SUMMARY OF THE RESTORING INTERNET FREEDOM ORDER

Scope of the definition of “Broadband Internet access service”

The Order preserves the current definition of “broadband Internet access service” as 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. (¶ 21)

“Mass market” means services marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries, which include institutions of higher education to the extent that they purchase these standardized retail services and services 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. The term excludes enterprise service offerings or special access services, which are typically offered to larger organizations through customized or individually negotiated arrangements. (¶ 21, n.58)

The forms of broadband Internet access service are divided into the two categories – “fixed” and “mobile” – which are intended to cover the entire universe of Internet access services and which apply to all providers of the service, regardless of whether they lease or own the facilities used to provide the service. (¶ 22)

“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. The term encompasses the delivery of fixed broadband over any medium, including wired (e.g., cable, DSL, fiber), fixed wireless (including fixed services using unlicensed spectrum), and fixed satellite. (¶ 22)

“Mobile” broadband Internet access service refers to a broadband Internet access service that serves end users primarily using mobile stations. The term encompasses, among other things, services that use smartphones or mobile-network-enabled tablets as the primary endpoints for connection to the Internet, as well as mobile satellite broadband services. (¶ 22)

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. (¶ 23);

- 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. (¶ 24); and
• Coffee shops, bookstores, airlines, private end-user networks such as libraries and universities, and other businesses that acquire broadband Internet access service from a broadband provider to enable patrons to access the Internet from their respective establishments, as well as a user who 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. (¶ 25)

Broadband Internet Access Service Is an Information Service Under the Communications Act

The Commission finds that the best reading of the relevant definitional provisions of the Communications Act (“Act”) – “information service,” “telecommunications service,” and “telecommunications” – supports classifying broadband Internet access service as an information service. The Commission long interpreted and applied these terms to classify various forms of Internet access service as information services – a conclusion affirmed as reasonable by the Supreme Court in Brand X. According to the Commission, its “action here simply returns to that prior approach.” (¶ 26)

Broadband Internet access service provides consumers the “capability” to engage in all of the information processes listed in the information service definition, which include “generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” Because broadband Internet access service necessarily has the capacity or potential ability to be used to engage in these activities, the Commission concludes that the service is best understood to have those “capabilit[ies].” And, these uses are not merely incidental to broadband Internet access service, which was designed and intended for such uses. (¶ 30)

Broadband Internet access is an information service irrespective of whether it provides the entirety of any end-user functionality or whether it provides end-user functionality in tandem with edge providers because Congress did not intend the classification question to turn on an analysis of which capabilities the end user selects, which could change over time. The Commission finds unpersuasive the assertion that an ISP must not only offer customers the “capability” for interacting with information that may be offered by third parties (“click-through”), but must also provide the ultimate content and applications themselves in order to be considered an “information service.” (¶ 31)

The Commission has long recognized that an ISP enabling subscribers to access third-party content and services can provide an “information service” – i.e., “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” (¶ 32)

Even if “capability” were understood as requiring more of the information processing to be performed by the classified service itself, the Commission finds that broadband Internet access service meets that standard. ISPs not only offer end users the capability to interact with information online in each and every one of the ways set forth in the “information service” definition, but they do so through a variety of functionally integrated information processing components that are part and parcel of the broadband Internet access service offering itself, including Domain Name Service (DNS) and caching, as well as certain other information processing capabilities offered by ISPs. (¶¶ 33-38, 41-43)

The Commission faults the Title II Order for: (1) putting misplaced reliance on Commission precedent from the traditional telephone service context when evaluating broadband Internet access service functionalities; (2) failing to consider how well – or how poorly – application of potentially ambiguous precedent to broadband Internet access service would advance Congress’s deregulatory statutory policy;
(3) relying upon specific holdings that are ambiguous in their analogy to technical characteristics of broadband Internet access service without adequately appreciating key regulatory distinctions between traditional telephone service and broadband Internet access service; and (4) ignoring Modification of Final Judgment (MFJ) precedent. (¶¶ 39-40, 43-44)

In addition to establishing that broadband Internet access service has the information processing capabilities outlined in the definition of “information service,” the Commission also finds that ISPs’ broadband Internet access service offerings make available information processing technology inextricably intertwined with transmission. The Commission makes this finding based on how consumers perceive the offer of broadband Internet access service, as well as the nature of the service actually offered by ISPs. (¶¶ 45-49)

