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**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 8**

**[GN Docket No. 14–28; DA 15-1425]**

Protecting and Promoting the Open Internet

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, via the Consumer and Governmental Affairs Bureau (CGB or Bureau) temporarily extends an exemption for smaller broadband Internet access service providers from compliance with certain enhancements to the existing transparency rule that governs the content and format of disclosures made by providers. The exemption is available to providers with 100,000 or fewer broadband connections as per the provider’s most recent Form 477, aggregated over all of the providers’ affiliates. These actions are necessary to enable consideration of whether to make the exemption permanent after the Commission completes its burden analysis.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Jerusha Burnett, Consumer Policy Division, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street SW., Washington, DC 20554. (202) 418-0526.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Document DA 15-1425, released December 15, 2015 in GN Docket No. 14-28, temporarily extending the exemption for smaller providers from enhanced transparency requirements established in the Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order (2015 Open Internet Order), published at 80 FR 19738, April 13, 2015. The full text of document DA 15-1425 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street SW., Room CY-A257, Washington, DC

20554. Document DA 15-1425 can also be downloaded in Word or Portable Document Format (PDF) at: <https://www.fcc.gov/document/open-internet-small-business-exemption-extension-order>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## **FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

The Commission currently has an Office and Management and Budget (OMB) collection 3060-1158 pending OMB's review and approval of a revision containing modified information collection requirements adopted in the Commission's 2015 Open Internet Order, published at 80 FR 19736, April 18, 2015. This collection contains information collection requirements for a temporary exemption for smaller broadband Internet access service providers imposed by the transparency rule, which are subject to the Paperwork Reduction Act (PRA) of 1995. Pub. L. 104-13. However, document DA 15-1425 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).

## **SYNOPSIS**

### **Introduction**

1. In document DA 15-1425, CGB finds that at this time it cannot fully evaluate the impact of removing the temporary exemption for smaller broadband Internet access service providers from the enhancements to the Open Internet transparency rule previously adopted by the Commission in the 2015 Open Internet Order. The information collection and disclosure requirements imposed by the transparency rule are subject to the PRA. The Commission is proceeding through the PRA process, which involves estimating the burden of complying with the transparency rule enhancements for

providers of all sizes and obtaining approval from OMB. To avoid acting prematurely in advance of that approval, CGB therefore extends the temporary exemption for smaller providers until December 15, 2016. At that time, the Bureau expects that the PRA process will be complete and that the full Commission will be able to consider whether and, if so, how best to extend the temporary exemption from the enhanced transparency requirements with the benefit of more complete information.

## **Background**

2. 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. These enhanced transparency requirements built upon the original transparency rule the Commission adopted in 2010 to provide critical information to end-user consumers, edge providers, and the Internet community regarding commercial terms, performance characteristics, and network practices. In the 2015 Open Internet Order, the Commission concluded that the enhanced requirements adopted were modest in nature, yet critical to consumers, and, indeed, that some may have already been required by the 2010 rule.

3. The Commission temporarily exempted from the enhanced transparency requirements those providers with 100,000 or fewer broadband subscribers, as per their most recent Form 477, aggregated over all of the providers' affiliates. At the same time, the Commission directed CGB to seek comment on both the appropriateness of the exemption as well as the threshold, and to adopt an order announcing whether it is maintaining an exemption and at what level by no later than December 15, 2015.

4. On June 22, 2015, the Bureau released a Public Notice, published at 80 FR 38424, July 15, 2015, seeking comment on whether to maintain the temporary exemption and, if so, the appropriate threshold for whether a provider qualified for such an exemption. The Public Notice also clarified that the threshold should be measured in terms of broadband connections, rather than in terms of subscribers or subscriber lines. For this reason, the Public Notice made clear that the current exemption from the enhanced transparency requirements applied to providers with 100,000 or fewer broadband connections.

## **Smaller Provider Exemption**

5. CGB hereby extends the temporary exemption for smaller providers from the enhanced transparency requirements until December 15, 2016. At that time, the Bureau expects that the PRA process will be complete and that the full Commission will be able to consider whether and, if so, how best to address the exemption from the enhanced transparency requirements for small providers with the benefit of more complete information.

6. The Bureau cannot agree with those commenters that claim that the enhanced transparency requirements offer no tangible benefit to customers of smaller providers. As the Commission stated in the 2015 Open Internet Order, the enhanced transparency requirements, while modest, are critical to enable end-user consumers to make informed choices about broadband Internet access services by providing them with timely information tailored to their needs. Similarly, the Commission stated that such requirements provide edge providers with the information necessary to develop new content, applications, services, and devices that promote the virtuous cycle of investment and innovation. The Commission noted in the 2015 Open Internet Order that it received numerous complaints from consumers after the 2010 rules took effect, suggesting that broadband providers were not providing the information that end users and edge providers need to receive and the Commission continues to receive such complaints. Commenters critical of the enhanced transparency requirements offer no evidence that Internet customers do not have the same complaints today that they raised in the period following the 2010 rules, nor do they present evidence that customers of smaller providers are less in need of these essential informational disclosures than are customers of larger providers. It is a matter of historical record that Open Internet issues do not necessarily concern the actions of only large broadband providers. Furthermore, the Bureau agrees with the commenter who noted that rural subscribers deserve the same benefits as all other subscribers.

