

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Consumer and Governmental Affairs Bureau)	GN Docket No. 14-28
Seeks Comment on Small Business Exemption)	
from Open Internet Enhanced Transparency)	
Requirements)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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CTIA – The Wireless Association[®] (“CTIA”)^{1/} submits the following comments in response to the *Public Notice* released by the FCC’s Consumer and Governmental Affairs Bureau (“Bureau”) in the above-referenced proceeding.^{2/} The *Public Notice* seeks comment on whether to retain an exemption to the enhanced transparency requirements the FCC adopted in its *2015 Open Internet Order* for smaller broadband providers as well as the threshold that should be used to determine whether an entity qualifies for the exemption.^{3/} While CTIA appreciates the FCC’s efforts to relieve some providers from unnecessary regulatory burdens, it continues to believe that the enhanced transparency requirements are unnecessary and unduly burdensome for all broadband providers, and especially for smaller providers.^{4/} Marketplace

^{1/} CTIA is an international nonprofit membership organization that has represented the wireless communications industry since 1984. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. More information about CTIA is available on the Association’s website at <http://www.ctia.org/about-us>.

^{2/} See *Consumer and Governmental Affairs Bureau Seeks Comment on Small Business Exemption from Open Internet Enhanced Transparency Requirements*, Public Notice, 30 FCC Rcd. 6409 (2015) (“*Public Notice*”); *Consumer and Governmental Affairs Bureau Announces Comment Dates for Small Business Exemption from Open Internet Enhanced Transparency Requirements*, Public Notice, 30 FCC Rcd. 7157 (2015) (establishing comment and reply comment deadlines).

^{3/} See *Public Notice* at 2-3; *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601, ¶¶ 154-181 (2015) (“*2015 Open Internet Order*”).

^{4/} See generally Comments of CTIA – The Wireless Association[®] on Proposed Information Collection Requirements, GN Docket No. 14-28 and OMB Control No. 3060-1158 (filed July 20, 2015) (“CTIA PRA Comments”).

forces and the FCC's existing transparency rules already ensure that mobile broadband providers disclose the type of information about their services and networks that consumers demand. The enhanced transparency requirements, on the other hand, provide consumers with no additional benefit while imposing substantial burdens on providers. The Commission should therefore have refrained from imposing the enhanced disclosure requirements on *any* mobile broadband provider. Nevertheless, to ensure that its rules do not impose overly burdensome obligations on smaller providers specifically, the Commission should:

- Permanently exempt smaller providers from any enhanced disclosure requirements that the Commission retains; and
- Reject the current definition of smaller providers used by the Commission in favor of a well-established “small telecommunications carrier” definition – non-dominant providers with fewer than 1,500 employees or providers with 500,000 or fewer subscribers – that has been developed and approved by the expert agency on small businesses, the Small Business Administration (“SBA”), and that better accounts for entities that would be disproportionately burdened by the enhanced disclosure requirements. Thus, the FCC should consider a small business in the context of the enhanced transparency requirements as an entity that meets either of the SBA-approved tests.

Permanently exempting smaller providers and revising the definition of small provider as proposed herein will more appropriately reduce the regulatory burdens on those entities that will be most significantly affected by the enhanced transparency rules.

I. INTRODUCTION AND SUMMARY.

As CTIA has previously explained to the Commission, its members are strongly committed to an open Internet and to keeping customers, edge providers, and others informed about service terms and conditions as well as network management practices and performance.^{5/}

^{5/} See Letter from Scott K. Bergmann, Vice President, Regulatory Affairs, CTIA – The Wireless Association®, to Tom Wheeler, Chairman, FCC, *et al.*, GN Docket Nos. 14-28 and 10-127, at 1 (filed Jan. 15, 2015) (“CTIA Transparency Letter”).

Wireless providers vigorously compete on terms of service and have a robust track record of voluntarily adopting transparent, pro-consumer policies and disclosures. For instance, all major U.S. wireless providers have voluntarily adopted CTIA’s Consumer Code for Wireless Service, which ensures that wireless service providers adhere to disclosure principles and practices that keep customers informed about their wireless usage.^{6/}

The successful implementation of these pro-consumer policies is backstopped by the transparency requirements the Commission adopted in 2010. Those rules provide that broadband service providers must “publicly disclose accurate information regarding the network management practices, performance, and commercial terms” of their service in a manner sufficient for consumers to make informed choices regarding the use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.^{7/}

The FCC’s *2015 Open Internet Order* significantly added to those obligations by requiring broadband providers to, among other things:

- Disclose commercial terms for prices, other fees, and data cap allowances;^{8/}
- Disclose network performance characteristics including packet loss (in addition to network speed and latency), performance by geographic area, and average performance over a reasonable time and during peak usage;^{9/}

^{6/} See CTIA PRA Comments at 21; CTIA Transparency Letter at 1; CTIA, *Consumer Code for Wireless Service* (2014), <http://www.ctia.org/policy-initiatives/voluntaryguidelines/consumer-code-for-wireless-service> (last visited July 27, 2015) (“Consumer Code for Wireless Service”). The signatories to the Consumer Code for Wireless Service cover almost 97 percent of U.S. wireless subscribers. They include: AT&T, Bluegrass Cellular, Cellcom, Sprint Corporation, T-Mobile USA, U.S. Cellular, and Verizon Wireless.

^{7/} See *2015 Open Internet Order* ¶ 157 (citing *Preserving the Open Internet*, Report and Order, 25 FCC Rcd. 17905, ¶ 54 (2010) (“*2010 Open Internet Order*”), *aff’d in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014)).

