



441 G St. N.W.
Washington, DC 20548

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June 6, 2024

The Honorable Maria Cantwell
Chair
The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: Safeguarding and Securing the Open Internet; Restoring Internet Freedom*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC) entitled “Safeguarding and Securing the Open Internet; Restoring Internet Freedom” (FCC 24-52). We received the rule on May 10, 2024. It was published in the *Federal Register* as a final rule on May 22, 2024. 89 Fed. Reg. 45404. The effective date of the rule is July 22, 2024, except for amendatory instruction 7 (revisions to 47 C.F.R. 8.2(a) and (b)), which is delayed indefinitely. FCC will publish a document in the *Federal Register* announcing the effective date.

According to FCC, with this final rule it adopts a Declaratory Ruling, Report and Order, Order, and Order on Reconsideration that reestablishes FCC’s authority over broadband internet access service. FCC stated that the Declaratory Ruling classifies broadband internet access service as a telecommunications service under title II of the Communications Act, providing FCC with additional authority to safeguard national security, advance public safety, protect consumers, and facilitate broadband deployment. FCC stated that the Order establishes broad, tailored forbearance of FCC’s application of title II to broadband providers while maintaining title II provisions FCC needs to fulfill its obligations and objectives. FCC stated the Report and Order reinstates straightforward, clear rules that prohibit blocking, throttling, or engaging in paid or affiliated prioritization arrangements, adopts certain enhancements to the transparency rule, and reinstates a general conduct standard that prohibits unreasonable interference or unreasonable disadvantage to consumers or edge providers. Lastly, FCC stated that the Order on Reconsideration partially grants and otherwise dismisses as moot four petitions for reconsideration filed in response to the 2020 Restoring Internet Freedom Remand Order.

Enclosed is our assessment of FCC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions

about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Chris Laughlin
Deputy Chief, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
“SAFEGUARDING AND SECURING OPEN INTERNET; RESTORING INTERNET FREEDOM”
(FCC 24-52)

(i) Cost-benefit analysis

In this final rule, the Federal Communications Commission (FCC) evaluated the costs and benefits of reclassifying broadband internet access service (BIAS) as a title II telecommunications service and of adopting the open internet rules relative to the regulatory framework. FCC determined that the benefits of the reclassification and open internet rules outweigh the costs. FCC stated that the primary benefits and costs attributable to the rule are changes in the economic welfare of consumers, BIAS providers, and edge providers. FCC also stated that BIAS is not a luxury, but a necessity for education, communication, healthcare, and participation in the economy. FCC determined that the adoption of open internet rules is necessary to help ensure the health, vitality, and security of the entire internet ecosystem.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

This final rule included a Final Regulatory Flexibility Analysis (FRFA) as required by RFA. FCC’s FRFA included a description of: (1) the need for, and objectives of the Declaratory Ruling, Order, Report and Order, and Order on Reconsideration; (2) a summary of significant issues raised by public comments in response to the Initial Regulatory Flexibility Analysis; (3) a response to comments by the Chief Counsel for Advocacy of the Small Business Administration; (4) a description and estimate of the number of small entities to which the rules will apply; (5) a description of projected reporting, recordkeeping and other compliance requirements for small entities; (6) steps taken to minimize the significant economic impact on small entities and significant alternatives considered; and (7) a discussion of reporting to Congress.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FCC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to

section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FCC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On November 3, 2023, FCC published a proposed rule. 88 Fed. Reg. 76048. FCC stated that it sought written public comments on its proposals, including comments on the Initial Regulatory Flexibility Analysis. FCC discussed comments received in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FCC stated that this final rule contains new or modified information collection requirements subject to PRA. FCC invited the general public to comment on the information collection requirements contained in the Report and Order as required by PRA. Additionally, FCC stated that amendments in the rule that contain new or modified information collection requirements will not become effective until after OMB completes any review that the Wireline Competition Bureau determines is required under PRA.

Statutory authorization for the rule

FCC promulgated this final rule pursuant to titles II and III of the Communications Act of 1934 and section 706 of the Telecommunications Act of 1996.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FCC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FCC is not subject to the Order.