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The FCC's Open Internet Order: New Net Neutrality Rules and Title II Regulation of Broadband

March 16, 2015

On March 12, 2015, the Federal Communications Commission (FCC) released the text of its order establishing new net neutrality rules applicable to providers of broadband Internet access service. These rules, which will apply equally to both fixed and mobile broadband providers, prohibit blocking, throttling, and paid prioritization, require enhanced transparency, and govern future conduct by broadband providers. The FCC also reclassified broadband Internet access service as a telecommunications service under Title II of the Communications Act and further declared mobile broadband to be a commercial mobile service. Although the FCC granted forbearance from certain provisions of Title II, broadband providers will be subject to various Title II obligations, the precise scope of which the FCC has yet to define. These actions represent the FCC's response to the D.C. Circuit's 2014 decision in *Verizon v. FCC*, which vacated the majority of the FCC's 2010 net neutrality rules. Chairman Tom Wheeler, along with Commissioners Clyburn and Rosenworcel, voted for the Order, while Commissioners Pai and O'Rielly dissented.

A summary of the FCC's Order is available below.

Need for Net Neutrality Rules. In discussing the need for net neutrality rules, the Commission found that broadband providers function as "gatekeepers" and have the "economic incentive" and "technical ability" to engage in practices that harm other network providers, edge providers, and end-users, thereby posing a threat to Internet openness. (§ 78). According to the FCC, such practices may include a broadband provider preferring its own or affiliated content, demanding fees from edge providers, or placing technical barriers to

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reaching end users. (§ 80). Additionally, the Commission found that "[t]he broadband provider's position as gatekeeper is strengthened by the high switching costs consumers face when seeking a new service," and that many consumers have access to only a single provider for 25/3 Mbps broadband service. (§ 81). The Commission also concluded that broadband providers have the ability to act as gatekeepers even in the absence of "the sort of market concentration that would enable them to impose substantial price increases on end users." (§ 84). Furthermore, the FCC pointed to past instances in which broadband providers have acted on incentives to harm "Internet openness," including the Madison River case, the Comcast-Bit Torrent case, and various instances of mobile wireless Internet providers allegedly "restricting customers' use of competitive payment applications, competitive voice applications, and remote video applications." (§ 79 n.123).

Scope of Net Neutrality Rules. The FCC's net neutrality rules are applicable to "fixed and mobile broadband Internet access service," which is defined as a "mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service." (§ 187).

This term extends to "services provided over any technology platform, including but not limited to wire, terrestrial wireless (including fixed and mobile wireless services using licensed or unlicensed spectrum), and satellite." (§ 187). Also covered is any service the Commission finds is "a functional equivalent" of broadband Internet access service or "is used to evade the protections" of the rules. (§ 187). And resellers of any service falling within the definition of broadband Internet access service will be subject to the rules, regardless of whether they own any facilities. (§ 188).

The FCC continues to define the term "mass market" as "a service marketed and sold on a standardized basis for residential customers, small businesses, and other end-user customers such as schools and libraries" as well as services "purchased with support of the E-rate and Rural Healthcare programs" and "any broadband internet access service offered using networks supported by the Connect America Fund (CAF)." (§ 189). The term does not include "enterprise service offerings," as those are "typically offered to larger organizations through customized or individually negotiated arrangements," or "special access services" on which the Commission has a separate ongoing proceeding. (§ 189).

The term "broadband Internet access service" does not include: (1) virtual private network (VPN) services; (2) content delivery networks (CDNs); (3) hosting or data storage services; or (4) "Internet backbone services (to the extent those services are separate from broadband Internet access service)." (§ 190). "[P]ublic safety services," as defined in Section 337 of the Communications Act, also fall outside of the definition of broadband Internet access service. (§ 188 n. 461).

The FCC also exempted "premises operators-such as coffee shops, bookstores, airlines, private end-user networks (e.g. libraries and universities), and other businesses that acquire broadband Internet access service from a broadband provider to enable patrons to access the Internet from their respective establishments-to the extent they may be offering broadband Internet access service" as defined in the new rules. (§ 191).

