does not comment in writing within 30 days after receiving the draft proposed rule, the EPA Administrator may sign the proposed rule for publication in the **Federal Register** any time after the 30-day period.

II. Do any Statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretaries of USDA and HHS. As such, none of the regulatory assessment requirements apply to this document.

Dated: May 17, 2017.

Marietta Echeverria,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2017–11569 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA–R08–RCRA–2016–0505; FRL–9962–17-Region 8]

Determination To Approve Alternative Final Cover Request for Phase 2 of the City of Wolf Point, Montana, Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an alternative final cover for Phase 2 of the City of Wolf Point landfill, a municipal solid waste landfill (MSWLF) owned and operated by the City of Wolf Point, Montana, on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana. The EPA is seeking public comment on EPA's determination to approve the City of Wolf Point's alternative final cover proposal.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making the final determination to approve the alternative final cover for Phase 2 of the City of Wolf Point landfill, as a direct final rule without a prior proposed rule. If we receive no relevant adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received on or before July 3, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2016–0505, by one of the following methods:

- Online: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.*
- *Email: roach.michael@epa.gov.*
- *Mail:* Michael Roach, Environmental Protection Agency, Region 8, Mail Code: 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202.
- *Hand delivery:* Environmental Protection Agency Region 8, Mail Code: 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202. Such deliveries are only accepted during normal hours of operation, which are Monday through Friday from 8:00 a.m. until 4:30 p.m.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2016–0505. The EPA may publish any comment received to its public docket without change and may be available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or by email. The *http://regulations.gov* Web site is an ''anonymous'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA rather than going through *http://www.regulations.gov,* your email address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact your for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Roach, Resource Conservation and Recovery Program, Mail Code: 8P–R, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202; telephone number: (303) 312–6369; email address: *roach.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is promulgating a site-specific rule that approves an alternative final cover for Phase 2 of the City of Wolf Point landfill, a municipal solid waste landfill (MSWLF) owned and operated by the City of Wolf Point, Montana, on the Assiniboine and Sioux Tribes' Fort Peck Reservation in Montana, as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect relevant adverse comments. We have explained the reasons for this approval in the preamble to the direct final rule.

Unless the EPA receives relevant adverse comments that oppose the site-specific rule during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get relevant adverse comments that oppose the site-specific rule, we will withdraw the direct final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time

Dated: April 17, 2017.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–11228 Filed 6–1–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 8 and 20

[WC Docket No. 17–108; FCC 17–60]

Restoring Internet Freedom

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, a *Notice of Proposed Rulemaking (NPRM)* proposes to end the Commission's public-utility regulation of the Internet and seeks comment on returning to the bipartisan,

light-touch regulatory framework that saw the free and open Internet flourish prior to the 2015 adoption of the Commission's *Title II Order.* Specifically, the *NPRM* proposes to return broadband Internet access service to its classification as an information service, return the classification of mobile broadband to its classification as a private mobile service, and eliminate the Internet standard. The *NPRM* also seeks comment whether the Commission should keep, modify, or eliminate the bright-line rules set forth in the *Title II Order.*

DATES: Comments are due on or before July 17, 2017, and reply comments are due on or before August 16, 2017. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before August 1, 2017.

ADDRESSES: You may submit comments, identified by WC Docket No. 17–108, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicole Ongele, Federal Communications Commission, via email to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, at (202) 418–1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WC Docket No. 17–108, adopted May 18, 2017 and released May 23, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It is available on the Commission's Web site at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.docx.*

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due August 1, 2017. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998), *http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf.*

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.* Parties who seek to file a large number of comments or ''group'' comments may do so through the public API or the Commission's electronic inbox established for this proceeding, called Restoring Internet Freedom Comments at *https://www.fcc.gov/restoring-internet-freedom-comments.* To ensure that bulk comments are properly recorded in ECFS, commenters must use the .CSV template provided.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD

20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

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Synopsis

I. Introduction

1. Americans cherish a free and open Internet. And for almost twenty years, the Internet flourished under a light-touch regulatory approach. It was a framework that our nation's elected leaders put in place on a bipartisan basis. President Clinton and a Republican Congress passed the Telecommunications Act of 1996, which 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.''

2. During this time, the Internet underwent rapid, and unprecedented, growth. Internet service providers (ISPs) invested over $1.5 trillion in the Internet ecosystem and American consumers enthusiastically responded. Businesses developed in ways that the policy makers could not have fathomed even a decade ago. Google, Facebook, Netflix, and countless other online businesses launched in this country and became worldwide success stories. The Internet became an ever-increasing part of the American economy, offering new and innovative changes in how we work, learn, receive medical care, and entertain ourselves.

3. But two years ago, the FCC changed course. It decided to apply utility-style regulation to the Internet. This decision represented a massive and unprecedented shift in favor of government control of the Internet.

4. The Commission's *Title II Order* has put at risk online investment and innovation, threatening the very open Internet it purported to preserve. Investment in broadband networks declined. Internet service providers have pulled back on plans to deploy new and upgraded infrastructure and services to consumers. This is particularly true of the smallest Internet service providers that serve consumers in rural, low-income, and other underserved communities. Many good-paying jobs were lost as the result of these pull backs. And the order has weakened Americans' online privacy by stripping the Federal Trade Commission—the nation's premier consumer protection agency—of its jurisdiction over ISPs' privacy and data security practices.

5. Today, we take a much-needed first step toward returning to the successful bipartisan framework that created the free and open Internet and, for almost twenty years, saw it flourish. By proposing to end the utility-style regulatory approach that gives government control of the Internet, we aim to restore the market-based policies necessary to preserve the future of Internet Freedom, and to reverse the decline in infrastructure investment, innovation, and options for consumers put into motion by the FCC in 2015. Our actions today continue our critical work to promote broadband deployment to rural consumers and infrastructure investment throughout our nation, to brighten the future of innovation both within networks and at their edge, and to close the digital divide.

II. Ending Public-Utility Regulation of the Internet

6. Between enactment of the Telecommunications Act and the 2015 adoption of the *Title II Order,* the free and open Internet flourished: Providers invested over $1.5 trillion to construct networks; high-speed Internet access proliferated at affordable rates; and consumers were able to enjoy all that the Internet had to offer. In 2015, the Commission abruptly departed from its prior posture and classified broadband Internet access service as a telecommunications service subject to public-utility regulations under Title II.

7. Today, we propose to reinstate the information service classification of broadband Internet access service and return to the light-touch regulatory framework first established on a bipartisan basis during the Clinton Administration. We also propose to reinstate the determination that mobile broadband Internet access service is not a commercial mobile service.

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

8. Our proposal to classify broadband Internet access service as an information service is based on a number of factors. First, we examine the text, structure, and history of the Communications Act and the Telecommunications Act, combined with the technical details of how the Internet works. Second, we examine Commission precedent. Third, we examine public policy and our goal of benefiting consumers through greater innovation, investment, and competition. We seek comment on our proposals and these analyses.

1. The Text and Structure of the Act

9. We start with the text of the Act itself. 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.'' Section 3 defines a ''telecommunications service'' 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.'' Section 3 also 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, without change in the form or content of the information as sent and received.''

10. We believe that Internet service providers offer the ''capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.'' Whether posting on social media or drafting a blog, a broadband Internet user is able to generate and make available information online. Whether reading a newspaper's Web site or browsing the results from a search engine, a broadband Internet user is able to acquire and retrieve information online. Whether it's an address book or a grocery list, a broadband Internet user is able to store and utilize information online. Whether uploading filtered photographs or translating text into a foreign language, a broadband Internet user is able to transform and process information online. In short, broadband Internet access service appears to offer its users the ''capability'' to perform each and every one of the functions listed in the definition—and accordingly appears to be an information service by definition. We seek comment on this analysis. Can broadband Internet users indeed access these capabilities? Are there other capabilities that a broadband Internet user may receive with service? If broadband Internet access service does not afford one of the listed capabilities to users, what effect would that have on our statutory analysis? More fundamentally, we seek comment on

how the Commission should assess whether a broadband provider is ''offering'' a capability. Should we assess this from the perspective of the user, from the provider, or through some other lens?

11. In the *Cable Modem Order,* the Commission recognized that broadband Internet users often used services from third parties: ''[S]ubscribers, by 'click-through' access, may obtain many functions from companies with whom the cable operator has not even a contractual relationship. For example, a subscriber to Comcast's cable modem service may bypass that company's web browser, proprietary content, and email. The subscriber is free to download and use instead, for example, a web browser from Netscape, content from Fox News, and email in the form of Microsoft's 'Hotmail.''' It nonetheless found the classification appropriate ''regardless of whether subscribers use all of the functions provided as part of the service, such as email or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service.'' In the *Title II Order,* the Commission in turn found that ''consumers are very likely to use their high-speed Internet connections to take advantage of competing services offered by third parties'' and asserted the service ''is useful to consumers today primarily as a conduit for reaching modular content, applications, and services that are provided by unaffiliated third parties.'' We seek comment on how consumers are using broadband Internet access service today. It appears that, as in 2002 and 2013, broadband Internet users ''obtain many functions from companies'' other than their Internet service provider. It also appears that many broadband Internet users rely on services, such as Domain Name Service (DNS) and email, from their ISP. Is that correct? If not, what services are broadband Internet users accessing from what providers? More generally, we seek comment on the relevance of this analysis. The definition of ''information service'' speaks to the ''capability'' to perform certain functions. Is a consumer capable of accessing these online services without Internet access service? Could a consumer access these online services using traditional telecommunications services like telephone service or point-to-point special access? (In the past, rate-of-return carriers have offered broadband Internet access transmission service as a common-carriage last-mile service that transmits data between and end user and an ISP. Absent an ISP at the other end, however, broadband Internet access transmission service only transmits data to a carrier's central office (or other aggregation point) as it does not itself offer the capabilities that come with Internet access.) Or are we correct that offering Internet access is precisely what makes the service capable of ''generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information'' to consumers?