^{8/} See *2015 Open Internet Order* ¶ 164.

^{9/} See *id.* ¶¶ 165-168.

- Disclose network practices concerning traffic associated with a particular user or group of users, including any application-agnostic degradation of service, as well as user-based or application-based practices, including the purpose of the practice, which users or data plans may be affected, the triggers that activate the practice, the types of traffic that are subject to the practice, and the practice’s likely effects on end users’ experiences;^{10/} and
- Develop mechanisms to notify end users directly if – based on demand prior to a period of congestion – their use of the network will trigger a network practice that will have a “substantial impact” on the end user’s service.^{11/}

Even while imposing these unnecessarily burdensome requirements, the Commission recognized their impact on smaller providers and granted a temporary exemption for broadband providers that have 100,000 or fewer subscribers.^{12/} It also directed the Bureau to determine by December 15, 2015 whether to maintain the exemption and, if so, at what level.^{13/}

Because the marketplace has and will continue to ensure that carriers provide an appropriate level of disclosures regarding network management practices, the expanded transparency requirements are inappropriate for *all* mobile broadband providers. The transparency requirements adopted in 2010 already serve as a regulatory backstop, and the enhanced transparency requirements provide consumers with no additional benefit and impose substantial burdens on providers, particularly smaller providers. If the FCC nevertheless retains these requirements, it should permanently exempt smaller broadband providers. In so doing, the Commission should use SBA-approved definitions of a smaller telecommunications carrier that more appropriately consider those entities that will be significantly burdened by the rules – *i.e.*, providers with 500,000 or fewer subscribers or non-dominant providers with fewer than 1,500

^{10/} See *id.* ¶¶ 169-170. The *2015 Open Internet Order* also directed the Bureau to establish a voluntary safe harbor for the format and nature of the required disclosures to consumers. See *id.* ¶¶ 176-181.

^{11/} See *id.* ¶ 171.

^{12/} See *id.* ¶¶ 174-175. The *Public Notice* notes that while the FCC described the threshold using the term “subscribers,” that metric is based on broadband “connections.” See *Public Notice* at 2.

^{13/} See *2015 Open Internet Order* ¶¶ 174-175.

employees. The FCC should consider a small provider in the context of the enhanced transparency requirements as an entity that meets either of the SBA-approved tests.

II. DESPITE THE RULE'S ADOPTION, THE ENHANCED TRANSPARENCY REQUIREMENTS ARE UNNECESSARY FOR ALL MOBILE BROADBAND PROVIDERS.

The additional transparency requirements adopted in the *2015 Open Internet Order* will not enhance consumer welfare or aid edge providers, as shown below, and the Commission should use this proceeding to limit the new rule's applicability to the extent available pursuant to the *Public Notice*.

A. Marketplace Forces and the 2010 Rules Already Ensure that the Information Consumers Demand is Disclosed.

The enhanced transparency requirements are unnecessary. Competition is flourishing in the mobile broadband market. As the FCC recently reported, more than 93 percent of Americans as of January 2014 have the ability to choose from among three or more mobile broadband providers, while more than 82 percent can choose from among four or more mobile broadband providers.^{14/} Even in rural areas, which are often served by smaller carriers, nearly three quarters of U.S. POPs have access to three or more mobile broadband providers.^{15/} In this competitive marketplace, customers can freely switch among the various carriers in search of plans that best suit their individual wireless needs. Indeed, many carriers are now offering to pay any applicable early termination fees in order to provide consumers with a further incentive to switch

^{14/} See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd. 15311, ¶¶ 50-51 (2014) (“*17th Wireless Competition Report*”); see also Comments of CTIA – The Wireless Association®, WT Docket No. 15-125 (filed June 29, 2015) (“*CTIA 18th Wireless Competition Report Comments*”).

^{15/} *17th Wireless Competition Report* ¶ 55.

carriers.^{16/} It is this competition, not regulation, that will ensure providers disclose to customers the type of network management information they need to make informed choices. As Chairman Wheeler has stated, “[c]ompetition is a power unto itself that must be encouraged,” and “[c]ompetitive markets produce better outcomes than regulated or uncompetitive markets.”^{17/}

Competition has already ensured that providers disclose information that consumers demand regarding their offerings, including information on prices, data caps (where applicable), network management practices, and – to the best of their ability – network speeds.^{18/} Mobile broadband providers that fail to disclose meaningful information about their services risk alienating their consumers and losing their business altogether.^{19/} Thus, in today’s competitive wireless ecosystem, mobile broadband providers have every incentive to provide to consumers the most meaningful quality of service information available. Consumer demand has also led to the adoption of CTIA’s Consumer Code for Wireless Service, which ensures that consumers are aware of the tools or services offered by wireless providers that enable consumers to track, monitor, and set limits on data usage and make informed choices about their wireless usage.^{20/} For instance, the Consumer Code for Wireless Service requires signatory wireless carriers to

^{16/} See, e.g., Cellcom, Special Offers, <https://www.cellcom.com/special-offers.html> (last visited Aug. 3, 2015); T-Mobile, 100 Million People Are Stuck. Don’t Be., <http://www.t-mobile.com/offer/switch-carriers-no-early-termination-fee.html> (last visited Aug. 3, 2015); Sprint Newsroom, Sprint Will Reimburse All Your Costs to Switch (Mar. 13, 2015), <http://newsroom.sprint.com/news-releases/sprint-will-reimburse-all-your-costs-to-switch-join-sprints-56-million-customers-today.htm>; see also 17th *Wireless Competition Report* ¶ 145.

