

# Wilkes Communications

## **ACCEPTABLE USE POLICY FOR BROADBAND INTERNET SERVICES**

Wilkes Telecommunications (“Wilkes”) has adopted this Acceptable Use Policy (“AUP”) to outline the acceptable use of Wilkes’ Broadband Internet service (“Broadband Service”). This AUP is in addition to any restrictions contained in the Wilkes Agreement for Residential Broadband Services (the “Subscriber Agreement”) available at [www.wilkes.net](http://www.wilkes.net). Please refer to the Frequently Asked Questions (“FAQs”) at [www.wilkes.net](http://www.wilkes.net) which includes explanations of how Wilkes implements and applies many of the provisions contained in this AUP.

All capitalized terms used in this AUP that are not defined here have the meanings given to them in the Subscriber Agreement.

You, the customer, must comply with this AUP. Your failure to do so could result in the suspension or termination of your Broadband Service account. If you do not agree to comply with this AUP, you must immediately stop all use of the Broadband Service and notify Wilkes so it can close your account.

Wilkes may revise this AUP from time to time by posting a new version on the Web site at [www.wilkes.net](http://www.wilkes.net) (the “Wilkes website”). Wilkes will use reasonable efforts to make customers aware of any changes to this AUP, which may include sending e-mail announcements or posting information on the Wilkes website. Revised versions of this AUP are effective immediately upon posting. Accordingly, customers of the Wilkes Broadband Internet Broadband Service should read any Wilkes announcements they receive and regularly visit the Wilkes web site and review this AUP to ensure their activities conform to the most recent version. If you have questions regarding this AUP, or if you wish to report violations of it, you can contact Wilkes at [www.wilkes.net](http://www.wilkes.net). To report illegal content on the Internet go to [www.ftc.gov](http://www.ftc.gov).

### **I. Prohibited Uses and Activities**

In general, this AUP prohibits uses and activities involving the Broadband Service that are illegal, infringe the rights of others, or interfere with or diminish the use and enjoyment of the Broadband Service by others.

It is a violation of this of AUP to connect equipment other than that provided by Wilkes to the network.

#### **A. Network and Usage Restrictions**

No user of the Broadband Service, Customer Equipment, or Wilkes Equipment may, individually or in combination with another:

1. restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Broadband Service (except for safety and security functions such as parental controls, for example), including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to use, send, or retrieve information;
2. restrict, inhibit, interfere with, or otherwise disrupt performance of the Broadband Service or cause a performance degradation regardless of intent, purpose or knowledge, to the Broadband Service or any Wilkes (or Wilkes supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any Wilkes (or Wilkes supplier) facilities used to deliver the Broadband Service;
3. resell the Broadband Service or otherwise make available to anyone outside the Premises the ability to use the Broadband Service (for example, through Wi-Fi or other methods of networking), in whole or in part, directly or indirectly. The Broadband Service is for personal and non-commercial residential use only and you agree not to use the Broadband Service for operation as an Internet service provider or for any business enterprise or purpose (whether or not for profit);
4. connect the Wilkes Equipment to any computer outside of your Premises;
5. interfere with computer networking or telecommunications service to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abusing operator privileges, and attempts to "crash" a host; and
6. accessing and using the Broadband Service with anything other than a dynamic Internet Protocol ("IP") address that adheres to the dynamic host configuration protocol ("DHCP"). You may not configure the Broadband Service or any related equipment to access or use a static IP address or use any protocol other than DHCP unless you are subject to a Broadband Service plan that expressly permits you to do so.