The new rules also do not apply to data services that do not go over the public Internet and thus are not broadband Internet access services (BIAS), which the FCC referred to as "non-BIAS data services." (§ 207). Examples of such services include: (1) "some broadband providers' existing facilities-based VoIP and Internet-Protocol video offerings," (2) "connectivity bundled with e-readers, heart monitors, or energy consumption sensors," and (3) "limited-purpose devices such as automobile telematics, and services that provide schools with curriculum-approved applications and content." (§ 208). However, the FCC will ensure these services do not undermine the effectiveness of the net neutrality rules and will subject these services to enforcement action if it finds they are providing the functional equivalent of broadband Internet access service or are being used to evade the net neutrality rules. (§ 210).

Bright-Line Net Neutrality Rules. The FCC adopted the following three bright-line prohibitions on providers of fixed and mobile broadband Internet access:

1. **No Blocking:** *A provider of broadband Internet access service "shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management." (§ 112).*
2. **No Throttling:** *A provider of broadband Internet access service "shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management." (§ 119).*
3. **No Paid Prioritization:** *A provider of broadband Internet access service "shall not engage in paid prioritization." "Paid prioritization" refers to the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity. (§ 125).*

The FCC stated that it will entertain requests for waiver of the paid prioritization rule, but "anticipate[s] granting such relief only in exceptional cases." (§ 132). Under the FCC's rigorous waiver standard, a petitioner must "demonstrate[] that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet." (§ 130). For example, an applicant could "provid[e] evidence that the practice furthers competition, innovation, consumer demand, or investment." (§ 131). In addition, "the applicant must demonstrate that the practice does not harm the nature of the open Internet, including, but not limited to, providing evidence that the practice:

- does not materially degrade or threaten to materially degrade the broadband Internet access service of the general public;
- does not hinder consumer choice;
- does not impair competition, innovation, consumer demand, or investment; and
- does not impede any forms of expressions, types of service, or points of view." (§ 131).

Standards for Future Conduct. In addition to the three bright-line rules, the FCC adopted a catch-all prohibition that sets forth a "no-unreasonable interference/disadvantage standard." Under this standard, the Commission will consider, on a case-by-case basis, whether a broadband provider has engaged in a practice "that unreasonably interfere[s] with or unreasonably disadvantage[s] the ability of consumers to reach the Internet content, services, and applications of their choosing or of edge providers to access consumers using the Internet." (§ 135). The Commission provided a nonexhaustive list of factors it will consider in determining whether conduct satisfies this standard, including: (1) end-user control; (2) competitive effects; (3) consumer protection; (4) effect on innovation, investment, or broadband deployment; (5) free expression; (6) whether the practice is application-agnostic; and (7) standard practices. (§§ 138-45). In no instance, however, will the Commission base the propriety of a given practice on whether such practice is "commercially unreasonable, which was the standard it tentatively proposed to use. (§ 150). The FCC indicated that it will consider the legality of sponsored data plans (sometimes called zero-rating)-which exclude certain edge provider content from end users' data allowances-and usage allowances (or data caps) under the no-unreasonable interference/disadvantage standard. (§§ 151-53).

Greater Transparency. The FCC adopted "targeted, incremental enhancements to the existing transparency rule." (§ 156). Specifically, broadband providers are required to disclose, in a consistent format, monthly service charges (including promotional rates, if any), other fees and surcharges, and data caps and/or allowances. (§ 164). Disclosures must also include packet loss as a measure of network performance, as well as information that is reasonably related to the performance the consumer will likely experience in the geographic area in which the consumer is purchasing service. (§ 166). Additionally, network performance must be "measured in terms of average performance over a reasonable period of time and during times of peak usage." (§ 166). Moreover, the new rules will require broadband Internet access providers to notify end users directly if their individual use of a network will trigger a network practice, based on their demand prior to a period of congestion, that is likely to have a significant impact on the end user's use of the service. (§ 171). However, the new rules do not require "real-time" disclosures," nor do they require disclosure of the source, location, timing, or duration of network congestion or packet corruption or jitter. (§§ 168, 172).

The FCC also clarified that its existing transparency rule requires disclosure of practices that a provider applies to a particular user or group (based on, for example, service plan, data volume, or location), including any application-agnostic degradation of service to a particular end user. (§ 169 & n.420). Similarly, the FCC clarified that disclosures of user- or application-based practices should include "the purpose of the 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 end users' experiences." (§ 169).