^{17/} See Prepared Remarks of FCC Chairman Tom Wheeler, The Ohio State University, Columbus, OH (Dec. 2, 2013), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-324476A1.pdf.

^{18/} See CTIA PRA Comments at 21-22; CTIA Transparency Letter at 1; Comments of T-Mobile USA, Inc., GN Docket Nos. 14-28 and 10-127, at 7-9 (filed July 18, 2014) (“T-Mobile Comments”) (“Competition in the mobile broadband marketplace ensures that all users receive the information they need to make informed decisions.”); see also Reply Comments of AT&T Services, Inc., GN Docket Nos. 14-28 and 10-127, at 106 (filed Sep. 15, 2014) (“AT&T Reply Comments”); Comments of Verizon and Verizon Wireless, GN Docket Nos. 14-28 and 10-127, at 21 (filed July 15, 2014) (“Verizon Comments”).

^{19/} See T-Mobile Comments at 7-9; Verizon Comments at 21.

^{20/} See CTIA PRA Comments at 21-22.

disclose to consumers at least 13 different pieces of information, including “whether there are prohibitions on data service usage and whether there are network management practices that will have a material impact on the customer’s wireless data experience.”^{21/}

Moreover, a variety of third parties compete to provide data that is meaningful for consumers. These sources help consumers find information regarding, among other things, coverage areas, service plans, mobile devices, network speeds, and customer services in order to help consumers understand their wireless options and determine which carriers, devices, and plans will meet their needs.^{22/} This data is not static: as networks and applications evolve, consumers may find different information relevant when comparing wireless services. In short, competition among wireless carriers and third-party websites and applications already serves to ensure that consumers have the information they need to help them make informed decisions about their wireless products and services. As Verizon has stated, “[w]hen consumers have useful information regarding the services available to them and can make choices based on that information, additional prescriptive rules are unnecessary.”^{23/}

B. The Enhanced Transparency Requirements Will Not Serve the Public Interest.

The enhanced disclosures are harmful, not beneficial. *First*, the enhanced disclosures will reduce regulatory certainty and stifle innovation. Carriers have been operating under the 2010 rules for nearly five years, and their businesses are built around a stable body of regulations.^{24/} Additional, detailed requirements obligating carriers to disclose commercially sensitive information create an inherent tension between compliance with the disclosure

^{21/} See Consumer Code for Wireless Service at 1-2.

^{22/} See CTIA 18th Wireless Competition Report Comments at 48-55.

^{23/} Verizon Comments at 21.

^{24/} See CTIA Transparency Letter at 1.

requirements and innovation with respect to network management, which could in turn deter carriers from deploying new tools designed to help consumers.^{25/}

Second, requiring disclosure of additional information about network and related management practices could create security risks by providing hackers with a blueprint of providers' system architecture. As AT&T has explained, "mandating detailed disclosures about network management practices could enable hackers to exploit ISP networks and empower unscrupulous edge providers to evade reasonable congestion-management practices that are necessary to ensure high-quality service for all customers."^{26/} T-Mobile has similarly noted that "mandatory disclosure of detailed operational information about the network and related management techniques would raise significant concerns regarding the release of proprietary and confidential information . . . [that] would potentially benefit not only a provider's competitors, but also criminals, hackers, and others seeking to disrupt a provider's network security and integrity."^{27/} And Verizon has pointed out that "a rule mandating disclosure of even more information . . . could limit broadband providers' ability to implement innovative new network-management tools and security protocols, because it would require them first to describe any new practices to consumers and edge providers – and, by extension, to competitors, hackers, spammers, and others wishing to exploit the network's weaknesses."^{28/}

Third, the enhanced transparency requirements will not result in any benefit to consumers and, to the contrary, could undermine the very purpose behind the rules. The FCC explained in the *2015 Open Internet Order* that the purpose of both the 2010 requirements and the enhanced

^{25/} See *id.* at Attachment at 2; see also Verizon Comments at 24.

^{26/} AT&T Reply Comments at 109.

^{27/} T-Mobile Comments at 10.

^{28/} Verizon Comments at 24.

disclosures is to provide critical information to serve end-user customers, edge providers, and the Internet community.^{29/} It added that enhancing the existing rules will, among other things, “better enable end-user customers to make informed choices about broadband services by providing them with timely information tailored more specifically to their needs.”^{30/} There is no evidence, however, that the information required under the enhanced disclosures, such as packet loss, performance by geographic area and during peak usage, or other tailored information, would be meaningful to consumers.^{31/} To the contrary, disclosures containing additional complicated technical information could obscure other more competitively useful information for consumers.^{32/} For instance, because low packet loss does not necessarily correlate to better network performance for delay intolerant applications, disclosures about packet loss information will not provide a reliable measure for consumers to evaluate or compare the performance of different networks.^{33/}

Instead, wireless consumers are best positioned to evaluate their quality of service based on their experience and individual needs. Rather than mandating the disclosure of technical parameters that will have little value to consumers, there are ample sources of more meaningful information about the quality of mobile broadband services available to consumers today. As detailed above, a variety of third-party resources already exist to provide consumers with the information they desire about the quality of their user experience on various wireless

^{29/} See *2015 Open Internet Order* ¶ 154.

^{30/} *Id.* ¶ 162.

