Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108

DECLARATORY RULING, REPORT AND ORDER, AND ORDER

Adopted: December 14, 2017 **Released: January 4, 2018**

By the Commission: Chairman Pai and Commissioners O'Rielly and Carr issuing separate statements; Commissioners Clyburn and Rosenworcel dissenting and issuing separate statements.

TABLE OF CONTENTS

Para.

I. INTRODUCTION 1
II. BACKGROUND 6
III. ENDING PUBLIC-UTILITY REGULATION OF THE INTERNET 20
A. Reinstating the Information Service Classification of Broadband Internet Access Service 21
1. Scope 21
2. Broadband Internet Access Service Is an Information Service Under the Act 26
3. Other Provisions of the Act Support Broadband's Information Service Classification 58
B. Reinstating the Private Mobile Service Classification of Mobile Broadband Internet Access Service 65
C. Public Policy Supports Classifying Broadband Internet Access Service As An Information Service 86
1. Title II Regulation Imposes Substantial Costs on the Internet Ecosystem 88
2. Utility-Style Regulation of Broadband Is a Solution in Search of a Problem 109
3. Pre-Existing Consumer Protection and Competition Laws Protect the Openness of the Internet 140
D. Restoring the Information Service Classification is Lawful and Necessary 155
E. Effects on Regulatory Structures Created by the *Title II Order* 162
1. Ending Title II Regulation of Internet Traffic Exchange 163
2. Forbearance 174
3. Returning Broadband Privacy Authority to the FTC 181
4. Wireline Infrastructure 185
5. Wireless Infrastructure 187
6. Universal Service 192
7. Preemption of Inconsistent State and Local Regulations 194
8. Disability Access Provisions 205
9. Continued Applicability of Title III Licensing Provisions 206
IV. A LIGHT-TOUCH FRAMEWORK TO RESTORE INTERNET FREEDOM 207
A. Transparency 209
1. History of the Transparency Rule 211
2. Refining the Transparency Rule 215
3. Authority for the Transparency Rule 232
B. Bright-Line and General Conduct Rules 239
1. Transparency Leads to Openness 240

2. Costs of Conduct Rules Outweigh Benefits 246
3. The Record Does Not Identify Authority for Comprehensive Conduct Rules 267
C. Enforcement 297
V. COST-BENEFIT ANALYSIS 304
VI. ORDER 324
A. Denial of INCOMPAS Petition to Modify Protective Orders 324
B. Denial of NHMC Motion Regarding Informal Consumer Complaints 339
VII. PROCEDURAL MATTERS 344
A. The Administrative Record 344
B. Final Regulatory Flexibility Analysis 346
C. Paperwork Reduction Act Analysis 347
D. Congressional Review Act 349
E. Data Quality Act 350
F. Accessible Formats 351
VIII. ORDERING CLAUSES 352
APPENDIX A – Final Rules
APPENDIX B – Final Regulatory Flexibility Analysis

I. INTRODUCTION

1. Over twenty years ago, in the Telecommunications Act of 1996, President Clinton and a Republican Congress established the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation."[1] Today, we honor that bipartisan commitment to a free and open Internet by rejecting government control of the Internet. We reverse the Commission's abrupt shift two years ago to heavy-handed utility-style regulation of broadband Internet access service and return to the light-touch framework under which a free and open Internet underwent rapid and unprecedented growth for almost two decades. We eliminate burdensome regulation that stifles innovation and deters investment, and empower Americans to choose the broadband Internet access service that best fits their needs.

2. We take several actions in this Order to restore Internet freedom. First, we end utility-style regulation of the Internet in favor of the market-based policies necessary to preserve the future of Internet freedom. In the 2015 *Title II Order*, the Commission abandoned almost twenty years of precedent and reclassified broadband Internet access service as a telecommunications service subject to myriad regulatory obligations under Title II of the Communications Act of 1934, as amended (the Act).[2] We reverse this misguided and legally flawed approach and restore broadband Internet access service to its Title I information service classification. We find that reclassification as an information service best comports with the text and structure of the Act, Commission precedent, and our policy objectives. We thus return to the approach to broadband Internet access service affirmed as reasonable by the U.S. Supreme Court.[3] We also reinstate the private mobile service classification of mobile broadband Internet access service and return to the Commission's definition of "interconnected service" that existed prior to 2015. We determine that this light-touch information service framework will promote investment and innovation better than applying costly and restrictive laws of a bygone era to broadband Internet access service. Our balanced approach also restores the authority of the nation's most experienced cop on the privacy beat—the Federal Trade Commission—to police the privacy practices of Internet Service Providers (ISPs).

