

Pai FCC Restores and Expands Small Carrier Open Internet Transparency Exemption

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On Thursday February 23, 2017, by a 2-1 vote, the Federal Communications Commission (FCC) voted to restore the Small Provider Exemption from the Commission's Open Internet rules, and to expand the exemption to cover more BIAS providers.

In the 2015 Open Internet Order, the FCC adopted enhanced transparency disclosure requirements for Internet service providers by requiring providers to disclose promotional rates, all fees and/or surcharges, all data caps and allowances, and additional network performance metrics (e.g., packet loss).

Initially, the Order exempted providers with 100,000 or fewer broadband connections (small providers) from such reporting transparency obligations for one year. However, former Chairman Wheeler's FCC allowed such obligations to expire.

The FCC's actions on Thursday restored the small carrier exemption, so that small providers will be exempt from reporting obligations for the next five years. They also expanded the exemption by changing the small provider threshold from 100,000 or fewer broadband connections to 250,000 or fewer broadband connections.

The Commission's decision to expand the scope of the small carrier exemption was not without controversy. Commissioner Clyburn dissented from the Order, claiming that the expansion will allow some of the largest Internet service providers in the country to exempt their subsidiaries which have under 250,000 connections. She also claimed the Commission did not provide a sufficient rationale for changing course from FCC precedent.

Although the Order was approved on February 23, it is retroactive to January 17. Despite this development, small carriers remain subject to the requirements of the 2010 transparency rule, which include network management practices, network performance characteristics, and commercial terms of service.

For questions about transparency requirements or other aspects of Open Internet enforcement, feel free to reach out to the authors of this article or your regular Kelley Drye contact.