

UPDATE June 5, 2018

New Net Neutrality Rules Effective Next Monday, June 11th

All ISPs Should Update Their Transparency Disclosures

Rule changes adopted by the [Restoring Internet Freedom Order](#) (“RIF Order”) will go into effect **June 11, 2018**. In addition to returning Internet service providers (“ISPs”) to Title I classification, the RIF Order modifies the transparency rule, which requires ISPs to disclose certain network management practices. **All ISPs should ensure that required transparency disclosures are accessible through a website or through the [new database](#) established by the Consumer and Government Affairs Bureau by Monday, June 11th.**

Overview. The RIF Order adopts sweeping changes rolling back the FCC’s prior [2015 Open Internet Order](#), which notably reversed a decades-old policy and reclassified broadband Internet access service (“BIAS”) as a “telecommunications service” under Title II of the Communications Act. Under the 2015 Open Internet Order, the FCC imposed three “bright line” rules on no-blocking, no-throttling and no-paid prioritization and adopted vague Internet General Conduct Standard. The RIF Order, conversely, returns BIAS to an “information service” classification. The RIF Order also revised the transparency rule, returning to a requirement similar to the one adopted in the Commission’s [2010 Open Internet Order](#), along with some important changes described below.

Reclassification. The RIF Order repeals the majority of the regulations imposed by the 2015 Open Internet Order. First, the RIF Order reclassifies BIAS as an “information service” and eliminates common carrier regulation of ISPs under Title II. As a result, regulatory oversight of BIAS providers’ conduct, including privacy, shifts back to the Federal Trade Commission. Second, the RIF Order repeals the no-blocking, no-throttling, and no-paid prioritization bright-line rules and the vague Internet General Conduct Standard. Third, the RIF Order eliminates regulation of BIAS providers’ Internet interconnection and traffic-exchange practices. Finally, the RIF Order broadly preempts state and local regulation of BIAS, including in the areas where the Commission has explicitly declined to regulate or vacated its regulatory role over BIAS.

Transparency Rule. By repealing the 2015 “enhancements” to the transparency rule, the RIF Order returns to the rule as adopted in the 2010 Open Internet Order, along with a requirement for ISPs to disclose any blocking, throttling, affiliated prioritization or paid prioritization in which they engage. Moreover, ISPs must publicly disclose accurate information regarding their network management practices, performance, and commercial terms so that consumers may make informed choices when purchasing BIAS service.

The transparency rule requires the following information be disclosed:

Network Management Practices:

- **Blocking.** Any practice (other than reasonable network management elsewhere disclosed) that blocks or otherwise prevents end user access to lawful content, applications, service, or non-harmful devices, including a description of what is blocked.

- Throttling. Any practice (other than reasonable network management elsewhere disclosed) that degrades or impairs access to lawful Internet traffic on the basis of content, application, service, user, or use of a non-harmful device, including a description of what is throttled.
- Affiliated Prioritization. Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, to benefit an affiliate, including identification of the affiliate.
- Paid Prioritization. Any practice that directly or indirectly favors some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, or resource reservation, in exchange for consideration, monetary or otherwise.
- Congestion Management. Descriptions of congestion management practices, if any.
- Application-Specific Behavior. Whether and why the ISP blocks or rate-controls specific protocols or protocol ports, modifies protocol fields in ways not prescribed by the protocol standard, or otherwise inhibits or favors certain applications or classes of applications.
- Device Attachment Rules. Any restrictions on the types of devices and any approval procedures for devices to connect to the network.
- Security. Any practices used to ensure end-user security or security of the network, including types of triggering conditions that cause a mechanism to be invoked (but excluding information that could reasonably be used to circumvent network security).

Performance Characteristics:

- Service Description. A general description of the service, including the service technology, expected and actual access speed and latency, and the suitability of the service for real-time applications.
- Impact of Non-BIAS Data Services. If applicable, what non-broadband Internet access service data services, if any, are offered to end users, and whether and how any non-broadband Internet access service data services may affect the last-mile capacity available for, and the performance of, broadband Internet access service.

Commercial Terms:

- Price. For example, monthly prices, usage-based fees, and fees for early termination or additional network services.
- Privacy Policies. A complete and accurate disclosure about the ISP's privacy practices, if any.
- Redress Options. Practices for resolving complaints and questions from consumers, entrepreneurs, and other small businesses.

Making the Disclosures Publicly Available. ISPs must make these disclosures publicly available through an easily accessible website of its choosing or through the new FCC database. An ISP that does not submit its required disclosure to the FCC through the portal will be deemed as having elected to provide it on a publicly available, easily accessible website. An ISP that submits its required disclosure to the FCC and later elects to provide it on a publicly available, easily accessible website must then inform the FCC of this change by filing via the FCC portal a clear statement of the change, including the website where consumers can find the required disclosure.

If you have any questions about the Restoring Internet Freedom Order or the transparency rule, please contact Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com, or Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

FCC Proposes FY 2018 Cable Regulatory Fees

On May 22, 2018, the FCC released a [Notice of Proposed Rulemaking](#) seeking comment on its proposed regulatory fees for fiscal year 2018. Congress requires the FCC to annually collect regulatory fees to cover its operational costs, and the FCC sets the fees by calculating the proportion of the total number of FCC employees needed to regulate a particular service.

In the NPRM, the FCC seeks comment on a number of proposed changes to its allocation of employees and fee structures, including whether to further raise the DBS regulatory fee rate to \$0.48 per subscriber per year.

Comments are due June 21, 2018. Reply Comments are due July 6, 2018.

Proposed Regulatory Fees. The FCC has proposed the following regulatory fees:

- **2017 Cable/IPTV regulatory fee:** The FCC has proposed that cable systems (including IPTV systems) that had subscribers as of December 31, 2017 pay \$0.77 per subscriber, a substantial decrease from 2017.
 - **DBS regulatory fee:** In 2015, the FCC made DBS a sub-category of the Cable/IPTV fee category and adopted an initial regulatory fee of \$0.12 per subscriber. The FCC increased the DBS fee to \$0.27 per subscriber in 2016, \$0.38 per subscriber in 2017, and has proposed a \$0.48 per subscriber fee for 2018.
- **CARS licenses and permits:** The FCC has proposed that CARS facilities operating on October 1, 2017 pay \$1,075.00, even if the facility's license expired after October 1, 2017.
- **Interconnected VoIP regulatory fee:** The FCC proposes an ITSP fee of \$0.00276 for each dollar of interstate and international telecommunications revenue that a provider reports on its Form 499-A.

Filing Procedures and Window. Following adoption of its FY 2018 Fee Order (likely in August 2018), the FCC will collect these fees during a subsequent filing window (likely in September 2018). All licensees must use their FRN and password to access the [Fee Filer System](#), and review, create, update, or change the fees owed. Then, each licensee must make payments electronically – online payment with a credit card, online payment from a bank account, or by sending a wire transfer. Fee Filer will print a Form 159-E for users to transmit via fax for wire transfers.

If you have any questions about regulatory fee payments, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

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