^{31/} See CTIA Transparency Letter at 2; see also Paperwork Reduction Act Comments of AT&T, GN Docket No. 14-28, OMB Control No. 3060-1158, at 5, 23-24 (filed July 20, 2015) (“AT&T PRA Comments”); Comments of the United States Telecom Association, GN Docket No. 14-28, OMB 3060-1158, at 14-15 (filed July 20, 2015) (“USTA PRA Comments”).

^{32/} See CTIA PRA Comments at 22-23; AT&T Reply Comments at 106-108; T-Mobile Comments at 10; Verizon Comments at 23.

^{33/} See CTIA PRA Comments at 22; USTA PRA Comments at 14.

networks. These resources, coupled with the information wireless providers already disclose under the 2010 transparency requirements and the Consumer Code for Wireless Service, allow consumers to make informed choices about their selection of broadband services. There is thus no need for the Commission to prescribe the metrics it believes are most relevant to consumers.

Finally, requiring enhanced disclosures about particular parameters arguably relevant today could lock in requirements that may no longer be important for consumer evaluation of future networks. Wireless networks are technically complex, diverse, and rapidly evolving, and in many cases uniform measurement requirements do not exist.^{34/} Consumers may be hard-pressed to use the information disclosed under the enhanced requirements to compare carrier networks as they continue to progress and change: the data and metrics that consumers desire today may not be the most relevant indicators of the user's wireless experience as networks and applications continue to evolve. Instead, the marketplace is best equipped to determine the type of information that consumers may need to choose between carriers.

III. THE ENHANCED TRANSPARENCY REQUIREMENTS ARE PARTICULARLY BURDENSOME FOR SMALLER PROVIDERS.

The *Public Notice* asks about the burden of the enhanced disclosures on smaller providers, as measured in financial and other resources, and how the burden is disproportionately experienced by smaller providers.^{35/} To the extent that burdens related to the enhanced disclosure requirements continue to exist, the *Public Notice* asks whether there are corresponding benefits to the customers of smaller providers.^{36/} Similarly, the *Public Notice* seeks comment on

^{34/} See CTIA PRA Comments at 13; CTIA Transparency Letter at 2; AT&T Reply Comments at 109-110.

^{35/} See *Public Notice* at 3.

^{36/} See *id.*

the impact of the enhanced disclosure requirements on rural customers.^{37/} The enhanced transparency requirements are burdensome on *all* broadband providers, but are particularly so for smaller providers,^{38/} many of which lack the monetary and/or staff resources to comply with complex disclosure requirements.

A. Compliance With the Enhanced Transparency Requirements Will be Time-Consuming and Costly.

Collecting additional data is a technically difficult and time-consuming process, requiring significant resources that smaller providers simply do not have. Many smaller carriers have only a handful of employees, and these few employees are responsible for all aspects of the carriers' operations, such as sales, marketing, tower-climbing, installation, billing, customer service, etc.^{39/} Adding to their already heavy and diverse workload could divert important resources that would otherwise be used to ensure the optimum performance of providers' networks.

Collecting additional data to comply with the new requirements would also be costly.^{40/}

As CTIA recently pointed out, not only would smaller providers need to hire additional staff,

^{37/} *See id.*

^{38/} *See* AT&T Reply Comments at 108-109; Comments of the American Cable Association, GN Docket Nos. 14-28 and 10-127, at 31 (filed July 17, 2014) ("ACA Comments"); Statement of Commissioner Pai on New Evidence that President Obama's Plan to Regulate the Internet Harms Small Businesses and Rural Broadband Deployment, at 1-2 (May 7, 2015) ("Pai Statement on Internet Regulations"), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-333383A1.pdf.

^{39/} *See* Comments of the Wireless Internet Service Providers Association, GN Docket No. 14-28, at 17 (filed July 16, 2014) ("WISPA Comments") ("WISPs are typically small, locally owned businesses with limited financial resources and small staff. Some are one person shops[.] . . . Many others have staff of less than ten in which these responsibilities are shared, or perhaps certain tasks such as tower-climbing or installation are contracted to third parties."); Comments of the Wireless Internet Service Providers Association Regarding the Paperwork Reduction Act, GN Docket No. 14-28, at 2 (filed July 20, 2015) ("WISPA PRA Comments") (quoting WISPA Comments); Comments of the Competitive Carriers Association, GN Docket No. 14-28, at 8-9 (filed July 16, 2014) ("CCA Comments"); AT&T Reply Comments at 108-109; Comments of WTA – Advocates for Rural Broadband, GN Docket No. 14-28, at 8 (filed July 17, 2014) ("WTA Comments").

^{40/} *See Wrecking the Internet to Save It? The FCC's Net Neutrality Rule: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 15 (2015) (Prepared Statement of Commissioner Pai, Federal Communications Commission) ("Pai House Remarks"), *available at* http://judiciary.house.gov/_cache/files/6624ec59-db2b-45b3-9615-0e689f4cbf37/114-18-93897.pdf ("Today there are thousands of smaller Internet service providers . . . that don't have the means or the margins to withstand a regulatory onslaught. Imposing on competitive broadband companies

they would also be compelled to hire lawyers to draft disclosure statements as well as consultants to adopt and implement disclosure procedures.^{41/} Further, they would incur substantial expenses related to the recurring costs of inspecting, maintaining, and recalibrating the monitoring and test equipment necessary to measure and report data.^{42/} The new requirement that broadband providers establish a mechanism for directly notifying customers if their individual use of a network will trigger a network practice could also compel mobile broadband providers to develop new computer systems.^{43/}