7. In determining whether and, if so, how to best to address the exemption, the Bureau must balance the benefit of the transparency rule enhancements to consumers against the impact on small

providers of removing the exemption. Until the PRA process is complete, however, the Bureau finds that we cannot fully evaluate this impact. Despite the Commission's finding that the enhancements adopted in the 2015 Open Internet Order are modest, a few commenters cite specific requirements as being particularly burdensome for smaller providers. The Commission is currently evaluating comments in response to the initial burden estimates and is preparing final burden estimates. In addition, in response to requests for additional clarity regarding the enhanced compliance obligations, the Bureau anticipates that the Commission may release a public notice in the near future, similar to the guidance provided in 2011 on interpreting the transparency requirements. Such guidance may provide greater certainty as to the enhanced disclosure obligations and alleviate commenter concerns regarding potential liability for inadvertent non-compliance.

8. The 2015 Open Internet Order directed the Bureau to seek comment on the smaller provider exemption and to adopt an order announcing whether it is maintaining an exemption and at what level by no later than December 15, 2015. To avoid making a premature determination prior to PRA approval, the Bureau therefore extends the exemption until December 15, 2016. At that time, the Bureau expects that the PRA process will be complete and that the full Commission will be able to consider whether and, if so, how best, to address the exemption from the enhanced transparency requirements for small providers with the benefit of more complete information.

### **Smaller Provider Threshold**

9. The Commission set the exemption threshold at 100,000 or fewer broadband connections as per providers' most recent Form 477, aggregated over all of the providers' affiliates. The Bureau agrees with those commenters who support the use of this threshold. As the Commission noted, this threshold is analogous to that which was used in the 2013 Rural Call Completion Order, published at 78 FR 76218, December 17, 2013, and advocated for by parties who sought such an exemption in this proceeding. Although some parties advocate that the Bureau should broaden this exemption to include entities that serve 500,000 or fewer broadband connections, the Bureau is concerned from our internal review of the

relevant Form 477 data that this change would substantially increase the number of consumers who would be temporarily excluded from receiving the information that the Commission has deemed essential for them to make informed choices about broadband services. Absent a more compelling reason than a desire to protect such providers from burdens that the Commission has concluded are modest in nature, the Bureau believes the Commission's threshold of 100,000 or fewer broadband connections as measured by their most recent Form 477, aggregated over all affiliates remains a reasonable basis to delineate which providers are likely to be most affected by the burden of complying with the enhanced disclosure requirements. Furthermore, the Bureau notes that providers with between 100,000 and 500,000 connections were not covered by the exemption established by the Commission in the 2015 Open Internet Order and, presumably, have already begun the process of coming into compliance. The Bureau does not agree with the Small Business Administration's (SBA) Office of Advocacy and CTIA that the Commission has adopted a size standard that differs from the SBA's size standard and thus requires SBA approval for regulatory enforcement purposes. The 100,000 connection threshold is not a business size. Rather it exempts businesses (both larger and smaller) based on an analysis of the relative costs of requiring compliance. By CGB's action here, the Bureau extends the exemption already set by the Commission in the 2015 Open Internet Order, using a threshold which itself is analogous to a threshold the Commission has used in the past.

### **Form 477**

10. In the Public Notice, the Bureau sought comment on whether smaller providers that fail to file a Form 477 should be ineligible for the exemption. One commenter notes that not all providers are required to submit Form 477 and suggests that these providers be allowed to offer an alternative reporting mechanism to avail themselves of the exemption. The Bureau agrees, in this limited circumstance, that providers that are not required to file a Form 477 can avail themselves of the exemption by demonstrating that they served 100,000 or fewer broadband connections aggregated over all the providers' affiliates at the relevant time should any complaint arise. In all other instances, however, the exemption will be tied

to the information provided on Form 477. In the 2015 Open Internet Order, the Commission expressly linked the exemption to the number of connections reported via the Form 477. The Bureau finds no basis in the record to revisit that decision herein. As a result, providers obligated to file Form 477 that do not fulfill their obligation to file such information in a timely manner will be ineligible for the exemption, even if they serve 100,000 or fewer broadband connections aggregated over all of the providers' affiliates.

#### **CONGRESSIONAL REVIEW ACT**

The Commission will not send a copy of DA 15-1425 pursuant to the Congressional Review Act, because the Commission adopted no rules therein. See 5 U.S.C 801(a)(1)(A). Rather than adopting rules, the Commission exercised its statutory authority to extend an exemption for smaller broadband Internet access service providers from compliance with certain enhancements to the existing transparency rule that governs the content and format of disclosures made by providers by Order until December 15, 2016.

#### **ORDERING CLAUSE**

Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), and § 8.3 of the Commission's rules, 47 CFR 8.3, and the authority delegated in §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141, 0.361, and in 2015 Open Internet Order, that document DA 15-1425  
IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION.

Mark Stone,  
Deputy Chief, Consumer and Governmental Affairs Bureau.  
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