12. In contrast, Internet service providers do not appear to offer ''telecommunications,'' *i.e.,* ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received,'' to their users. *For one,* broadband Internet users do not typically specify the ''points'' between and among which information is sent online. Instead, routing decisions are based on the architecture of the network, not on consumers' instructions, and consumers are often unaware of where online content is stored. Domain names must be translated into IP addresses (and there is no one-to-one correspondence between the two). Even IP addresses may not specify where information is transmitted to or from because caching servers store and serve popular information to reduce network loads. In short, broadband Internet users are paying for the access to information ''with no knowledge of the physical location of the server where that information resides.'' We believe that consumers want and pay for these functionalities that go beyond mere transmission—and that they have come to expect them as part and parcel of broadband Internet access service. We seek comment on our analysis. How are broadband Internet users' requests for information handled by Internet service providers today? What functionalities beyond mere transmission do Internet service providers incorporate into their broadband Internet access service? We particularly seek comment on the *Title II Order*'s assertion that the phrase ''points specified by the user'' is ambiguous—how should we interpret that phrase so that it carries with it independent meaning and is not mere surplusage? Is it enough, as the *Title II Order* asserted, for a broadband Internet user to specify the information he is trying to access but not the ''points'' between or among which the information will be transmitted? Does it matter that the Internet service provider specifies the points between and among which information will be transmitted? (We note that the *Title II Order* asserted that ''[i]t is not uncommon in the toll-free arena for a single number to route to multiple locations, and such a circumstance does not transform that service to something other than telecommunications.'' Despite that assertion, the Commission *has* expressly found that the management of toll-free numbers is ''not a common carrier service'' and that providers that manage toll-free numbers ''do not need to be carriers.'').

13. *For another,* Internet service providers routinely change the form or content of the information sent over their networks—for example, by using firewalls to block harmful content or using protocol processing to interweave IPv4 networks with IPv6 networks. The Commission has acknowledged that broadband Internet networks must be reasonably managed since at least the *2005 Internet Policy Statement.* We believe that consumers want and pay for these functionalities that go beyond mere transmission—and that they have come to expect them as part and parcel of broadband Internet access service. We seek comment on our analysis. What constitutes a ''change in the form'' of information? If not the protocol-processing for internetworking or other protocol-processing performed as part of Internet access service, how should we interpret this phase so it carries with it independent meaning and is not mere surplusage? How could we plausibly conclude that it is not a ''change in the . . . content'' to use firewalls and other reasonable network management tools to shield broadband Internet users from unwanted intrusions and thereby alter what information reaches the user for the user's benefit? We seek comment on other ways in which Internet service providers change the form or content of information to facilitate a broadband Internet user's experience online.

14. Other provisions of the Act appear to confirm our analysis that broadband Internet access services should be classified as information services. For instance, section 230 defines an interactive computer service to mean ''*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* and such systems operated or services offered by libraries or educational institutions.'' On its face, the plain language of this provision deems Internet access service an information service. We seek comment on this analysis, on the language of section 230, and on how it

should impact our classification of broadband Internet access service.

15. Section 231 is even more direct. It expressly states that ''Internet access service'' ''does not include telecommunications services.'' And it defines Internet access service as one offering many capabilities (like an information service): ''a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers.'' Although inserted into the Communications Act one year after the Telecommunications Act's passage and previously interpreted to ''clarify that section 231 was not intended to impair our or a state commission's ability to regulate basic telecommunications services,'' this language on its face makes clear that Internet access service is not a telecommunications service. We seek comment on this analysis, on the language of section 231, and on how it should impact our classification of broadband Internet access service.

16. The structure of Title II appears to be a poor fit for broadband Internet access service. In the *Title II Order,* the Commission, on its own motion, forbore either in whole or in part on a permanent or temporary basis from 30 separate sections of Title II as well as from other provisions of the Act and Commission rules. The significant forbearance the Commission granted in the *Title II Order* suggests the highly prescriptive regulatory framework of Title II is unsuited for the dynamic broadband Internet access service marketplace. We seek comment on this analysis, and on what weight we should give this analysis in examining the future of this model of regulation.

17. The purposes of the Telecommunications Act appear to be better served by classifying broadband Internet access service as an information service. Congress passed the Telecommunications Act to ''promote competition and reduce regulation'' and ''[n]othing in the 1996 Act or its legislative history suggests that Congress intended to alter the current classification of Internet and other information services or to expand traditional telephone regulation to new and advanced services.'' Or as Senator John McCain put it, ''[i]t certainly was not Congress's intent in enacting the supposedly pro-competitive, deregulatory 1996 Act to extend the burdens of current Title II regulation to Internet services, which historically have been excluded from regulation.'' Or as Congress codified its intent in section 230: It is the policy of the United States ''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.'' An information service classification would ''reduce regulation'' and preserve a free market ''unfettered by Federal or State regulation''—but a telecommunications service classification would not. Indeed, as Judge Brown of the D.C. Circuit recently noted, ''[b]y incorporating [the] FCC's distinction between 'enhanced service' and 'basic service' into the statutory scheme, and by placing Internet access on the 'enhanced service' side, Congress prohibited the FCC from construing the 'offering' of 'telecommunications service' to be the 'information service' of Internet access.'' We seek comment on this analysis, as well as whether there are any other provisions of the Communications Act or Telecommunications Act that establish congressional intent with respect to the appropriate regulatory framework for broadband Internet access services.

18. More broadly, we seek comment on the text, structure, and purposes of the Communications Act and the Telecommunications Act, as well as any additional facts about what Internet service providers offer, how broadband Internet access service works, and what broadband Internet users expect that might inform our analysis.

19. We seek special comment on two aspects of the *Title II Order*'s interpretation of the Act. First, the *Title II Order* claimed its interpretation sprang in part from a change in ''broadband providers' marketing and pricing strategies, which emphasize speed and reliability of transmission separately from and over the extra features of the service packages they offer.'' It claimed this marketing ''leaves a reasonable consumer with the impression that a certain level of transmission capability—measured in terms of 'speed' or 'reliability'—is being offered in exchange for the subscription fee, even if complementary services are also included as part of the offer.'' We note that even before the *Cable Modem Order,* the Commission recognized that Internet service providers marketed the speed of their connections. We seek comment on whether Internet service providers' marketing has decidedly changed in recent decades. More generally, we seek comment on the relevance of this argument. Neither statutory service definition speaks of speed or reliability, and there is little reason to think consumers might want a fast or reliable ''transmission . . . of information'' but not a fast or reliable ''capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information.'' Indeed, many of the advertisements discussed by the *Title II Order* speak directly to the capabilities offered through high-speed service. We seek comment on this analysis and on any other relevant facts regarding whether broadband Internet users receive the capabilities of an information service or the mere transmission between points of a user's choosing of a telecommunications service.

20. Second, the *Title II Order* found that DNS and caching used in broadband Internet access service were just used ''for the management, control, or operation of a telecommunications system or the management of a telecommunications service.'' The Commission has previously held this category applies to ''adjunct-to-basic'' functions that are ''incidental'' to a telecommunications service's underlying use and ''do not alter [its] fundamental character.'' As such, these functions generally are not ''useful to end users, rather than carriers.'' We seek comment on how DNS and caching functions are now used, whether they benefit end users, Internet service providers, or both, and whether they fit within the adjunct-to-basic exception. How would broadband Internet access service work without DNS or caching? Would removing DNS have a merely incidental effect on broadband Internet users, or would it fundamentally change their online experience? Absent caching, would broadband Internet users that now expect high-quality video streaming see only incidental changes or more fundamental changes? Are there other ways that DNS or caching are used for ''for the management, control, or operation of a telecommunications system''? Are there any other aspects of the *Title II Order*'s treatment of DNS or caching that should be reconsidered here?

2. Commission Precedent Supports Classification as an Information Service

21. Our proposed classification of broadband Internet access service as an information service is firmly rooted in Commission precedent. For two decades, a consistent bipartisan framework supported a free and open Internet. That same consensus led to six separate Commission decisions confirming that Internet access service is an information service, subject to Title I. Chairman Kennard first led the

FCC in determining that Internet access service is an information service in the *Stevens Report.* Chairman Powell led the Commission to classify broadband Internet access service over cable systems as an information service in the *Cable Modem Order.* Chairman Martin led the Commission to classify several broadband Internet access services as information services in the *Wireline Broadband Classification Order,* the *BPL-Enabled Broadband Order,* and the *Wireless Broadband Internet Access Order.* Finally, Chairman Genachowski declined to reclassify broadband Internet access services in the *Open Internet Order.*

22. We believe the Commission under Democratic and Republican leadership alike was correct in these decisions to classify broadband Internet access service as an information service and that, 20 years after the passage of the Telecommunications Act, we should be reluctant to second-guess the interpretations of those more likely to understand the contemporary meaning of the terms of the Telecommunications Act. We seek comment on our assessment. Did the Commission's historical information service classification better enable flexibility in marketplace offerings? Did the regulatory certainty of maintaining the same regulatory environment for approximately three decades (since the *Computer Inquiries*) foster additional investment or innovative business models to benefit consumers? How should we evaluate the prior Commissions' predictions of intermodal competition given the 4,559 Internet service providers now in the market? How many providers would likely have entered the market if traditional Title II regulation had been the norm? What actual harms, if any, resulted from light-touch regulation?

23. The Commission has previously concluded that Congress formally codified information services and telecommunications services as two, mutually exclusive types of service in the Telecommunications Act. The *Title II Order* did not appear to disagree with this analysis, finding that broadband Internet access service was a telecommunications service and *not* an information service. We believe this conclusion regarding mutual exclusivity is correct based on the text and history of the Act. We seek comment on this analysis.