Each of these burdens is exacerbated by the fact that smaller carriers typically operate with less spectrum.^{44/} Smaller providers must constantly adjust and fine-tune their networks to ensure that they meet consumer demands while they efficiently operate with limited bandwidth. Each new change will require review and input from management-level decision-makers, consultants, and others to determine whether it may trigger revised disclosures.^{45/} Determining how complex disclosure requirements are affected by this continuously changing environment will endlessly tax smaller providers' staff and financial resources.^{46/}

the rules designed to constrain the continent-spanning Bell telephone monopoly will do nothing but raise the costs of doing business.”); Letter from the Small Business Association to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, at 2 (filed Sep. 25, 2014); *see also* AT&T PRA Comments at 4 (“[T]he true cost to implement all of the 2015 *Open Internet Order*’s new transparency rule collections will likely be millions, if not tens of millions, of dollars for AT&T alone, depending on how the new requirements are ultimately interpreted.”).

^{41/} *See* CTIA PRA Comments at 6; *see also* WISPA PRA Comments at 4 (“[M]ost, if not all, small broadband providers have no in-house legal counsel, engineers, technical writers, staff administrators or web administrators, and will need to hire outside legal counsel, engineers and consultants to comply, at substantially higher cost than the Commission estimates.”); USTA PRA Comments at 5; WISPA Comments at 17-18; WTA Comments at 8.

^{42/} *See* CTIA PRA Comments at 14; USTA PRA Comments at 9; WTA Comments at 8; *see also* AT&T PRA Comments at 15-28 (detailing the numerous estimated compliance costs associated with the enhanced disclosure requirements).

^{43/} *See* CTIA PRA Comments at 16.

^{44/} *See* CCA Comments at 8-9.

^{45/} *See* CTIA PRA Comments at 11.

^{46/} *See id.*; CCA Comments at 8-9.

The *Public Notice* points out that when the Commission adopted the enhanced transparency requirements, it found that they were “modest in nature.”^{47/} As demonstrated above, this finding is inaccurate with respect to all mobile broadband providers generally, but especially with respect to smaller providers. Smaller providers have less experience complying with reporting requirements and simply do not have the means to comply with burdensome regulations.^{48/} The Commission should not now double down on that burden and saddle them with new regulatory obligations here.

The Commission recently reiterated that it is committed to ensuring that there are multiple providers in the marketplace, but the additional burdens on smaller carriers associated with the enhanced transparency requirements will have the precise opposite effect that the Commission intends.^{49/} Small wireless providers face significant competitive pressure which drives them to provide meaningful and accurate information to their consumers. As of January 2014, nearly three quarters of consumers in rural areas are able to choose from three or more mobile broadband providers. Instead of increasing competition, which ultimately benefits

^{47/} *Public Notice* at 2; see also *2015 Open Internet Order* ¶ 172.

^{48/} See Commissioner Michael O’Rielly, FCC, Remarks Before WISPAmerica 2015, at 1-3 (Feb. 24, 2015) (“Commissioner O’Rielly WISPAmerica Remarks”), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-332230A1.pdf.

^{49/} See *17th Wireless Competition Report* ¶¶ 1, 9 (stating that “[c]ompetition in mobile wireless services is a cornerstone of the Commission’s mission and essential for driving innovation, investment, and consumer benefits” and that “[t]he Commission’s policies have been guided by the goal of promoting and preserving competition, which in turn has facilitated the ability of consumers to make choices among numerous service providers and leads to lower prices, improved quality, and increased innovation”); see also *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, Public Notice, 30 FCC Rcd. 5062, 5066 (2015) (seeking comment on whether there is sufficient access to spectrum “for multiple service providers to be able to provide robust competition”).

consumers, the additional costs of the enhanced disclosures will dissuade potential providers from entering the market or drive out once viable competitors.^{50/}

B. The Enhanced Transparency Requirements Will Provide No Benefit to Customers of Smaller Providers.

Burdening smaller providers with enhanced transparency requirements will not result in any corresponding benefit to smaller providers' customers. As noted above, the enhanced transparency requirements are not likely to aid consumers any more than do the 2010 disclosure requirements and competitive pressures. Moreover, if the enhanced requirements are applied to larger carriers, consumers that find the enhanced disclosures meaningful could switch to those carriers – a further marketplace check on the value of the disclosure requirements.

Indeed, customers of smaller providers could actually be harmed by application of the enhanced transparency rules. The increased costs associated with compliance will prevent smaller providers from allocating resources toward developing new products and services that help them meet the needs of consumers and stay competitive in today's wireless ecosystem. As Bluegrass Cellular, Inc. has stated, the costs of complying with the new rules adopted in the *2015 Open Internet Order* hinder "spending money on other priorities, including expanding and improving service."^{51/} While this is true for all mobile broadband providers, the negative impact of the enhanced transparency requirements will especially be heightened for smaller providers since their costs are spread across a smaller customer base, as compared to nationwide carriers.^{52/}

^{50/} See WISPA Comments at 16-20; Commissioner O'Rielly WISPAmerica Remarks at 1-3; Pai Statement on Internet Regulations at 1-2.

^{51/} See Declaration of Ron Smith in Support of Stay ("Smith Declaration"), *attached to* Joint Petition for Stay of United States Telecom Association, CTIA – The Wireless Association®, AT&T Inc., Wireless Internet Service Providers Association, and CenturyLink, GN Docket No. 14-28 (filed May 1, 2015).

