



PUBLIC NOTICE

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON SMALL BUSINESS EXEMPTION FROM OPEN INTERNET ENHANCED TRANSPARENCY REQUIREMENTS

GN Docket No. 14-28

Comment Date: 30 days after publication in the Federal Register
Reply Comment Date: 60 days after publication in the Federal Register

In the *2015 Open Internet Order*, the Commission adopted certain enhancements to the existing transparency rule that governs the content and format of disclosures made by providers of broadband Internet access service.¹ These enhanced transparency requirements build on the original transparency rule the Commission adopted in 2010 to provide critical information to end-user consumers, edge providers, and the Internet community.² These enhancements apply to provider disclosures required by the existing transparency rule regarding commercial terms, performance characteristics, and network practices.³

¹ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, paras. 154-181 (rel. Mar. 12, 2015) (*2015 Open Internet Order*). A summary of the *2015 Open Internet Order* was published in the Federal Register. See 80 Fed. Reg. 19738-01 (April 13, 2015).

² *Id.* at paras. 154, 161; see also 47 C.F.R. § 8.3.

³ *2015 Open Internet Order* at paras. 164-170. The enhanced requirements include disclosure of: (i) commercial terms for prices, other fees, and data cap allowances; (ii) performance characteristics including packet loss, performance by geographic area, and average performance over a reasonable time and during peak usage; (iii) network practices including practices that are applied to traffic associated with a particular user or group, including any application-agnostic degradation of service, user based or application based practices should include the purpose of practice, which users or data plans may be affected, the triggers that activate the use of the practice, the types of traffic that are subject to the practice and the practice's likely effects on the end users' experience; and (iv) a voluntary safe harbor that providers may use in meeting the existing requirement to make transparency disclosures in a format that meets the needs of end users. See *id.* at paras. 164-170, 176-181. As noted in the *Order*, the transparency rule has always required that broadband providers disclose information "sufficient to allow consumers to make informed choices," which could include the information expressly required by the enhancements. See *id.* at para. 182.

In response to concerns from smaller providers about the compliance burden of the enhancements, the Commission temporarily exempted those providers “with 100,000 or fewer broadband subscribers as per their most recent Form 477, aggregated over all the providers’ affiliates.”⁴ At the same time, the Commission stated that “both the appropriateness of the exemption and the [subscriber] threshold require further deliberation,”⁵ and directed the Consumer and Governmental Affairs Bureau to seek comment on the exemption and to “adopt an order announcing whether it is maintaining an exemption and at what level by no later than December 15, 2015.”⁶ With this Public Notice we seek comment on these issues.

While the Commission described the threshold using the terms “subscribers” and “subscriber lines,” it emphasized that the relevant metric should be that used on Form 477, *Local Telephone Competition and Broadband Reporting*.⁷ That metric is broadband “connections,”⁸ the broadband equivalent of subscriber lines, which the Commission used in the analogous exemption adopted in the Rural Call Completion Order.⁹ For these reasons, we make clear that the exemption from the enhanced transparency requirements applies to providers with 100,000 or fewer broadband *connections*.

Small Business Exemption. We seek comment on whether the enhancements to the transparency rule raise compliance burden concerns that warrant making permanent the exemption. We note that the Commission did not adopt some of the enhancements proposed in the *Notice of Proposed Rulemaking* and found those it did adopt were “modest in nature.”¹⁰ For example, the Commission declined to adopt disclosures relating to the source of congestion, packet corruption, and jitter, in recognition of commenter concerns with difficulties of making these particular disclosures.¹¹ The Commission also did not require “real-time” disclosures,¹² and stated that the bulk of the objections from smaller providers concerned proposals that were not adopted.¹³ We seek comment on whether the adopted enhanced transparency requirements nevertheless impose burdens on smaller providers sufficient to justify retaining the exemption.

⁴ *2015 Open Internet Order* at paras. 172-75 (emphasizing that all providers of broadband Internet access service, including small providers, remain subject to the transparency rule adopted in 2010).

⁵ *Id.* at para. 174.

⁶ *Id.*

⁷ *Id.* at para. 173.

