

SENATE No. 48

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>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/25/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/20/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>5/27/2021</i>

SENATE No. 48

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 48) of James B. Eldridge and Tram T. Nguyen for legislation to ensure a free and open internet in the commonwealth. Advanced Information Technology, the Internet and Cybersecurity.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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 Section 6A of chapter 25C of the General Laws is hereby repealed.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 inserting after
4 section 8 the following 2 sections:-

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 “Application-agnostic”, not differentiating on the basis of source, destination, Internet
10 content, application, service or device or class of Internet content, application, service or device.

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

“Class of content, application, service or device”, Internet content or a group of Internet applications, services or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service or device, using the same application- or transport-layer protocol or having similar technical characteristics, including, but not limited to, the size, sequencing or timing of packets, or sensitivity to delay.

“Consumer” or “end user”, an individual or entity that uses a broadband internet access service.

“Content, applications, or services”, all Internet traffic transmitted to or from end users of a broadband Internet access service, including, but not limited to, traffic that may not fit clearly into any of these categories.

“Edge provider”, an individual or entity that provides content, application, or service over the Internet, and an individual or entity that provides a device used for accessing content, application or service over the Internet.

“Enterprise service”, an offering to larger organizations through customized or individually negotiated arrangements or special access services.

“Fixed broadband Internet access service”, a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes, but is not limited to, fixed wireless services including, but not limited to, fixed unlicensed wireless services, and fixed satellite services.

“Fixed Internet service provider” means a business that provides fixed broadband Internet access service to an individual, corporation, government or other customer in the Commonwealth.

“Impairing or degrading lawful Internet traffic on the basis of Internet content, application or service, or use of a nonharmful device”, impairing or degrading any of the following: (1) particular content, applications or services; (2) particular classes of content, applications or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices. The term includes, without limitation, differentiating, positively or negatively, between any of the following: (1) particular content, applications or services; (2) particular classes of content, applications or services; (3) lawful Internet traffic to particular nonharmful devices; or (4) lawful Internet traffic to particular classes of nonharmful devices.

“Internet service provider” or “ISP”, a business that provides broadband Internet access service to an individual, corporation, government or other customer in the commonwealth.

“ISP traffic exchange agreement”, an agreement between an Internet service provider and another individual or entity, including, but not limited to an edge provider, content delivery

network or other network operator, to exchange Internet traffic destined for, or originating from, an Internet service provider's end users between the Internet service provider's network and the other individual or entity.

"ISP traffic exchange", the exchange of internet traffic destined for or originating from an Internet service provider's end users between the internet service provider's network and another person or entity, including, but not limited to, an edge provider, content delivery network or other network operator.

"Mass market", a service that sells large quantities of goods on a standardized basis to residential customers, small businesses, and other customers, including, but not limited to, schools, institutions of higher learning, and libraries. "Mass market" services also include broadband Internet access services purchased with support of the E-rate and Rural Health Care programs and similar programs at the federal and state level, regardless of whether they are customized or individually negotiated, as well as any broadband Internet access service offered using networks supported by the Connect America Fund or similar programs at the federal and state level. "Mass market" service does not include enterprise service.

"Mobile broadband Internet access service", a broadband Internet access service that serves end users primarily using mobile stations. Mobile broadband Internet access service includes, but is not limited to, broadband Internet access services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services.

“Mobile Internet service provider”, a business that provides mobile broadband Internet access service to an individual, corporation, government or other customer in the Commonwealth.

“Mobile station”, a radio communication station capable of being moved and which ordinarily does move.

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

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

“Zero-rating”, exempting some internet traffic from a consumer's data usage allowance.

(b) It shall be unlawful for a fixed Internet service provider, insofar as the provider is engaged in providing fixed broadband Internet access service, and it shall be unlawful for a mobile Internet service provider, insofar as the provider is engaged in providing mobile broadband Internet access service, to engage in these activities:

(1) block lawful content, applications, or services, or nonharmful devices subject to reasonable network management;

(2) impair or degrade lawful traffic based on content, application or service, or use of a nonharmful device, subject to reasonable network management;

(3) require consideration, monetary or otherwise, from an edge provider, including, but not limited to, in exchange for any of the following:

(i) delivering Internet traffic to, and carrying Internet traffic from, the Internet service provider's end users.