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[1] 47 U.S.C. § 230(b)(2). *See generally* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*) (1996 Act).

[2] *See Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (*Title II Order*).

[3] *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (*Brand X*).

3. Next, we require ISPs to be transparent. Disclosure of network management practices, performance, and commercial terms of service is important for Internet freedom because it helps consumers choose what works best for them and enables entrepreneurs and other small businesses to get technical information needed to innovate. Individual consumers, not the government, decide what Internet access service best meets their individualized needs. We return to the transparency rule the Commission adopted in 2010[4] with certain limited modifications to promote additional transparency, and we eliminate certain reporting requirements adopted in the *Title II Order* that we find to be unnecessary and unduly burdensome.

4. Finally, we eliminate the Commission's conduct rules. The record evidence, including our cost-benefit analysis, demonstrates that the costs of these rules to innovation and investment outweigh any benefits they may have. In addition, we have not identified any sources of legal authority that could justify the comprehensive conduct rules governing ISPs adopted in the *Title II Order*. Lastly, we find that the conduct rules are unnecessary because the transparency requirement we adopt, together with antitrust and consumer protection laws, ensures that consumers have means to take remedial action if an ISP engages in behavior inconsistent with an open Internet.

5. Through these actions, we advance our critical work to promote broadband deployment in rural America and infrastructure investment throughout the nation, brighten the future of innovation both within networks and at their edge, and move closer to the goal of eliminating the digital divide.

II. BACKGROUND

6. Since long before the commercialization of the Internet, federal law has drawn a line between the more heavily-regulated common carrier services like traditional telephone service and more lightly-regulated services that offer more than mere transmission. More than fifty years ago, the Commission decided *Computer I*, the first of a series of decisions known as the *Computer Inquiries*,[5] which, in combination, created a dichotomy between "basic" and "enhanced" services.[6] In 1980's *Second Computer Inquiry*, the Commission established that basic services offered "pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information"[7] and were "regulated under Title II of the [Communications] Act."[8] Enhanced services, by contrast, were "any offering over the telecommunications network which is more than a basic transmission service. In an enhanced service, for example, computer processing applications are used to act on the content, code, protocol, and other aspects of the subscriber's information."[9] Unlike basic services, the Commission found that "enhanced services should not be regulated under the Act."[10]

7. Just two years later, the federal courts would draw a similar line in resolving the government's antitrust case against AT&T. The Modification of Final Judgment (MFJ) of 1982 distinguished between "telecommunications services," which Bell Operating Companies could offer when

[4] *See Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17972-80, 17981, paras. 124-35, 137 (2010) (*Open Internet Order*).

[5] *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services*, Notice of Inquiry, 7 FCC 2d 11 (1966).

[6] *Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Second Computer Inquiry*), Docket No. 20828, Final Decision, 77 FCC 2d 384, 420, para. 97 (1980) (*Computer II Final Decision*).

[7] *Id.* at 420, para. 96.

[8] *Id.* at 428, para. 114.

[9] *Id.* at 420, para. 97.

[10] *Id.* at 428, para. 114.

"actually regulated by tariff,"[11] and "information services," including "data processing and other computer-related services"[12] and "electronic publishing services,"[13] which Bell Operating Companies (BOCs) were prohibited from offering under the terms of that court decision.[14] The Telecommunications Act of 1996's (the 1996 Act) "information service" definition is based on the definition of that same term used in the MFJ, which governed the Bell Operating Companies after the breakup of the Bell system.[15]

8. In the 1996 Act, intended to "promote competition and reduce regulation,"[16] Congress drew a line between lightly regulated "information services" and more heavily regulated "telecommunications services."[17] It also found that the "Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation"[18] and declared it the policy of the United States to "promote the continued development of the Internet and other interactive computer services and other interactive media" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[19] The 1996 Act went on to define "interactive computer service" to include "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet . . . ."[20]

