

HOUSE No. 4222

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers and Andres X. Vargas

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 relative to providing for net neutrality and consumer protection.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|------------------------------|--|
| <i>David M. Rogers</i> | <i>24th Middlesex</i> |
| <i>Andres X. Vargas</i> | <i>3rd Essex</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> |
| <i>Edward F. Coppinger</i> | <i>10th Suffolk</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>Tricia Farley-Bouvier</i> | <i>3rd Berkshire</i> |
| <i>Dylan Fernandes</i> | <i>Barnstable, Dukes and Nantucket</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> |
| <i>Colleen M. Garry</i> | <i>36th Middlesex</i> |
| <i>Carmine L. Gentile</i> | <i>13th Middlesex</i> |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> |
| <i>Jonathan Hecht</i> | <i>29th Middlesex</i> |
| <i>Natalie Higgins</i> | <i>4th Worcester</i> |
| <i>Kate Hogan</i> | <i>3rd Middlesex</i> |

| | |
|-------------------------------|-----------------------|
| <i>Jay R. Kaufman</i> | <i>15th Middlesex</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Robert M. Koczera</i> | <i>11th Bristol</i> |
| <i>David Paul Linsky</i> | <i>5th Middlesex</i> |
| <i>Jay D. Livingstone</i> | <i>8th Suffolk</i> |
| <i>Juana Matias</i> | <i>16th Essex</i> |
| <i>James R. Miceli</i> | <i>19th Middlesex</i> |
| <i>Brian Murray</i> | <i>10th Worcester</i> |
| <i>Sarah K. Peake</i> | <i>4th Barnstable</i> |
| <i>Smitty Pignatelli</i> | <i>4th Berkshire</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> |

HOUSE No. 4222

By Messrs. Rogers of Cambridge and Vargas of Haverhill, a petition (subject to Joint Rule 12) of David M. Rogers, Andres X. Vargas and others for legislation to provide for net neutrality and consumer protection. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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

An Act relative to providing for 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. The General Laws are hereby amended by inserting after chapter 93K the
2 following chapter:-

3 CHAPTER 93L

4 NET NEUTRALITY

5 Section 1. This chapter shall be known and may be cited as the “Net Neutrality and
6 Consumer Protection Act.”

7 Section 2. The General Court hereby finds and declares that:

8 (a) It is the public policy of Massachusetts to ensure that all commonwealth customers of
9 Internet service providers have access to an open and neutral Internet.

10 (b) The prioritization of lawful Internet network traffic, except for reasonable Internet
11 network management, may impede competition in the Internet marketplace by permitting
12 Internet service providers to exert undue influence and potentially usurp the customer's privilege
13 to dictate success in the marketplace.

14 (c) The prioritization of lawful Internet network traffic, except for reasonable Internet
15 network management, may stifle innovation by providing large and established companies
16 enhanced access to customers and, in turn, degrading the access of small businesses,
17 entrepreneurs and start-up companies to customers.

18 (d) The prioritization of lawful Internet network traffic, except for reasonable Internet
19 network management, may lead to increased costs for customers as content providers are likely
20 to pass along to their customers any increase in operating costs caused by any fee that allows for
21 that prioritization.

22 (e) The prioritization of lawful Internet network traffic, except for Internet reasonable
23 network management, may inhibit the free exchange of ideas on the Internet by allowing Internet
24 service providers to give selected content providers enhanced access to the Internet user
25 community.

26 Section 3. As used in this chapter, the following words shall, unless the context clearly
27 requires otherwise, have the following meanings:-

28 "Content provider", any person, business or organization that owns or operates a website
29 or creates, develops, promotes or owns any content, including, but not limited to video, audio
30 and text, that is available via the Internet.

31 "Department", the department of telecommunications and cable within the office of
32 consumer affairs and business regulation established in section 1 of chapter 25C.

33 "Director", the director of the office of consumer affairs and business regulation in the
34 executive office of housing and economic development established in section 1 of chapter 24A.

35 "Internet", the international computer network of both federal and non-federal
36 interoperable packet switched data networks.

37 "Internet service provider", any person, business, or organization qualified to do business
38 in the commonwealth that provides individuals, corporations, or other entities with the ability to
39 connect to the Internet through equipment that is located in the commonwealth.

40 "Office", office of consumer affairs and business regulation in the executive office of
41 housing and economic development.

42 "Reasonable Internet network management", an Internet network management practice
43 that is appropriate and tailored to achieving a legitimate network management purpose, taking
44 into account the particular network architecture and technology of the Internet access service, or
45 that is for emergency communication, law enforcement, public safety or national security
46 purposes.