24. The Commission has previously found that Congress intended the definitions of information service and telecommunications service in the Act to parallel those definitions in the MFJ and in the *Computer Inquiries.* The *Title II Order* apparently accepted these parallels. We thus seek comment on any evidence that the court in the MFJ thought that Internet access service was a telecommunications service. Did the court and the Department of Justice intend to exclude Internet access services from the prohibitions on what Bell Operating Companies could offer? Did the court and the Department of Justice intend for Internet access services to be regulated via tariff (as other telecommunications services were)? We similarly seek comment on any evidence that the Commission in the *Computer Inquiries* thought that Internet access service was a basic service. Did the Commission intend for facilities-based carriers to offer Internet access service without the protections of the *Computer Inquiries* (as they could for basic services)? The Supreme Court has said that statutory interpretation ''must be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency.'' How is that canon relevant here?

25. Finally, the *Title II Order* deviated further from Commission precedent to extend its authority to Internet traffic exchange or ''interconnection,'' an area historically unregulated and beyond the Commission's reach. We believe Internet traffic exchange, premised on privately negotiated agreements or case-by-case basis, is not a telecommunications service. Moreover, we find nothing in the Act that would extend our jurisdiction as previously suggested by the *Title II Order.* We further do not believe there exists any non-Title II basis for the Commission to exercise ongoing regulatory oversight over Internet traffic exchange. We accordingly propose to relinquish any authority over Internet traffic exchange. We seek comment on the consequences and implications of relinquishing the Commission's regulatory authority in this manner.

26. We note that the Commission's *Title II Order* also went well beyond agency precedent in important ways. For instance, the Commission did not limit its analysis to the ''last mile'' connections at issue in the *Brand X* and the FCC's underlying proceeding in that case. Rather, the Commission's *Title II Order* defined Internet access service as extending far deeper into the network. We seek comment on the significance of this expansive departure from agency precedent.

3. Public Policy Supports Classification as an Information Service

27. The Commission's decision to reclassify broadband Internet access service as a telecommunications service subject to Title II regulation has resulted in negative consequences for American consumers—including depressed broadband investment and reduced innovation because of increased regulatory burdens and regulatory uncertainty stemming from the rules adopted under Title II. As providers have devoted more resources to complying with new regulations, the threat of regulatory enforcement of vague rules and standards has dampened providers' incentive to invest and innovate. Additionally, although reclassifying broadband Internet access service as a telecommunications service has led to significant regulatory burdens, it has not solved any discrete, identifiable problems. Restoring broadband Internet access service to its previous status as an information service subject to Title I is in the public interest because it will alleviate the harms caused by Title II reclassification. We seek detailed comment on this analysis below.

28. Following the *2014 Notice* and in the lead up to the *Title II Order,* Internet service providers stated that the increased regulatory burdens of Title II classification would lead to depressed investment. Recent data indicate how accurate those predictions were. A recent study indicates that capital expenditure from the nation's twelve largest Internet service providers has fallen by $3.6 billion, a 5.6% decline relative to 2014 levels. Another study indicated that between 2011 and 2015, the threat of reclassification reduced telecommunications investment by about 20–30%, or about $30–40 billion annually. Other sources also explain that other countries' experiences should caution the United States that ongoing utility-style regulation should be expected to have even more dramatic impacts on investment beyond what has already occurred. Other interested parties have come to different conclusions. (Free Press, Internet Service Providers' Capital Expenditures (Feb. 28, 2017), (noting a decrease in investment from 2015 to 2016, but claiming an increase in investment in the 2-year period of 2015–16 compared to 2013–14). We observe, however, that these figures showing increased investment do not incorporate the generally accepted accounting practice of maintaining consistency over time, as they include AT&T's foreign capital expenditures in Mexico as well as

expenditures related to DirectTV, and do not adjust for Sprint's changed accounting treatment of leased handset devices from an operating expense to a capital expense.).

29. We believe that these reduced expenditures are a direct and unavoidable result of Title II reclassification, and exercise our predictive judgment that reversing the Title II classification and restoring broadband Internet access service to a Title I service will increase investment. Among other things, Internet service providers have finite resources, and requiring providers to divert some of those resources to newly imposed regulatory requirements adopted under Title II will, unsurprisingly, reduce expenditures that benefit consumers. We seek comment on how the burdens associated with Title II regulation have impacted broadband investment and, as a result, consumers. Has the Commission's increased regulation of broadband adversely impacted broadband investment and innovation? What impact has Title II reclassification had on providers' business models, including any lost opportunity costs, and how has this impact been passed on to consumers? Is there any evidence that increased regulation has promoted broadband investment, as some claim? What are the long-term implications of utility-style regulation with respect to capital expenditures on high-speed networks?

30. We also seek specific comment on how the classification of broadband Internet access service as a telecommunications service has impacted smaller broadband Internet access service providers, many of whom lack the dedicated compliance staffs and financial resources of the nation's largest providers. Before the Commission adopted the *Title II Order,* many small providers made it clear that reclassification would harm their businesses and the customers they serve. Since reclassification, small providers—including non-profit, municipal ISPs—have been forced to reduce their investment and halt the expansion of their networks, and slow, if not delay, the development and deployment of innovative new offerings. For example, one small ISP had planned to ''triple the number of new base stations'' that would be deployed each month to provide fixed wireless broadband service to new customers, but put those plans on hold as a result of the Commission's reclassification. Other small providers have had to modify or abandon altogether past business models to account for increased compliance costs and depressed investment from outside investors. This depressed investment has had particularly strong impacts on the deployment of broadband to previously unserved and rural areas. What other impacts have small providers felt as a result of reclassification? Have there been any corresponding benefits for small providers?

31. In addition to imposing significant regulatory costs on Internet service providers, Title II reclassification created significant regulatory uncertainty. USTelecom specifically identified ''regulatory uncertainty'' as one of the causes of reduced investment. Regulatory uncertainty may have particularly significant effects on small Internet service providers, which may be poorly equipped to address the legal, technical, and financial burdens associated with an uncertain regulatory environment. That uncertainty has directly led to reduced investment, which has harmed consumers. We seek comment on what other effects regulatory uncertainty has had on broadband Internet access service providers' investment decisions.

32. We also seek comment on other consumer benefits that would result from restoring broadband Internet access service classification to an information service, rather than subjecting these services to utility-style regulation. We note that increased investment is likely to lead to a faster closing of the digital divide for rural and low-income consumers, higher speeds and more competition for all consumers, as well as more affordable prices. We seek comment on the magnitude of these effects, and what further steps the Commission should take to maximize facilities-based investment and competition. Specifically, we seek comment on the trade-offs from changing the classification status. We also seek comment more broadly on the effects on innovation of regulatory uncertainty, and other examples of reduced innovation from Internet service providers as a result of the Title II classification.

33. We also seek comment on specific ways in which consumers were harmed under the light-touch regulatory framework that existed before the Commission's *Title II Order.* Much of the *Title II Order* focused extensively on hypothetical actions Internet service providers ''might'' take, and how those actions ''might'' harm consumers, but the *Title II Order* only articulated four examples of actions Internet service providers arguably took to justify its adoption of the Internet conduct standard under Title II. Do these isolated examples justify the regulatory shift that Title II reclassification entailed? Do such isolated examples constitute market failure sufficient to warrant pre-emptive, industry-wide regulation? Were pre-existing federal and state competition and consumer protection regimes, in addition to private sector initiatives, insufficient to address such isolated examples, and if so, why? What are the costs and benefits of pre-emptive, industry-wide regulation in such circumstances? In particular, does that approach deter competition and competitive entry, and does it have unintended consequences with respect to infrastructure investment? Do those unintended consequences outweigh any purported benefits in addressing such isolated cases pre-emptively? Is there evidence of actual harm to consumers sufficient to support maintaining the Title II telecommunications service classification for broadband Internet access service? Is there any evidence that the likelihood of these events occurring decreased with the shift to Title II?

34. Conversely, what, if any, changes have been made as a result of Title II reclassification that have had a positive impact on consumers? Was Title II reclassification necessary for any of those changes to occur? Is there any evidence, for example, that consumers' online experiences and Internet access have improved due to policies adopted in the *Title II Order*?

4. The Commission Has Legal Authority To Classify Broadband Internet Access Service as an Information Service

35. As the D.C. Circuit has held, ''[i]t is axiomatic that administrative agencies may issue regulations only pursuant to authority delegated to them by Congress.'' And that authority is not unbounded. The Commission has authority, as the Supreme Court recognized in *Brand X,* to interpret the Communications Act, including ambiguous definitional provisions. However, when interpreting a statute it administers, the Commission, like all agencies, ''must operate 'within the bounds of reasonable interpretation.' And reasonable statutory interpretation must account for both 'the specific context in which . . . language is used' and 'the broader context of the statute as a whole.' ''

36. An agency also is free to change its approach to interpreting and implementing a statute so long as it acknowledges that it is doing so and justifies the new approach. Evaluating the change in regulatory approach in the *Title II Order,* the D.C. Circuit majority

in *USTelecom* applied a ''highly deferential standard'' to the agency's predictive judgments regarding the investment effects of reclassification, and deferred to the Commission's '''evaluat[ion of] complex market conditions''' underlying its rejection of providers' reliance interests in the prior classification. D.C. Circuit precedent also recognizes, however, that should the Commission's predictions ''prove erroneous, the Commission will need to reconsider'' the associated regulatory actions ''in accordance with its continuing obligation to practice reasoned decision-making.'' We believe that the Commission's predictions and expectations regarding broadband investment and the nature and effects of reclassification on the operation of the marketplace were mistaken and have not been borne out by subsequent events. Moreover, we believe that a restoration of the information service classification for broadband Internet access service is likely to increase infrastructure investment. In such a case, principles of administrative law give us more than ample latitude to revisit our approach. We seek comment on this overall approach, and we seek comment on these specific issues in the sections below.

