

HOUSE No. 2927

The Commonwealth of Massachusetts

PRESENTED BY:

Andres X. Vargas and David Allen Robertson

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 protecting consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>

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By Messrs. Vargas of Haverhill and Robertson of Tewksbury, a petition (accompanied by bill, House, No. 2927) of Andres X. Vargas and others protecting consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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

An Act protecting consumers by prohibiting blocking, throttling, or paid prioritization in the provision of internet service.

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, as appearing in the 2016 Official Edition, is
2 hereby amended by inserting after section 4A the following section:-

3 Section 4B. The executive office of administration and finance shall promote and
4 improve net neutrality throughout the commonwealth. In furtherance of net neutrality, the
5 secretary, through the operational services division shall require any contractor who is an internet
6 service provider that is seeking to supply any such services to the commonwealth, to receive net
7 neutrality certification from the department of public utilities.

8 SECTION 2. Section 2 of chapter 7D of the General Laws is hereby amended by adding
9 the following paragraph:-

10 Any agency that adheres to the policies, procedures or objectives established by the office
11 shall adopt net neutral principles as provided for in subsection (b) of section 9 of chapter 25C.

12 SECTION 3. Subsection (a) of section 3 of said chapter 7D is hereby amended by adding
13 the following clause:-

14 (xiii) provide for and implement standards for net neutral principles as provided for in
15 subsection (b) of section 9 of chapter 25C and, in consultation with the operational services
16 division, ensure that no vendor for the commonwealth is awarded a contract from the
17 commonwealth who does not adhere to such net neutral principles.

18 SECTION 4. Section 4 of said chapter 7D is hereby amended by adding the following
19 sentence:- The CISO shall ensure that net neutral principles of the commonwealth are followed
20 by executive offices and agencies.

21 SECTION 5. Section 4C of said chapter 7D is hereby amended by adding the following
22 sentence:- The chief digital officer shall ensure that such public facing web presence includes a
23 statement of the commonwealth's principles of net neutrality on its home page and any landing
24 page of any agency.

25 SECTION 6. Subsection (d) of section 7 of said chapter 7D is hereby amended by adding
26 the following clause:-

27 (x) implementing net neutral practices.

28 SECTION 7. Section 9 of said chapter 7D is hereby amended by inserting after the
29 second sentence the following sentence;- The plan shall include net neutral principles for the
30 provision of internet service among state agencies that include; (i) not blocking lawful content,

31 applications, services, or non-harmful devices, subject to reasonable network management; (ii)
32 impairing or degrading lawful internet traffic on the basis of internet content, application, or
33 service, or use of a non-harmful device, subject to reasonable network management; or (iii)
34 engaging in paid prioritization, as defined and set forth in section 9 of chapter 25C.

35 SECTION 8. Chapter 10 of the General Laws is hereby amended by adding the following
36 section:-

37 Section 78. (a) There shall be established on the books of the commonwealth, the Internet
38 Consumer Access Account in the state treasury and overseen by the department of the state
39 treasurer. All receipts from recoveries by the office of the attorney general for lawsuits related to
40 the Massachusetts Antitrust Act under the provisions of chapter 93, or otherwise designated to
41 the Account, shall be deposited into the Account.

42 (b) Moneys in the Account may be spent only after appropriation. Expenditures from the
43 Account may be used only for costs incurred by the office of the attorney general in the
44 administration and enforcement of the Massachusetts Antitrust Act under chapter 93.

45 SECTION 9. Chapter 25C of the General Laws is hereby amended by adding the
46 following 2 sections:—

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

49 “Broadband internet access service”, (i) a mass-market retail service by wire or radio that
50 provides the capability to transmit data to and receive data from all or substantially all internet
51 endpoints, including any capabilities that are incidental to and enable the operation of the

52 communications service, but excluding dial-up internet access service; and (ii) the term
53 broadband internet access service shall also encompass any service that the federal
54 communications commission finds to be providing a functional equivalent of the service
55 described in clause (i) of this definition, or that is used to evade the protections set forth in this
56 section.

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

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

67 (b) A person engaged in the provision of broadband internet access service in the
68 commonwealth, insofar as the person is so engaged, shall not:

69 (i) block lawful content, applications, services, or non-harmful devices, subject to
70 reasonable network management;

71 (ii) impair or degrade lawful internet traffic on the basis of internet content, application,
72 or service, or use of a non-harmful device, subject to reasonable network management; or

73 (iii) engage in paid prioritization.

74 (c) The department may waive the prohibition on paid prioritization only if the petitioner
75 demonstrates that the practice would provide some significant public interest benefit and would
76 not harm the open nature of the internet in the commonwealth.

77 Section 10. (a) The department shall have jurisdiction, general supervision, regulation
78 and control over a broadband internet access service provider's compliance with section 9.

79 (b) The department shall establish a certification process for a broadband internet access
80 service provider to certify they uphold principles of net neutrality as required by section 9 and do
81 not act in a manner that contradicts those principles.

82 (c) The department shall provide to consumers of internet broadband a method to conduct
83 verification tests, on the customer's own or through a third-party, to determine the average
84 connectivity speed experienced by actual users for each Internet service provider within the
85 commonwealth.

86 The department shall compile the information disclosed to it by any consumer or third
87 party of the result of such test by all of the Internet service providers within the commonwealth
88 pursuant to this chapter and from the office's own verification tests, conducted pursuant to this
89 section, for the enforcement of net neutral certification.

90 SECTION 10. Chapter 93 of the General Laws is hereby amended by adding the
91 following section:-

92 Section 115. (a) The general court finds that the practices covered by this chapter are
93 matters vitally affecting the public interest for the purpose of applying the Massachusetts

94 Antitrust Act. A violation of this chapter is not reasonable in relation to the development and
95 preservation of business and is an unfair or deceptive act in trade or commerce and an unfair
96 method of competition for the purpose of applying the Massachusetts Antitrust Act.

97 (b) This chapter may be enforced solely by the attorney general.

98 SECTION 11. Chapter 164 of the General Laws, as appearing in the 2016 Official
99 Edition, is hereby amended by inserting after section 34B the following section:-

100 Section 34C. No distribution company, telephone company or telecommunications
101 system may use, or enter into an agreement with the commonwealth for use of, an existing pole
102 or installation of new pole owned by the commonwealth, unless such user has received a net
103 neutral certification from the department and is compliant with such certification.

104 SECTION 12. Section 47E of said chapter 164 is hereby amended by adding the
105 following 2 paragraphs:-

106 For the purposes of this section, the term telecommunications system shall include
107 Internet service. Any such system may provide internet service outside its own
108 telecommunications system service territory for retail purposes, notwithstanding any general or
109 special law to the contrary. Such internet service may include broadband internet access service,
110 which is a mass-market retail service by wire or radio that provides the capability to transmit
111 data to and receive data from all or substantially all internet endpoints, including any capabilities
112 that are incidental to and enable the operation of the communications service, but excluding dial-
113 up internet access service.

114 A provider of such internet service shall not:

115 (i) block lawful content, applications, services, or non-harmful devices, subject to
116 reasonable network management;

117 (ii) impair or degrade lawful internet traffic on the basis of internet content, application,
118 or service, or use of a non-harmful device, subject to reasonable network management; or

119 (iii) engage in paid prioritization, as set forth and defined by section 9 of chapter 25C.

120 This paragraph shall be enforced pursuant to section 10 of said chapter 25C.

121 SECTION 13. The department of public utilities shall promulgate regulations to
122 implement the provisions of sections 1 and 12 on or before September 1, 2018.