Contrary to the Title II Order, the relevant classification precedent focuses on the nature of the service offering the provider makes, rather than being limited to the functions within that offering that particular subscribers do, in fact, use or that third parties also provide. The Commission’s finding that broadband Internet access service makes available information processing inextricably intertwined with transmission is consistent with classification precedent prior to the Title II Order. The Commission also rejects assertions that: (1) ISPs necessarily offer both an information service and a telecommunications service because broadband Internet access service includes a transmission component; and (2) the Commission’s analysis would necessarily mean that standard telephone service is likewise an information service. (¶¶ 50-57)

The Commission finds that other provisions of the Act support the conclusion that broadband Internet access service is appropriately classified as an information service, including Sections 230 and 231. While the language in Sections 230 and 231 is not determinative of the information service classification, the Commission finds it supportive of its analysis of the textual provisions at issue. According to the Commission, the purposes of the 1996 Telecommunications Act are better served by classifying broadband Internet access service as an information service, and the structure of Title II appears to be a poor fit for broadband Internet access service. (¶¶ 58-64)

**Reinstating the Private Mobile Service Classification of Mobile Broadband Internet Access Service**

Restoring the prior longstanding definitions and interpretation of Section 332, the Commission concludes that mobile broadband Internet access service should not be classified as a commercial mobile service or its functional equivalent. The Commission reads the definitions of the terms “public switched network” and “interconnected service” from the 1994 Second CMRS Report and Order, which, according to the Commission, reflect the best reading of the Act. The Commission finds that, under these definitions, mobile broadband Internet access service is not a commercial mobile service. (¶¶ 65-81).

In light of its determination that mobile broadband Internet access service should be restored to its classification as an information service, and consistent with its findings that reinstating this classification will serve the public interest, the Commission also finds that it will serve the public interest to exercise its statutory authority to return to its original conclusion that mobile broadband Internet access is not a commercial mobile service. The Commission finds that this approach avoids contradictory and absurd results, including singling out mobile providers of broadband Internet access service for common carrier regulation while freeing fixed broadband Internet access services from such regulation, notwithstanding that there is generally greater competition in the provision of mobile than in fixed broadband Internet access services. (¶ 82)
The Commission also reconsiders the analysis regarding functional equivalence in the Title II Order, finding that the test for functional equivalence adopted in the Second CMRS Report and Order reflects the best interpretation of Section 332. Under this test, the Commission finds that mobile broadband Internet access is not the functional equivalent of commercial mobile service because the two services have different service characteristics and intended uses and are not closely substitutable for each other, as evidenced by the fact that changes in price for one service generally will not prompt significant percentages of customers to change from one service to the other. (¶¶ 83-85)

Public Policy Supports Classifying Broadband Internet Access Service As An Information Service

While its legal analysis concluding that broadband Internet access service is best classified as an information service under the Act is sufficient grounds alone on which to base its classification decision, the Commission finds that public policy arguments and economic analysis reinforce that conclusion. The Commission finds that reinstating the information service classification for broadband Internet access service is more likely to encourage broadband investment and innovation, furthering the Commission’s goal of making broadband available to all Americans and benefitting the entire Internet ecosystem. (¶¶ 86-87)

Consistent with the recognition that regulatory burdens and uncertainty can deter investment by regulated entities, the Commission finds that Title II classification has reduced ISP investment in the network and hampered innovation because of regulatory uncertainty. The Commission finds that the record also demonstrates that small ISPs, many of which serve rural consumers, have been particularly harmed by Title II. It also finds that there is no convincing evidence of increased investment in the edge that would compensate for the reduction in network investment. (¶¶ 88-108)

The Commission finds that the sparse evidence of harms discussed in the Title II Order – evidence repeated by commenters as the basis for continuing Title II classification – demonstrates that the incremental benefits of Title II over light-touch regulation are inconsequential and pale in comparison to the significant costs of public-utility regulation. According to the Commission, proponents of Title II regulation can only point to a handful of incidents that purportedly affected Internet openness, while ignoring the two decades of flourishing innovation that occurred under the light-touch regulation that preceded the Title II Order. (¶¶ 109-115)