^{52/} See, e.g., Smith Declaration at 1 (stating that Bluegrass Cellular, Inc., which offers wireless broadband service across the state of Kentucky, serves more than 137,000 retail customers); nTelos Wireless, nTelos Holdings Corp. Reports Second Quarter 2015 Results, at 3 (July 28, 2015), <http://content.stockpr.com/ntelos/news/2015-07->

Customers in rural areas could also be harmed by the potential reduction of broadband services and competition in underserved and rural markets.^{53/} CTIA notes that the Broadband Opportunity Council recently solicited input on ways to promote broadband, including in rural and underserved areas.^{54/} While the Commission is not the subject of that Notice and Request for Comment, it too should take measures to reduce impediments to broadband deployment. One of those impediments is burdensome and unwarranted transparency requirements on deployment in areas where economics already make it challenging to provide a competitive service.

The Commission’s rationale for adopting the enhanced disclosure requirements with respect to edge providers – protecting them against carriers that might withhold certain “critical” information – does not apply to smaller providers.^{55/} It is illusory to believe that left unchecked, these providers will withhold important information or engage in behavior that could adversely impact any edge provider, particularly large ones, or that cannot otherwise be addressed by the current rules.^{56/} Neither Google nor Facebook, with thousands of employees,^{57/} needs protection

28_NTELOS_Holdings_Corp_Reports_Second_Quarter_2015_1330.pdf (stating that nTelos Wireless provides voice and data coverage for approximately 297,500 retail subscribers across western Virginia, West Virginia, and portions of Maryland, North Carolina, Pennsylvania, Ohio and Kentucky); GCI, GCI Reports Second Quarter 2015 Financial Results (Aug. 4, 2015), <http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle&ID=2075723> (stating that GCI, which operates in the state of Alaska, has 236,100 wireless lines in service as of June 30, 2015).

^{53/} See WISPA Comments at 16-20; Commissioner O’Rielly WISPAmerica Remarks at 1-3; Pai Statement on Internet Regulations at 1-2.

^{54/} See Broadband Opportunity Council Notice and Request for Comment, 80 Fed. Reg. 23785 (Apr. 29, 2015) (“BOC Notice”); Comments of CTIA – The Wireless Association®, Docket No. 150414365-5365-01 (filed June 10, 2015) (“CTIA BOC Comments”), available at <http://www.ctia.org/docs/default-source/Legislative-Activity/150610-ctia-comments-in-response-to-boc-notice.pdf?sfvrsn=0>.

^{55/} See 2015 Open Internet Order ¶ 154.

^{56/} See ACA Comments at 32, 38-39 (stating, for instance, that “[t]here is no compelling evidence that smaller and medium-sized providers can harm large or impede edge providers or [Content Delivery Networks] in a way that can be remedied by increased transparency requirements”).

^{57/} See Google Inc., Securities and Exchange Commission Form 10-Q For the Quarterly Period Ended June 30, 2015, at 31 (filed July 23, 2015), available at http://investor.google.com/pdf/20150630_google_10Q.pdf; Facebook Inc., Securities and Exchange Commission Form 10-Q For the Quarterly Period Ended March 31, 2015, at 48 (filed Apr. 23, 2015), available at <http://files.shareholder.com/downloads/AMDA-NJ5DZ/496519865x0xS1326801-15-15/1326801/filing.pdf>.

from firms with few employees or little market power, especially given consumers' ability to easily and seamlessly switch providers. Conversely, requiring smaller providers to disclose detailed network information could influence edge providers' decisions whether to slow or stop the flow of content to providers or to otherwise engage in anticompetitive conduct.^{58/} For instance, depending on how a smaller provider manages its network and whether it pays an edge provider for content, an edge provider could seek to charge smaller broadband providers more or withhold content if they are receiving greater benefits from a competitor.^{59/} This could not only limit consumer choice in terms of content, but could also raise consumer prices.^{60/}

IV. THE SMALL BUSINESS EXEMPTION SHOULD BE MADE PERMANENT.

The *Public Notice* seeks comment on whether the enhancements to the transparency rule impose compliance burdens for smaller providers that warrant making the exemption permanent.^{61/} Alternatively, it asks whether a one-time temporary extension is warranted and, if so, the period of time that would be appropriate.^{62/}

The Commission should make permanent the exemption from the enhanced transparency requirements for smaller providers rather than adopt a one-time temporary extension of the exemption. As noted above, the enhanced disclosures place significant burdens on smaller providers, which will not be eased over time. For example, the need for additional staff and associated expenses will not be eliminated or reduced because the enhanced transparency requirements include ongoing obligations; compliance cannot be completed at a specific point in

^{58/} See WISPA Comments at 16.

^{59/} See *id.* at 16, 23-24.

^{60/} See *id.* at 23-24.

^{61/} See *Public Notice* at 2.

^{62/} See *id.*

time. Similarly, there will be continuing costs for inspecting, maintaining, and recalibrating test equipment. Moreover, wireless companies are continuously upgrading their networks to the benefit of consumers. As Drs' Reed and Tripathi have explained, "only change is constant in wireless standards and networks. As a result, network management practices must constantly evolve to address new architectures, new technologies, new standards, and new wireless applications with new performance needs."^{63/} Accordingly, no amount of time or transition period will allow smaller providers, as the Bureau suggests, to efficiently absorb the burdens of the enhanced disclosures.

