

Comments on FCC's Open Internet Rulemaking

Key Findings

- In October, the Federal Communications Commission (FCC) proposed rules that would reclassify broadband internet access service under Title II of the Communications Act. This would potentially apply more stringent, legacy telephone regulation on internet service providers.
- Electric cooperatives support rules that prohibit the blocking, throttling, or paid prioritization of internet traffic. Electric cooperatives treat all consumers equally, and do not engage in such practices.
- Electric cooperatives are concerned that the implementation of these new regulations will disproportionately affect small entities by requiring them to comply with burdensome and complex new reporting and compliance obligations. NRECA urges the Commission to create targeted exemptions for small entities.

Background

In October, the FCC issued a Notice of Proposed Rulemaking (NPRM) that seeks to reclassify broadband internet access service (BIAS) from a less regulated information service to a more regulated telecommunications service, and broaden the agency's regulatory authority over this service. This rulemaking would apply what is commonly referred to as "net neutrality" rules, and seeks to address other issues including public safety, network resiliency, and privacy.

The FCC has alternated between classifying BIAS as a more heavily-regulated telecommunications service, and a less regulated information service. Telecommunications service regulations were created to govern legacy voice services and historically applied to the larger telephone and incumbent providers.

Summary of NRECA's Comments

NRECA agrees with some of the principles outlined by the NPRM, including prohibitions on blocking or throttling access to content, and the need for limited regulatory oversight of internet service. As cooperatives, NRECA members do not block or throttle access to internet content, and generally agree that some providers unreasonably disadvantage consumers and edge providers with these types of practices.

Targeted Compliance Exemptions for Small Providers. Small providers often lack sufficient resources to address cumbersome new regulatory obligations. Current size standards set by the U.S. Small Business Administration qualify providers as "small" if they have fewer than 1,500 employees. Most wired telecommunications providers fall under this threshold, despite there being a noteworthy difference in size between organizations with 1,500 employees and those with 100. NRECA urges the FCC to establish a more appropriate "small" entity size exemption for providers with fewer than 100,000 broadband consumers.

The FCC also sought comment on whether it should begin requiring Internet Service Providers (ISPs) to submit reports in response to outages or the degradation of communications services. Small, locally-owned

ISPs such as co-ops already have a strong incentive to provide reliable service, and outage reporting requirements could add additional bureaucracy and burdens to the restoration of service. NRECA encourages the FCC to exempt small, locally-owned providers from this potential requirement.

The FCC should exclude non-internet access data services, including SCADA and smart grid. In addition to seeking a targeted exemption for small entities, NRECA strongly supports the exclusion of non-internet access data services, including smart grid services, from being covered under the proposal. Many electric cooperatives own and operate fiber networks for supervisory data and control (SCADA) and smart grid functions in support of the provision of electric service. While these data services may operate alongside BIAS service, they should be excluded from the scope of FCC's re-evaluation and the agency should specify that these utility functions qualify as non-BIAS data services.

Separate rulemakings needed on data privacy and Universal Service. The NPRM seeks comment on other related and important topics including data privacy and Universal Service. Given the significance and complexity of these issues, NRECA encourages the FCC to temporarily forbear from applying new rules until they are explored in separate proceedings.

Refrain from imposing overly-complicated transparency rules. NRECA supports the overall objectives of the FCC's transparency rules. However, we are concerned that the agency may create significant additional, redundant compliance burdens, such as expanding requirements to include a detailed and lengthy transparency statement. NRECA instead suggests that the existing broadband label requirement should be the primary means for educating consumers about offerings and network practices. Once again, we encourage the FCC to consider the impacts of additional compliance burdens on small providers.

The FCC should clarify the preemptive effect on state regulation. The reclassification of broadband internet access service as a telecommunications service could open the door to a myriad of state-level regulatory actions. For the sake of consistency, and regulatory predictability for internet service providers, NRECA encourages the FCC to clearly define the roles between federal and state entities over broadband internet access service.

Next Steps

Comments on the NPRM were submitted to the FCC on December 14, 2023. Reply comments will be due to the FCC on January 17, 2024.

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