

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

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to to preserve forthwith and uphold the open foundation of the internet, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

SECTION 1. Chapter 7 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after section 4A the following section:-

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

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

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

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

(xiii) provide for and implement standards for net neutral principles as provided for in subsection (b) of section 9 of chapter 25C and, in consultation with the operational services division, ensure

that no vendor for the commonwealth is awarded a contract from the commonwealth who does not adhere to such net neutral principles.

SECTION 4. Section 4 of said chapter 7D is hereby amended by adding the following sentence:-

The CISO shall ensure that net neutral principles of the commonwealth are followed by executive offices and agencies.

SECTION 5. Section 4C of said chapter 7D is hereby amended by adding the following

sentence:- The chief digital officer shall ensure that such public facing web presence includes a statement of the commonwealth's principles of net neutrality on its home page and any landing page of any agency.

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

(x) implementing net neutral practices.

SECTION 7. Section 9 of said chapter 7D is hereby amended by inserting after the second

sentence the following sentence;- The plan shall include net neutral principles for the provision of internet service among state agencies that include; (i) not blocking lawful content, applications, services, or non-harmful devices, subject to reasonable network management; (ii) impairing or degrading lawful internet traffic on the basis of internet content, application, or service, or use of a non-harmful device, subject to reasonable network management; or (iii) engaging in paid prioritization, as defined and set forth in section 9 of chapter 25C.

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

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

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

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

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

“Broadband internet access service”, (i) a mass-market retail service by wire or radio 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 service; and (ii) the term broadband internet access service shall also encompass any service that the federal communications commission finds to be providing a functional equivalent of the service described in clause (i) of this definition, or that is used to evade the protections set forth in this section.

“Paid prioritization”, the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic

shaping, prioritization, resource reservation, or other forms of preferential traffic management, either: (i) in exchange for consideration, monetary or otherwise, from a third party; or (ii) to benefit an affiliated entity.

“Reasonable network management”, 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.

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

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

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

- (iii) engage in paid prioritization.

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

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

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

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

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

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

Section 115. (a) The general court finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the Massachusetts Antitrust Act. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Massachusetts Antitrust Act.

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

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

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

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

For the purposes of this section, the term telecommunications system shall include Internet service. Any such system may provide internet service outside its own telecommunications system service territory for retail purposes, notwithstanding any general or special law to the contrary. Such internet service may include broadband internet access service, which is a mass-market retail service by wire or radio 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 service.

A provider of such internet service shall not:

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

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

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

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

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