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December 17, 2015

In an order released late on December 15, the FCC extended the temporary exemption for smaller Internet service providers ("ISPs") from the "enhanced transparency" provisions of its March 2015 *Open Internet Order* through December 15, 2016.

The *Open Internet Order* mandated a series of new disclosures by ISPs, including the full monthly service charge and other fees, data caps and allowances, packet loss data, and average speeds in the customer's geographic area. In recognition of the extra burdens imposed on smaller ISPs by these additional disclosures, the FCC exempted any ISP with fewer than 100,000 broadband connections from the additional requirements (but not the requirements adopted in 2010, which remained in place) until December 15, 2015.

The new order extends the exemption for one year. The order notes that the federal Office of Management and Budget has not completed its review of burden the new rules may impose, which means that those rules are not in effect for any ISP. The OMB's review should be completed well before the end of 2016. The order thus concludes that a one-year extension is appropriate while FCC considers whether to make the exemption permanent.

The Order provides some clues as to how the FCC will decide whether to make the exemption permanent. Most notably, it describes the way the FCC will approach the decision, "balance[ing] the benefit of the transparency rule enhancements to consumers against the impact on small providers of removing the exemption." The order rejected proposals to increase the exemption threshold from 100,000 connections to 500,000 connections stating that doing so "would substantially increase the number of consumers who would be … excluded" from receiving the enhanced disclosures, undermining the purpose of the rule.

Three commissioners issued statements on the order, providing a preview of how they see the question of whether to extend the exemption. Chairman Wheeler and Commissioner Clyburn both indicated that a final decision would be premature until the OMB review is complete, but Clyburn's statement suggested more sympathy for a permanent exemption than Wheeler's. Commissioner O'Rielly made it clear that he will support a permanent exemption. Since Commissioner Pai is likely to agree with O'Rielly's position, and Commissioner Clyburn showed some support for the exemption, Chairman Wheeler may have difficulty obtaining enough votes to support eliminating the exemption entirely.

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