47 Section 4. Except where deemed necessary for reasonable Internet network management,
48 an Internet service provider shall provide all customers:-

49 (i) access to any lawful Internet content of their choice;

50 (ii) the ability to attach or connect any lawful device to the network on the customer's
51 end connection, provided that the device does not harm the network;

52 (iii) the ability to run any lawful application and use any lawful service of their choice;
53 and
54 (iv) access to an open and neutral Internet, free of any attempt by any Internet service
55 provider to privilege, degrade, prioritize or block any data transmitted across its network based
56 upon the type, content, source, ownership or destination of the data.

57 Section 5. An Internet service provider shall provide all customers:-

58 (i) full disclosure, at the time they become customers of that provider, of the Internet
59 service provider's policies relating to, or any action taken by the Internet service provider having
60 the effect of, the privileging, degrading, prioritizing or blocking of any Internet traffic;

61 (ii) prior written notification at least 30 days before the implementation of, or any
62 change in, any of their Internet service provider's policies or actions after they become customers
63 of that provider that will result in the privileging, degrading, prioritizing or blocking of any
64 Internet traffic except where necessary for reasonable Internet network management;

65 (iii) disclosure of all agreements made by the Internet service provider and a content
66 provider that provide the content provider's Internet traffic with any form of preferential
67 treatment over any other lawful Internet traffic; and

68 (iv) a comprehensive list, within their monthly or other periodic billing statement, of
69 any and all fees charged by the Internet service provider, separately itemized for each fee and, if
70 applicable, for each instance in which that fee is charged, including, but not limited to, all fees
71 charged by the Internet service provider for accessing a particular website, with each occurrence

72 of such access for which the customer has incurred a charge listed separately, together with the
73 time and date of access.

74 Section 6. (a) Notwithstanding any provision of chapter 25C or any other general or
75 special law to the contrary, the department shall have jurisdiction, general supervision, regulation
76 and control over an Internet service provider's compliance with sections 4 and 5.

77 (b) Any person may file a formal complaint alleging a violation of sections 4 or 5.

78 (c) The department shall have the right to institute, or to intervene as a party in, any
79 action in any court of competent jurisdiction seeking injunctive or other relief to compel
80 compliance with any provision of sections 4 or 5 or any rule, regulation or order adopted
81 thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in
82 connection therewith.

83 (d) The department or its employees may visit the places of business and other premises
84 and examine the records and facilities of all internet service providers to ascertain if all rules and
85 regulations and orders of the department have been complied with. The department shall also
86 have the power to issue subpoenas to compel the attendance of witnesses and the production of
87 documents, papers, books, records, and other evidence before it in any matter over which it has
88 jurisdiction, control or supervision. The department shall have the power to administer oaths and
89 affirmations to persons whose testimony is required.

90 (e) Subject to section 4 of chapter 25C, the commissioner of the department shall have all
91 the powers and duties under this chapter including, but not limited to: presiding at hearings;
92 maintaining or intervening in an action; hearing appeals and issuing enforcement orders;
93 enforcement powers; and all other authority to carry out the duties and responsibilities of

94 sections 4 and 5. Appeals taken from the orders of the department shall be taken in the same
95 manner and according to the same procedure for the department of public utilities established in
96 section 5 of chapter 25.

97 (f) Nothing in this section shall be construed to affect or modify the authority of the
98 attorney general to apply and enforce chapter 93A and other consumer protection laws of general
99 applicability;

100 Section 7. (a) There is established in the office the "Massachusetts Internet Service
101 Provider Registry" for the purpose of making Internet service quality and pricing information
102 readily available to customers within the commonwealth.

103 (b) The office shall promulgate regulations that require all Internet service providers,
104 with customers in the commonwealth, to affirmatively disclose the following information to the
105 office:

106 (i) the material terms of any agreement with any content provider that will result in
107 the privileging or prioritization of a content provider's Internet traffic. Disclosure of this
108 information shall occur before the Internet service provider takes any action which would result
109 in the privileging or prioritization of the content provider's Internet traffic;

110 (ii) all of the Internet service provider's policies relating to, or any action taken by the
111 Internet service provider that will result in, the privileging, degrading, prioritizing or blocking of
112 any Internet traffic. Disclosure of this information shall occur before the Internet service provider
113 takes any actions which would result in the privileging, degrading, prioritizing or blocking of any
114 Internet traffic, except that the disclosure may occur within seven calendar days after any action
115 is taken if the action is necessary for reasonable Internet network management; and

116 (iii) the material terms of all basic agreements entered into with all of its customers for
117 Internet service, including a full accounting of any and all fees charged by the Internet service
118 provider to its customers and any promises or assertions made regarding the connectivity speed
119 of the Internet service.

120 (c) The office shall conduct verification tests, on its own or through a third-party, to
121 determine the average connectivity speed experienced by actual users for each Internet service
122 provider within the Commonwealth.