⁸ *See, e.g.*, most recent Form 477 Instructions, <https://transition.fcc.gov/form477/477inst.pdf>, at 4 (“FCC Form 477 collects information about broadband connections to end-user locations . . .”).

⁹ *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16168, para. 27 (2013).

¹⁰ *2015 Open Internet Order* at para. 172.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

We seek specific comment on the following questions. What is the burden of the enhanced disclosures to smaller providers as measured in financial and other resources, and how is the burden disproportionately experienced by smaller providers? To the extent that concerns remain regarding any burdens, what is the corresponding benefit to customers of smaller providers of the information contained in those disclosures? For example, to what extent are customers of exempted providers deprived of information they need to understand the services they purchase and receive, and to monitor practices that could undermine an open Internet? Are rural customers likely to be disproportionately affected by exempting smaller providers from the enhanced disclosure requirements? How should any benefits of the enhanced transparency requirements to customers of exempted providers be balanced against any public interest benefits of reducing burdens to the providers? Will the reduction of compliance burdens for smaller providers benefit consumers in the areas served by those providers by, for example, facilitating broadband deployment, lower prices, or better quality services for consumers?

If the Commission does not make the exemption permanent, would a one-time temporary extension of the exemption for some period be necessary to allow a smooth transition to full compliance, and would such an approach be more beneficial to consumers than a permanent exemption? What period of time would be appropriate for smaller providers to adequately address the potential burdens associated with the enhanced transparency rules? How does the subscriber threshold discussed below affect this analysis? Should the Commission require carriers to report to the Commission on their progress with meeting the goals of the enhanced transparency rules? What conditions may be appropriate for a one-time, temporary extension of the current exemption? What factors should the Commission consider in determining the limitations of a one-time, temporary extension of the exemption? We seek comment on these and any other relevant issues.

Small Provider Threshold. The Commission set the provider threshold for purposes of the exemption at 100,000 or fewer broadband connections as measured by their most recent Form 477, aggregated over all affiliates.¹⁴ Is this the right threshold for any extension of the exemption? If not, what is a more appropriate level to identify those providers “likely to be most disproportionately affected by the new disclosure requirements?”¹⁵ How should the Commission determine whether a provider qualifies for the exemption if it is required to file a Form 477 but has not done so? Should such providers be ineligible for the exemption until they have done so? Are there reasons to adopt thresholds that vary for fixed and mobile providers? We note that the Final Regulatory Flexibility Analysis contained in the *2015 Open Internet Order* discusses a number of ways to define the small entities impacted by that Order.¹⁶ In this regard, we welcome comments from entities with expertise on such questions, such as the Small Business Administration. We seek comment on these and any other issues commenters deem relevant.

¹⁴ *Id.* at para. 173.

¹⁵ *Id.* at para. 173.

¹⁶ *See id.* at App. B – paras. 17-54.

PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

The *2015 Open Internet Order* included a Final Regulatory Flexibility Analysis (FRFA) pursuant to 5 U.S.C § 603, discussing the impact on small entities of the policies and rules adopted therein.¹⁷ We incorporate the FRFA and invite parties to file comments in light of this additional Public Notice.

B. Paperwork Reduction Act

The *2015 Open Internet Order* contained new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 including new collections relating to the enhanced transparency requirements.¹⁸ The Commission currently has an Office and Management and Budget (OMB) collection 3060-1158 pending OMB's review and approval. The Federal Register notice seeking comment on the revision was published in the Federal Register on May 20, 2015, at 80 FR 29000. OMB, the general public, and other federal agencies are invited to comment on the information collections contained in this proceeding. This Public Notice, however, does not modify the existing information collection requirements contained in OMB collection 3060-1158, and it does not contain new or modified information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198.¹⁹

C. Filing Requirements

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

¹⁷ *Id.* at App. B.

¹⁸ *Id.* at para. 578.

¹⁹ *See also* 44 U.S.C. 3506(c)(4).

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (717) 338-2797; or Richard.Smith@fcc.gov.

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²⁰ 47 C.F.R. §§ 1.1200 *et seq.*