

SENATE No. 1960

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: | DISTRICT/ADDRESS: | |
|---------------------------|--------------------------------|------------------|
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>1/31/2019</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>1/31/2019</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>2/1/2019</i> |

SENATE No. 1960

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1960) of James B. Eldridge, Patricia D. Jehlen, Denise Provost and Mary S. Keefe for legislation to ensure a free and open internet in the Commonwealth. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2389 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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

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 Section 6A of chapter 25C of the General Laws is hereby repealed.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. Protecting consumers from blocking, throttling, or paid prioritization in the
6 provision of internet service

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

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

15 "Paid prioritization", the management of a broadband provider’s network to directly or
16 indirectly favor some traffic over other traffic, including through use of techniques such as traffic
17 shaping, prioritization, resource reservation, or other forms of preferential traffic management,
18 either: (1) in exchange for consideration, monetary or otherwise, from a third party; or (2) to
19 benefit an affiliated entity.

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

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

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

30 “Zero-rating”, exempting some internet traffic from a consumer’s data limitation.

31 “ISP traffic exchange”, the exchange of internet traffic destined for, or originating from,
32 an internet service provider’s end users between the internet service provider’s network and
33 another person or entity, including, but not limited to, an edge provider, content delivery
34 network, or other network operator.

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

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

43 (2) shall not prohibit the use of non-harmful devices, subject to reasonable network
44 management;

45 (3) shall not throttle lawful traffic based on source, application or services, destination,
46 content, ownership or type, subject to reasonable network management;

47 (4) shall not engage in paid prioritization;

48 (5) shall not engage in practices with respect to, related to, or in connection with, ISP
49 traffic exchange that have the purpose or effect of circumventing or undermining the
50 effectiveness of this section;

51 (6) shall publicly disclose accurate and relevant information in plain language regarding
52 the network management practices, performance, and commercial terms of its broadband internet
53 access services sufficient for consumers to make informed choices regarding the use of such
54 services and for content, application, service, and device providers to develop, market, and
55 maintain internet offerings, except that a provider is not required to publicly disclose
56 competitively sensitive information or information that could compromise network security or
57 undermine the efficacy of reasonable network management practices;

58 (7) shall not engage in zero-rating practices, including, but not limited to, zero-rating
59 some Internet content, applications, services, or devices in a category of Internet content,
60 applications, services, or devices, but not the entire category; and

61 (8) shall not engage in zero-rating practices in exchange for consideration, monetary or
62 otherwise.

63 (c) The department shall establish a process for broadband internet access service
64 providers to certify that they will not engage in practices inconsistent with this subsection (b),
65 limit state-conferred benefits to broadband internet access service providers, limit applicability of
66 pole attachment rules to broadband internet access service providers that adhere to subsection
67 (b), and review state-conferred benefits such as easements and taxes.

68 (d) The attorney general shall enforce this section through adjudication of complaints
69 alleging such violations in accordance with sections one to fourteen A, inclusive, of chapter 93.

70 (e) Nothing in this section supersedes any obligation or authorization a provider of
71 broadband internet access service may have to address the needs of emergency communications
72 or law enforcement, public safety, or national security authorities, consistent with or as permitted

73 by applicable law, or limits a provider's ability to do so, or prohibits reasonable efforts by a
74 provider of broadband internet access service to address copyright infringement or other
75 unlawful activities.

76 (f) Nothing in this section shall be construed to limit a consumer's choice of service plan
77 or a consumer's control over a chosen broadband internet access service.

78 SECTION 4. Chapter 30B of the General Laws is hereby amended by adding the
79 following section:-

80 Section 24. Net Neutrality and Internet Service Providers Entering into State Contracts

81 (a) A person that submits a bid or proposal to, or otherwise proposes to enter into or
82 renew, a contract with a governmental body with respect to the provision of internet service shall
83 provide the contracting authority with copies of all disclosures required in Section 10 of chapter
84 25C.

85 (b) A governmental body shall consult with the department about the network
86 management practices of each internet service provider under consideration for the award of a
87 contract. The internet service provider's network management practices shall be a factor in the
88 government body's decision about awarding the broadband internet service contract.

89 SECTION 5. Chapter 10 of the General Laws is hereby amended by adding the following
90 section:-

91 Section 78. (a) There is hereby established and set up on the books of the commonwealth
92 an internet consumer access fund to be administered by the treasurer. The fund shall consist of
93 monies received and recovered by the office of the attorney general from lawsuits related to

94 sections one to fourteen A, inclusive, of chapter 93, or funds otherwise designated to this
95 account.

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

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

101 SECTION 6. Within 60 days after the effective date of this act, the department shall
102 adopt formal complaint procedures to address alleged violations of section 9 of chapter 25C of
103 the General Laws.