9. For the next 16 years, the Commission repeatedly adopted a light-touch approach to the Internet that favored discrete and targeted actions over pre-emptive, sweeping regulation of Internet service providers. In the 1998 *Stevens Report*, the Commission comprehensively reviewed the Act's definitions as they applied to the emerging technology of the Internet and concluded that Internet access service was properly classified as an information service.[21] The *Stevens Report* also found that subjecting Internet service providers and other information service providers to "the broad range of Title II constraints," would "seriously curtail the regulatory freedom that the Commission concluded in *Computer II* was important to the healthy and competitive development of the enhanced-services industry."[22]

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[11] *U.S. v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 228-29 (D.D.C. 1982) (*MFJ Initial Decision*), *aff'd sub nom. Maryland v. U.S.*, 460 U.S. 1001 (1983).

[12] *Id.* at 179.

[13] *Id.* at 180.

[14] *Id.* at 228.

[15] *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21954, para. 99 (1996) (*Non-Accounting Safeguards Order*); *see also, e.g.*, H.R. Conf. Rep. No. 104-458 at 126 (Jan. 31, 1996) ("'Information service' and 'telecommunications' are defined based on the definition used in the Modification of Final Judgment."); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11514, para. 28 (1998) (*Stevens Report*) (citing *MFJ Initial Decision*, 552 F. Supp. at 226-32).

[16] Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[17] 47 U.S.C. § 153(24), (53).

[18] 47 U.S.C. § 230(a)(4).

[19] 47 U.S.C. § 230(b)(1), (2).

[20] 47 U.S.C. § 230(f)(2).

[21] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11536, para. 73 (1998) (*Stevens Report*).

[22] *Id.* at 11524, para. 46.

10. In the 2002 *Cable Modem Order*, the Commission classified broadband Internet access service over cable systems as an "interstate information service,"[23] a classification that the Supreme Court upheld in June 2005 in the *Brand X* decision.[24] There was no dispute that at least some of the elements of Internet access met the definition of "information services," and the Court rejected claims that "[w]hen a consumer goes beyond those offerings and accesses content provided by parties other than the cable company" that "consumer uses 'pure transmission.'"[25] To the contrary, the Court found "reasonable" "the Commission's understanding of the nature of cable modem service"—namely, that "[w]hen an end user accesses a third party's Web site" that user "is equally using the information service provided by the cable company that offers him Internet access as when he accesses the company's own Web site, its e-mail service, or his personal Web page," citing as examples the roles of Domain Name System (DNS) and caching.[26]

11. In 2004, then-FCC Chairman Michael Powell announced four principles for Internet freedom to further ensure that the Internet would remain a place for free and open innovation with minimal regulation.[27] These four "Internet freedoms" include the freedom to access lawful content, the freedom to use applications, the freedom to attach personal devices to the network, and the freedom to obtain service plan information.[28]

12. In the 2005 *Wireline Broadband Classification Order*, the Commission classified broadband Internet access service over wireline facilities as an information service.[29] At the same time, the Commission also unanimously endorsed the four Internet freedoms in the *Internet Policy Statement*.[30] The *Internet Policy Statement* announced the Commission's intent to "incorporate [these] principles into its ongoing policymaking activities" in order to "foster creation, adoption and use of Internet broadband content, applications, services and attachments, and to ensure consumers benefit from the innovation that comes from competition."[31]

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[23] *See Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802, para. 7 (2002) (*Cable Modem Order*).

[24] *Brand X*, 545 U.S. 967.

[25] *Id.* at 998.

[26] *Id.* at 998-1000.

[27] Michael K. Powell, Chairman, FCC, Preserving Internet Freedom: Guiding Principles for the Industry, Remarks at the Silicon Flatirons Symposium (Feb. 8, 2004), https://apps.fcc.gov/edocs_public/attachmatch/DOC-243556A1.pdf (*Powell Speech*).

[28] *Id.* at 5.

[29] *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Classification Order*), *aff'd Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

[30] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, GN Docket No. 00-185, CC Docket Nos. 02-33, 01-33, 98-10, 95-20, CS Docket No. 02-52, Policy Statement, 20 FCC Rcd 14986 (2005) (*Internet Policy Statement*).

