

SENATE No. 2389

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 to ensure a free and open internet in the Commonwealth.

PETITION OF:

NAME:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

SENATE No. 2389

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 2389) (subject to Joint Rule 12) of James B. Eldridge for legislation to ensure a free and open internet in the Commonwealth. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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

An Act to ensure a free and open internet in the Commonwealth.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to preserve forthwith and uphold equal treatment of internet communications by adhering to certain principles, including: protect consumer choice; classify broadband internet service providers as common carriers; prohibit blocking; ensure free access to all lawful websites; prohibit unreasonable discrimination of lawful network traffic; require transparency; apply rules to both wireline and wireless; and direct the attorney general to enforce these principles, 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. This act shall be known and may be cited as the “Internet Freedom Act.”

2 SECTION 2. Section 6A of chapter 25C of the General Laws is hereby repealed.

3 SECTION 3. Chapter 25C of the General Laws is hereby amended by adding the
4 following section:-

5 Section 9.

6 (a) For the purposes of this section, the following words shall have the following
7 meanings, unless the context clearly requires otherwise:-

8 “Broadband internet access service”, a mass market retail service by wire or radio that
9 provides the capability to transmit data to and receive data from all or substantially all internet
10 endpoints, including any capabilities that are incidental to and enable the operation of the
11 communications service, but excluding dial-up internet access; any service that the federal
12 communications commission finds to be providing a functional equivalent of the service
13 described in the previous sentence, or that is used to evade the obligations set forth in this
14 section.

15 “Paid prioritization”, management of internet service by a broadband internet access
16 service to directly or indirectly favor some internet traffic over other internet traffic based upon
17 content, source, ownership, type or in exchange for consideration, monetary or otherwise, from a
18 third party or to benefit an affiliated entity.

19 “Reasonable network management”, a network management practice that is appropriate
20 and tailored to achieving a legitimate network management purpose, taking into account the
21 particular network architecture and any technology and operational limitations of the broadband
22 internet access service provider.

23 “Specialized services”, services other than broadband internet access service that are
24 offered over the same network as, and that may share network capacity with, broadband internet
25 access service.

26 “Throttle”, intentional manipulation including, but not limited to, selectively slowing,
27 speeding, altering, degrading, interfering with, enhancing, or privileging of internet service by a
28 broadband internet access service provider.

29 “Consumer”, any individual or entity that uses a broadband internet access service.

30 (b) a person engaged in the provision of broadband internet access service in the
31 commonwealth, or a telecommunications or internet service provider that has entered into a
32 franchise agreement, right-of-way agreement, or other contract with the state of Massachusetts or
33 a political subdivision thereof, under section 25A of chapter 166, section 21 of chapter 81, or
34 section 3 of chapter 4A of the General Laws, or that uses facilities that are subject to such
35 agreements, even if it is not a party to the agreement:-

36 (1) shall not block lawful content, applications, or services, subject to reasonable network
37 management;

38 (2) shall not prohibit the use of non-harmful devices, subject to reasonable network
39 management; (3) shall not throttle lawful traffic based on source, application or services,
40 destination, content, ownership or type, subject to reasonable network management;

41 (4) shall not engage in paid prioritization; and

42 (5) shall publicly disclose accurate and relevant information in plain language regarding
43 the network management practices, performance, and commercial terms of its broadband internet
44 access services sufficient for consumers to make informed choices regarding the use of such
45 services and for content, application, service, and device providers to develop, market, and
46 maintain internet offerings, except that a provider is not required to publicly disclose

47 competitively sensitive information or information that could compromise network security or
48 undermine the efficacy of reasonable network management practices.

49 (c) The department shall establish a process for broadband internet access service
50 providers to certify that they will not engage in practices inconsistent with subsection (b), limit
51 state-conferred benefits to broadband internet access service providers, limit applicability to pole
52 attachment rules to broadband internet access service providers that adhere to subsection (b), and
53 review state-conferred benefits such as easements and taxes.

54 (d) The attorney general shall enforce this section through adjudication of complaints
55 alleging such violations in accordance with sections one to fourteen A, inclusive, of chapter 93
56 of the General Laws.

57 (e) Nothing in this section supersedes any obligation or authorization a provider of
58 broadband internet access service may have to address the needs of emergency communications
59 or law enforcement, public safety, or national security authorities, consistent with or as permitted
60 by applicable law, or limits a provider's ability to do so, or prohibits reasonable efforts by a
61 provider of broadband internet access service to address copyright infringement or other
62 unlawful activities.

63 (f) Nothing in this section shall be construed to limit a consumer's choice of service plan
64 or a consumer's control over a chosen broadband internet access service, or the ability of
65 broadband internet access service providers to offer specialized services.

66 (g) Specialized services may not be offered or provided in ways that threaten the
67 meaningful availability of broadband internet access service or that have been devised or
68 promoted in a manner designed to evade the purposes of this section.

69 (h) Notwithstanding any other provision of law, the provision of broadband internet
70 access service or any other mass market retail service providing advanced telecommunications
71 capability, as that term is defined in 47 U.S.C. section 1302, shall be considered to be an
72 information service.

73 SECTION 4. Chapter 10 of the General Laws is hereby amended by adding the following
74 section:

75 Section 78

76 (a) There shall be established and set up on the books of the commonwealth an internet
77 consumer access fund to be administered by the treasurer. The fund shall consist of monies
78 received and recovered by the office of the attorney general from lawsuits related to sections one
79 to fourteen A, inclusive, of chapter 93 of the General Laws, or funds otherwise designated to this
80 account.

81 (b) The treasurer shall make distributions from the internet consumer access account for
82 purposes consistent with ensuring equal access to the free flow of information over the internet.

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

86 SECTION 5. Within 60 days after the enactment of this act, the department shall adopt
87 formal complaint procedures to address alleged violations of section 9 of chapter 25C.