

Part 8: Preserving an Open Internet

The FCC added Part 8 to Title 47 of the Code of Federal Regulations in December 2010 when it adopted the First Open Internet Order, December 21, 2010. The Order contained three basic rules:

1. The **transparency rule** applied to both fixed and mobile broadband providers, who must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.
2. The "**no blocking**" rule required fixed broadband providers not to block lawful content, applications, services, or non-harmful devices subject to reasonable network management, and mobile broadband providers not to block lawful websites or block applications that compete with their voice or video telephony services.
3. The "**no unreasonable discrimination**" rule applied only to fixed broadband providers and forbade discrimination in transmitting lawful network traffic over a consumer's broadband Internet access service.

On January 14, 2014, the D.C. Circuit vacated the anti-discrimination and anti-blocking portions of the 2010 Order because it appeared the FCC was trying to impose Title II, common carrier-style regulation while retaining the prior classification of BIAS as an information service subject to Title I. In response, the FCC adopted an Order on February 26, 2015, that reclassified BIAS as a telecommunications service under Title II, but forbore from enforcing 27 provisions of Title II and over 700 associated regulations, including rate regulation and last-mile unbundling. It adopted three "bright-line" rules - no blocking (§ 8.5), no throttling (§ 8.7), and no paid prioritization (§ 8.9) - and applied the rules to fixed and mobile broadband alike. It also adopted a rule prohibiting any unreasonable interference or unreasonable disadvantage with end users' ability to select, access, and use BIAS or the lawful Internet content, applications, services, or devices of their choice, or edge providers' ability to make lawful content, applications, services, or devices available to end users (§ 8.11). The Order contains exceptions for reasonable network management and for specialized services. The 2015 Open Internet Order was upheld by the D.C. Circuit.

In December 2017, the Commission adopted the Restoring Internet Freedom [Declaratory Ruling, Report and Order, and Order](#) (released Jan. 4, 2018), which:

- Restored the classification of broadband internet access service as an "information service;"
- Reinstated the private mobile service classification of mobile BIAS

- Returned to the transparency rule adopted in the First Open Internet Order, with certain modifications;
- Eliminated certain reporting requirements adopted in the 2015 Title II Order;
- Eliminated the Commission’s conduct rules; and
- Clarified the effects of the return to an information service classification on other regulatory frameworks, including the need for a uniform federal regulatory approach to apply to interstate information services like broadband Internet access service.

The Order retains the transparency rule adopted in the Open Internet Order (§ 8.1), but eliminates many of the additional reporting obligations adopted by the Commission in the Title II Order. The new rules:

- Require ISPs to disclose information about their network management practices, performance, and commercial terms to consumers, entrepreneurs, and the Commission. This includes their practices relating to blocking, throttling, affiliated prioritization, paid prioritization, congestion management, application-specific behavior, device attachment rules, and security;
- Restore the Federal Trade Commission’s ability to protect consumers online from any unfair, deceptive, and anticompetitive practices without burdensome regulations, achieving comparable benefits at lower cost; and
- Eliminate the internet conduct rules, including the general conduct rule and the prohibitions on paid prioritization, blocking, and throttling.

The 2017 Order removed and deleted in their entirety sections 8.2, 8.3, 8.5, 8.7, 8.9, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.17, 8.18, and 8.19.

Finally, the 2017 Order continues to allow carriers to elect to offer broadband transmission services on a common carrier basis, either pursuant to tariff or on a non-tariffed basis. (¶ 178)