The FCC adopted a temporary exemption from the transparency rule enhancements for fixed and mobile providers with 100,000 or fewer subscribers. (§ 173). The FCC directed the Consumer & Governmental Affairs Bureau to issue an order by December 15, 2015, announcing whether it will maintain the exemption and, if so, whether it will retain or modify the 100,000-subscriber threshold. (§ 174).

The FCC also created a "safe harbor" process regarding the format and nature of the required disclosure to consumers, but declined to mandate the exact format for such disclosures. Rather, the Commission directed the Consumer Advisory Committee to formulate and submit to the Commission a proposed disclosure format no later than October 31, 2015. (§ 180). Furthermore, the Commission delegated authority to the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Consumer & Governmental Affairs Bureau to issue a Public Notice when the proposed format is acceptable. (§ 180). "Broadband providers that voluntarily adopt this format will be presumed to be in compliance with the requirement to make transparency disclosures in a format that meets the needs of consumers." (§ 181). However, a broadband provider may be found in violation of the rules even if it utilizes the safe harbor disclosure format "if the content of the disclosure is misleading or inaccurate." (§ 181).

Reasonable Network Management. For the purposes of the rules other than paid prioritization, a broadband provider may engage in reasonable network management:

A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

(§ 215). The FCC stated that it will continue to evaluate whether a network management practice is reasonable on a case-by-case basis. (§ 218). In an effort to provide "clarity" and "guidance" to providers, the FCC enumerated two "legitimate network management practices," including those primarily used for, and tailored to (1) "ensuring network security and integrity, including by addressing traffic that is harmful to the network;" and (2) "addressing traffic that is unwanted by end users." (§ 220). The FCC also reiterated that it is more likely to find a practice "reasonable" if it (1) alleviates congestion without regard to the source, destination, content, or service involved; or (2) is transparent, and either allows the end user to control it or is application-agnostic. (§ 220). Because of the additional challenges involved in mobile broadband network management, the Commission recognized that mobile broadband providers "may have a greater need to apply network management practices" and that providers relying on unlicensed Wi-Fi networks also "have specific network management needs." (§§ 223-24).

Interconnection. The Commission declined to apply its net neutrality rules to "Internet traffic exchange arrangements." (§ 195). However, because the definition of broadband Internet access service includes the exchange of Internet traffic, and because the FCC (as discussed below) reclassified broadband Internet access service as a telecommunications service subject to Title II of the Communications Act, the FCC stated that it retained authority to hear interconnection disputes under Sections 201 and 202 of the Communications Act (and related enforcement provisions) on a case-by-case basis. (§§ 195, 205).

Enforcement Mechanisms. While the Commission stated that it encourages parties to resolve disputes through "informal discussions" and "private negotiations," the FCC provided "backstop mechanisms" to address such disputes, and it will "proactively monitor compliance and take strong enforcement action against parties who violate open Internet rules." (§§ 225-26).

In the interest of promoting legal certainty, the Commission will promulgate advice regarding its net neutrality rules in two ways:

1. **Advisory Opinions:** The Commission concluded that the use of advisory opinions, similar to those used by the DOJ's Antitrust Division, is in the public interest and "would advance the Commission's goal of providing legal certainty." (§ 229). Accordingly, any entity subject to the Commission's jurisdiction may request an advisory opinion regarding its own proposed *prospective* conduct that may implicate the Commission's open Internet rules. Advisory opinions, and initial requests for such opinions, will be made available to the public. (§§ 230-39).
2. **Enforcement Advisories:** The Commission will periodically publish enforcement advisories "to offer clarity, guidance, and predictability concerning the open Internet rules." (§§ 240-41).

The FCC will preserve existing avenues for enforcement of the net neutrality rules—including informal complaints, formal complaints, and FCC-initiated complaints—and will analyze all complaints on a case-by-case basis. (§§ 242-53). To ensure effective access to the Commission's processes, the FCC will appoint an ombudsperson to assist consumers, businesses, and organizations with net neutrality complaints and questions. (§§ 254-56). The Commission also made it easier to lodge both informal and formal net neutrality complaints, the latter of which the new rules require to be filed electronically. (§§ 257-65). The Commission also declined to adopt mandatory arbitration procedures, while making clear that parties are free to engage in mediation and outside arbitration to settle net neutrality disputes. (§§ 266-67). Finally, the FCC invited interested parties to file amicus briefs in net neutrality complaint proceedings and authorized the Enforcement Bureau to seek written opinions from outside technical organizations to aid in its enforcement of the new rules. (§§ 268-72).

