



ML Strategies Alert

Massachusetts Legislature Issues Net Neutrality Report, Recommends Legislation

04.09.2018

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On March 23, 2018, the Special Senate Committee on Net Neutrality and Consumer Protection (the Committee) released [a report](#) recommending legislation aimed at ensuring net neutrality in Massachusetts. The report and legislation are being presented in response to the Federal Communications Commission's (FCC) December 2017 order reversing rules instituted during the Obama Administration deeming internet service a public utility and requiring internet providers to treat traffic equally.

Since being established on January 18, 2018, the Committee held a public hearing, reviewed federal and state statutes and regulations, studied FCC orders, and met with relevant state agencies, consumer advocacy groups, and industry stakeholders. Senator Cynthia Creem has served as the Committee's chair, Senator Bruce Tarr has served as Vice Chair, and Senators Mike Barrett, Jamie Eldridge, Eric Lesser, Barbara L'Italien, and Patrick O'Connor have been members.

The Committee opined that the FCC's repeal of net neutrality protections would "[open] the door to network management practices that could harm consumer choice, technological innovation and the free flow of information on the internet." The Committee concluded that state action is necessary to protect net neutrality and ensure that internet service providers (ISPs) cannot misuse consumer data.

The report proposes legislation (S.2376, the text of which is contained in the report) banning ISPs from engaging in the practices of blocking, throttling, or paid prioritization in the provision of internet service. ISPs are prohibited from collecting, using, or sharing a consumer's personal data without their consent except under certain limited conditions. Consumers are authorized to request that ISPs provide them with a list of any of their data that has been collected by the ISP.

ISPs are required to disclose to the Massachusetts Department of Telecommunications and Cable (the Department) when they are having a dispute about interconnection that results in the degradation of service to customers. ISPs are also required to make the same disclosures to the Department that they already make to the FCC.

The Department is directed to develop standards for what it means to be a "net neutral" ISP and determine whether each ISP complies with the criteria set forth. The Department is required to develop regulations to rank ISPs on the quality of their net neutrality practices and score each ISP against its criteria. ISPs in compliance with the Department's standards will be authorized to display a "Massachusetts Net Neutrality Seal" on marketing materials. The Department is also given authority to make an assessment against ISPs in order to cover the costs associated with its new responsibilities.

The report notes that any state action on net neutrality will likely face legal challenges on the grounds of preemption and the Commerce Clause. It adds that a state net neutrality law could withstand such a challenge, however, and says that the uncertainty of the federal legal landscape should not prevent states from acting.

ISP representatives expressed their opposition to the legislation at a hearing before the Committee on March 28. They said that the industry does not currently and does not intend to engage in practices, such as blocking, throttling, or paid prioritization, that the bill aims to prevent. A representative of one industry group, the New England Cable & Telecommunications Association, testified that “this proposal will harm investment [and] Massachusetts’ world-class tech economy because it proposes a heavy-handed regulatory overreach for a problem that frankly doesn’t exist.” Industry representatives also argued against state-by-state regulations, which they claimed would be unworkable while speaking in favor of a federal law enshrining net neutrality and privacy protections.

The measures included in the Senate’s bill would take effect on January 1, 2019, if the legislation is passed by the legislature and signed by Governor Baker. Several other net neutrality bills are currently pending in the legislature, including ones sponsored by Senator L’Italien ([S.2336](#)) and Representatives Andy Vargas ([H.4151](#)) and Dave Rogers ([H.4222](#)). The Joint Committee on Telecommunication, Utilities, and Energy held a hearing on these bills on April 3.

ML Strategies will continue to monitor and report on issues relevant to the telecommunications industry periodically throughout the session.

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