The Commission concludes that “hypothetical harms, unsupported by empirical data, economic theory, or even recent anecdotes, do not provide a basis for public-utility regulation of ISPs.” Further, the Commission’s transparency rule will require ISPs to clearly disclose practices that may harm consumers. The Commission finds that such disclosures, coupled with existing consumer protection and antitrust laws, will significantly reduce the likelihood that ISPs will engage in actions that would harm consumers or competition. (¶ 116)

According to the Commission, the record establishes that ISPs have strong incentives to preserve Internet openness, and these interests typically outweigh any countervailing incentives an ISP might have. The Commission finds that because the content and applications produced by edge providers often complement the broadband Internet access service sold by ISPs, Title II – and the attendant utility-style regulation of ISPs – are an unnecessarily heavy-handed approach to protecting Internet openness. (¶ 117)
The Commission disagrees with the claim that Commission action was necessary because ISPs have “gatekeeper” power that is likely to thwart the virtuous cycle of broadband adoption. Taking a holistic view of the market(s) supplied by ISPs, the Commission finds that innovation by ISPs – which may take the form of reduced costs, network extension, increased reliability, responsiveness, throughput, ease of installation, and portability – are as likely to drive additional broadband adoption as are services of edge providers. (¶§ 118-122)

Because fixed broadband Internet access providers frequently face competitive pressures, the primary market failure rationale for classifying broadband Internet access service under Title II is absent. The Commission finds that the presence of competitive pressures in itself protects the openness of the Internet. According to the Commission, this competition, combined with the protections of the antitrust and consumer protection laws against anticompetitive behaviors, will constrain the actions of an ISP that attempts to undermine the openness of the Internet in ways that harm consumers. (¶§ 123-128)

Mobile wireless ISPs face competition in most markets, with widespread and ever extending head-to-head competition between four major carriers. According to the Commission, both the Title II Order and its supporters in the current proceeding fail to properly account for the pressure mobile Internet access might exert on fixed, including fixed wireline, Internet access supply. (¶§ 129-130)

The Commission finds that any market power that ISPs have over access to end users is limited in the extent it can distort edge-provider decisions (or those of their end users). Even a fledgling edge provider that can only be viable in the long term if it offers service to three quarters of broadband subscribers is not dependent on gaining access to any single provider. According to the Commission, any market power on the part of a large wireline ISP is further diminished if edge providers can reach end users at locations other than their homes, such as at work, or through a mobile ISP. Larger edge providers likely have countervailing market power that would reduce the prospect of inefficient outcomes due to ISP market power. (¶§ 131-134)

The Commission likewise finds the “terminating access monopoly” concern – that once a consumer chooses a broadband provider, that provider has a monopoly on access to the subscriber – not credible. No small ISP could exercise market power in negotiations with large edge providers. And because end users home to more than one platform (e.g., one fixed and one mobile) capable of granting the end user effective access to the edge provider’s content (i.e., they multi-home), the Commission finds that there is no terminating monopoly. It also finds that to the extent that a terminating monopoly exists for some edge providers, there is no substantive evidence that demonstrates how different efficient prices to edge providers would be from the prices that would emerge without rules banning paid prioritization or prohibiting ISPs from charging providers. (¶§ 135-137)

The Commission finds that the record presents no compelling evidence that any inefficiencies, to the extent they exist, justify Title II regulation. It finds that there is no empirical evidence that the likely effects from conventional market power or the terminating monopoly, to the extent they exist, are likely to be important, let alone outweigh the harmful effects of Title II regulation. (¶¶ 138-139)

Pre-Existing Consumer Protection and Competition Laws Protect the Openness of the Internet

In the unlikely event that ISPs engage in conduct that harms Internet openness, the Commission finds that utility-style regulation is unnecessary to address such conduct. Other legal regimes – particularly antitrust law and the FTC’s authority under Section 5 of the FTC Act – protect consumers. The Commission finds
that these established antitrust and consumer protection laws are well-suited to addressing any openness concerns because they apply to the whole of the Internet ecosystem, including edge providers, thereby avoiding tilting the playing field against ISPs and causing economic distortions by regulating only one side of business transactions on the Internet. (¶ 140)

The FTC has broad authority to protect consumers from “unfair or deceptive acts or practices.” The reclassification of broadband Internet access service restores the FTC’s authority to enforce any commitments made by ISPs regarding their network management practices that are included in their advertising or terms and conditions. For example, commitments by many of the largest ISPs not to block or throttle legal content can be enforced by the FTC under Section 5, protecting consumers without imposing public-utility regulation on ISPs. (¶¶ 141-142)