[31] *Id.* at 14988, para. 5. The Commission did this, for example, by incorporating such principles in its rules governing certain wireless spectrum. *See Service Rules For the 698-746, 747-762 and 777-792 MHz Bands et al.*, WT Docket No. 06-150 et al., Second Report and Order, 22 FCC Rcd 15289, 15361, 15365, paras. 194, 206 (2007).

13. In the 2006 *BPL-Enabled Broadband Order*, the Commission concluded that broadband Internet access service over power lines was properly classified as an information service,[32] and in the 2007 *Wireless Broadband Internet Access Order*, the Commission classified wireless broadband Internet access service as an information service, again recognizing the "minimal regulatory environment" that promoted the "ubiquitous availability of broadband to all Americans."[33] The Commission also found that "mobile wireless broadband Internet access service is not a 'commercial mobile radio service' as that term is defined in the Act and implemented in the Commission's rules."[34]

14. In the 2008 *Comcast-BitTorrent Order*, the Commission sought to directly enforce federal Internet policy that it drew from various statutory provisions consistent with the *Internet Policy Statement*, finding certain actions by Comcast "contravene[d] . . . federal policy" by "significantly imped[ing] consumers' ability to access the content and use the applications of their choice."[35] In 2010, the U.S. Court of Appeals for the D.C. Circuit rejected the Commission's action, holding that the Commission had not justified its action as a valid exercise of ancillary authority.[36]

15. In response, the Commission adopted the 2010 *Open Internet Order*, where once again the Commission specifically rejected Title II-based heavy-handed regulation of broadband Internet access service.[37] Instead, the *Open Internet Order* relied on, among other things, newly-claimed regulatory authority under section 706 of the Telecommunications Act to establish no-blocking and no-unreasonable-discrimination rules as well as a requirement that broadband Internet access service providers "publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services."[38]

16. In 2014, the D.C. Circuit vacated the no-blocking and no-unreasonable-discrimination rules adopted in the *Open Internet Order*, finding that the rules impermissibly regulated broadband Internet access service providers as common carriers,[39] in conflict with the Commission's prior determination that broadband Internet access service was not a telecommunications service and that mobile broadband Internet access service was not a commercial mobile service.[40] The D.C. Circuit nonetheless upheld the transparency rule,[41] held that the Commission had reasonably construed section

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[32] *See United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006) (*BPL-Enabled Broadband Order*).

[33] *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, 5902, para. 2 (2007) (*Wireless Broadband Internet Access Order*).

[34] *Id.* at 5916, para. 41.

[35] *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices; Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management*, File No. EB-08-IH-1518, WC Docket No. 07-52, Memorandum Opinion and Order, 23 FCC Rcd 13028, 13052, 13054, paras. 43, 45 (2008) (*Comcast-BitTorrent Order*).

[36] *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010) (*Comcast*). Among other things, the court held that section 706 of the 1996 Act could not serve as the source of direct authority to which the Commission's action was ancillary because the Commission was bound in *Comcast* by a prior Commission determination that section 706 did not constitute a direct grant of authority. *Id.* at 658-59.

[37] *Open Internet Order*, 25 FCC Rcd at 17972-80, 17981, paras. 124-35, 137.

[38] *Id.* at 17992 (Appendix A).

[39] *Verizon v. FCC*, 740 F.3d 623, 655-58 (D.C. Cir. 2014) (*Verizon*).

[40] *Id.* at 650.

[41] *Id.* at 635-42.

706 of the Telecommunications Act as a grant of authority to regulate broadband Internet access service providers, and suggested that no-blocking and no-unreasonable-discrimination rules might be permissible if Internet service providers could engage in individualized bargaining.[42]

17. Later that year, the Commission embarked yet again down the path of rulemaking, proposing to rely on section 706 of the 1996 Act to adopt enforceable rules using the D.C. Circuit's "roadmap."[43] But in November 2014, then-President Obama called on the FCC to "reclassify consumer broadband service under Title II of the Telecommunications Act."[44] Three months later, the Commission shifted course and adopted the *Title II Order*, reclassifying broadband Internet access service from an information service to a telecommunications service,[45] and reclassifying mobile broadband Internet access service as a commercial mobile service.[46] The Commission also adopted three bright-line rules prohibiting blocking, throttling, and paid-prioritization, as well as a general Internet conduct standard and "enhancements" to the transparency rule.[47] In 2016, a divided panel of the D.C. Circuit upheld the *Title II Order* in *United States Telecom Association v. FCC*, concluding that the Commission's classification of broadband Internet access service was permissible under *Chevron* step two.[48] The D.C. Circuit denied petitions for rehearing of the case *en banc*,[49] and petitions for *certiorari* remain pending with the Supreme Court.[50]