37. Even more fundamentally, we believe that the Commission's statutory interpretation in the *Title II Order* did not adequately reflect proper standards of statutory construction, and that classifying broadband Internet access service as an information service is the better reading of the statute, independent of the factual developments subsequent to the *Title II Order.* We note that the Supreme Court has expressly upheld the Commission's prior information service classification. We seek comment on this analysis. Although the *Title II Order*'s telecommunications service classification was upheld in *USTelecom,* the court emphasized that it ''sit[s] to resolve only legal questions presented and argued by the parties,''' and not '''arguments a party could have made but did not.'' Many arguments as to why an information service classification of broadband Internet access service reflects the better reading of ambiguous provisions of the Act were not addressed by the court because the arguments were raised in support of a claim that the Act unambiguously required a particular service classification. (Or, in other cases they were not addressed at all. rejecting arguments that information service classification was unambiguously required based on the text, structure, and purpose of the Act; highlighting the limited ways in which USTelecom challenged the *Title II Order* for failing to demonstrate that the *NARUC* test for common carriage was met; rejecting arguments that the statute completely precludes the Commission from defining ''public switched network'' more broadly than the public switched telephone network; rejecting arguments that the statute necessarily compels the Commission to distinguish between ''mobile broadband alone enabling a connection'' and ''mobile broadband enabling a connection through use of adjunct applications such as VoIP''). Thus, although we are in any case free to revisit previously affirmed interpretations of ambiguous statutory language, we note that the *USTelecom* decision did not reach many aspects of the statutory analysis we propose here. We seek comment on this analysis and on our reasoning that the statutory interpretation proposed in this NPRM more faithfully adheres to the Act and reflects the better reading of the relevant provisions than the views adopted in the *Title II Order.*

B. Reinstating the Private Mobile Service Classification of Mobile Broadband Internet Access Service

38. We propose to classify all broadband Internet access services—both fixed and mobile—as information services. With respect to mobile broadband Internet access service, we further propose to return it to its original classification as a private mobile service, and in conjunction to revisit the elements of the *Title II Order* that modified or reinterpreted key terms in section 332 of the Act and our implementing rules. We seek comment on that proposal, including on the specific issues discussed below. We also generally seek comment on whether certain and, if so, which, aspects of the D.C. Circuit's analysis of mobile broadband Internet access service in *USTelecom* necessitate modifications or additions to the Commission's proposals with respect to mobile broadband Internet access service here. We also seek comment on the scope of the authority delegated by sections 332(d)(1) through (3) to the Commission to define or specify the terms used in section 332 and discussed below.

39. We propose to restore the meaning of ''public switched network'' under section 332(d)(2) to its pre-*Title II Order* focus on the traditional public switched telephone network. We find persuasive the Commission's reasoning when originally adopting the prior definition, which also appears more consistent with the historical usage of the term ''public switched network,'' appears to better accord with the text of section 332(d)(2) by clearly covering only a single, integrated network, and was not disturbed by Congress in amendments to section 332 of the Act. We seek comment on this analysis and our proposed approach.

40. We also propose to return to our prior definition of ''interconnected service'' by restoring the word ''all'' in the codified definition. Although the court in *USTelecom* found the deletion of ''all'' to be ''of no consequence'' to the reclassification of mobile broadband Internet access service, it did so based on an argument that the Commission never mentioned in its brief—namely, that mobile broadband users can reach telephone customers ''via VoIP'' and that this determination is sufficient (regardless of the deletion of the word ''all'') to render mobile broadband Internet access service interconnected with the public switched network. We seek comment on that view and whether the Commission erred in 2015 by modifying the definition based on the view that two separate networks can be interconnected if they do not allow all users to communicate with each other. (Had all the elements of the *Title II Order*'s mobile broadband Internet access service classification remained, a future Commission might have incentives to continue pursuing such an approach to avoid the potentially absurd result that traditional wireless voice service no longer constituted commercial mobile service. While not finding it a sufficient basis to reject the *Title II Order*'s treatment of mobile broadband Internet access service, the D.C. Circuit acknowledged the possibility that the revised definition of public switched network raised questions about whether traditional wireless voice service was sufficiently interconnected with the public switched network to still constitute a commercial mobile service.) The FCC's prior decision in this respect appears to run contrary to the focus on a single, integrated network that we believe Congress likely intended in section 332(d)(2). We seek comment on these views. In the *Title II Order,* the Commission noted that the prior definition of ''interconnected service'' would encompass a service that ''provides general access to points on the PSN [but] also restricts calling in certain limited ways'' (such as blocking of 900 numbers), but cited no evidence that the prior definition led to any confusion. We question the need for changes to the prior definition to account for that limited exception to

general access, but nonetheless seek comment on whether modified rule language is warranted, and if so, what language targeted narrowly to that issue should be incorporated.

41. We also seek comment on whether any other interpretations of section 332 or our implementing rules from the *Title II Order* should be revisited here in connection with our proposed classification of mobile broadband Internet access service. For example, would a narrower interpretation of ''capability'' for purposes of the definition of ''interconnected service'' under our rules be warranted based on the Act or the regulatory history of that language? Are there other interpretations that should be reconsidered? In addition to the changes to the definitions in section 20.3 of the rules discussed above, would any additional changes to our codified rules be warranted?

42. In applying the definitions and interpretations of key terms in section 332 and our implementing rules under the proposals above, we also propose to reach the same conclusions regarding the application of those terms to mobile broadband Internet access service as we did in the *Wireless Broadband Internet Access Order.* We seek comment on that proposal and whether there have been any material changes in technology, the marketplace, or other facts that would warrant refinement or revision of any of that analysis.

43. Furthermore, insofar as mobile broadband Internet access service is best interpreted to be an information service, we believe that likely also would counsel in favor of classifying it as a private mobile service to avoid the inconsistency of the service being both an information service and a common carrier service. The Commission explained this reasoning when originally classifying mobile broadband Internet access service as both an information service and a private mobile service, and we propose to apply that same reasoning again here. We seek comment on this proposal.

44. We also believe that mobile broadband Internet access service is not the ''functional equivalent'' of commercial mobile service, and seek comment on that view. The Commission previously has observed, in light of Congress's determinations in section 332, that ''very few mobile services that do not meet the definition of CMRS will be a close substitute for a commercial mobile radio service.'' By contrast, we are concerned that the *Title II Order*'s test, which focuses on whether the service merely ''enables ubiquitous access to the vast majority of the public,'' would eviscerate the statutory scheme. We believe that the standard for demonstrating functional equivalency under our rules is instead more likely to properly implement section 332(d)(3) of the Act, and we thus propose to reconsider the *Title II Order*'s position that the Commission is free to depart from that standard. In addition, the *Title II Order* made no claim that the functional equivalency standard in our rules was met by mobile broadband Internet access service, and we similarly propose here that it does not meet that standard. We seek comment on these proposals and on any other or different definition of ''functional equivalent'' that the FCC should adopt.

45. Given the apparent historical success of the wireless marketplace prior to the *Title II Order,* we anticipate that returning mobile broadband Internet access service to its original classification of a private mobile service and restoring prior definitions and interpretations of key concepts in section 332 is likely to substantially benefit the wireless marketplace and consumers and have few, if any, policy disadvantages. We seek comment on this view. To the extent any commenters believe that these proposals will have negative policy consequences, we seek specific information regarding the scope or significance of any such consequences and whether they can be mitigated in whole or in part through modifications to our proposals.

C. Effects on Regulatory Structures Created by the Title II Order

46. The *Title II Order* imposed additional regulatory frameworks under Title II, including forbearance and privacy. We seek comment on how we should treat those structures and proceedings moving forward.

47. *Forbearance.* If we adopt our lead proposal to remove the Title II reclassification of broadband Internet access service, what effect does that action have on the provisions of the Act from which the Commission forbore in the *Title II Order*? We believe that restoring the classification status of broadband Internet access service to an information service will render any additional forbearance moot in most cases. We seek comment on this analysis. At the same time, we seek comment on whether, with respect to broadband Internet access service, the Commission should maintain and extend forbearance to even more provisions of Title II as a way of further ensuring that our decision in this proceeding will prove to reduce regulatory burdens.

48. We also seek comment on the effect of reinstating an information service classification on providers that voluntarily offered broadband transmission on a common carrier basis under the *Wireline Broadband Classification Order* framework. The *Title II Order* allowed such providers to opt-in to the *Title II Order*'s forbearance framework. Should providers voluntarily electing to offer broadband transmission on a common carrier basis be able to do so under the *Title II Order*'s forbearance framework if we reclassify broadband Internet access service as an information service? If not, what transition mechanisms are required for such providers that opted-in to the *Title II Order*'s forbearance framework to enable them to revert back to the *Wireline Broadband Classification Order* framework? Should we extend forbearance to any other rules or statutory provisions for carriers that choose to offer broadband transmission on a common carrier basis?

49. *Section 222 Regulations.* Historically, the Federal Trade Commission (FTC) protected the privacy of broadband consumers, policing every online company's privacy practices consistently and initiating numerous enforcement actions. When the Commission reclassified broadband Internet access service as a common carriage telecommunications service in 2015, however, that action stripped FTC authority over Internet service providers because the FTC is prohibited from regulating common carriers. (One Ninth Circuit case held that the common carrier exemption precluded FTC oversight of ISPs that otherwise were common carriers with respect to non ISP services. As the FCC recently explained in that case, the panel decision erred by overlooking the textual relationship between the statutes governing the FTC's and FCC's jurisdiction. The FCC's letter called on the Ninth Circuit to grant rehearing, which it recently did, and in doing so it set aside the earlier and erroneous panel opinion. The recent en banc order by the Ninth Circuit means that the *Title II Order*'s reclassification of broadband Internet access service serves as the only limit on the authority of the FTC to oversee the conduct of Internet service providers). To address the gap created by the Commission's reclassification of broadband Internet access service as a common carriage service, the *Title II Order* called for a new rulemaking to apply section 222's customer proprietary network information provisions to Internet service providers. In October 2016, the Commission

adopted rules governing Internet service providers' privacy practices and applied the rules it adopted to other providers of telecommunications services. In March 2017, Congress voted under the Congressional Review Act (CRA) to disapprove the Commission's *2016 Privacy Order,* which prevents us from adopting rules in substantially the same form.