(ii) avoiding having the edge provider's content, application, service, or nonharmful device blocked from reaching the Internet service provider's end users.

(iii) avoiding having the edge provider's content, application, service, or nonharmful device impaired or degraded.

(4) engage in paid prioritization;

(5) engage in practices with respect to, related to, or in connection with, ISP traffic exchange, including but not limited to agreements, that have the purpose or effect of circumventing or undermining the effectiveness of this section;

(6) engage in zero-rating in exchange for consideration, monetary or otherwise from a third party.

(7) zero-rate some Internet content, applications, services or devices in a category of Internet content, applications, services or devices, but not the entire category.

(c) A fixed Internet service provider, insofar as the provider is engaged in providing fixed broadband Internet access service, and a mobile Internet service provider, insofar as the provider is engaged in providing mobile broadband Internet access service, shall not unreasonably interfere with or unreasonably disadvantage (1) end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (2) edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this subsection. Zero-rating Internet traffic in application-agnostic ways shall not be a violation of this subsection provided that no consideration, monetary or otherwise, is provided by any third party in exchange for the Internet service provider's decision whether to zero-rate traffic.

(d) A fixed Internet service provider, insofar as the provider is engaged in providing fixed broadband Internet access service, and a mobile Internet service provider, insofar as the provider is engaged in providing mobile broadband Internet access service, shall publicly disclose accurate and relevant information in plain language regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient for consumers to make informed choices regarding the use of such services and for content, application, service, and device providers to develop, market, and maintain internet offerings, except that a provider is not required to publicly disclose competitively sensitive information or information that could compromise network security or undermine the efficacy of reasonable network management practices;

(e) It shall be unlawful for a fixed Internet service provider, and it shall be unlawful for a mobile Internet service provider, to offer or provide services other than broadband Internet

access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services satisfy either of the following conditions:

(1) They have the purpose or effect of evading the prohibitions in this section.

(2) They negatively affect the performance of broadband Internet access service.

(f) The department shall establish a process for broadband internet access service providers to certify that they will not engage in practices inconsistent with subsections (b) through (e), limit state-conferred benefits to broadband internet access service providers that adhere to subsections (b) through (e), limit applicability of pole attachment rules to broadband internet access service providers that adhere to subsections (b) through (e), and review state-conferred benefits such as easements and taxes.

(g) The attorney general shall enforce this section through adjudication of complaints alleging such violations in accordance with sections 1 to 14A, inclusive, of chapter 93.

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

Section 10. Prohibition on Certain Data Usage Caps.

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

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

“COVID-19 emergency”, also known as COVID-19, means the state of emergency concerning the novel coronavirus disease outbreak declared by the governor on March 10, 2020.

“Internet service provider”, a business that provides broadband Internet access service to an individual, corporation, government, or other customer in the commonwealth.

“Consumer” or “end user”, an individual or entity that uses a broadband internet access service.

(b) Notwithstanding any general or special law to the contrary, for the duration of the COVID-19 emergency and 60 days thereafter, an Internet service provider shall not:

(1) increase the cost of any Broadband Internet Access Services for a consumer

(2) levy a new fee or charge related to Broadband Internet Access Services upon a consumer;

(3) impose new data caps or allowances on a consumer; or

(4) shut off Broadband Internet Access Service or services for a consumer that is unable to pay an overdue bill due to financial hardship caused by the COVID-19 emergency.

(c) Internet service providers shall not impose a data cap or allowance below 5 terabytes per month. SECTION 4. Chapter 30B of the General Laws is hereby amended by inserting after section 23 the following section:-

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

(a) A person that submits a bid or proposal to, or otherwise proposes to enter into or renew, a contract with a governmental body with respect to the provision of internet service shall provide the contracting authority with copies of all disclosures required in section 9 of chapter 25C.

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

SECTION 5. Chapter 10 of the General Laws is hereby amended by inserting after section 78 the following section:-

Section 79. (a) There is hereby established and set up on the books of the commonwealth an internet consumer access fund to be administered by the treasurer. The fund shall consist of monies received and recovered by the office of the attorney general from lawsuits related to sections 1 to 14A, inclusive, of chapter 93, or funds otherwise designated to this account.

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

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

203 SECTION 6. Within 60 days of the effective date of this act, the department shall adopt
204 formal complaint procedures to address alleged violations of section 9 of chapter 25C.