18. In May 2017, we adopted a *Notice of Proposed Rulemaking* (*Internet Freedom NPRM*),[51] in which we proposed to return to the successful light-touch bipartisan framework that promoted a free and open Internet and, for almost twenty years, saw it flourish. Specifically, the *Internet Freedom NPRM* proposed to reinstate the information service classification of broadband Internet access service. The *Internet Freedom NPRM* also proposed to reinstate the determination that mobile broadband Internet access service is not a commercial mobile service.[52] To determine how to best honor the Commission's commitment to ensuring the free and open Internet, the *Internet Freedom NPRM* also proposed to re-evaluate the Commission's existing rules and enforcement regime to analyze whether *ex ante* regulatory

[42] *See, e.g., id.* at 657 (quoting *Cellco Partnership v. FCC*, 700 F.3d 534, 549 (D.C. Cir. 2012)).

[43] *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) (*2014 Notice*).

[44] President Obama, Statement on Net Neutrality (Nov. 10, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/11/10/statement-president-net-neutrality.

[45] *Title II Order*, 30 FCC Rcd 5601.

[46] *Id.* at 5778, para. 388.

[47] *Id.* at 5607-09, paras. 15-24.

[48] *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016) (*USTelecom*).

[49] *United States Telecom Ass'n v. FCC*, 855 F.3d 381, 382 (D.C. Cir. 2017) (Srinivasan, J., and Tatel, J., concurring in the denial of rehearing *en banc*) (stating that "[e]n banc review would be particularly unwarranted at this point in light of the uncertainty surrounding the fate of the FCC's Order").

[50] *See* Petition for Writ of Certiorari, *Berninger v. FCC*, 825 F.3d 674 (No. 17-498); Petition for Writ of Certiorari, *AT&T v. FCC*, 825 F.3d 674 (No. 17-499); Petition for Writ of Certiorari, *American Cable Ass'n v. FCC*, 825 F.3d 674 (No. 17-500); Petition for Writ of Certiorari, *CTIA-The Wireless Ass'n v. FCC*, 825 F.3d 674 (No. 17-501); Petition for Writ of Certiorari, *NCTA-The Internet & Television Ass'n v. FCC*, 825 F.3d 674 (No. 17-502); Petition for Writ of Certiorari, *TechFreedom v. FCC*, 825 F.3d 674 (No. 17-503); Petition for Writ of Certiorari, *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (No. 17-504)..

[51] *Restoring Internet Freedom*, Notice of Proposed Rulemaking, 32 FCC Rcd 4434 (2017) (*Internet Freedom NPRM*).

[52] *Id.* at 4453, para. 55.

intervention in the market is necessary.[53] Specifically, the *Internet Freedom NPRM* proposed to eliminate the Internet conduct standard and the non-exhaustive list of factors intended to guide application of that rule.[54] It also sought comment on whether to keep, modify, or eliminate the bright-line conduct and transparency rules.[55]

19. The *Internet Freedom NPRM* prompted more comments than any other rulemaking in the Commission's history. Between release of the *Internet Freedom NPRM* and the close of the comment period on August 30, 2017, more than 22 million comments were filed in our Electronic Comment Filing System (ECFS), with even more submissions lodged during the *ex parte* period.[56] The Commission is grateful to all commenters who engaged the legal and public policy questions presented by this important rulemaking.

