

SENATE No. 2336

The Commonwealth of Massachusetts

PRESENTED BY:

Barbara A. L'Italien

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>Andres X. Vargas</i>	<i>3rd Essex</i>	
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>12/19/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>12/19/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>12/19/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>12/20/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>12/21/2017</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	<i>12/21/2017</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>12/20/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>12/20/2017</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>12/21/2017</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>12/21/2017</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>12/21/2017</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>12/21/2017</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>12/21/2017</i>

<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>12/21/2017</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>12/21/2017</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>12/21/2017</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>12/21/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>12/21/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>12/21/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>12/21/2017</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>12/21/2017</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>	<i>12/21/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>12/21/2017</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>12/21/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>12/21/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>12/21/2017</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>12/21/2017</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>12/21/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>12/21/2017</i>
<i>William M. Straus</i>	<i>10th Bristol</i>	<i>12/21/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>12/21/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>12/21/2017</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>12/21/2017</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>1/3/2018</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>1/3/2018</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>1/3/2018</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/10/2018</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/15/2018</i>

SENATE No. 2336

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act protecting consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to preserve forthwith and uphold the open foundation of the internet by adhering to certain principles, including: free flow of information over the internet; free access to all lawful websites; no unreasonable discrimination of lawful network traffic; no paid prioritization; and clear commitment to transparency, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 25C of the General Laws, as appearing in the 2016 Official
2 Edition, is hereby amended by adding the following section:—

3 Section 9. Protecting consumers from blocking, throttling, or paid prioritization in the
4 provision of internet service

5 (a) The following words as used in this section shall have the following meanings,
6 unless the context clearly requires otherwise:

7 "Broadband internet access service" a mass-market retail service by wire or radio that
8 provides the capability to transmit data to and receive data from all or substantially all internet

9 endpoints, including any capabilities that are incidental to and enable the operation of the
10 communications service, but excluding dial-up internet access service. or any service that the
11 federal communications commission finds to be providing a functional equivalent thereof that is
12 used to evade the protections set forth in this section.

13 “Massachusetts Antitrust Act” Sections one to fourteen A, inclusive, of Chapter 93 of the
14 General Laws.

15 "Paid prioritization" the management of a broadband provider's network to favor, either
16 directly or indirectly, certain traffic over other traffic. Paid prioritization may include the use of
17 techniques such as traffic shaping, prioritization, resource reservation, or other forms of
18 preferential traffic management, either:

- 19 (1) In exchange for consideration (monetary or otherwise) from a third party; or
20 (2) to benefit an affiliated entity.

21 “Reasonable network management" a practice that has a primarily technical network
22 management justification but does not include other business practices. A network management
23 practice is reasonable if it is primarily used for and tailored to achieving a legitimate network
24 management purpose, taking into account the particular network architecture and technology of
25 the broadband internet access service.

26 (b) A person or entity engaged in the provision of broadband internet access service in
27 Commonwealth of Massachusetts shall not:

- 28 (1) Block lawful content, applications, services, or nonharmful devices, subject
29 to reasonable network management;

30 (2) Impair or degrade lawful internet traffic on the basis of internet content,
31 application, or service, or use of a nonharmful device, subject to reasonable network
32 management; or

33 (3) Engage in paid prioritization.

34 (c) The Department of Telecommunications and Cable may waive the prohibition on paid
35 prioritization in subsection (a)(c) of this section only if the petitioner demonstrates that the
36 practice would serve a legitimate and significant public interest and would not harm the open
37 nature of the internet in the Commonwealth.

38 (d) For the purpose of application and enforcement of the Massachusetts Antitrust Act
39 violations of this Section shall be considered matters that:

40 (1) vitally affect the public interest;

41 (2) are not reasonable in relation to the development and preservation of business; and

42 (3) are unfair or deceptive acts in trade or commerce and an unfair method of
43 competition.

44 (4) shall be enforced by the Attorney General

45 SECTION 3. Chapter 10 of the General Laws, as appearing in the 2016 Official Edition,
46 is hereby amended by adding the following section:

47

48 Section 78: Internet Consumer Access Account

49 (a) There shall be established and set up on the books of the commonwealth an
50 Internet Consumer Access Fund to be administered by the Treasurer. The fund shall consist of
51 monies received and recovered by the office of the attorney general from lawsuits related to the
52 Massachusetts Antitrust Act under the provisions of this chapter, or funds otherwise designated
53 to this account.

54 (b) The Treasurer shall make distributions from the Internet Consumer Access
55 Account for purposes consistent with ensuring equal access to free flow of information over the
56 internet.

57

58 (c) Subject to appropriation, expenditures from the account may be used for costs
59 incurred by the office of the attorney general in the administration and enforcement of this
60 chapter.