



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[GN Docket No. 14-28; DA 15-731]

Protecting and Promoting the Open Internet

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission via the Consumer and Governmental Affairs Bureau (CGB), seeks comment on whether to maintain a temporary exemption for smaller providers from certain enhancements to the existing transparency rules that govern the content and format of disclosures made by providers of broadband Internet access service.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by GN Docket No. 14-28, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and **GN Docket No. 14-28**.
- **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 (although the Commission continues to

experience delays in receiving 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 Street, SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by 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 should be addressed to 445 12th Street, SW., Washington, DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, (717) 338-2797.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 15-731, released June 22, 2015 in GN Docket No. 14-28, seeking comment on the exemption from Open Internet enhanced transparency requirements. The full text of document DA 15-731 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document DA 15-731 can also be downloaded in Word or Portable Document Format (PDF) at:

<https://www.fcc.gov/document/cgb-see-comment-exemption-open-internet-enhanced-transparency>.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200 et seq. 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.

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).

PAPERWORK REDUCTION ACT

The Commission currently has an Office and Management and Budget (OMB) collection 3060-1158 pending OMB's review and approval. The 60 day Federal Register notice seeking comment on the revision was published in the Federal Register on May 20, 2015, at 80 FR 29000. This collection contains information collection requirements for the Open Internet transparency rules, which are subject to the Paperwork Reduction Act (PRA) of 1995. Pub. L. 104-13. However, document DA 15-731 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. See also 44 U.S.C. 3506(c)(4).

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. The Commission incorporates the FRFA and invites parties to file comments in light of document DA 15-731.

SYNOPSIS

1. In the 2015 Open Internet Order, published at 80 FR 19738, April 13, 2015, 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 from the enhanced transparency requirements adopted therein. At the same time, the Commission stated that "both the appropriateness of the exemption and the [subscriber] threshold require further deliberation," and directed CGB 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.
2. While the Commission described the exemption threshold using the terms "subscribers" and "subscriber lines," it emphasized that the relevant metric should be that used on Form 477. That metric is broadband "connections," the broadband equivalent of subscriber lines, which the Commission used in the analogous exemption adopted in the Rural Call Completion Order, published at 78 FR 76218, December 17, 2013. For these reasons, we make clear that the exemption from the enhanced transparency requirements applies to providers with 100,000 or fewer broadband connections.
3. Small Business Exemption. The Commission seeks comment on whether the enhancements to the transparency rule raise compliance burden concerns that warrant making permanent the exemption. The Commission notes that it did not adopt some of the enhancements originally proposed and found those it did adopt were "modest in nature." The Commission seeks comment on whether the adopted enhanced transparency requirements nevertheless impose burdens on smaller providers sufficient to justify retaining the exemption.

4. The Commission seeks 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?

5. 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?

6. 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? The Commission seeks comment on these and any other relevant issues.

7. Small Provider Threshold. The Commission set the smaller 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. 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? 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? The Commission notes 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. The Commission seeks comment on these and any other issues commenters deem relevant.

FEDERAL COMMUNICATIONS COMMISSION.

Alison Kutler,
Acting Chief, Consumer and Governmental Affairs Bureau.

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