

APPENDIX A**Final Rules**

The Federal Communications Commission amends 47 C.F.R. parts 1, 8 and 20 as follows:

PART 1: PRACTICE AND PROCEDURE

1. Section 1.49 is amended by revising paragraph (f)(1)(i) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

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(f) * * *

(1) * * *

(i) Formal complaint proceedings under Section 208 of the Act and rules §§ 1.720 through 1.736, pole attachment complaint proceedings under Section 224 of the Act and rules §§ 1.1401 through 1.1424, and formal complaint proceedings under Open Internet rules §§ 8.12 through 8.17, and;

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2. The heading of part 8 is amended to read as follows:

PART 8: PROTECTING AND PROMOTING THE OPEN INTERNET

3. The authority citation for part 8 is amended to read as follows:

AUTHORITY: 47 U.S.C. §§ 151, 152, 153, 154, 201, 202, 208, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, 1302.

4. Section 8.1 is amended to read as follows:

§ 8.1 Purpose.

The purpose of this Part is to protect and promote the Internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission, and thereby to encourage the deployment of advanced telecommunications capability and remove barriers to infrastructure investment.

5. Section 8.11 is redesignated section 8.2 and is amended to read as follows:

§ 8.2 Definitions.

(a) *Broadband Internet access service.* 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. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this Part.

(b) *Edge provider.* Any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.

(c) *End user.* Any individual or entity that uses a broadband Internet access service.

(d) *Fixed broadband Internet access service.* A broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services (including fixed unlicensed wireless services), and fixed satellite services.

(e) *Mobile broadband Internet access service.* A broadband Internet access service that serves end users primarily using mobile stations.

(f) *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.

6. Section 8.5 is amended to read as follows:

§ 8.5 No blocking.

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.

7. Section 8.7 is amended to read as follows:

§ 8.7 No throttling.

A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, 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.

8. Section 8.9 is redesignated section 8.19.

9. New section 8.9 is added to read as follows:

§ 8.9 No paid prioritization.

(a) A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not engage in paid prioritization.

(b) “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.

(c) The Commission may waive the ban on paid prioritization only if the petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet.

10. New section 8.11 is added to read as follows:

§ 8.11 No unreasonable interference or unreasonable disadvantage standard for Internet conduct.

Any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage (i) end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule.

11. Section 8.13 is amended by revising paragraph (a)(4), revising paragraphs (b), (b)(1) and (b)(2), removing paragraph (b)(3), redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding new paragraph (c) to read as follows:

§ 8.13 General pleading requirements.

(a) * * *

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(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address, telephone number, email address, and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and, to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

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(b) *Initial Complaint: Fee remittance; Service; Copies to be filed.* The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106) and:

(1) Shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System, and, on the same day:

(2) Serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process, if available, on the same date that the complaint is filed with the Commission;

(c) *Subsequent Filings: Service; Copies to be filed.*

(1) All subsequent submissions shall be filed using the Commission's Electronic Comment Filing System. In addition, all submissions shall be served by the filing party on the attorney of record for each party to

the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by email, together with a proof of such service in accordance with the requirements of § 1.47(g).

Service is deemed effective as follows:

(a) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(b) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service; or

(c) Service by email that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by email that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

(2) Parties shall provide hard copies of all submissions to staff in the Market Disputes Resolution Division of the Enforcement Bureau upon request.

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12. Section 8.14 is amended by adding new paragraph (g), and redesignating paragraphs (g) through (h) as (h) through (i) to read as follows:

§ 8.14 Formal complaint procedures.

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(g) *Request for written opinion from outside technical organization.* (1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Enforcement Bureau may, in its discretion, request a written opinion from an outside technical organization regarding one or more issues in dispute.

(2) (i) Wherever possible, the opinion shall be requested from an outside technical organization whose members do not include any of the parties to the proceeding.

(ii) If no such outside technical organization exists, or if the Enforcement Bureau in its discretion chooses to request an opinion from an organization that includes among its members a party to the proceeding, the Bureau shall instruct the organization that any representative of a party to the proceeding within the organization may not participate in either the organization's consideration of the issue(s) referred or its drafting of the opinion.

(iii) No outside technical organization shall be required to respond to the Bureau's request.

(3) (i) If an opinion from an outside technical organization is requested and the request is accepted, the Enforcement Bureau shall notify the parties to the dispute of the request within ten (10) days and shall provide them copies of the opinion once it is received.

(ii) The outside technical organization shall provide its opinion within thirty (30) days of the Enforcement Bureau's request, unless otherwise specified by the Bureau.

(iii) Parties shall be given the opportunity to file briefs in reply to the opinion.

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13. Section 8.16 is amended by revising paragraph (a), adding new paragraphs (a)(1) through (a)(4), removing paragraph (b), and redesignating paragraphs (c) through (g) as (b) through (f) to read as follows:

§ 8.16 Confidentiality of proprietary information.

(a) Any materials generated in the course of a proceeding under this part may be designated as proprietary by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b) (1)–(9). Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as proprietary fall under the standards for nondisclosure enunciated in the FOIA.

