

**SENATE . . . . . No. 2389**

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**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**

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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.

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**The Commonwealth of Massachusetts**

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 Section 6A of chapter 25C of the General Laws is hereby repealed.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