## **B. Conduct and Information Restrictions**

No user of the Broadband Service, Customer Equipment, or Wilkes' Equipment may, individually or in combination with another:

1. avoid incurring charges for or otherwise being required to pay for usage of the Broadband Service;
2. invade another person's privacy, stalk, harass, or otherwise violate the rights of other persons;
3. undertake or accomplish any unlawful purpose. This includes, but is not limited to, posting, storing, transmitting or disseminating information, data or material which is libelous, obscene, unlawful, threatening or defamatory, or which infringes the intellectual property rights of any person or entity, or which in any way constitutes or encourages conduct that would constitute a criminal offense, or otherwise violate any local, state, federal, or non-U.S. law, order, or regulation;

4. post, store, send, transmit, or disseminate any information or material which a reasonable person could deem to be unlawful;
5. upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way information, software or other material obtained through the Broadband Service or otherwise that is protected by copyright or other proprietary right, without obtaining any required permission of the owner;
6. collect, or attempt to collect, personal information about third parties without their consent;
7. transmit unsolicited bulk or commercial messages commonly known as "spam;"
8. send voluminous copies of the same or substantially similar messages, empty messages, or messages which contain no substantive content, or send very large messages or files that disrupts a server, account, blog, newsgroup, chat, or similar service;
9. initiate, perpetuate, or in any way participate in any pyramid or other illegal scheme;
10. participate in the collection of voluminous amounts of e-mail addresses, screen names, or other identifiers of others (without their prior consent), a practice sometimes known as spidering or harvesting, or participate in the use of software (including "spyware") designed to facilitate this activity;
11. collect responses from unsolicited bulk messages;
12. falsify, alter, or remove message headers;
13. falsify references to Wilkes or its network, by name or other identifier, in messages;
14. impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity (for example, "phishing");
15. violate the rules, regulations, terms of service, or policies applicable to any network, server, computer database, service, application, system, or Web site that you access or use.

### **C. Technical Restrictions**

No user of the Broadband Service, Customer Equipment, or the Wilkes Equipment may, individually or in combination with another:

1. use the Internet service or facilities for web-hosting, e-mail hosting, or other unusually high-bandwidth consumption unless you have made special subscription arrangements with Wilkes and the usage does not otherwise violate law or regulation;
2. access any other person's computer or computer system, network, software, or data without his or her knowledge and consent; breach the security of another user or system; or attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other hosts, networks, or accounts without express permission to do so;
3. use or distribute tools or devices designed or used for compromising security or whose use is otherwise unauthorized, such as password guessing programs, decoders,

password gatherers, keystroke loggers, analyzers, cracking tools, packet sniffers, encryption circumvention devices, or Trojan Horse programs. Unauthorized port scanning is strictly prohibited;

4. copy, distribute, or sublicense any proprietary software provided in connection with the Broadband Service by Wilkes or any third party, except that you may make one copy of each software program for back-up purposes only;

5. distribute programs that make unauthorized changes to software (cracks);

6. use or run dedicated, stand-alone equipment or servers from the Premises that provide network content or any other services to anyone outside of your Premises local area network ("Premises LAN"), also commonly referred to as public services or servers. Examples of prohibited equipment and servers include, but are not limited to, e-mail, Web hosting, file sharing, and proxy services and servers;

7. use or run programs from the Premises that provide network content or any other services to anyone outside of your Premises LAN, except for personal and non-commercial residential use;

8. service, alter, modify, or tamper with Wilkes Equipment or Broadband Service or permit any other person to do the same who is not authorized by Wilkes.

## **II. Customer Conduct and Features of the Broadband Service**

### **A. Customer Obligations**

In addition to being responsible for your own compliance with this AUP, you are also responsible for any use or misuse of the Broadband Service that violates this AUP, even if it was committed by a friend, family member, or guest with access to your Broadband Service account. Therefore, you must take steps to ensure others do not use your account to gain unauthorized access to the Broadband Service by, for example, strictly maintaining the confidentiality of your Broadband Service login and password. In all cases, you are solely responsible for the security of any device you choose to connect to the Broadband Service, including any data stored or shared on that device. It is also your responsibility to secure the Customer Equipment and any other Premises equipment or programs not provided by Wilkes that connect to the Broadband Service from external threats such as viruses, spam, botnets, and other methods of intrusion.