Legal Authority. The FCC grounded its new net neutrality rules in Section 706 of the Telecommunications Act of 1996; Title II of the Communications Act; and, as to mobile broadband only, Title III of the Communications Act.

According to the Commission, Section 706 provides legal authority to adopt all of its net neutrality rules. The Commission relied upon the D.C. Circuit's decision in *Verizon v. FCC*, which recognized Sections 706(a) and 706(b) as affirmative grants of authority. The Commission concluded that the rules are within the scope of Section 706 because they: (1) fall within the Commission's subject matter jurisdiction; and (2) are designed to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans. (§§ 275-82).

In addition, the FCC relied upon Title II of the Communications Act because the Commission reclassified broadband Internet access service as a Title II telecommunications service. The FCC primarily relied on Section 201, which requires just and reasonable charges and practices, and Section 202, which makes it unlawful to unjustly or unreasonably discriminate in charges or practices. (§§ 283-84). With respect to mobile broadband, the Commission relied on its authority under Title III to "ensure that spectrum licensees are providing service in a manner consistent with the public interest." (§§ 285-93).

Applying these sources of authority, the Commission found ample legal bases on which to adopt its new net neutrality rules. The Commission concluded that its bright-line rules and standard for future conduct advance the goals of Section 706. And given its reclassification of broadband Internet access service, the Commission found that its rules no longer impermissibly mandate common carriage. Moreover, the Commission explained that its standard for future conduct tracks the language of Sections 201 and 202, and is thus authorized by these provisions of Title II. Finally, because the D.C. Circuit previously upheld the Commission's 2010 transparency rule, the Commission expressed confidence that the enhanced transparency rule is well grounded in its authority. (§§ 288-97).

Reclassifying Broadband Internet Access as a Title II Telecommunications Service. In a Declaratory Ruling, which the FCC applies prospectively, it reclassifies "broadband Internet access service" as a "telecommunications service" subject to Title II "regardless of the technological platform over which the service is offered." (§§ 308, 330-35). The FCC clarified that broadband Internet service includes the service that broadband providers make available to edge providers. (§§ 338-39).

The FCC found that the facts have changed since the FCC's decision to classify broadband Internet access services as information services. (§ 330). In particular, the Commission found that "fixed and mobile consumers today largely use their broadband Internet access connections to access content and services that are unaffiliated with their broadband Internet access service provider." (§ 349). The FCC based its determination on consumer data and the fact that broadband services are often marketed solely based on speed and price rather than in regard to other forms of service differentiation. (§§ 343-54). "In short, broadband Internet access service is marketed today primarily as a conduit for the transmission of data across the Internet." (§ 354). The Commission concluded that "broadband Internet access service" is distinct from the "add-on" applications, content, and services that are generally information services" and that it is therefore "a telecommunications service" subject to Title II. (§ 341).

Reclassifying Mobile Broadband Internet Access as a Commercial Mobile Service. In addition to finding that mobile broadband internet access service is a telecommunications service subject to Title II, the FCC also found that mobile broadband Internet access service is a "commercial mobile service" or at least its "functional equivalent." (§ 388). To reach this conclusion, the Commission found that mobile broadband Internet access service is "interconnected" with the "public switched network." Because the existing definition of "public switched network" is expressly limited to services using the North American Numbering Plan, the Commission adopted a new definition that expressly includes "public IP addresses": "the network that includes any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use[s] the North American Numbering Plan, or public IP addresses." (§ 391). Under this new definition, the FCC found that mobile broadband Internet access service is interconnected with the public switched network.

The FCC also explained that "mobile broadband is an interconnected service because it gives its users the capability to send and receive communications from all other users of the Internet." (§ 398). In addition, the Commission explained that the "capability" of connecting with NANP numbers through VoIP was a sufficient basis for classifying mobile broadband as a commercial mobile service. (§ 400). Finally, the Commission

found that reclassification as a commercial mobile service was most consistent with its decision to also classify mobile broadband as a telecommunications service under Title II. (¶ 403).

State and Local Regulation. The FCC reaffirmed its "longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes." It also made clear that the States are bound by the Commission's forbearance decisions. And it announced a "firm intention" to exercise preemption authority to preclude states from imposing broadband regulations that are inconsistent with the Commission's order. (¶¶ 431-33).

