



June 3, 2019

Mr. Paul Thronson and Mr. Nick Zachariasen
South Dakota Community Action
7301 S. Valencia Drive
Sioux Falls, SD 57108

RECEIVED
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S.D. SEC. OF STATE

Dear Mr. Thronson and Mr. Zachariasen:

This office is required to review each initiated measure to determine whether it is written in a clear and coherent manner in the style and form of other legislation and worded so that the effect of the measure is not misleading or likely to cause confusion among voters in accordance with SDCL 12-13-24. Further, in accordance with SDCL 12-13-25, this office is required to provide written comments to assist the measure's sponsor in complying with SDCL 12-13-24, including assistance regarding the substantive content of the measure in order to minimize any conflict with existing law and ensure the measure's effective administration. You are under no obligation to accept any of the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24 and 12-13-25.

Attached is a copy of your proposed initiated measure regarding the state procurement of internet, data, and telecommunications services with our suggested changes in overstrikes and underscores. The title has been removed since the attorney general will provide the title as required by SDCL 12-13-25.1. If you have any questions regarding our suggested changes, please feel free to contact us.

It has been determined during this review that this proposed initiated measure may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative Research Council a copy of the initiated measure as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Hancock". The signature is fluid and cursive, written over a white background.

Jason Hancock
Director

JH:DO:ct

Enclosure

CC: The Honorable Steve Barnett, Secretary of State
The Honorable Jason Ravnsborg, Attorney General

BE IT ENACTED BY THE LEGISLATURE PEOPLE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

For the purposes of this Act, the term, telecommunications services, includes internet and data services.

Section 2. That the code be amended by adding a NEW SECTION to read:

To be awarded a contract with the state for the provision of telecommunications services, a service provider shall publicly disclose to all of the provider's customers in the state, including the state itself, accurate information regarding the network and transport management practices including cellular data and wireless broadband transport, performance and commercial terms of the provider's broadband internet access services sufficient for consumers to make informed choices regarding use of the services and for content, application, service, and device providers to develop, market, and maintain internet offerings.

Section 3. That the code be amended by adding a NEW SECTION to read:

To receive a contract from the state for the provision of telecommunications services, a service provider may not, with respect to any consumer in the state, including the state itself as a consumer:

- (1) Block lawful content, applications, services, or nonharmful devices, subject to reasonable network management that is disclosed to the consumer;
- (2) Throttle, impair, degrade, or otherwise interfere with lawful internet traffic on the basis of internet content, application, or service, or use of a nonharmful device, subject to reasonable network management that is disclosed to the consumer;
- (3) Engage in prioritization of network traffic, media content, or any other kind of data when such prioritization is done for monetary payment or other consideration;
- (4) Unreasonably interfere with or unreasonably disadvantage 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
- (5) Unreasonably interfere with or unreasonably disadvantage edge providers' ability to make lawful content, applications, services, or devices available to end users.

Section 4. That the code be amended by adding a NEW SECTION to read:

The Bureau of Administration may promulgate rules, pursuant to chapter 1-26, ~~or other policies and guidance~~ as deemed necessary and appropriate to carry out the provisions of this Act and to monitor the Act's enforcement.

Section 5. That the code be amended by adding a NEW SECTION to read:

Each contracting department or agency that procures telecommunications services shall cooperate with the Bureau of Administration in implementing this Act and provide information and assistance as the bureau requires in the performance of the bureau's functions pursuant to this Act. Agencies shall receive approval from the Bureau of Administration before procuring internet services, including cellular data or wireless broadband internet services.