(2) File with the Commission, using the Commission’s Electronic Comment Filing System, a public version of the materials that redacts any proprietary information and clearly marks each page of the redacted public version with a header stating “Public Version.” The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary’s Office an unredacted hard copy version of the materials that contain the proprietary information and clearly marks each page of the unredacted confidential version with a header stating “Confidential Version.” The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §§ 1.47(g) and 8.13(c)(1)(a)–(c);

(b) Except as provided in paragraph (c) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

- (5) Court reporters and stenographers in accordance with the terms and conditions of this section.
- (c) The Commission will entertain, subject to a proper showing under § 0.459, a party's request to further restrict access to proprietary information. Pursuant to § 0.459, the other parties will have an opportunity to respond to such requests. Requests and responses to requests may not be submitted by means of the Commission's Electronic Comment Filing System but instead must be filed under seal with the Office of the Secretary.
- (d) The individuals designated in paragraphs (b)(1)–(3) shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.
- (e) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (b) and (c) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.
- (f) Upon termination of a complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

14. Section 8.18 is added to read as follows:

§ 8.18 Advisory opinions.

(a) *Procedures*

- (1) Any entity that is subject to the Commission's jurisdiction may request an advisory opinion from the Enforcement Bureau regarding its own proposed conduct that may implicate the open Internet rules or any rules or policies related to the open Internet that may be adopted in the future. Requests for advisory opinions may be filed via the Commission's website or with the Office of the Secretary and must be copied to the Chief of the Enforcement Bureau and the Chief of the Investigations and Hearings Division of the Enforcement Bureau.
- (2) The Enforcement Bureau may, in its discretion, refuse to consider a request for an advisory opinion. If the Bureau declines to respond to a request, it will inform the requesting party in writing.
- (3) Requests for advisory opinions must relate to prospective or proposed conduct that the requesting party intends to pursue. The Enforcement Bureau will not respond to requests for opinions that relate to ongoing or prior conduct, and the Bureau may initiate an enforcement investigation to determine whether such conduct violates the open Internet rules. Additionally, the Bureau will not respond to requests if the same or substantially the same conduct is the subject of a current government investigation or proceeding, including any ongoing litigation or open rulemaking at the Commission.
- (4) Requests for advisory opinions must be accompanied by all material information sufficient for Enforcement Bureau staff to make a determination on the proposed conduct for which review is requested. Requesters must certify that factual representations made to the Bureau are truthful and accurate, and that they have not intentionally omitted any information from the request. A request for an

advisory opinion that is submitted by a business entity or an organization must be executed by an individual who is authorized to act on behalf of that entity or organization.

(5) Enforcement Bureau staff will have discretion to ask parties requesting opinions, as well as other parties that may have information relevant to the request or that may be impacted by the proposed conduct, for additional information that the staff deems necessary to respond to the request. Such additional information, if furnished orally or during an in-person conference with Bureau staff, shall be promptly confirmed in writing. Parties are not obligated to respond to staff inquiries related to advisory opinions. If a requesting party fails to respond to a staff inquiry, then the Bureau may dismiss that party's request for an advisory opinion. If a party voluntarily responds to a staff inquiry for additional information, then it must do so by a deadline to be specified by Bureau staff. Advisory opinions will expressly state that they rely on the representations made by the requesting party, and that they are premised on the specific facts and representations in the request and any supplemental submissions.

(b) After review of a request submitted hereunder, the Enforcement Bureau will: (1) issue an advisory opinion that will state the Bureau's present enforcement intention with respect to the proposed open Internet practices; (2) issue a written statement declining to respond to the request; or (3) take such other position or action as it considers appropriate. An advisory opinion states only the enforcement intention of the Enforcement Bureau as of the date of the opinion, and it is not binding on any party. Advisory opinions will be issued without prejudice to the Enforcement Bureau or the Commission to reconsider the questions involved, or to rescind or revoke the opinion. Advisory opinions will not be subject to appeal or further review.

(c) The Enforcement Bureau will have discretion to indicate the Bureau's lack of enforcement intent in an advisory opinion based on the facts, representations, and warranties made by the requesting party. The requesting party may rely on the opinion only to the extent that the request fully and accurately contains all the material facts and representations necessary to issuance of the opinion and the situation conforms to the situation described in the request for opinion. The Bureau will not bring an enforcement action against a requesting party with respect to any action taken in good faith reliance upon an advisory opinion if all of the relevant facts were fully, completely, and accurately presented to the Bureau, and where such action was promptly discontinued upon notification of rescission or revocation of the Commission's or Bureau's approval.

(d) *Public disclosure.* The Enforcement Bureau will make advisory opinions available to the public on the Commission's website. The Bureau will also publish the initial request for guidance and any associated materials. Parties soliciting advisory opinions may request confidential treatment of information submitted in connection with a request for an advisory opinion pursuant to § 0.459.

(e) *Withdrawal of request.* Any requesting party may withdraw a request for review at any time prior to receipt of notice that the Enforcement Bureau intends to issue an adverse opinion, or the issuance of an opinion. The Enforcement Bureau remains free, however, to submit comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information, whether submitted pursuant to this procedure or otherwise, does not in any way limit or stop the Bureau from taking such action at such time thereafter as it deems appropriate. The Bureau reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all governmental purposes.

PART 20: COMMERCIAL MOBILE SERVICES

15. Section 20.3 is amended to read as follows:

§ 20.3 Definitions.

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Commercial mobile radio service. * * *

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(b) The functional equivalent of such a mobile service described in paragraph (a) of this section, including a mobile broadband Internet access service as defined in Section 8.2.

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Interconnected Service. A service:

(a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from other users on the public switched network; or

(b) * * *

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Public Switched Network. 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 uses the North American Numbering Plan, or public IP addresses, in connection with the provision of switched services.

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