123 (d) The office shall compile the information disclosed by all of the Internet service
124 providers within the commonwealth pursuant to this chapter and from the office's own
125 verification tests, conducted pursuant to this section, into an "Internet Service Provider
126 Registry." The director shall organize the registry in a format that is conducive to review and
127 comparison by customers and prospective customers of Internet service.

128 At a minimum, the registry shall include for each Internet service provider:-

129 (i) all fees charged by the Internet service provider;

130 (ii) the connectivity speed that the Internet service provider promises or claims to
131 provide to its customers;

132 (iii) the average connectivity speed found during the office's verification tests;

133 (iv) a full list of any content providers that have entered into an agreement with each
134 Internet service provider for the privileging or prioritizing of the content provider's Internet
135 traffic; and

136 (v) a simple explanation of the Internet service provider's policies relating to
137 privileging, degrading, prioritizing or blocking of any Internet traffic, and any impact those
138 policies may have on the Internet service provider's customers.

139 (e) The office shall make available electronically on its Internet website in English and
140 Spanish the information contained in the registry, and shall provide the information to customers
141 and prospective customers upon request by means of a toll-free telephone service operated by the
142 office.

143 The information available on the Internet website shall:-

144 (i) be organized to meet the requirements of subsection d. of this section and be
145 designed so that the customer or prospective customer may download and print the displayed
146 information;

147 (ii) include a statement drafted by the director which explains the potential negative
148 impact that non-neutral treatment of Internet traffic can have upon customers of Internet service
149 and, more generally, on the Internet marketplace, competition, innovation and the free exchange
150 of ideas, which shall be prominently displayed at the top of each of the website's pages;

151 (iii) include the full text of section 4 and the disclosures required pursuant to section 5;

152 (iv) include Internet web links to other governmental resources that provide
153 information relating to Internet network neutrality, the regulation of the Internet, how a
154 complaint may be filed with the Federal Communications Commission for a violation of any of
155 its open Internet regulations including, but not limited to, regulations under Part 8 of Title 47 of

156 the Code of Federal Regulations, and how a complaint may be filed with the office for a
157 violation of this chapter; and

158 (v) contain clear language that is designed to assist customers and prospective
159 customers in understanding the content of, and how to access, the information made available on
160 the website.

161 (f) The office may contract with a public or private entity for the purpose of developing,
162 administering, and maintaining the registry established pursuant to this section. The contract
163 shall specify the duties and responsibilities of the entity with respect to the development,
164 administration, and maintenance of the registry. The office shall monitor the work of the entity to
165 ensure that the registry is developed, administered, and maintained pursuant to the requirements
166 of this chapter.

167 Section 8. (a) An Internet service provider that conducts business in the commonwealth
168 and that privileges, degrades, prioritizes or blocks any Internet traffic, except where necessary
169 for reasonable Internet network management, shall provide to all customers in the
170 commonwealth, upon entering into an agreement for service and annually thereafter, a document
171 containing the following information:-

172 (i) the full text of section 4 and the disclosures required pursuant to section 5, set
173 forth by the office as the "Massachusetts Net Neutrality Act"

174 (ii) a statement detailing any of the Internet service provider's policies that may result
175 in the privileging, degrading, prioritizing, or blocking of any Internet traffic;

176 (iii) a statement describing any actions regularly taken by the Internet service provider
177 that result in the privileging, degrading, prioritizing or blocking of any Internet traffic;

178 (iv) a full list of content providers that have entered into an agreement with the
179 Internet service provider for the privileging or prioritizing of its Internet traffic; and

180 (v) the network traffic prioritization notification statement, which shall read as
181 follows, "The Internet service you receive has been prioritized by name of Internet service
182 provider and therefore, discriminates against non-prioritized content. It is possible that a
183 particular website or content that you wish to view may load more slowly or fail to properly load
184 on your computer or Internet access device as a result of network prioritization." The Internet
185 service provider shall insert, in place of the name designated by bracketed text above, the name
186 of the company that is contracted to provide Internet service to the customer receiving the
187 notification.

188 (b) An Internet service provider offering services to a Massachusetts customer that
189 privileges, degrades, prioritizes or blocks any Internet traffic, except where necessary for
190 reasonable Internet network management, shall include, in a prominent location and in 12-point
191 boldface type, the network traffic prioritization notification statement, as required pursuant to
192 subsection (a), in every bill or statement sent to each customer receiving Internet services within
193 Massachusetts.

194 Section 9. It shall be an unfair or deceptive act or practice and a violation of chapter 93A
195 to violate any provision of this chapter and the attorney general of the commonwealth or any
196 other person may bring an action pursuant to chapter 93A.

197 SECTION 2. This act shall take effect on January 1, 2019, but the director of the office of
198 consumer affairs and business regulation and the commissioner of the department of
199 telecommunications and cable may take such anticipatory administrative action in advance
200 thereof as shall be necessary for the implementation of this act.