The antitrust laws, particularly Sections 1 and 2 of the Sherman Act, as well as Section 5 of the FTC Act, protect competition in all sectors of the economy where the antitrust agencies have jurisdiction. When challenged under the antitrust laws, the types of conduct and practices prohibited under the Title II Order would be evaluated under the “rule of reason,” which amounts to either a social benefit-cost test or a consumer welfare test. (¶¶ 143-144)

The Commission finds that most of the examples of net neutrality violations discussed in the Title II Order could have been investigated as antitrust violations or consumer protection cases. Among the benefits of the antitrust laws over public utility regulation are: (1) the “rule of reason” allows a balancing of pro-competitive benefits and anti-competitive harms; (2) the case-by-case nature of antitrust allows for the regulatory humility needed when dealing with the dynamic Internet; (3) antitrust laws focus on protecting competition; and (4) the same long-practiced and well-understood laws apply to all Internet actors. (¶¶ 145-154)

Restoring the Information Service Classification is Lawful and Necessary

The Commission finds that it has the legal authority to return to the classification of broadband Internet access service as an “information service.” The Supreme Court has found that the authority delegated to the Commission by Congress includes the legal authority to interpret the definitional provisions of the Communications Act. Relying on that authority, the Commission changes course from the Title II Order and restores the information service classification of broadband Internet access service, which, according to the Commission, represents the best interpretation of the Act. (¶¶ 155-156)

The Commission finds that its determination that classifying broadband Internet access service as an information service is “superior both as a matter of textual interpretation and public policy suffices to support the change in direction – even absent any new facts or changes in circumstances.” Regardless, the Commission finds that the record provides several other sufficient and independent bases for its decision to revisit the classification of broadband Internet access service, including that the Title II Order’s regulatory predictions about its “light-touch” regulatory framework have not been borne out. (¶¶ 157-158)

The Commission is not persuaded that there were reasonable reliance interests in the Title II Order that preclude the agency from revisiting the classification of broadband Internet access service. The Commission found that there is no evidence in the record regarding edge investments made in reliance upon the Title II Order, and any such reliance would not have been reasonable given the lengthy prior history of information service classification of broadband Internet access service, which the Commission is restoring. (¶¶ 159-161)
Effects on Regulatory Structures Created by the Title II Order

The Commission clarifies the regulatory effects of its reinstatement of broadband Internet access service as a Title I “information service” on other regulatory frameworks affected or imposed by the Title II Order, including the effects on: (1) Internet traffic exchange arrangements; (2) the Title II Order’s forbearance framework; (3) broadband privacy; (4) wireline broadband infrastructure; (5) wireless broadband infrastructure; (6) universal service; (7) jurisdiction and preemption; (8) disability access; and (9) licensing provisions. (¶ 162)

Internet traffic exchange arrangements. As a result of the decision to restore the classification of broadband Internet access service as an information service, Internet traffic exchange arrangements are no longer subject to Title II and its attendant obligations. Thus, Internet traffic exchange is returned to the longstanding free-market framework “under which the Internet grew and flourished for decades.” (¶¶ 163-173)

Forbearance framework. With the reinstatement of the information service classification of broadband Internet access service, the forbearance granted in the Title II Order is now moot. The Commission returns to the pre-Title II Order status quo and allows providers to voluntarily elect to offer broadband transmission on a common carrier basis. The Commission also clarifies that carriers are no longer permitted to use the Title II Order forbearance framework (i.e., no carrier will be permitted to maintain, or newly elect, the Title II Order forbearance framework). (¶¶ 174-180)

Broadband privacy. By reinstating the information service classification of broadband Internet access service, jurisdiction to regulate broadband privacy and data security is returned to the FTC. The Commission finds that restoring FTC jurisdiction over ISPs will enable the FTC to apply its extensive privacy and data security expertise to provide uniform online privacy protections. (¶¶ 181-184)

Wireline broadband infrastructure. The Commission finds that Title II classification is not necessary to maintain the Commission’s authority to promote infrastructure investment and broadband deployment. The Commission will address this authority in other proceedings and take further action as is necessary to promote broadband deployment and infrastructure investment. The Commission states that its decision should not be misinterpreted or used as an excuse to create barriers to infrastructure investment and broadband deployment by, for example, increasing pole attachment rates or inhibiting broadband providers from attaching equipment. (¶¶ 185-186)