Forbearance from Title II. Having reclassified broadband Internet access services under Title II, the FCC considered on its own motion whether to forbear from any Title II provision under Section 10 of the Communications Act. (¶ 434).

The FCC declined to forbear from applying the following provisions of Title II to broadband Internet access services:

- *Unjust or Unreasonable Charges and Discrimination.* The Commission declined to forbear from Sections 201 and 202, which prohibit "unjust or unreasonable" charges, practices, and classifications, and which prohibit "unjust or unreasonable discrimination." (¶ 441). The Commission explained that these provisions not only will foster innovation and competition, thereby promoting broadband investment nationwide, they also will provide the Commission with direct statutory authority to protect Internet openness. (¶¶ 442-43). The Commission also found that Sections 201 and 202 provide a necessary backstop for consumers given concerns about limited competition in the broadband marketplace. (¶ 444). However, the Commission does not envision going beyond its net neutrality rules to adopt *ex ante* rate regulation of broadband Internet access service, and accordingly it will forbear from pre-existing tariffing requirements and its rules governing rate regulation. (¶¶ 451-52).
- *Enforcement Provisions.* The Commission declined to forbear from Section 208 and related statutory provisions—Sections 206, 207, and 209—that establish an FCC complaint process to aid in the enforcement of the Communications Act. (¶ 453). The Commission explained that the enforcement provisions are necessary to make application of Sections 201 and 202 meaningful, as "the possibility of enforcement needs to be available." (¶ 454). The Commission emphasized its primary jurisdiction in this area, endorsing an approach in which courts reviewing Section 207 claims cannot find entitlement to damages for a claim under Section 201(b) unless the Commission has already determined that a particular practice is "unreasonable." (¶ 455). In addition, the Commission did not forbear from Sections 216 and 217, which "merely extend the Title II obligations of carriers to their trustees, successors in interest, and agents." (¶ 453).
- *Customer Privacy.* The Commission declined to forbear from Section 222, which "imposes a duty on every telecommunications carrier to protect the confidentiality of its customers' private information" and "imposes restrictions on carriers' ability to use, disclose, or permit access to" customer proprietary network information without the customer's consent. (¶ 462). However, the Commission will forbear from applying its rules implementing Section 222 insofar as they would be triggered by Title II classification

of broadband Internet access service. (§ 467).

- *Disability Access.* The Commission declined to forbear from most of Section 225, which mandates the availability of interstate and intrastate telecommunications relay service ("TRS") to individuals with disabilities. (§ 468). While forbearing from TRS Fund contribution obligations at this time, the Commission explained that it would "like to assess the need for such additional funding," and retains the authority "to require such contributions should the Commission elect to do so in a rulemaking in the future." (§ 470). The Commission also declined to forbear from Section 255 and its associated rules, which "require telecommunications service providers and equipment manufacturers to make their services and equipment accessible to individuals with disabilities." (§ 472). The Commission explained that similar requirements already apply to providers of broadband Internet access service through the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). (§ 473). The Commission also declined to forbear from Section 251(a)(2), which requires all telecommunications carriers to comply with Sections 255.
- *Pole Attachments.* The Commission declined to forbear from Section 224, which governs pole attachments access and rates. (§ 478). The FCC concluded that applying Section 224 "will help ensure just and reasonable rates for broadband Internet access service by continuing pole access and thereby limiting the input costs that broadband providers otherwise would need to incur." (§ 478). The Commission is "committed to avoiding an outcome in which entities misinterpret today's decision as an excuse to increase pole attachment rates of cable operators providing broadband Internet access service." (§ 482).
- *Universal Service.* The Commission declined to forbear from most of Section 254, which is the statutory basis for the Commission's universal service programs, and Section 214(e). (§ 486). The Commission noted that it has already supported broadband deployment through universal service programs and that the new classification simply provides another statutory justification in support of its policies going forward. (§ 486). However, the Commission will forbear from any requirement that would impose new universal service contribution obligations associated with broadband Internet access service. (§ 488). But, as with its decision regarding TRS Fund contributions, the Commission reserved the authority to revisit this determination, making clear that "while broadband Internet access service will not be subject to new universal service contributions at this time, our action today is not intended to prejudice or limit how the Commission may proceed in the future." (§ 489).