### **B. Wilkes' Rights**

Wilkes reserves the right to refuse to transmit or post, and to remove or block, any information or materials, in whole or in part, that it, in its sole discretion, deems to be in violation of Sections I or II of this AUP, or otherwise harmful to Wilkes' network or customers using the Broadband Service, regardless of whether this material or its dissemination is lawful so long as it violates this AUP. Neither Wilkes nor any of its affiliates, suppliers, or agents have any obligation to monitor transmissions or postings (including, but not limited to, e-mail, file transfer, blog, newsgroup, and instant message transmissions) made on the Broadband Service.

However, Wilkes and its affiliates, suppliers, and agents have the right to monitor these transmissions and postings from time to time for violations of this AUP and to disclose, block, or remove them in accordance with this AUP, the Subscriber Agreement, and applicable law.

## **C. Service Restrictions**

All of Wilkes' network and system services are provided according to scheduled fees for each type of service. You agree to use such services in accordance with the terms set forth below.

### **1. Email and Web-Hosting Services**

**(i) Unsolicited Email Prohibited** - You may not use Wilkes-hosted email addresses for the purpose of sending unsolicited email. You may not use or cause to be used Wilkes' equipment, network connectivity, or other resources to originate, deliver, relay or otherwise transmit unsolicited email messages. You may not engage in any of the foregoing prohibited activities by using the service of any other provider, third-party agent, remailing service or address forwarding service, in such a way that Wilkes' network addresses or Wilkes-hosted web or email services are in any way identified as being associated with the sending of unsolicited email.

**(ii) Unauthorized use, or forging, of mail header information** (e.g. "spoofing") is prohibited.

**(iii) Fraudulent Activity Prohibited** – You may not use the Wilkes email and web-hosting services to make fraudulent offers to sell or buy products, items, services, or to advance any type of financial scam such as "pyramid schemes", "Ponzi schemes", or "chain letters." You may not use techniques to hide or obscure the source of any e-mail or other communications.

**(iv) Wilkes reserves the right to suspend or delay delivery of email to Customer** utilizing Wilkes email services and/or the virtual domain email if the volume of email being redirected, stored, or delivered on the Customer's behalf is deemed excessive. Excessive traffic is defined as any amount of email traffic that noticeably degrades performance on the server in question, in the sole discretion of Wilkes. Stored mail exceeding these limits may be transferred to a compressed file at Wilkes' discretion. Wilkes will attempt to notify the account holder via the account contact information on record; however, Wilkes reserves the right to delete the contents of such email boxes upon thirty (30) days after attempted notification.

The Broadband Service may not be used to communicate or distribute e-mail or other forms of communications in violation of Section I of this AUP. As described below in Section III of this AUP. Wilkes uses reasonable network management tools and techniques to protect customers from receiving spam and from sending spam (often without their knowledge over an infected computer).

Wilkes is not responsible for deleting or forwarding any e-mail sent to the wrong e-mail address by you or by someone else trying to send e-mail to you. Wilkes is also not responsible for forwarding e-mail sent to any account that has been suspended or terminated. This e-mail will be returned to the sender, ignored, deleted, or stored temporarily at Wilkes' sole discretion. In the event that Wilkes believes in its sole discretion that any subscriber name, account name, or e-mail address (collectively, an "identifier") on the Broadband Service may be used for, or is being used for, any misleading, fraudulent, or other improper or illegal purpose, Wilkes (i) reserves the right to block access to and prevent the use of any of these identifiers and (ii) may at any time require any customer to change his or her identifier. In addition, Wilkes may at any time reserve any identifiers on the Broadband Service for Wilkes' own purposes. In the event that a Broadband Service account is terminated for any reason, all e-mail associated with that account (and any secondary accounts) will be permanently deleted as well.

### **2. Instant, Video, and Audio Messages**

Each user is responsible for the contents of his or her instant, video, and audio messages and the consequences of any of these messages. Wilkes assumes no responsibility for the timeliness, misdelivery, deletion, or failure to store these messages. In the event that a Broadband Service account is terminated for any reason, all instant, video, and audio messages associated with that account (and any secondary accounts) will be permanently deleted as well.