V. THE SMALL PROVIDER THRESHOLD SHOULD BE REDEFINED.

The *2015 Open Internet Order* set the interim small provider threshold for purposes of the enhanced disclosures exemption at 100,000 or fewer broadband connections as measured by the provider's most recent Form 477, aggregated over all affiliates.^{64/} The *Public Notice* asks whether this is the right threshold for any extension of the exemption and, if not, whether there is a more appropriate level to identify those providers "likely to be most disproportionately affected by the new disclosure requirements."^{65/}

The current standard for the exemption is not appropriate and should be refined. As suggested above, the Commission should remove impediments to, and instead encourage, broadband deployment, including by eliminating unnecessary burdens on providers serving underserved and rural areas. Indeed, the Administration and Congress have both recognized the importance of wireless broadband deployment and have taken numerous steps to make such

^{63/} See Dr. Jeffrey H. Reed and Dr. Nishith D. Tripathi, *Net Neutrality and Technical Challenges of Mobile Broadband Networks*, at 18 (Sept. 4, 2014), *appended to* Letter from Scott Bergmann, Vice President – Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28 and 10-127 (dated Sept. 4, 2014).

^{64/} See *id.* at 3; *2015 Open Internet Order* ¶¶ 173-174.

^{65/} See *Public Notice* at 3 (citing *2015 Open Internet Order* ¶ 173).

deployment a clear priority.^{66/} The 100,000 or fewer broadband connections standard is too small to achieve this goal. Many broadband providers may have greater than 100,000 connections, but may not have the resources necessary to comply with the enhanced disclosures. As stated above, smaller carriers operate with fewer employees who are already responsible for diverse workloads. Requiring such providers to comply with the burdensome enhanced transparency requirements would force them to further strain already overburdened staff or hire additional employees and consultants to ensure compliance, either option of which would have the effect of diverting financial resources away from the core goal of improving the wireless products and services offered to consumers. For these companies with small resources and substantial competitive pressures, adding additional burdensome regulations with no meaningful benefit will ultimately harm wireless consumers.

In addition, the current standard has not been subject to approval by the SBA. The SBA was established “to aid, counsel, assist and protect the interests of small business concerns.”^{67/} In addition to certain statutory criteria established for small businesses, the SBA can “specify detailed definitions or standards by which a business concern may be determined to be a small business.”^{68/} In contrast, no federal department or agency may prescribe a small business size standard unless it is authorized by statute or it is, among other things, put out for public comment

^{66/} See, e.g., BOC Notice (directing executive agencies to “identify and address regulatory barriers that may unduly impede either wires broadband deployment or the infrastructure to augment wireless broadband deployment”); Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409, 126 Stat. 156, 232-34 (2012) (eliminating unnecessary delays in local and state siting approvals); Exec. Order 13616, Accelerating Infrastructure Deployment, § 1, 77 Fed. Reg. 36903 (June 20, 2012) (facilitating wired and wireless broadband infrastructure deployment on Federal lands, buildings, and rights of way, federally assisted highways, and Tribal and individual Indian trust lands, particularly in underserved communities).

^{67/} See Small Business Administration, What We Do: Mission, <https://www.sba.gov/about-sba/what-we-do/mission> (last visited July 21, 2015).

^{68/} See 15 U.S.C. § 632 (a)(2)(A).

and receives approval from the SBA Administrator.^{69/} Therefore, rather than create an arbitrary threshold, the better approach is for the FCC to base its determination of a small business on metrics previously established by the expert agency that can (and is indeed required to) appropriately assess whether an entity has the capacity to deal with additional obligations – *i.e.*, the SBA.^{70/}

The SBA has approved two metrics that are suitable for the FCC’s enhanced disclosure exemption, one of which has been used by the Commission several times before. *First*, pursuant to the Small Business Act, the SBA has defined small telecommunications carriers as those non-dominant providers with fewer than 1,500 employees.^{71/} The Commission already relied on this and similar definitions when it conducted its Final Regulatory Flexibility Analysis accompanying the *2015 Open Internet Order* and should do so again here.^{72/} *Second*, the SBA has approved the definition of a small telecommunications carrier as one with 500,000 or fewer subscribers, referred to as a “Tier III” carrier by the FCC.^{73/} The Commission has relied on this

^{69/} See 15 U.S.C. § 632 (a)(2)(C).

^{70/} See 15 U.S.C. § 634b (3), (9) (stating that the SBA’s Office of Advocacy is charged not only with “measur[ing] the direct costs and other effects of government regulation on small businesses,” but also with “recommending specific measures for creating an environment in which all businesses will have the opportunity to compete effectively and expand to their full potential”); Small Business Administration, *What We Do*, <https://www.sba.gov/about-sba/what-we-do> (last visited July 21, 2015) (stating that the SBA routinely assesses the impact of regulatory burdens on small businesses); see also CTIA BOC Comments at 23-24 (urging Broadband Opportunity Council member agencies to defer to expert agency determinations on matters that fall within their expertise – *e.g.*, rely on the SBA to define a “small business” – in order to minimize regulatory costs and provide incentives to providers to maximize broadband deployment).

^{71/} See 15 U.S.C. § 632; 13 C.F.R. § 121.201.

^{72/} The FCC conducted its Final Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, which relies on the Small Business Act as well as criteria established by the SBA to determine the definition of “small entity.” See *2015 Open Internet Order* at Appendix B ¶ 17.