III. ENDING PUBLIC-UTILITY REGULATION OF THE INTERNET

20. We reinstate the information service classification of broadband Internet access service, consistent with the Supreme Court's holding in *Brand X*.[57] Based on the record before us, we conclude that the best reading of the relevant definitional provisions of the Act supports classifying broadband Internet access service as an information service. Having determined that broadband Internet access service, regardless of whether offered using fixed or mobile technologies, is an information service under the Act, we also conclude that as an information service, mobile broadband Internet access service should not be classified as a commercial mobile service or its functional equivalent. We find that it is well within our legal authority to classify broadband Internet access service as an information service, and reclassification also comports with applicable law governing agency decisions to change course. While we find our legal analysis sufficient on its own to support an information service classification of broadband Internet access service, strong public policy considerations further weigh in favor of an information service classification. Below, we find that economic theory, empirical data, and even anecdotal evidence also counsel against imposing public-utility style regulation on ISPs. The broader Internet ecosystem thrived under the light-touch regulatory treatment of Title I, with massive investment and innovation by both ISPs and edge providers, leading to previously unimagined technological developments and services. We conclude that a return to Title I classification will facilitate critical broadband investment and innovation by removing regulatory uncertainty and lowering compliance costs.

A. Reinstating the Information Service Classification of Broadband Internet Access Service

1. Scope

21. We continue to define "broadband Internet access service" as a mass-market[58] retail service by wire or radio that provides the capability to transmit data to and receive data from all or

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[53] *Id.* at 4458, para. 70.

[54] *Id.* at 4458, para. 72.

[55] *Id.* at 4460, para. 76, 4461-64, paras. 80-91.

[56] Initial comments on the *Internet Freedom NPRM* were due on July 17, 2017. Reply comments were originally due on August 16, 2017, but the Commission granted a two-week extension until August 30, 2017, to allow parties "additional time to analyze the technical, legal, and policy arguments raised by initial commenters [and] provide the Commission with more thorough comments, ensuring that the Commission has a complete record on which to develop its decisions." *FCC Extends Restoring Internet Freedom Reply Deadline to Aug. 30*, WC Docket No. 17-108, Order, 32 FCC Rcd 6535, 6535-36, para. 2 (WCB 2017).

[57] *Brand X*, 545 U.S. at 980.

[58] By mass market, we mean services marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries. "Schools" would include institutions of higher education to the extent that they purchase these standardized retail services. For purposes of this definition,

(continued....)

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.[59]

22. The term "broadband Internet access service" includes 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. For purposes of our discussion, we divide the various forms of broadband Internet access service into the two categories of "fixed" and "mobile." With these two categories of services—fixed and mobile—we intend to cover the entire universe of Internet access services at issue in the Commission's prior broadband classification decisions,[60] as well as all other broadband Internet access services offered over other technology platforms that were not addressed by prior classification orders. We also make clear that our classification finding applies to all providers of broadband Internet access service, as we delineate them here, regardless of whether they lease or own the facilities used to provide the service.[61] "Fixed" broadband Internet access service refers to a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user's home router, computer, or other Internet access device to the Internet.[62] The term encompasses the delivery of fixed broadband over any medium, including various forms of wired broadband services (e.g., cable, DSL, fiber), fixed wireless broadband services (including fixed services using unlicensed spectrum), and fixed satellite broadband services. "Mobile" broadband Internet access service refers to a broadband Internet access service that serves end users primarily using mobile stations.[63] Mobile broadband Internet access includes, among other things, services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet.[64] The term also encompasses mobile satellite broadband services.

23. As the Commission found in 2010, broadband Internet access service does not include services offering connectivity to one or a small number of Internet endpoints for a particular device, e.g., connectivity bundled with e-readers, heart monitors, or energy consumption sensors, to the extent the service relates to the functionality of the device.[65] To the extent these services are provided by ISPs over last-mile capacity shared with broadband Internet access service, they would be non-broadband Internet access service data services (formerly specialized services). As the Commission found in both 2010 and 2015, non-broadband Internet access service data services do not fall under the broadband Internet access

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"mass market" also includes broadband Internet access service purchased with the support of the E-rate and Rural Healthcare programs, as well as any broadband Internet access service offered using networks supported by the Connect America Fund (CAF), but does not include enterprise service offerings or special access services, which are typically offered to larger organizations through customized or individually negotiated arrangements. *See Open Internet Order*, 25 FCC Rcd at 17932, para. 45; *Title II Order*, 30 FCC Rcd at 5745-46, para. 336 & n.879.

[59] 47 CFR § 8.11(a); *Open Internet Order*, 25 FCC Rcd at 17932, para. 44; *id.* at 17935, para. 51 (finding that the market and regulatory landscape for dial-up Internet access service differed from broadband Internet access service).