Wireless broadband infrastructure. The Commission reaffirms its interpretations regarding the application of Sections 224 and 332(c)(7) to wireless broadband Internet access service and reiterates that commingling services does not change the fact that the facilities are being used for the provisioning of services within the scope of these statutory provisions. The Commission finds that this clarification will alleviate concerns that wireless broadband Internet access providers not face increased barriers to infrastructure deployment as a result of the Commission’s reclassification decision. (¶¶ 187-191)

Universal service. The reclassification of broadband access as an information service does not affect or alter the Commission’s existing programs to support the deployment and maintenance of broadband-capable networks – i.e., the Connect America Fund’s high-cost universal service support mechanisms. The Commission finds that the reinstatement of the information service classification for broadband Internet access service does not require the agency to address its legal authority to continue supporting broadband
Internet access service in the Lifeline program, as such concerns are more appropriately addressed in other proceedings. (¶¶ 192-193)

Jurisdiction and preemption. The Commission concludes that the regulation of broadband Internet access service should be governed principally by a uniform set of federal regulations, rather than by a patchwork of separate state and local requirements. Thus, the Commission preempts any state or local measures that would effectively impose rules or requirements that the Commission has repealed or decided to refrain from imposing or that would impose more stringent requirements for any aspect of broadband service addressed in its order. The preempted measures include: (1) any so-called “economic” or “public utility-type” regulations, such as common-carriage requirements akin to those found in Title II of the Act and its implementing rules; and (2) other rules or requirements that the Commission repeals or refrains from imposing because they could pose an obstacle to or place an undue burden on the provision of broadband Internet access service and conflict with the deregulatory approach adopted by the Commission. The Commission insists that it does not disturb or displace the states’ traditional role in generally policing such matters as fraud, taxation, and general commercial dealings, so long as the administration of such general state laws does not interfere with federal regulatory objectives. Nor does the Commission intend to deprive the states of any functions expressly reserved to them under the Act, such as responsibility for designating eligible telecommunications carriers; jurisdiction over poles, ducts, conduits, and rights-of-way; or authority to adopt state universal service policies not inconsistent with the Commission’s rules. The Commission concludes that it has legal authority to preempt inconsistent state and local regulation of broadband Internet access service. (¶¶ 194-204)

Disability access. The Act provides the Commission with authority to ensure that consumers with disabilities can access broadband networks regardless of whether broadband Internet access service is classified as telecommunications service or information service. To the extent other accessibility issues arise, the Commission will address those issues in separate proceedings. (¶ 205)

Licensing provisions. The decision to classify wireless broadband Internet access service as an information service does not affect the general applicability of the spectrum allocation and licensing provisions of Title III and the Commission’s rules to this service. Provisions governing access to and use of spectrum (and their corresponding Commission rules) do not depend on whether the service using the spectrum is classified as a telecommunications or information service under the Act. (¶ 206)

Light-Touch Framework to Restore Internet Freedom

Consistent with the light-touch, market based approach that has been the lodestar of the Commission’s approach to preserving Internet freedom, the Commission adopts a light-touch framework that will preserve Internet freedom for all Americans. (¶ 207)

Transparency Rule

The Commission commits to balanced ISP transparency requirements, with minor adjustments, to the transparency rule adopted in the 2010 Open Internet Order, which the Commission finds provides consumers and the Commission with essential information while minimizing the burdens imposed on ISPs. The Commission modifies the existing transparency rule to eliminate many of the additional reporting obligations adopted by the Commission in the Title II Order, finding that those additional obligations do not benefit consumers, entrepreneurs, or the Commission sufficiently to outweigh the burdens imposed on ISPs. (¶¶ 209-210)
The Commission adopts the following rule, which it finds is consistent with the record that supports retaining at least some transparency requirements:

Any person providing broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

The Commission finds that disclosures required by this rule increase the likelihood that ISPs will abide by open Internet principles by reducing the incentives and ability to violate those principles. It also finds that the Internet community will identify problematic conduct, and that those affected by such conduct will be in a position to make informed competitive choices or seek available remedies for anticompetitive, unfair, or deceptive practices. The transparency rule applies to broadband Internet access service, as well as functional equivalents or any service that is used to evade the Commission’s transparency requirements. (¶¶ 215-217)

Broadband Internet access service providers must prominently disclose network management practices, performance, and commercial terms of their broadband Internet access service. These disclosures must meet specific requirements to make the rule effective. (¶ 218)

**Network Management Practices.** ISPs must disclose the following 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. These descriptions should include the types of traffic subject to the practices; the purposes served by the practices; the practices’ effects on end users’ experience; criteria used in practices, such as indicators of congestion that trigger a practice, including any usage limits triggering the practice, and the typical frequency of congestion; usage limits and the consequences of exceeding them; and references to engineering standards, where appropriate.
• **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).

