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March 9, 2018

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Greg Walden
Chairman
The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Restoring Internet Freedom*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (Commission) entitled "Restoring Internet Freedom" (FCC 17-166). We received the rule on January 26, 2018. It was published in the *Federal Register* as a final rule on February 22, 2018. 83 Fed. Reg. 7852.

The final rule classifies broadband internet access service as an information service and reinstates the private mobile service classification of mobile broadband internet access service. The final rule requires internet service providers to disclose information about their network management practices, performance characteristics, and commercial terms of service. The final rule also eliminates the conduct rules imposed by the Protecting and Promoting the Open Internet Order, also called the Title II Order.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. GAO's longstanding policy is to avoid taking a position on or addressing matters that are pending in litigation. As there is pending litigation on whether the Commission complied with certain requirements of the Administrative Procedure Act, this report does not take a position on those issues. Our review of other procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Daniel Kahn
Division Chief, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
“RESTORING INTERNET FREEDOM”
(FCC 17-166)

(i) Cost-benefit analysis

The Federal Communications Commission (Commission) included in this final rule a section entitled Cost-Benefit Analysis. The Commission stated that it evaluated maintaining the classification of broadband internet access service as a telecommunications service (i.e., Title II regulation); maintaining the internet conduct rule; maintaining the no-blocking rule; maintaining the no-throttling rule; and maintaining the ban on paid prioritization. According to the Commission, the primary benefits, costs, and transfers attributable to this Order are the changes in the economic welfare of consumers, ISPs, and edge providers that would occur due to the Commission’s actions. The Commission concluded that the private costs of maintaining a Title II classification due to foregone network investment are directionally negative and likely constitute at least several billion dollars annually and that there are social costs beyond the private costs associated with the foregone investment. The Commission also concludes that the incremental benefits of maintaining the Title II classification are approximately zero. Finding that the benefits of maintaining the Title II classification are approximately zero, coupled with its finding that the private and social costs are positive, the Commission concluded that maintaining the Title II classification would have net negative benefits. The Commission also discussed the transparency provisions and concluded its cost-benefit analysis supports the approach of this final rule. Further, the Commission found that the benefits of the internet conduct standard are limited if not approximately zero and concluded that maintaining the internet conduct standard would impose net negative benefits.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Commission included in the final rule a Final Regulatory Flexibility Analysis (FRFA) which the Commission concluded conforms to the Act. The FRFA included statements concerning (1) the need for, and objectives of, the final rule; (2) a summary of significant issues raised by public comments to the Initial Regulatory Flexibility Analysis; (3) a response to comments by the Chief Counsel for Advocacy of the Small Business Administration; (4) a description and estimate of the number of small entities to which the final rule may apply; (5) a description of projected reporting, recordkeeping, and other compliance requirements for small entities; and (6) steps taken to minimize the significant economic impact on small entities and significant alternatives considered.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On June 2, 2017, the Commission published a proposed rule. 82 Fed. Reg. 25,568. The Commission stated that it focused its review of the record on the submitted comments that bore substantively on the legal and public policy consequences of the proposed rule and that it did not rely on comments it determined were devoid of substance or the thousands of identical or nearly-identical non-substantive comments.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Commission determined that this final rule contains new or modified information collection requirements subject to the Act. The Commission stated that these information collection requirements will be submitted to the Office of Management and Budget (OMB) for review and that OMB, the public, and other agencies will be invited to comment on the new requirements.

Statutory authorization for the rule

The Commission promulgated this final rule under the authorities of sections 34–39, 151, 152(a), 154(i), 154(j), 155, 160, 201, 214, 222, 225, 227, 251(e), 257, 301, 302, 303, 307, 309, 316, 332, 610, 615, 615a, 615b, 615c, 1403, 1404, 1451, 1452, and 1455 of title 47, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the review requirements of the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.