, “broadband service” means any two-  
30 way service that transmits information at a rate that is generally not  
31 less than 200 kilobits per second in at least one direction.

32 **Sec. 4.** This act becomes effective on July 1, 2019.