### **3. Personal Web Pages and File Storage**

As part of the Broadband Service, Wilkes provides access to personal Web pages and storage space through the Personal Web Pages and Online Storage features (collectively, the "Personal Web Features"). You are solely responsible for any information you or others publish or store on the Personal Web Features. You are also responsible for ensuring all content made available through the Personal Web Features is appropriate for those who may have access to it. For example, you must take appropriate precautions to prevent minors from receiving or accessing inappropriate content. Wilkes reserves the right to remove, block, or refuse to post or store any information or materials, in whole or in part, that it, in its sole discretion, deems to be in violation of Section I of this AUP. For purposes of this AUP, "material" refers to all forms of communications including text, graphics (including photographs, illustrations, images, drawings, logos), executable programs and scripts, video recordings, and audio recordings. Wilkes may remove or block content contained on your Personal Web Features and terminate your Personal Web Features and/or your use of the Broadband Service if we determine you have violated the terms of this AUP.

### **III. Network Management and Limitations on Data Consumption**

Wilkes manages its network with the goal of delivering a fast, safe, and uncompromised broadband Internet experience to all of its customers; however, high-speed bandwidth and network resources are not unlimited. Managing the network is essential for the promotion of best possible Broadband Internet experience by all of Wilkes' customers. The company uses reasonable network management practices consistent with industry standards. Wilkes tries to use tools and technologies which are minimally intrusive and, in its independent judgment guided by industry experience, among the best in class. Of course, the company's network management practices will change and evolve along with the uses of the Internet and the challenges and threats on the Internet.

All broadband Internet service providers manage their networks. Many of them use the same or similar tools as Wilkes. If the company didn't manage its network, its customers would be subject to the negative effects of spam, viruses, security attacks, network congestion, and other risks and degradations of service. By engaging in responsible network management including enforcement of this AUP, Wilkes can deliver the best possible broadband Internet experience to all of its customers. Visit Wilkes' website at [www.wilkes.net](http://www.wilkes.net) for more information.

#### **A. Network Management**

Wilkes uses various tools and techniques to manage its network, deliver the Broadband Service, and ensure compliance with this AUP and the Subscriber Agreement. These tools and techniques are dynamic, like the network and its usage, and can and do change frequently. Wilkes' network management practices may include (i) identifying spam and preventing its delivery to customer e-mail accounts, (ii) detecting malicious Internet traffic and preventing the

distribution of viruses or other harmful code or content, (iii) temporarily lowering the priority of traffic for users who are the top contributors to current network congestion, and (iv) using other tools and techniques Wilkes may be required to implement in order to meet its goal of delivering the best possible broadband Internet experience to all of its customers.

## **B. Network Usage and Data Consumption Restrictions**

You acknowledge that all of the Wilkes Internet services are intended for periodic, active use of email, user newsgroups, transfers via FTP, Internet chat, Internet games, and browsing of the Internet. You must comply with all current bandwidth, data storage, and other limitations on Wilkes' Internet Services established by Wilkes and Wilkes suppliers. You agree not to intentionally use Wilkes' Internet Services on a standby or inactive basis in order to maintain a connection. The excessive use or abuse of Wilkes' network resources by one Customer may have a negative impact on all other Customers. Accordingly, you may not use Wilkes' Internet Services or take any action, directly or indirectly, which will result in excessive consumption or utilization of the system or network resources, or which may weaken network performance, as determined by Wilkes' sole discretion. Such prohibited actions include, but are not limited to: using Wilkes' Internet Services to host a web server site which attracts excessive traffic at your location, continuously uploading or downloading streaming video or audio, usenet hosting, continuous FTP uploading or downloading, or acting in a manner which negatively effects other users' ability to engage in real time exchanges and use of Wilkes' Internet Services.

The Broadband Service is for personal and non-commercial residential use only. Therefore, Wilkes reserves the right to suspend or terminate Broadband Service accounts where data consumption is not characteristic of a typical residential user of the Broadband Service as determined by Wilkes in its sole discretion.