50. We propose to respect the jurisdictional lines drawn by Congress whereby the FTC oversees Internet service providers' privacy practices, given its decades of experience and expertise in this area. We seek comment on this proposal.

51. *Lifeline.* We propose to maintain support for broadband in the Lifeline program after reclassification. In the *Universal Service Transformation Order,* the Commission recognized that ''[s]ection 254 grants the Commission the authority to support not only voice telephony service but also the facilities over which it is offered'' and ''allows us to . . . require carriers receiving federal universal service support to invest in modern broadband-capable networks.'' Accordingly, as the Commission did in the *Universal Service Transformation Order,* we propose requiring Lifeline carriers to use Lifeline support ''for the provision, maintenance, and upgrading'' of broadband services and facilities capable of providing supported services. We seek comment on this proposal. We also seek comment on any rule changes necessary to effectuate this change in our underlying authority to support broadband for low-income individuals and families.

52. *Other.* Beyond the issues raised above, we seek comment on the impact of reclassification on other Commission proceedings and proposals. For instance, how should we take into account our proposed reclassification in our proposals with respect to pole attachments and our inquiries with respect to preemption under section 253 of the Act? How should the Broadband Deployment Advisory Committee factor in the reduced regulatory burdens and increased investment that we anticipate will flow from reclassification? More generally, if broadband Internet access service is classified as an interstate information service, how would that impact jurisdiction? We encourage commenters to offer specific recommendations as to how we can leverage our proposed reclassification in other proceedings to further encourage broadband deployment to all Americans.

III. A Light-Touch Regulatory Framework

53. Proposing to restore broadband Internet access service to its long-established classification as an information service reflects our commitment to a free and open Internet. Indeed, our lead proposal reaffirms the long-standing, bipartisan consensus begun in the Clinton Administration by restoring the Internet to the dynamic state that allowed it to flourish prior to the *Title II Order.* To determine how to best honor our commitment to restoring the free and open Internet, we propose re-evaluating the Commission's existing rules and enforcement regime to analyze whether *ex ante* regulatory intervention in the market is necessary. To the extent we decide to retain any of the Commission's *ex ante* regulations, we seek comment on whether, and how, we should modify them, specifically considering different approaches such as self-governance or *ex post* enforcement that may effectuate our goals better than across-the-board rules. Finally, we discuss the Commission's legal authority to adopt rules governing Internet service provider practices.

A. Re-Evaluating the Existing Rules and Enforcement Regime

54. Below, we explore the best method to restore the long-standing consensus under both Democratic and Republican-led Commissions, represented by the four Internet Freedoms, that consumers should have access to the content, applications, and devices of their choosing as well as meaningful information about their service, all without deterring the investment and innovation that has allowed the Internet to flourish. We examine these freedoms and the Commission's current rules related to them, and for each, ask whether we should keep, modify, or eliminate them.

1. Eliminating the Internet Conduct Standard

55. In the *Title II Order,* the Commission created a catch-all standard intended to prohibit ''current or future practices that cause the type of harms [the Commission's] rules are intended to address.'' This standard allows the Commission to prohibit practices that it determines unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach the Internet content, services, and applications of their choosing or of online content, applications, and service providers to access consumers. This standard also gives the Commission discretion to prohibit any Internet service provider practice that it believes violates any one of the non-exhaustive list of factors adopted in the *Title II Order.*

56. We propose eliminating this Internet conduct standard and the non-exhaustive list of factors intended to guide application of the rule, and we seek comment on this proposal. What are the costs of the present Internet conduct standard and implementing factors? Do the standard and its implementing factors provide carriers with adequate notice of what they are and are not allowed to do? Does the standard benefit consumers in any way and, if so, how? We believe that eliminating the Internet conduct standard will promote network investment and service-related innovation by eliminating the uncertainty caused by vague and undefined regulation. Do commenters agree?

57. Because the Internet conduct standard is premised on theoretical problems that will be adjudicated on an individual, case-by-case basis, Internet service providers must guess at what they are permitted and not permitted to do. The now-retracted so-called Zero Rating Report issued by the Wireless Telecommunications Bureau illustrates the dilemma providers experience under a Title II regulatory regime. After a thirteen-month investigation, the Report did not specifically call for an end to any provider's practices or identify any particular harm from offering consumers free data. Instead, it stated that the free-data plans ''may raise'' economic and public policy issues that ''may harm consumers and competition.'' It then reiterated that any determination about the harm from free data offerings would be made by the Commission on a ''case-by-case'' basis, using a ''non-exhaustive list of factors.'' Instead of giving providers clear rules of the road to govern future conduct, this report put a provider on notice that an enforcement action could be just around the corner. The Report, and the investigation that preceded it, left Internet service providers with two options: Either wait for a regulatory enforcement action that could arrive at some unspecified future point or stop providing consumers with innovative offerings. We seek comment on whether this roving mandate has impacted innovation, and what impact that has had on consumers. We seek comment on whether eliminating this vague standard will spur innovation and benefit consumers.

58. We propose not to adopt any alternatives to the Internet conduct rule, and we seek comment on this proposal. Is there a need for any general non-

discrimination standard in today's Internet marketplace? If so, what would that general non-discrimination standard be? The *2014 Notice* proposed prohibiting ''commercially unreasonable practices.'' Should we consider that alternative? Or should we consider another general rule and framework (such as Commission adjudication of non-discrimination complaints)? If we adopt our proposals to eliminate the Internet conduct standard and not to adopt any alternative general requirement, we seek comment on how we can encourage innovative business models that give consumers more choices and lower prices while also promoting consumer freedom on the Internet.

2. Determining the Need for the Bright Line Rules and the Transparency Rule

59. In the *Title II Order,* despite virtually no quantifiable evidence of consumer harm, the Commission nevertheless determined that it needed bright line rules banning three specific practices by providers of both fixed and mobile broadband Internet access service: Blocking, throttling, and paid prioritization. The Commission also ''enhanced'' the transparency rule by adopting additional disclosure requirements. Today, we revisit these determinations and seek comment on whether we should keep, modify, or eliminate the bright line and transparency rules.

60. At the outset of our review of the Commission's existing rules, we seek comment on whether *ex ante* regulatory intervention in the market is necessary in the broadband context. Beyond the few, scattered anecdotes cited by the *Title II Order,* have there been additional, concrete incidents that threaten the four Internet Freedoms sufficient to warrant adopting across-the-board rules? Is there any evidence of market failure, or is there likely to be, sufficient to warrant pre-emptive, comprehensive regulation? How have marketplace developments impacted the incentive and ability, if any, of broadband Internet access service providers to engage in conduct that is contrary to the four Internet Freedoms? Must we find that market power exists to retain rules in this space, and if so must the rules only apply to providers that have market power? Further, should any approach we adopt—whether *ex ante* rules, expectations regarding industry self-governance, or *ex post* enforcement practices—vary based on the size, financial resources, customer base of the broadband Internet access service provider, and/or other factors? Specifically, we seek comment on whether rules are necessary for or burdensome on smaller providers.

61. The Commission partially justified the 2015 rules on the theory that the rules would prevent anti-competitive behavior by ISPs seeking to advantage affiliated content. With the existence of antitrust regulations aimed at curbing various forms of anticompetitive conduct, such as collusion and vertical restraints under certain circumstances, we seek comment on whether these rules are necessary in light of these other regulatory regimes. Could the continued existence of these rules negatively impact future innovative, pro-competitive business deals that would not by themselves run afoul of merger conditions or established antitrust law?

62. In addition, the D.C. Circuit majority that reviewed the *Title II Order* stated that ''[i]f a broadband provider . . . were to choose to exercise editorial discretion—for instance, by picking a limited set of Web sites to carry and offering that service as a curated internet experience,'' then the *Title II Order* ''excludes such [a] provider[ ] from the rules.'' Given that an ISP can avoid Title II classification simply by blocking enough content, are the purported benefits of the existing rules more illusory than they initially appear? By disclosing to consumers that it is offering a ''curated internet experience,'' can an ISP escape from the ambit of the rules entirely? We seek comment on the implications of the D.C. Circuit's observation.

63. *Need for the No-Blocking Rule.* We emphasize that we oppose blocking lawful material. The Commission has repeatedly found the need for a no-blocking rule on principle, asserting that ''the freedom to send and receive lawful content and to use and provide applications and services without fear of blocking is essential to the Internet's openness.'' We merely seek comment on the appropriate means to achieve this outcome consistent with the goals of maintaining Internet freedom, maximizing investment, and respecting the rule of law. We seek comment on whether a codified no-blocking rule is needed to protect such freedoms. For example, prior to 2015, many large Internet service providers voluntarily abided by the 2010 no-blocking rule in the absence of a regulatory obligation to do so. Do we have reason to think providers would behave differently today if the Commission were to eliminate the no-blocking rule? Is the no-blocking rule necessary for or burdensome on smaller providers?

64. We seek comment on the continuing need for a no-blocking rule. The no-blocking rule, originally adopted in 2010, invalidated by the *Verizon* court, and re-adopted in the *Title II Order,* prohibits Internet service providers from blocking competitors' content by mandating that a customer has a right to access lawful content, applications, services, and to use non-harmful devices, subject to reasonable network management.

65. If we determine that a no-blocking rule is indeed necessary to ensure a free, open, and dynamic Internet, what are the best means to achieve this outcome consistent with the goals of maintaining Internet freedom and maximizing investment? Should we consider modifying the existing no-blocking rule to better align with our proposed legal classification of broadband Internet access service as an information service? The *Verizon* court made clear that the Commission's 2010 no-blocking rule impermissibly subjected Internet service providers to common-carriage regulation. We seek comment on whether there are other formulations of a no-blocking rule that are consistent with our proposed legal classification of broadband Internet access service as an information service and for which we would have legal authority.