The Commission does not mandate disclosure of any other network management practices, which are defined to mean a practice “appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.” (¶¶ 219-220)

**Performance characteristics.** ISPs must disclose the following performance characteristics of their broadband Internet access service:

• **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-Broadband Internet Access Service 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. (¶¶ 221-222)

**Commercial Terms.** ISPs must make the following disclosures:

• **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. For example, whether any network management practices entail inspection of network traffic, and whether traffic is stored, provided to third parties, or used by the ISP for non-network management purposes.

• **Redress Options.** Practices for resolving complaints and questions from consumers, entrepreneurs, and other small businesses. (¶ 223)

The Commission eliminates the additional reporting obligations adopted in the *Title II Order* and related guidance, finding that these additional reporting obligations unduly burden ISPs without providing a comparable benefit to consumers. (¶¶ 224-226)

The Commission declines to exempt small providers from its transparency rule. (¶ 227)
Means and Format of Disclosure

ISPs must publicly disclose the information required by the Commission’s transparency rule and have two options for disclosure. (¶ 228)

First, ISPs may include the disclosures on a publicly available, easily accessible website. ISPs are expected to make disclosures in a manner accessible by people with disabilities. ISPs doing so need not distribute hard copy versions of the required disclosures and need not file them with the Commission. ISPs electing this option must adhere to the means of disclosure requirement from the Open Internet Order and the clarification found in the 2011 Advisory Guidance. Second, ISPs may transmit their disclosures to the Commission, which will make them available on a publicly available, easily accessible website. (¶ 229)

The Commission eliminates the direct notification requirement and the consumer broadband label safe harbor for form and format of disclosures adopted in the Title II Order. The Commission finds that requiring all ISPs to disclose the same information, regardless of format, will allow for comparability between offerings, and enable the Commission to meet its statutory reporting requirements. (¶¶ 230-231)

Authority for the Transparency Rule

The Commission relies on Section 257 as authority for its transparency requirements. Consistent with Section 257, the disclosure requirements will help the Commission both identify and address potential market entry barriers in the provision and ownership of information services and the provision of parts and services to information service providers. (¶¶ 232-233)

The Commission also finds that eliminating market entry barriers in the provision and ownership of information services and the provision of parts and services to information service providers will help bring the benefits of new inventions and developments to the public. (¶ 234)

The Commission finds that its transparency requirements are consistent with the First Amendment because they represent permissible regulation of commercial speech. It also finds that the requirements directly advance substantial government interests in encouraging competition and innovation and are no more extensive than necessary. (¶¶ 235-238)

Bright-Line and General Conduct Rules

The Commission eliminates the conduct rules adopted in the Title II Order – including the general conduct rule and the prohibitions on paid prioritization, blocking, and throttling for three reasons.

First, the Commission finds that its transparency rule, in combination with the state of broadband Internet access service competition and the antitrust and consumer protection laws, obviates the need for conduct rules by achieving comparable benefits at lower cost. The effect of the transparency rule is that ISP practices that involve blocking, throttling, and other behavior that may give rise to openness concerns will be disclosed to the Commission and the public, which will increase the chances that harmful practices will not occur in the first place and that, if they do, they will be quickly remedied in light of the FTC’s and DOJ’s authority to address any potential harms. To the extent that conduct rules lead to any additional marginal deterrence, the Commission deems the substantial costs – including costs to consumers in terms of lost innovation as well as monetary costs to ISPs – not worth the possible benefits. (¶¶ 240-245)
Second, scrutinizing closely each prior conduct rule, the Commission finds that the costs of each rule outweigh its benefits. It finds that the Internet Conduct Rule is vague, creating uncertainty and likely denying or delaying consumer access to innovative new services by not providing carriers with adequate notice of what they are and are not permitted to do. It also finds that the rule is unnecessary because the FTC will vigorously protect consumers and competition through its consumer protection and antitrust authorities. (¶¶ 246-252)

