

SENATE No. 2610

The Commonwealth of Massachusetts

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

SENATE, July 16, 2018

The committee on Ways and Means to whom was referred the Senate Bill to protect consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service (Senate, No. 2336) (also based on Senate, No. 2376),-- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled “An Act promoting net neutrality and consumer protection” (Senate, No. 2610).

For the committee,
Karen E. Spilka

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An Act promoting net neutrality and consumer protection.

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 7 of the General Laws is hereby amended by inserting after section
2 23B the following section:-

3 Section 23C. Notwithstanding any general or special law relating to procurement, and to
4 the extent permitted by federal law, a state agency or state authority, as defined in section 1 of
5 chapter 29, shall establish a preference for the procurement of internet service from an internet
6 service provider, as defined in section 9 of chapter 25C, that meets or exceeds the standards
7 established under subsection (e) of section 9 of chapter 25C.

8 SECTION 2. Section 11E of chapter 12 of the General Laws, as appearing in the 2016
9 Official Edition, is hereby amended by inserting after the words “transmission company”, in line
10 7, the following words:- , internet service provider.

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

13 Section 9. (a) As used in this section, the following words shall have the following
14 meanings, unless the context clearly requires otherwise:

15 “Broadband internet access service”, a mass-market retail service by wire or radio that
16 provides the capability to transmit data to and receive data from all or substantially all internet
17 endpoints, including capabilities that are incidental to and enable the operation of the service, but
18 excluding dial-up internet access service.

19 “Customer”, a current or former subscriber to a broadband internet access service in the
20 commonwealth or an applicant for an internet service in the commonwealth.

21 “Customer proprietary information”, personal information of a customer, including, but
22 not limited to, financial information, health information, information pertaining to a child of the
23 customer who is under the age of 18, Social Security number, precise geolocation information,
24 driver’s license number or state-issued identification card number, content of communications,
25 web browsing history, application usage history, the functional equivalents of web browsing or
26 application usage history and any information, including metadata and de-identified data, that is
27 linked, or reasonably may be linked, to a specific customer or device.

28 “Internet service provider”, a person who provides broadband internet access service to
29 customers in the commonwealth.

30 “Paid prioritization”, the management of a broadband provider’s network to favor, either
31 directly or indirectly, certain traffic over other traffic, which may include, but shall not be limited
32 to, the use of techniques such as traffic shaping, prioritization, resource reservation or other
33 forms of preferential traffic management, either: (i) in exchange for consideration, monetary or
34 otherwise, from a third party; or (ii) to benefit an affiliated entity.

35 (b) There shall be an internet service provider registry to make broadband internet access
36 service quality and network management practices readily available to customers in the
37 commonwealth. The department shall compile for the registry information disclosed by internet
38 service providers in the commonwealth pursuant to this section and from the verification tests
39 conducted pursuant to this section. The department shall organize the registry in a format that is
40 conducive to review and comparison by customers and prospective customers of internet service.
41 The registry shall be available on the department's website and shall include net neutrality and
42 consumer privacy grades under subsection (f) in 1 comparison chart for fixed line internet
43 service providers and 1 comparison chart for wireless internet service providers. The department
44 shall provide the information in the registry upon request.

45 (c) Annually, not later than October 1, all internet service providers shall file current and
46 accurate copies of the following disclosures with the department: (i) the internet service
47 provider's network management practices, performance characteristics and commercial terms of
48 its broadband internet access services under 47 C.F.R. 8.1; and (ii) the internet service provider's
49 privacy policy under the California Business and Professions Code §§ 22575 to 22579, if
50 applicable.

51 (d) The department shall conduct regular verification tests on its own or through a third
52 party to determine the accuracy of the disclosures made by each internet service provider under
53 subsection (c).

54 (e) The department shall establish standards for a Massachusetts Net Neutrality and
55 Consumer Privacy Seal that shall allow an internet service provider to demonstrate that it: (i)
56 provides equal access to an open and neutral internet; (ii) commits to and enforces policies which

57 prohibit paid prioritization; and (iii) provides customers with a mechanism to easily opt-out of
58 third-party access to customer proprietary information for purposes other than the provision of
59 broadband internet access service from which that customer proprietary information was derived.
60 Annually, not later than July 1, the department shall publish standards to measure the network
61 management practices of each internet service provider. The department shall determine whether
62 each internet service provider meets the standards established under this subsection. An internet
63 service provider that meets the standards may display the Massachusetts Net Neutrality and
64 Consumer Privacy Seal on its marketing materials. Use of the Massachusetts Net Neutrality and
65 Consumer Privacy Seal while not in compliance with the standards set forth by the department
66 shall be considered a deceptive practice under chapter 93A.

67 (f) Based on the standards established in subsection (e), the department shall grade
68 internet service providers on the provider's internet service quality, policies on paid
69 prioritization, network management practices and consumer privacy practices. The highest
70 grades shall be given to an internet service provider who meets or exceeds the standards of net
71 neutrality and consumer privacy under subsection (e).

72 (g) An internet service provider that conducts business in the commonwealth shall
73 disclose to each customer its net neutrality and consumer privacy grade before entering into an
74 agreement for service and annually thereafter, and shall provide the customer with the website
75 and phone number for the registry. Failure to disclose a net neutrality and consumer privacy
76 score as required by this section shall be considered a deceptive practice under chapter 93A.

77 (h) Nothing in this section shall preclude or limit an action brought under chapter 93A or
78 any other law.

79 (i) Notwithstanding any other section of chapter 25C or any other general or special law
80 to the contrary, the department shall have jurisdiction, general supervision, regulation and
81 control over an internet service provider's compliance with this section.

82 (j) The department shall promulgate regulations to implement this section.

83 SECTION 4. Section 47E of chapter 164 of the General Laws, as appearing in the 2016
84 Official Edition, is hereby amended by inserting after the word "system", in line 6, the following
85 words:- , including, but not limited to, internet access and wireless internet access,.

86 SECTION 5. The department of telecommunications and cable shall promulgate the
87 regulations required under to implement section 9 of chapter 25C of the General Laws, as
88 appearing in section 2, not later than July 1, 2019.

89 SECTION 6. Section 3 shall take effect on July 1, 2019.