The FCC will forbear from applying 27 Title II provisions and over 700 Commission rules to broadband Internet access service, including:

- *Tariffing.* The Commission stated that it will forbear from applying Sections 203 and 204, which require common carriers to file a schedule of rates and charges for interstate common carrier services. (§ 497). Instead, to guard against unreasonable rates, the Commission explained that it will rely on its net neutrality rules and Sections 201 and 202, which "establish both *ex ante* legal requirements and a framework for case-by-case evaluations governing broadband providers' actions." (§ 498). The Commission relatedly will forbear from Section 205, which provides for Commission investigation of

existing rates and practices. (§ 506).

- *Interlocking Directorates.* The Commission determined that it will forbear from applying Section 212, which empowers the Commission to monitor the involvement of directors or officers holding such positions in more than one common carrier. (§ 507).
- *Information Collection and Reporting.* The Commission decided to forbear from applying Sections 211, 213, 215, 218, 219, and 220, which provide discretionary powers to compel production of useful information or the filing of regular reports. (§ 508).
- *Discontinuance.* The Commission stated that it will forbear from applying Section 214 discontinuance approval requirements, which require certain carriers to submit applications to the Commission for the discontinuance, reduction, or impairment of existing services. (§ 509). The Commission also granted forbearance with respect to Section 214(d), which authorizes the Commission to require a common carrier to provide itself with adequate facilities. (§ 512).
- *Interconnection.* The Commission determined that it will forbear from applying Sections 251, 252, and 256, which govern interconnection, concluding that the availability of other protections under the Commission's net neutrality rules and Sections 201 and 202 adequately address concerns about interconnection. (§ 513).
- *Subscriber Changes.* The Commission decided to forbear from applying Section 258, which prohibits unauthorized carrier changes, as the record in the net neutrality proceeding did not reveal whether or how unauthorized changes in broadband Internet access providers could occur. (§ 515).
- *Other Title II Provisions.* The Commission stated that it will also forbear from the following provisions because they are not relevant to broadband Internet access service:
 - Sections 271-276 provisions concerning Bell Operating Companies (§ 517);
 - Section 221 property provisions (§ 519);
 - Section 259 infrastructure sharing and notification requirements (§ 519);
 - Section 226 Telephone Operator Customer Services Improvement Act requirements (§ 520);
 - Section 227 Telephone Consumer Protection Act notification obligations and restriction of inaccurate caller identification information (§ 520);
 - Section 228 pay-per-call regulations (§ 520);
 - Section 260 provisions regulating local exchange carrier practices. (§ 520).
- *Truth-in-Billing Rules.* The Commission determined that it will forbear from applying its truth-in-billing rules, finding that the requirement of just and reasonable conduct under Section 201(b) will provide protection in this context. (§ 522).
- *Roaming-related Provisions and Regulations.* The Commission decided to retain for mobile broadband Internet access services the roaming obligations that applied prior to reclassification of that service. (§ 526).

- *Terminal Equipment Rules.* The Commission stated that it will forbear from applying certain terminal equipment rules. (§ 527).

Forbearance from Other Provisions and Regulations. The Commission concluded that the same reasoning underlying forbearance from certain Title II provisions justifies forbearance from other provisions and regulations, including:

- Certain provisions of Titles III and IV and associated Commission rules that may apply by their terms to *providers or services* (§ 528);
- All Commission rules for which the underlying authority derives from provisions under Titles II, III, and IV which have been forbore from by the order (§ 528);
- Any contributions to support mechanisms or fee payment requirements under the Act or the Commission's rules that could be triggered by reclassification (§ 528);

On the other hand, the Commission made clear that it does not forbear from provisions that do not fall under Communications Act and its implementing rules, provisions or regulations not newly triggered by the reclassification of broadband Internet access service, or certain rules governing the wireless licensing process. (§§ 529-34).

Severability. The FCC explicitly stated that "the actions we take today to be separate and severable such that in the event any particular action or decision is stayed or determined to be invalid, we would find that the resulting regulatory framework continues to fulfill our goal of preserving and protecting the open Internet and that it shall remain in effect to the fullest extent permitted by law." (§ 574).

Effective Date. All of the new rules, except the transparency rule enhancements, will become effective "60 days after publication in the Federal Register." The transparency rule enhancements, which contain information collection requirements that must be approved by the Office of Management and Budget, will become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date. (§ 585).