The Commission declines to adopt a ban on paid prioritization. It finds that the transparency rule, along with enforcement of the antitrust and consumer protection laws, addresses many of the concerns regarding paid prioritization raised in this record. Thus, it finds that the incremental benefit of a ban on paid prioritization is likely to be small or zero. The Commission expects that eliminating the ban on paid prioritization will help spur innovation and experimentation, encourage network investment, and better allocate the costs of infrastructure, likely benefiting consumers and competition. Thus, the costs of the ban are likely significant. The Commission rejects assertions that allowing paid prioritization would lead ISPs to create artificial scarcity on their networks by neglecting or downgrading non-paid traffic. (¶¶ 253-262)

The Commission finds the no-blocking and no-throttling rules are unnecessary to prevent the harms that they were intended to thwart. It finds that the transparency rule – coupled with the Commission’s enforcement authority and with FTC enforcement of ISP commitments, antitrust law, consumer expectations, and ISP incentives – will be sufficient to prevent these harms, particularly given the consensus against blocking practices, as reflected in the scarcity of actual cases of such blocking. (¶¶ 263-266)

Third, the Commission finds that the record does not identify any legal authority to adopt conduct rules for all ISPs, and it declines to “distort the market with a patchwork of non-uniform, limited-purpose rules.” The Commission finds that provisions in Section 706 directing the Commission to encourage deployment of advanced telecommunications capability are better interpreted as hortatory rather than as independent grants of regulatory authority. The Commission also is not persuaded that Section 230 is a grant of regulatory authority that could provide the basis for conduct rules. Nor does it find that the record reveals other sources of authority that collectively would provide a sure foundation for conduct rules that would treat all similarly-situated ISPs the same. (¶¶ 267-296)

Enforcement

In light of the modifications to its regulations, the Commission also revises its enforcement practices under them. The Commission eliminates its Ombudsman, formal complaint rules, and advisory opinions established in the Title II Order. The Commission finds that existing informal complaint procedures combined with transparency and competition, as well as antitrust and consumer protection laws, will ensure that ISPs continue to be held accountable for their actions. (¶¶ 297-303)

Cost-Benefit Analysis

While lacking data that would allow the Commission to quantify the magnitudes of many of the effects of its rules, it finds that it can make a reasonable assessment of the direction of the effect on economic efficiency (i.e., net positive or net negative benefits). (¶ 304)

In conducting the cost-benefit analysis, the Commission finds that maintaining the Title II classification of broadband Internet access service decreased investment and is likely to continue to decrease investment by
ISPs, which are likely to result in less deployment of service to unserved areas and less upgrading of facilities in already served areas. Finding that the benefits of maintaining the Title II classification are approximately zero, coupled with the finding that the private and social costs are positive, the Commission concludes that maintaining the Title II classification would have net negative benefits. Thus, the Commission finds that maintaining the Title II classification would decrease overall economic welfare, and the Commission’s benefit-cost analysis supports the decision to reclassify broadband Internet access service as a Title I service. (¶¶ 307-312)

The Commission next considers transparency, which it concludes has positive benefits. However, combining the benefits of a transparency rule with an assessment of the costs of the several transparency rules, the Commission concludes that the transparency rule in the Title II Order would have the smallest net positive benefit because the additional elements of the regime have little significant additional benefits but impose significant additional costs. Because the Commission’s transparency rule would have a larger net positive benefit than the transparency rule in the Title II Order, the Commission finds that its benefit-cost analysis of the transparency alternatives supports its decision to adopt a transparency rule more limited than the one in the Title II Order. (¶¶ 313-315)

Finally, in evaluating the Internet conduct rule and the bright-line rules, the Commission assumes that it will not maintain the Title II classification and will adopt the transparency rule, which allows for an evaluation of the rules in a way that incorporates the Commission’s decisions on classification and transparency. The Commission finds that maintaining the Internet conduct rule and bright-line rules have created uncertainty and reduced investment and thus impose substantial social costs. Having adopted a transparency rule, the Commission finds the benefits of these rules are limited since the transparency rule will allow antitrust and consumer protection law, coupled with consumer expectations and ISP incentives, to mitigate potential harms. Therefore, the Commission concludes that maintaining these rules has a small net negative benefit, compared to the new regulatory environment created by the Commission (i.e., Title I classification and the transparency rule). (¶¶ 316-323)