66. *Need for the No-Throttling Rule.* In the *Title II Order,* the Commission concluded that throttling was a sufficiently severe and distinct threat that it required its own, separate, codified rule. The no-throttling rule mirrors the no-blocking rule and bans the impairment or degradation of lawful Internet traffic or use of a non-harmful device, subject to reasonable network management practices. We seek comment on whether this rule is still necessary, particularly for smaller providers. How does the rule benefit consumers, and what are its costs? When is ''throttling'' harmful to consumers? Does the no-throttling rule prevent providers from offering broadband Internet access service with differentiated prioritization that benefits consumers? Does the no-throttling rule harm latency-sensitive applications and content? Does it prevent product differentiation among ISPs? If we eliminate the no-blocking rule, should we also eliminate the no-throttling rule? If we determine that a no-throttling rule is indeed necessary to ensure a free, open, and dynamic Internet, are there ways in which we could modify the no-throttling rule so it aligns with our proposed legal classification of broadband Internet access service as an information service and for which we would have legal authority?

67. The Commission justified the separate, codified no-throttling rule on

the theory of preventing anti-competitive behavior for broadband Internet access providers' affiliated content. With the existence of antitrust and other regulations aimed at curbing collusion, we seek comment on whether a no-throttling rule is duplicative of these other regulatory regimes. Could the continued existence of this rule negatively impact future innovative, pro-competitive business deals that would not by themselves run afoul of merger conditions or established antitrust law?

68. *Need for the No Paid Prioritization Rule.* The Commission concluded in the *Title II Order* that ''fast lanes'' or ''paid prioritization'' practices ''harm consumers, competition, and innovation, as well as create disincentives to promote broadband deployment.'' The Commission adopted this *ex ante* flat ban on individual negotiations to address an apparently nonexistent problem. The ban on paid prioritization did not exist prior to the *Title II Order* and even then the record evidence confirmed that no such rule was needed since several large Internet service providers made it clear that that they did not engage in paid prioritization and had no plans to do so. We seek comment on the continued need for such a rule and our authority to retain it.

69. What are the trade-offs in banning business models dependent on paid prioritization versus allowing them to occur when overseen by a regulator or industry actors? Is there a risk that banning paid prioritization suppresses pro-competitive activity? For example, could allowing paid prioritization give Internet service providers a supplemental revenue stream that would enable them to offer lower-priced broadband Internet access service to end-users? What would be the impacts on new startups and innovation? Does a no-paid-prioritization rule harm the development of real-time or interactive services? Could allowing paid prioritization enable certain critical information, such as consumers' health care vital signs that are being monitored remotely, to be transmitted more efficiently or reliably? What other considerations mitigate any potential negative impacts from business models like paid prioritization? Should the Commission impose restrictions on these business models at all?

70. We seek comment on current traffic delivery arrangements online. How do content, application, and service providers host their data online? Do they rely on installing their own servers in data centers, content delivery networks, or cloud-based hosting? What are the varying service characteristics of these options and their varying costs? It appears that some larger online content providers like Netflix host their own data centers and interconnect directly with Internet service providers. Is that still true? What are the service characteristics and costs of this option? How should the existence of these arrangement impact our evaluation of whether Internet service providers should be able to offer an alternative delivery option such paid prioritization?

71. For those parties that believe an *ex ante* flat ban on paid prioritization is necessary, are there other formulations of a no-paid-prioritization rule that are consistent with our proposed legal classification of broadband Internet access service as an information service and for which we would have legal authority? Are there any other formulations that are consistent with allowing pro-competitive or pro-consumer paid prioritization arrangements? Would we need to modify the rule and, if so, how?

72. *Need for the Transparency Rule.* We seek comment on whether to keep, modify, or eliminate the transparency rule. When the Commission adopted the transparency rule in 2010 and enhanced it in 2015, it found that ''effective disclosure of Internet service providers' network management practices, performance, and commercial terms of service promotes competition, innovation, investment, end-user choice, and broadband adoption.'' We continue to support these objectives and seek comment on whether the existing transparency rule is the best way to accomplish them, or if there are other methods we can employ to achieve the goals of competition, innovation, investment, end-user choice, and broadband adoption.

73. Although we agree that the disclosure requirements were among some of the least intrusive regulatory measures imposed by the *Title II Order,* we seek comment on whether the additional reporting obligations from that rule remains necessary in today's competitive broadband marketplace. What are the benefits and drawbacks of those additional reporting obligations? Is the length of time necessary to obtain approval of these rules, first adopted in February 2015 and yet not going into effect until nearly two years later, illustrative of just how burdensome the new enhancements are in comparison to the 2010 rule? Would the original transparency rule, which has been continuously operational since it came into effect following adoption of the *Open Internet Order,* be sufficient to protect consumers? Although the *Verizon* court upheld the 2010 transparency rule, we seek comment on our authority to retain the 2015 ''enhancements'' or to modify the transparency rule in a manner distinct from the *Open Internet Order* or *Title II Order.* For example, does the full and accurate disclosure of service plan information to consumers carry with it most of the benefits of the rule? How often do non-consumers rely on the additional disclosures required by the transparency rule? Are those additional benefits worth the additional cost of compliance, especially for small businesses?

74. Assuming we find a transparency rule necessary, how should we treat the additional guidance related to the transparency rule? For example, should we continue to enforce guidance from the Commission's Chief Technology Officer regarding acceptable methodologies for disclosure of network performance to satisfy the enhanced transparency rule? Is there merit in continuing to promote the broadband consumer labels that provided ISPs with a safe harbor—or do those standardized notices harm consumers by preventing them from obtaining additional information? Does the repeated need for advisory guidance following the original 2010 transparency rule indicate that the rule itself is too open-ended?

3. Additional Considerations Applicable to Existing Rules

75. Should we decide to keep or modify any of our existing open Internet rules, we propose and seek comment on several issues related to their continued operation.

76. *Scope.* Should we keep any of the existing bright-line rules or the transparency rule, we propose maintaining the definitions of the services applicable to the rules, the scope of the term ''lawful content,'' the exception for reasonable network management, and other provisions adopted in the *Title II Order* so as not to impact ISPs rights or obligations with respect to other laws or safety and security considerations. Reasonable network management ''allow[s] service providers the freedom to address legitimate needs such as avoiding network congestion and combating harmful or illegal content'' without running afoul of the rules. With respect to the definition of ''reasonable network management,'' we seek comment on whether we should eliminate the restriction imposed by the *Title II Order* that the exception will only be considered if used for a ''technical management justification rather than other business justifications,'' or if we

should return to the 2010 definition of ''reasonable network management'' that did not contain that qualifier.

77. For the reasonable network management exception and definition of non-broadband Internet access service data services that fall outside the scope of the rules, we seek comment on how we should view any additional guidance explaining those terms as set forth in the *Title II Order,* but not codified as part of the rules. Should we follow the case-by-case approach taken for evaluating reasonable network management? For non-broadband Internet access service data services, should we adhere to the characteristics of non-broadband Internet access service data services described in the *Title II Order*? Or, should we revert to the general concept of non-broadband Internet access service data services discussed in the *Open Internet Order* (and then known as ''specialized services'')? Further, for non-broadband Internet access service data services, should we eliminate the guidance that if non-broadband Internet access service data services ''are undermining investment, innovation, competition, and end-user benefits,'' then the Commission will take enforcement action—including the particularized focus on ensuring that ''over-the-top services offered over the Internet are not impeded in their ability to compete with other data services?''

78. *Application to Mobile.* To the extent we keep or modify any of the existing rules, we seek comment on whether mobile broadband should be treated differently from fixed broadband. The *Title II Order* applied the Internet openness rules equally to both fixed and mobile broadband Internet access services. This approach departed from the *Open Internet Order*'s framework, which adopted a different no-blocking standard for mobile broadband Internet access service and excluded mobile from the no unreasonable discrimination rule. Are there legal, technical, economic, and/or policy reasons to distinguish mobile and fixed broadband with respect to rules in this context, and if so how should we differentiate the two in any rules that we keep or modify? For instance, several mobile providers who opposed application of the broader rules in 2015 argued that additional rules were unnecessary because competition for mobile broadband service adequately restrained the behavior of mobile Internet service providers. We seek comment on whether this contention is correct in today's marketplace.

4. Enforcement Regime

79. Should we keep or modify any of the Commission's existing rules discussed above, we seek comment on how we should enforce them. In the *Open Internet Order* the Commission set forth procedures for filing both informal and formal complaints. Commission rules currently provide for filing fees in the case of complaints to enforce Part 8 rules governing broadband Internet access service and in the case of data roaming complaints. Would those rules need to be modified in the event that we reclassify broadband Internet access service? Could some rules subject to those complaint procedures remain? Are there other similar issues the Commission would need to address? The *Title II Order* also allowed the Enforcement Bureau to issue advisory opinions and enforcement advisories, and it created an ombudsperson position to provide effective access to dispute resolution. We seek comment on whether advisory opinions or enforcement advisories have benefitted consumers or broadband Internet access service providers. If we restore the broadband Internet access service classification to an information service, should that alter our complaint and enforcement process in this context?

80. Additionally, we seek comment on streamlining future enforcement processes. For instance, we propose eliminating the ombudsperson role. Is the role of an ombudsperson necessary to protect consumer, business, and other organizations' interests when the Commission has a Bureau—the Consumer and Governmental Affairs Bureau (CGB)—dedicated to protecting consumer interests? Our experience suggests that consumers are comfortable working with CGB, and typically did not call on the ombudsperson specifically. Has the ombudsperson been called to action to assist in circumstances that otherwise could not have been handled by CGB?