Common activities, which may cause excessive data consumption in violation of this AUP, include, but are not limited to, numerous or continuous bulk transfers of files and other high capacity traffic using (i) file transfer protocol ("FTP"), and (ii) newsgroups. You must also ensure your use of the Broadband Service does not restrict, inhibit, interfere with, or degrade any other person's use of the Broadband Service, nor represent (as determined by Wilkes in its sole discretion) an overly large burden on the network. In addition, you must ensure your use of the Broadband Service does not limit or interfere with Wilkes' ability to deliver and monitor the Broadband Service or any part of its network.

If you use the Broadband Service in violation of the restrictions referenced above, that is considered a violation of this AUP. In these cases, Wilkes may, in its sole discretion, suspend or terminate your Broadband Service account or request you subscribe to a version of the Broadband Service (such as a commercial grade Internet service, if appropriate) if you wish to continue to use the Broadband Service at higher data consumption levels. Wilkes may also provide versions of the Broadband Service with different speed and data consumption limitations, among other characteristics, subject to applicable Broadband Service plans. Wilkes' determination of the data consumption for Broadband Service accounts is final.

## **IV. Violation of this Acceptable Use AUP**

Wilkes reserves the right to immediately suspend or terminate your Broadband Service account and terminate the Subscriber Agreement if you violate the terms of this AUP or the Subscriber Agreement.

Wilkes does not routinely monitor the activity of individual Broadband Service accounts for violations of this AUP, except for determining aggregate data consumption in connection with the data consumption provisions of this AUP. However, in the company's efforts to promote good citizenship within the Internet community, it will respond appropriately if it becomes aware of inappropriate use of the Broadband Service. Wilkes has no obligation to monitor the Broadband Service and/or the network. However, Wilkes and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content in order to, among other things, operate the Broadband Service; identify violations of this AUP; and/or protect the network, the Broadband Service and Wilkes users.

Wilkes prefers to inform customers of inappropriate activities and give them a reasonable period of time in which to take corrective action. Wilkes also prefers to have customers directly resolve any disputes or disagreements they may have with others, whether customers or not, without Wilkes' intervention. However, if the Broadband Service is used in a way which Wilkes or its suppliers, in their sole discretion, believe violates this AUP, Wilkes or its suppliers may take any responsive actions they deem appropriate under the circumstances with or without notice. These actions include, but are not limited to, temporary or permanent removal of content, cancellation of newsgroup posts, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Broadband Service (including but not limited to newsgroups). Neither Wilkes nor its affiliates, suppliers, nor agents will have any liability for any of these responsive actions. These actions are not Wilkes' exclusive remedies and Wilkes may take any other legal or technical actions it deems appropriate with or without notice.

Wilkes reserves the right to investigate suspected violations of this AUP, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on Wilkes' servers and network. During an investigation, Wilkes may suspend the account or accounts involved and/or remove or block material that potentially violates this AUP. You expressly authorize and consent to Wilkes and its suppliers cooperating with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) and system administrators at other Internet service providers or other network or computing facilities in order to enforce this AUP. Upon termination of your Broadband Service account, Wilkes is authorized to delete any files, programs, data, e-mail and other messages associated with your account (and any secondary accounts).

The failure of Wilkes or its suppliers to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this AUP is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect. You agree to indemnify, defend, and hold harmless Wilkes and its affiliates, suppliers, and agents against all claims and expenses (including reasonable attorney fees) resulting from any violation of this AUP. Your indemnification will survive any termination of the Subscriber Agreement.

#### **V. Copyright and Digital Millennium Copyright Act Requirements**



Wilkes is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Broadband Service to comply with these laws. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Broadband Service (or any part of the Broadband Service) in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is Wilkes' policy in accordance with the DMCA and other applicable laws to reserve the right to terminate the Broadband Service provided to any customer or user who is either found to infringe third party copyright or other intellectual property rights, including repeat infringers, or who Wilkes, in its sole discretion, believes is infringing these rights. Wilkes may terminate the Broadband Service at any time with or without notice for any affected customer or user.