[60] *See Wireless Broadband Internet Access Order*, 22 FCC Rcd at 5909-10, paras. 19, 22; *Cable Modem Order*, 17 FCC Rcd at 4818-19, para. 31; *Wireline Broadband Classification Order*, 20 FCC Rcd at 14860, para. 9; *BPL-Enabled Broadband Order*, 21 FCC Rcd 13281; *Title II Order*, 30 FCC Rcd at 5746, para. 337.

[61] As the Supreme Court observed in *Brand X*, "the relevant definitions do not distinguish facilities-based and non-facilities-based carriers." *Brand X*, 545 U.S. at 997.

[62] *Open Internet Order*, 25 FCC Rcd at 17934, para. 49; *Title II Order*, 30 FCC Rcd at 5683, para. 188.

[63] *See* 47 U.S.C. § 153(34); *Open Internet Order*, 25 FCC Rcd at 17934, para. 49.

[64] We note that "public safety services" as defined in section 337(f)(1) would not meet the definition of "broadband Internet access service" subject to the rules herein given that "such services are not made commercially available to the public by the provider" as a mass-market retail service. 47 U.S.C. § 337(f)(1).

[65] *See Open Internet Order*, 25 FCC Rcd at 17933, para. 47, n.149.

service category.[66] Such services generally are not used to reach large parts of the Internet; are not a generic platform, but rather a specific applications-level service; and use some form of network management to isolate the capacity used by these services from that used by broadband Internet access services.[67] Further, we observe that to the extent ISPs "use their broadband infrastructure to provide video and voice services, those services are regulated in their own right."[68]

24. Broadband Internet access service also does not include virtual private network (VPN) services, content delivery networks (CDNs), hosting or data storage services, or Internet backbone services (if those services are separate from broadband Internet access service), consistent with past Commission precedent.[69] The Commission has historically distinguished these services from "mass market" services, as they do not provide the capability to transmit data to and receive data from all or substantially all Internet endpoints.[70] We do not disturb that finding here.

25. Finally, we observe that to the extent that coffee shops, bookstores, airlines, private end-user networks such as libraries and universities, and other businesses acquire broadband Internet access service from an ISP to enable patrons to access the Internet from their respective establishments, provision of such service by the premise operator would not itself be considered a broadband Internet access service unless it was offered to patrons as a retail mass market service, as we define it here.[71] Likewise, when a user employs, for example, a wireless router or a Wi-Fi hotspot to create a personal Wi-Fi network that is not intentionally offered for the benefit of others, he or she is not offering a broadband Internet access service under our definition, because the user is not marketing and selling such service to residential customers, small business, and other end-user customers such as schools and libraries.

2. Broadband Internet Access Service Is an Information Service Under the Act

26. In deciding how to classify broadband Internet access service, we find that the best reading of the relevant definitional provisions of the Act supports classifying broadband Internet access service as an information service. Section 3 of the Act defines an "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."[72] Section 3 defines a "telecommunications service," by contrast, as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[73] Finally, section 3 defines "telecommunications"—used in each of the prior two definitions—as "the transmission, between or among points specified by the user, of information of the user's choosing,

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[66] *Id.* at 17965-66, paras. 112-13; *Title II Order*, 30 FCC Rcd at 5696, para. 207; *see also* Illinois DoIT Comments at 1-2 ("We believe it is important to highlight this distinction between BIAS and non-BIAS data services to allow development of innovative business models that address consumer needs, that are not met through a standard BIAS offering.").

[67] *Title II Order*, 30 FCC Rcd at 5697, para. 209.

[68] Cox Comments at 33.

[69] *Open Internet Order*, 25 FCC Rcd at 17933, para. 47.

[70] *Id.* Consistent with past Commissions, we note that the transparency rule we adopt today applies only so far as the limits of an ISP's control over the transmission of data to or from its broadband customers.

[71] *See Open Internet Order*, 25 FCC Rcd at 17935, para. 52. Although not bound by the transparency rule we adopt today, we encourage premise operators to disclose relevant restrictions on broadband service they make available to their patrons. *See id.* at 17936, para. 163.

[72] 47 U.S.C. § 153(24).

[73] 47 U.S.C. § 153(53).