81. What have been the benefits and drawbacks of the complaint procedures instituted in 2010 and 2015? Since these rules were formally codified in 2010, only one formal complaint has been filed under them to date. Can we infer that parties heeded the Commission's encouragement to ''resolve disputes through informal discussions and private negotiations'' without Commission involvement, except through the informal complaint process? Does the lack of formal complaints indicate that dedicated, formal enforcement procedures are unwarranted? If we restore broadband Internet access service's classification as an information service, should that alter our complaint and enforcement process in this context? If so, in what way should the processes be altered? Are there methods other than formal complaints we can employ to ensure a free and open Internet?

82. In addition to the enforcement regime, the *Title II Order* delegated authority to several Bureaus and Offices to make further decisions involving the rules following their adoption. For example, the *Title II Order* delegated authority to the Chief Technologist to provide guidance under the transparency rule and further delegated authority to several Bureaus to determine whether the safe harbor disclosures under the transparency rule aligned with the Commission's expectations. If we determine there is no need for the existing transparency rule or enforcement regime, then we believe that the technological and safe harbor guidance would become irrelevant. We also believe that the safe harbor disclosure guidance would be rendered moot. We seek comment on this analysis and on whether there nonetheless are any affirmative steps the Commission should take with respect either to those delegations of authority or to actions already taken in reliance on that delegated authority.

B. Legal Authority To Adopt Rules

83. We seek comment on the legal authority that the Commission would have in this area if we adopted our lead proposal to classify broadband Internet access service as an information service.

84. *Section 706.* We seek comment on whether section 706(a) and (b) of the 1996 Act are best interpreted as hortatory rather than as delegations of regulatory authority. Such an interpretation generally is reflected in the Commission's approach to section 706 prior to 2010. The text of these provisions also appears more naturally read as hortatory, particularly given the lack of any express grant of rulemaking authority, authority to prescribe or proscribe the conduct of any party, or to enforce compliance. Although some courts have held that the Commission's post-2010 interpretation of section 706(a) and/or (b) as a grant of regulatory authority was not unreasonable, we seek comment on whether interpreting those provisions as hortatory nonetheless is the better reading. Or should we maintain our post-2010 interpretation of these provisions? Alternatively, we seek comment whether section 706 reflects a ''deregulatory bent,'' and, if so, how we should interpret that with respect to obligations for regulated entities. If section 706 reflects a deregulatory

emphasis, what authority does it give the Commission, particularly in situations in which capital expenditures by Internet service providers have slowed, as they have in the past year under Title II regulation? If we interpret section 706(a) as a grant of authority, does that mean state commissions would have coequal authority? If we interpret section 706(b) as a grant of authority, what would happen to any rules adopted using that authority if the Commission later found that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion? Are there other interpretations of section 706 of the 1996 Act that we should consider?

85. *Section 230.* We also seek comment on whether section 230 gives us the authority to retain any rules that were adopted in the *Title II Order.* In *Comcast,* the D.C. Circuit observed that the Commission there ''acknowledge[d] that section 230(b)'' is a ''statement [ ] of policy that [itself] delegate[s] no regulatory authority.'' Are there grounds for the Commission to revisit that interpretation or otherwise invoke section 230 here? For example, the D.C. Circuit in *Comcast* speculated that ''[p]erhaps the Commission could use section 230(b) . . . to demonstrate . . . a connection'' to an ''express statutory delegation of authority,'' although it had not done so there. If the Commission were to demonstrate a connection to an express statutory delegation of authority, what would such a demonstration look like? What, if any, express statutory delegations of authority over broadband Internet access service exist?

86. *Other Sources of Legal Authority.* Should we determine rules are indeed necessary in this space, we seek comment on any other sources of independent legal authority we might use to support such rules. For example, we seek comment on the Communications Act authority cited by the Commission in its *Open Internet Order.* If any other sources of legal authority exist, to what extent could they be used? And, what are the trade-offs, including the advantages and disadvantages, of using any of these other sources of legal authority in lieu of Title II provisions that depend on the classification of broadband Internet access service as a telecommunications service and/or section 706 of the 1996 Act?

87. *Constraints on our Legal Authority.* The Commission has repeatedly recognized that adopting rules like these raises constitutional concerns. For example, some petitioners in the *USTelecom* v. *FCC* case argued that compelling an Internet service provider to carry all speech violates the First Amendment. Others have argued that ''[t]here is no principled basis for distinguishing the speech of broadband providers from other speakers using older technologies.'' The D.C. Circuit Court of Appeals disagreed, finding that ''the First Amendment poses no bar to the rules.'' However, at least one judge on the D.C. Circuit believes that the Commission's current ''net neutrality rule violates the First Amendment to the U.S. Constitution . . . . [because] the First Amendment bars the Government from restricting the editorial discretion of Internet service providers, absent a showing that an Internet service provider possesses market power in a relevant geographic market.'' We seek comment on whether the First Amendment or any other constitutional provision, or any other federal law, would constrain the Commission from adopting rules here. If a rule poses serious constitutional concerns, how should we modify it? Does the continued classification of broadband Internet access service as a common-carriage service itself raise any constitutional concerns?

C. Cost-Benefit Analysis

88. We propose as part of this proceeding to conduct a cost-benefit analysis (CBA). We propose to compare the costs and the benefits of maintaining the classification of broadband Internet access service as a telecommunications service (*i.e.* Title II regulation); (Throughout this section, when discussing maintaining broadband Internet access service as a telecommunications service, we mean as actually implemented by the *Title II Order,* where the Commission forbore from applying some sections of the Act and some Commission rules) maintaining the Internet conduct rule; maintaining the no-blocking rule; maintaining the no-throttling rule; maintaining the ban on paid prioritization; maintaining the transparency rules; and acting on the other interpretive and policy changes for which we seek comment above. We seek comment on how the CBA should be conducted to appropriately separate or combine the analyses of each piece discussed above. We also seek comment generally on the importance of conducting a CBA as well as the interaction between the Commission's public interest standard and a weighing of the costs and benefits.

89. Given the size of the economic impacts due to our decisions in this proceeding, it is especially important to evaluate whether the decision will have net positive benefits. Our presumption is that the effects of the decision would have an annual effect on the economy of *at least* $100 million which is the federal government's standard threshold for requiring agencies covered by Executive Order 12866 to conduct a regulatory analysis. (A ''regulatory analysis'' has three key components: (1) A statement of the need for a proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and the costs). The other parts of this *NPRM* effectively seek comment on the first and second pieces of the regulatory analysis). Executive Order 12866 indicates regulatory actions are economically significant if they ''[h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' While the Commission is not required by law to comply with this Executive Order, we believe the $100 million threshold provides a helpful guideline for when a CBA is clearly appropriate. (While we believe it is clearly appropriate for actions in excess of $100 million, we make no suggestion here about whether the Commission should conduct CBAs below that threshold). We seek comment on our assertion that conducting a CBA is appropriate and that the decision is likely to be economically significant.

90. In conducting the CBA, we propose to follow standard practices employed by the federal government. Specifically we propose to follow the guidelines in section E (''Identifying and Measuring Benefits and Costs'') of the Office of Management and Budget's Circular A–4. This publication provides guidelines that an agency can follow for identifying and quantifying costs and benefits associated with regulatory decisions while allowing for appropriate latitude in how the analysis is conducted for a particular regulatory situation. We seek comment on following Circular A–4 generally. We also seek comment on any specific portions of Circular A–4 where the Commission should diverge from the guidance provided. Commenters should explain why particular guidance in Circular A–4 should not be followed in this circumstance and should propose alternatives.

91. Any CBA should be conducted by comparing the costs and benefits relative to the ''baseline'' scenario. As OMB Circular A–4 explains, ''[t]his baseline should be the best assessment

of the way the world would look absent the proposed action.'' Care should be taken to recognize that in certain cases repealing or eliminating a rule does not result in a total lack of regulation but instead means that other regulations continue to operate or other regulatory bodies will have authority. For example, as we evaluate the costs and benefits of maintaining the current classification of broadband Internet access service as a telecommunications service, the CBA should recognize that changing the classification of broadband Internet access service to an information service would result in the FTC having jurisdiction over certain aspects of such services. Therefore, the benefits and costs of the FCC maintaining Title II jurisdiction over broadband Internet access service should be calculated with FTC enforcement as the appropriate baseline. In this example, the benefits of maintaining the Commission's Title II classification are those benefits that exist over and above the ''baseline'' scenario of FTC jurisdiction (and, at a minimum, FCC Title I protections). Likewise, the costs of maintaining Title II should be estimated as those costs of *ex ante* FCC regulation relative to FTC *ex post* regulation. We seek comment on the appropriate baseline scenarios that should be used and on our proposed course of action above.

92. In weighing the costs and benefits of any policy, there always exists an element of uncertainty. As commenters suggest costs and benefits the Commission should consider, we ask that to the extent possible information could also be provided about the level of certainty surrounding a scenario or particular value. Also, various costs and benefits are likely to occur at different points in time. When suggesting costs and benefits, we seek comment on the timing of those costs and benefits. (As explained in OMB Circular A–4, section E, the timing of costs and benefits is important because ultimately the CBA will need to discount future costs and benefits for the purpose of calculating net present benefits.) We also seek comment on how uncertainty around and timing of costs and benefits should interact in the analysis.

93. *Costs.* There is evidence that the actions taken by the Commission in the *Title II Order* have reduced investments by ISPs. We presume that maintaining those actions would depress investment relative to the baseline. Many of the costs of lower or misallocated investment in networks and in other sectors of the digital economy will be due to consumers and businesses having less broadband Internet access service coverage and lower quality of service. Since the networks built with capital investments are only a means to an end, we believe that the private costs borne by consumers and businesses of maintaining the *status quo* result from decreased value derived from using the networks. We seek comment on this analysis. What approaches should we use to capture these costs? We seek comment on particular methods and data sources we might use to estimate the private costs of forgoing the building, maintaining, or upgrading of these networks.

