



441 G St. N.W.
Washington, DC 20548

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April 28, 2015

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

The Honorable Fred Upton
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Protecting and Promoting the Open Internet*

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 “Protecting and Promoting the Open Internet” (FCC 15-24). We received the rule on April 7, 2015. It was published in the *Federal Register* as a final rule on April 13, 2015. 80 Fed. Reg. 19,738.

The final rule establishes rules to protect and promote the open Internet. Specifically, the Open Internet Order adopts bright-line rules that prohibit blocking, throttling, and paid prioritization; a rule preventing broadband providers from unreasonably interfering or disadvantaging consumers or edge providers from reaching one another on the Internet; and provides for enhanced transparency into network management practices, network performance, and commercial terms of broadband Internet access service. These rules apply to both fixed and mobile broadband Internet access services. The Order reclassifies broadband Internet access service as a telecommunications service subject to title II of the Communications Act. Finally, the Order forbears from the majority of title II provisions, leaving in place a framework that will support regulatory action while simultaneously encouraging broadband investment, innovation, and deployment.

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. Our review of the 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: Matthew DelNero
Deputy Bureau Chief
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
“PROTECTING AND PROMOTING THE OPEN INTERNET”
(FCC 15-24)

(i) Cost-benefit analysis

As an independent regulatory agency, the Federal Communications Commission (Commission) is not required to prepare, and did not prepare a cost benefit analysis.

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

The Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) which was incorporated into the 2014 Open Internet Notice of Proposed Rulemaking (Open Internet NPRM). The Commission sought written public comment on the possible significant economic impact on small entities regarding the proposals addressed in the Open Internet NPRM, including comments on the IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis was also prepared for the final rule which included: (1) a description of the need for, and objectives of rule; (2) a summary of significant issues raised by public comments in response to the IRFA; (3) a description and estimate of the number of small entities to which the rule would apply; (4) a description of projected reporting, recordkeeping, and other compliance requirements for small entities; and (5) 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 July 1, 2014, the Commission published a Notice of Proposed Rulemaking in the *Federal Register*. 79 Fed. Reg. 37,448. The Commission received 3.7 million comments from the public by the close of the reply comment period on September 15, 2014, with more submissions arriving after that date. The Commission stated that a quantitative analysis of the comment pool revealed a number of key insights. For example, by some estimates, nearly half of all comments received by the Commission were unique. The Commission summarized the comments by explaining that while there has been some public dispute as to the percentage of comments taking one position or another, it was clear that the majority of comments supported the Commission’s action to protect the open Internet. Comments regarding the continuing need for open Internet rules, their legal basis, and their substance formed the core of the overall body of comments. In particular, support for the reclassification of broadband Internet access under

title II, opposition to fast lanes and paid prioritization, and unease regarding the market power of broadband Internet access service providers were themes frequently addressed by commenters.

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

The final rule contains new information collection requirements subject to PRA. The Commission stated in the final rule that it will submit the requirements to the Office of Management and Budget (OMB) for review under PRA. The Commission invited OMB, the general public, and other federal agencies to comment on the new information collection requirements contained in the rule. In addition, the Commission noted that it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission stated that the final rule requires broadband providers to publicly disclose accurate information regarding the commercial terms, performance, and network management practices of their broadband Internet access services sufficient for end users to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings. The Commission stated that it assessed the effects of this rule and found that any burden on small businesses will be minimal because (1) the rule gives broadband providers flexibility in how to implement the disclosure rule, and (2) the rule gives providers adequate time to develop cost-effective methods of compliance.

Statutory authorization for the rule

The final rule is authorized by section 706 of the Telecommunications Act of 1996 and title II and title III of the Communications Act of 1934.

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.