**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 25 TO CHAPTER 9, TITLE 58 SO AS TO ENACT THE “SOUTH CAROLINA NET NEUTRALITY PROTECTION AND MAINTENANCE ACT”, TO DEFINE RELEVANT TERMS, TO PROVIDE THAT A TELECOMMUNICATIONS OR INTERNET SERVICE PROVIDER ENGAGED IN THE PROVISION OF BROADBAND INTERNET ACCESS SERVICE PUBLICLY SHALL DISCLOSE ACCURATE INFORMATION REGARDING THE NETWORK MANAGEMENT PRACTICES, PERFORMANCE, AND COMMERCIAL TERMS OF ITS BROADBAND INTERNET ACCESS SERVICES SUFFICIENT FOR CONSUMERS TO MAKE INFORMED CHOICES REGARDING USE OF THESE SERVICES AND FOR CONTENT, APPLICATION, SERVICE, AND DEVICE PROVIDERS TO DEVELOP, MARKET, AND MAINTAIN INTERNET OFFERINGS, AND TO PROHIBIT CERTAIN PRACTICES BY TELECOMMUNICATIONS OR INTERNET SERVICE PROVIDERS ENGAGED IN THE PROVISION OF BROADBAND INTERNET ACCESS SERVICE IN SOUTH CAROLINA; TO PROVIDE THAT VIOLATIONS OF THIS ACT ARE NOT REASONABLE IN RELATION TO THE DEVELOPMENT AND PRESERVATION OF BUSINESS AND CONSTITUTE AN UNFAIR OR DECEPTIVE ACT IN TRADE OR COMMERCE AND AN UNFAIR METHOD OF COMPETITION FOR THE PURPOSE OF APPLYING THE SOUTH CAROLINA CONSUMER PROTECTION CODE; AND TO PROVIDE THAT A PUBLIC ENTITY MAY NOT ENTER INTO A CONTRACT WITH A TELECOMMUNICATIONS OR INTERNET SERVICE PROVIDER ENGAGED IN THE PROVISION OF BROADBAND INTERNET ACCESS SERVICE IN SOUTH CAROLINA UNLESS THE CONTRACT INCLUDES A REPRESENTATION THAT THE TELECOMMUNICATIONS OR INTERNET SERVICE PROVIDER IS NOT CURRENTLY ENGAGED IN, AND AN AGREEMENT THAT THE TELECOMMUNICATIONS OR INTERNET SERVICE PROVIDER WILL NOT ENGAGE IN, THOSE PRACTICES PROHIBITED BY THIS ACT.

Whereas, high‑speed Internet access service, referred to generically as “broadband advanced communication services,” including both wired and wireless technologies, is essential in the twenty‑first century for education, economic competitiveness, and quality of life; and

Whereas, broadband infrastructure is indispensable to the operation and management of many critical infrastructures, including energy generation systems, the power grid, water supply systems, public safety and emergency response systems, medical facilities, educational institutions, and libraries; and

Whereas, multiple studies confirm that the use of broadband advanced communication services increases economic productivity, public and private organizational operation efficiency, and enhanced business profitability; and

Whereas, the provision and maintenance of equitable access to technology, broadband Internet access services, digital content, and classroom management tools are critical for all students, teachers, and school administrators in South Carolina, including those in rural and other unserved and underserved areas, in order to provide equal educational resources to all students at all education levels; and

Whereas, the Federal Communications Commission (FCC) adopted open Internet rules on February 26, 2015, to protect free expression and innovation on the Internet and to promote investment in the nation’s broadband networks; and

Whereas, those open Internet rules ensure that consumers and businesses have access to a fast, fair, and open Internet by imposing three bright‑line rules: (1) broadband providers shall not block access to lawful content, applications, services, or nonharmful devices; (2) broadband providers shall not impair or degrade lawful Internet traffic, including throttling, on the basis of content, application, or service, or use of a nonharmful device; and (3) broadband providers shall not favor some lawful Internet traffic over other lawful Internet traffic in exchange for consideration of any kind; and

Whereas, because the Internet must be a place in which companies, large and small, as well as individual developers, can compete on a level playing field, the State of South Carolina supports net neutrality as a principle that underpins a fast, fair, and open Internet for consumers and businesses to ensure equal access to lawful content by prohibiting paid prioritization, throttling, and blocking. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 9, Title 58 of the 1976 Code is amended by adding:

“Article 25

South Carolina Net Neutrality Protection and Maintenance Act

Section 58‑9‑2800. This article may be cited as the ‘South Carolina Net Neutrality Protection and Maintenance Act’.

Section 58‑9‑2810. (A) As used in this section:

(1) ‘Broadband Internet access service’ means a mass‑market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial‑up Internet access service. The term also encompasses any service that the Federal Communications Commission finds to be providing a functional equivalent of the service described in this item, or that is used to evade the protections set forth in this section.

(2) ‘Edge provider’ means an individual or entity that provides any content, application, or service over the Internet, or an individual or entity that provides a device used for accessing any content, application, or service over the Internet.

(3) ‘End user’ means an individual or entity that uses a broadband Internet access service.

(4) ‘Mobile broadband Internet access service’ means a broadband Internet service that serves end users primarily using mobile stations.

(5) ‘Paid prioritization’ means the management of a broadband 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:

(a) in exchange for consideration, monetary or otherwise, from a third party; or

(b) to benefit an affiliated entity.

(6) ‘Reasonable network management’ means a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it 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 Internet access service.

(7) ‘Throttling’, also known as ‘data transfer throttling’ or ‘lean data transfer’, means the deliberate regulation of the data transfer rate in a communications system.

(B) Notwithstanding another provision of law, a telecommunications or Internet service provider engaged in the provision of broadband Internet access service in South Carolina publicly shall disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of these services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.

(C) A telecommunications or Internet service provider engaged in the provision of broadband Internet access service in South Carolina may not:

(1) block lawful content, applications, services, or nonharmful devices, subject to reasonable network management;

(2) impair or degrade lawful Internet traffic, including ‘throttling’, on the basis of Internet content, application, or service, or use of a nonharmful device, subject to reasonable network management;

(3) engage in paid prioritization; or

(4) unreasonably interfere with or unreasonably disadvantage:

(a) end users’ ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice; or

(b) edge providers’ ability to make lawful content, applications, services, or devices available to end users.

(D) The Public Service Commission may waive the prohibition on paid prioritization in subsection (C) only if the petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet in South Carolina.

Section 58‑9‑2820. The General Assembly finds that the practices covered by this article are matters vitally affecting the public interest for the purpose of applying the South Carolina Consumer Protection Code. A violation of this article is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the South Carolina Consumer Protection Code.

Section 58‑9‑2830. (A) For purposes of this section, ‘public entity’ has the same meaning and applicability as provided in Section 11‑35‑5300(B)(2).

(B)(1) After the effective date of this section, a public entity may not enter into a contract with a telecommunications or Internet service provider engaged in the provision of broadband Internet access service in South Carolina unless the contract includes a representation that the telecommunications or Internet service provider is not currently engaged in, and an agreement that the telecommunications or Internet service provider will not engage in, those practices prohibited by Section 58‑9‑2810(C).

(2) Failure to comply with a provision of this section is not grounds for a protest filed pursuant to Section 11‑35‑4210 or another preaward protest process appearing in a procurement ordinance adopted by a political subdivision pursuant to Section 11‑35‑50 or 11‑35‑70, or similar law.”

SECTION 2. This act takes effect upon approval by the Governor.

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