

1 AN ACT relating to internet service providers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Broadband Internet access service" means any mass-market retail service*
7 *by wire or radio that provides the capability to transmit data from all or*
8 *substantially all internet endpoints, including any capabilities that are*
9 *incidental to and enable the operation of the communications service, but*
10 *excluding dial-up internet access service. Broadband Internet access service*
11 *includes any service that the federal communications commission finds to*
12 *be providing a functional equivalent thereof that is used to evade the*
13 *protections set forth in this section;*

14 *(b) "Edge provider" means any person or entity that provides any content,*
15 *application, or service over the Internet, and any person or entity that*
16 *provides a device used for accessing any content, application, or service over*
17 *the Internet;*

18 *(c) "End user" means any person or entity that uses a broadband Internet*
19 *access service;*

20 *(d) "Paid prioritization" means the management of a broadband provider's*
21 *network to directly or indirectly favor some traffic over other traffic,*
22 *including through the use of techniques such as traffic shaping,*
23 *prioritization, resource reservation, or other forms of preferential traffic*
24 *management, either:*

25 *1. In exchange for consideration, monetary, or otherwise, from a third*
26 *party; or*

27 *2. To benefit an affiliated entity; and*

1 (e) "Reasonable network management" means a practice that has a primarily
 2 technical network management justification, but does not include other
 3 business practices. A network management practice is reasonable if it is
 4 primarily used for and tailored to achieving a legitimate network
 5 management purpose, taking into account the particular network
 6 architecture and technology of the broadband internet access service.

7 (2) The Commonwealth shall not, through contract or like business agreement under
 8 the Kentucky Model Procurement Act, procure telecommunications services with
 9 a service provider that:

10 (a) Blocks lawful content, applications, services, or nonharmful devices, subject
 11 to reasonable network management;

12 (b) Impairs or degrades lawful internet traffic on the basis of internet content,
 13 application, or service, or use of a nonharmful device, subject to reasonable
 14 network management;

15 (c) Engages in paid prioritization; or

16 (d) Unreasonably interferes with or unreasonably disadvantages:

17 1. End users' ability to select, access, and use broadband internet access
 18 service or the lawful internet content, applications, services, or devices
 19 of their choice; or

20 2. Edge providers' ability to make lawful content, applications, services,
 21 or devices available to end users.

22 (3) If a service provider with a contract or like business agreement with the
 23 Commonwealth violates the provisions of this section, the contract or like
 24 business agreement shall be deemed terminated.

25 ➔SECTION 2. A NEW SECTION OF KRS 367.110 TO 367.300 IS CREATED
 26 TO READ AS FOLLOWS:

27 (1) This section shall be known as the Fair Access to the Internet Act.

1 (2) As used in this section:

2 (a) "Broadband Internet access service" means any mass-market retail service
3 by wire or radio that provides the capability to transmit data from all or
4 substantially all internet endpoints, including any capabilities that are
5 incidental to and enable the operation of the communications service, but
6 excluding dial-up internet access service. Broadband Internet access service
7 includes any service that the federal communications commission finds to
8 be providing a functional equivalent thereof that is used to evade the
9 protections set forth in this section;

10 (b) "Edge provider" means any person or entity that provides any content,
11 application, or service over the Internet, and any person or entity that
12 provides a device used for accessing any content, application, or service over
13 the Internet;

14 (c) "End user" means any person or entity that uses a broadband Internet
15 access service;

16 (d) "Paid prioritization" means the management of a broadband provider's
17 network to directly or indirectly favor some traffic over other traffic,
18 including through the use of techniques such as traffic shaping,
19 prioritization, resource reservation, or other forms of preferential traffic
20 management, either:

21 1. In exchange for consideration, monetary, or otherwise, from a third
22 party; or

23 2. To benefit an affiliated entity; and

24 (e) "Reasonable network management" means a practice that has a primarily
25 technical network management justification, but does not include other
26 business practices. A network management practice is reasonable if it is
27 primarily used for and tailored to achieving a legitimate network

1 management purpose, taking into account the particular network
2 architecture and technology of the broadband internet access service.

3 (3) A service provider shall not engage in unfair, false, misleading, or deceptive acts
4 or practices in the conduct of any trade or commerce including but not limited to
5 the following:

6 (a) Blocking lawful content, applications, services, or nonharmful devices,
7 subject to reasonable network management;

8 (b) Impairing or degrading lawful internet traffic on the basis of internet
9 content, application, or service, or use of a nonharmful device, subject to
10 reasonable network management;

11 (c) Engaging in paid prioritization; or

12 (d) Unreasonably interfering with or unreasonably disadvantaging:

13 1. End users' ability to select, access, or use broadband internet access
14 service or the lawful internet content, applications, services, or devices
15 of their choice; or

16 2. Edge providers' ability to make lawful content, applications, services,
17 or devices available to end users.

18 (4) A service provider who violates any provision of this section shall be subject to a
19 civil penalty not to exceed ten thousand dollars (\$10,000), payable to the office of
20 the Attorney General. All penalties recovered by the Attorney General shall be
21 paid into the State Treasury and credited to the account of the Attorney General.

22 ➔Section 3. If any provision of this Act or the application thereof to any person or
23 circumstance is held invalid, the invalidity shall not affect other provisions or
24 applications of this Act that can be given effect without the invalid provision or
25 application, and to this end the provisions of this Act are severable.