94. In addition to the private costs discussed above, foregone networks may also impose additional societal costs. In particular, fewer network effects created by increased connectivity will occur. As another example, society will not realize some efficiencies and savings from governments delivering services over the networks. Additionally, there are likely long run costs due to forgoing better connectivity that would allow new products and services to be created. We seek comment on this analysis. How should our CBA incorporate these types of cost into the analysis? What other ancillary costs might exist? What data is appropriate to use?

95. It is also likely that the foregone investment *per se* results in economic costs (*e.g.,* fewer network construction jobs), and we seek comment on how the Commission should incorporate any of these costs into the analysis. For example, should the Commission use a multiplier to account for economic activity missed due to tempered investment? If so, what are the appropriate multipliers to use? Commenters should provide sources to justify recommendations for multiplier values.

96. Lastly, there may be other costs that are not directly the result of decreased investment in networks. Maintaining current policies may prevent new business models or new products and services from being viable and ultimately delivering value to society. We seek comment on such costs and how we may incorporate them into our analysis.

97. *Benefits.* There are various theoretical possibilities for economic benefits created by the current policies. We therefore seek comment on these benefits. Commenters should identify these benefits relative to an appropriate baseline, not relative to a situation where there is no regulation or statute to govern behavior. For example, if the ban on paid prioritization is maintained but broadband Internet access service is classified as an information service, then commenters should identify the benefits a blanket ban on paid prioritization carries over the FTC's authority to police anticompetitive conduct.

98. We particularly seek comments that attempt to quantify the benefits rather than merely suggest the existence of benefits without any indication of their magnitude. We also ask commenters to particularly highlight benefits where *actual* misconduct has been observed. To the extent the baseline scenario allows any market failures to go unregulated, commenters should clearly identify the market failure and the estimated economic benefit associated with addressing it through the maintenance of current policies.

IV. Initial Regulatory Flexibility Analysis

99. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

100. With this NPRM, the Commission initiates a new rulemaking that proposes to restore the market-based policies necessary to preserve the future of Internet Freedom, and to reverse the decline in infrastructure investment, innovation, and options for American consumers put into motion by the Commission in 2015. The Commission's *Title II Order* has put at risk online investment and innovation, threatening the very open Internet it purported to preserve. Investment in broadband networks declined. Internet service providers (ISPs) have pulled back on plans to deploy new and upgraded infrastructure and services to consumers. This is particularly true of the smallest Internet service providers that serve consumers in rural, low-income, and other underserved communities. This rulemaking continues the critical work to promote

broadband deployment to rural consumers and infrastructure investment throughout our nation, to brighten the future of innovation both within networks and at their edge, and to close the digital divide.

101. The NPRM sets forth the following three main proposals: Returning broadband Internet access service to its previously-settled classification as an information service, restoring the definition of ''public switched telephone network'' to its original meaning, and eliminating the Internet conduct standard. The NPRM also seeks comment on a variety of issues relating to the effects of the Commission's *Title II Order,* including the burdens imposed by the *Title II Order* that have led to decreased investment and reduced innovation and have been felt by Internet service providers (ISPs) and consumers. Additionally, the NPRM seeks comment on the effects of reclassifying broadband Internet access service as an information service on the existing enforcement regime and the necessity of the other rules adopted in the *Title II Order.* Specifically, the NPRM seeks comment on the usefulness and necessity of the no-blocking rule, the no-throttling rule, the no paid prioritization rule, and the transparency rule.

B. Legal Basis

102. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 3, 10, 201(b), 230, 254(e), 303(r), 332, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 153, 160, 201(b), 254(e), 303(r), 332, 1302.

C. Description and Estimate of the Number of Small Entities To Which the Rules Would Apply

103. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

1. Total Small Entities

104. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

2. Broadband Internet Access Service Providers

105. The proposed rules would apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled ''broadband.'' The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $32.5 million or less. These are labeled non-broadband. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. For the second category, census data for 2012 show that there were 1,442 firms that operated for the entire year Of those firms, a total of 1,400 had annual receipts less than $25 million. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

106. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Initial Regulatory Flexibility Analysis.

3. Wireline Providers

107. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

108. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

109. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

110. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

111. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

112. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

113. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

114. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the NPRM.

4. Wireless Providers—Fixed and Mobile

115. The broadband Internet access service provider category covered by these proposed rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or

reportable eligibility events, unjust enrichment issues are implicated.

116. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

117. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

118. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

119. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

120. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

121. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

122. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

123. *Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

124. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80

channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

125. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

126. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

127. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

128. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

129. *700 MHz Guard Band Licenses.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

130. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

131. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for

these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

132. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

133. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

134. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

135. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

136. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

5. Satellite Service Providers

137. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. Both categories have a small business size standard of $32.5 million or less in average annual receipts, under SBA rules.

138. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

139. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

6. Cable Service Providers

140. Because section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

141. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*.e.g.* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

142. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

143. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

7. All Other Telecommunications

144. *Electric Power Generators, Transmitters,* and *Distributors.* This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

145. As indicated above, the NPRM seeks comment on modifications to the Commission's existing no-blocking rule, no-throttling rule, no paid prioritization rule, and transparency rule, and it proposes eliminating the Internet conduct standard. While we anticipate that the removal or modification of burdensome regulations will lead to a

long-term reduction in reporting, recordkeeping, or other compliance requirements on some small entities, the potential modifications, if adopted, could initially impose additional reporting, recordkeeping, or other compliance requirements on some small entities. We seek comment on any other potential effects that could result from the changes proposed in the *NPRM,* particularly as they relate to small businesses.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

146. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

147. The *NPRM* specifically seeks comment on the reporting requirements imposed by the enhanced transparency rule, and whether modifying that rule would alleviate any regulatory burdens. Additionally, we believe that the proposals contained within this *NPRM* represent a significant consolidation and simplification for small entities from the rules imposed by the *Title II Order.* The rules imposed by the *Title II Order* created heavy compliance burdens, and those burdens were particularly onerous for smaller providers without dedicated compliance staffs. By proposing the elimination of the general conduct standard, and seeking comment on the other rules imposed by the *Title II Order,* the *NPRM* attempts to understand and mitigate the negative effects the *Title II Order* had on small businesses. More generally, by proposing to return to an information service classification for broadband Internet access services, the *NPRM* seeks to reduce the burdens that Title II classification imposed.

148. The Commission also expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding. We note that numerous small providers have already filed comments with the Commission expressing their support for the Commission's proposed changes.

149. We seek comment here on the effect the various proposals described in the NPRM, and summarized above, will have on small entities, and on what effect alternative rules would have on those entities. How can the Commission achieve its goal of protecting and promoting an open Internet while also imposing minimal burdens on small entities? We specifically note that within this *NPRM,* we have sought comment on the effects on small business of the disclosures required by the transparency rule, and we have emphasized the outsize regulatory burdens that Title II reclassification has placed on small internet providers. What other specific steps could the Commission take in this regard?

150. Since this *NPRM* seeks to reduce the compliance burdens of ISPs through the removal of unnecessary regulation, it does not propose any alternative methods of reducing those burdens. However, we seek comment from interested parties or any potential method of reducing compliance burdens and restoring Internet freedom that has not been proposed in this *NPRM.*

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

151. None.

V. Procedural Matters

A. Initial Regulatory Flexibility Analysis

152. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this *NPRM of Proposed Rulemaking,* of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates on the first page of this *NPRM of Proposed Rulemaking.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Initial Paperwork Reduction Act Analysis

153. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Other Procedural Matters

1. Ex Parte Rules—Permit-But-Disclose

154. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize

themselves with the Commission's *ex parte* rules.

VI. Ordering Clauses

155. Accordingly, *it is ordered* that, pursuant to sections 3, 10, 201(b), 230, 254(e), 303(r), and 332 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 153, 160, 201(b), 254(e), 303(r), 332, 1302, this Notice of Proposed Rulemaking *is adopted.*

156. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before July 17, 2017 and reply comments on or before August 16, 2017.

157. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 8

Protecting and promoting the open internet.

47 CFR Part 20

Commercial mobile services.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer. Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 8 and 20 as follows:

PART 8—PROTECTING AND PROMOTING THE OPEN INTERNET

§ 8.11 [Remove and Reserve].

■ 1. Remove and reserve § 8.11.

PART 20—COMMERCIAL MOBILE SERVICES

■ 2. Amend § 20.3 by revising paragraph (b) under the definition of ''Commercial mobile radio service;'' paragraph (a) under the definition of ''Interconnected Service;'' and the definition of ''Public Switched Network'' to read as follows:

§ 20.3 Definitions.

* * * * *

(b) The functional equivalent of such a mobile service described in paragraph (a) of this section.

* * * * *

(a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or

* * * * *

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services.

* * * * *

[FR Doc. 2017–11455 Filed 6–1–17; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17–106; FCC 17–59]

Elimination of Main Studio Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to eliminate its rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license. The Commission tentatively finds that the main studio rule is now outdated and unnecessarily burdensome for broadcast stations. The Commission also proposes to eliminate existing requirements associated with the main studio rule, including the requirement that the main studio must have full-time management and staff present during normal business hours, and that it must have program origination capability.

DATES: Comments are due on or before July 3, 2017; reply comments are due on or before July 17, 2017.

ADDRESSES: You may submit comments, identified by MB Docket No. 17–106, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17–59, adopted and released on May 18, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Notice of Proposed Rulemaking (NPRM), we propose to eliminate the Federal Communications Commission (Commission) rule that requires each AM, FM, and television broadcast station to maintain a main studio located in or near its community of license.[1] When the rule was conceived almost eighty years ago, local access to the main studio was designed to facilitate input from community members as well as the station's participation in community activities. Today, however, widespread availability of electronic communication enables stations to participate in their

[1] 47 CFR 73.1125(a) through (d).