^{73/} See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd. 14841, ¶¶ 22-24 (2002) (“*E911 Stay Order*”) (classifying commercial mobile radio service (“CMRS”) carriers with 500,000 subscribers or fewer as of the end of 2001 as “Tier III” wireless carriers approval from the SBA); Letter from Hector V. Barreto, Administrator, SBA, to Blaise Scinto, Acting Chief, Policy Division, Wireless Telecommunications

definition in the past, including when it found that “Tier III” carriers merited relief from certain new E911 requirements,^{74/} and when it exempted such carriers from certain number portability and back-up power requirements.^{75/} Using this definition, the largest wireless provider that could be exempt would serve less than one seventh of one percent of U.S. wireless subscribers.^{76/} This SBA-approved definition would thus likewise be appropriate.

CTIA recognizes that the Small Business Act, as noted above, permits agencies to adopt a different standard for small entities, provided that the alternate standard is put out for public comment and receives approval from the SBA Administrator.^{77/} The Commission has routinely followed this practice in other contexts,^{78/} unless it is otherwise exempt.^{79/} The Commission,

Bureau, FCC (dated Jan. 21, 2003) (approving the “Tier III” wireless classification as a small business size standard).

^{74/} See *E911 Stay Order* ¶ 1 (extending its E911 Phase II interim handset and network upgrade compliance deadlines by thirteen months for “Tier III” carriers).

^{75/} See *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 18 FCC Rcd. 12472, ¶¶ 1, 18 (2003) (exempting “Tier III” CMRS providers that have not received a request to provide local number portability from the pooling requirement); *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd. 10541, ¶ 79 (2007) (declining to impose certain emergency back-up power requirements on “Tier III” carriers).

^{76/} According to the CTIA Wireless Industry Survey, there are 355.4 million wireless subscribers in the U.S. as of January 2015. A carrier with 500,000 subscribers would account for .14 percent of that total, or one seventh of one percent. See CTIA Wireless Industry Survey, available at http://www.ctia.org/docs/default-source/Facts-Stats/ctia_survey_ye_2014_graphics.pdf?sfvrsn=2.

^{77/} See 15 U.S.C. § 632(a)(2)(c).

^{78/} See, e.g., *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Applications for License and Authority to Operate in the 2155-2175 MHz Band; Petitions for Forbearance Under 47 U.S.C. § 160*, Notice of Proposed Rulemaking and Order on Reconsideration, 28 FCC Rcd. 11479, ¶ 152 (2013) (“AWS-3 NPRM”) (soliciting input on its proposal to define a small business, as it has for other spectrum auctions, 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); *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, Report and Order, 29 FCC Rcd. 4610, ¶ 189, n.580 (2014) (adopting its proposed standards and noting that the FCC requested approval from the SBA for its decision); see also, e.g., *Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services; Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the*

however, did not adequately comply with its obligations under the Small Business Act when it adopted the exemption in the *2015 Open Internet Order* and should use this opportunity to address that shortcoming.^{80/}

Both of the metrics above conform to the SBA requirements and have been subject to appropriate approval processes. Accordingly, the Commission should consider a small business in the context of the enhanced transparency requirements as an entity that meets either of the SBA-approved tests. Reliance on the expertise of the SBA to define a small entity is more appropriate than the Commission’s approach and would better achieve the FCC’s goal of ensuring that the exemption includes those providers “likely to be most disproportionately affected by the new disclosure requirements.”^{81/}

Commission’s Rules; Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service; Application of Verizon Airfone Inc. for Renewal of 800 MHz Air-Ground Radiotelephone License, Call Sign KNKG804, Order on Reconsideration and Report and Order, 20 FCC Rcd. 19663, ¶ 28, n.98 (2005) (“We sought consultation regarding these proposed size standards with the U.S. Small Business Administration (SBA), as required by the Small Business Act, 15 U.S.C. § 632(a)(2)(c), and 13 C.F.R. §§ 121.901-903. On January 26, 2005, the SBA indicated that these size standards appeared reasonable and that it had no specific comments.”).

^{79/} See 15 U.S.C. § 632(a)(2)(C) (“Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern”); *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd. 5299, ¶ 108, n.246 (2000) (explaining that SBA approval of the FCC’s size standards for “small businesses” and “very small businesses” in the 746-764 MHz and 776-794 MHz bands was not required because the Commission is exempt from 15 U.S.C. § 632 for those bands).

^{80/} While the *Public Notice* now seeks comment on the Commission’s definition of small provider, the FCC did not follow those procedures prior to adopting its temporary exemption from the enhanced transparency requirements. Moreover, the *Public Notice* does not appear to meet the other requirements of the Small Business Act, such as seeking approval from the SBA Administrator, for whatever standard the Commission may decide to adopt. See 15 U.S.C. § 632 (a)(2)(C). The *Public Notice* notes that the FCC “welcome[s] comments from entities with expertise on such questions, such as the Small Business Administration.” However, that is not the same as seeking approval from the SBA for a particular standard, which it correctly did in other contexts. See, e.g., *AWS-3 NPRM* ¶ 152 (explaining that “[w]e are coordinating these proposed small business size standards with the U.S. Small Business Administration”).

^{81/} *2015 Open Internet Order* ¶ 173.

VI. CONCLUSION.

CTIA and its members are strongly committed to a vibrant, open Internet, and, as detailed above, the transparency rules adopted in 2010 and robust competition in the mobile broadband market already ensure that carriers provide an appropriate level of disclosure to consumers regarding network management practices. Since the enhanced transparency requirements provide no added public benefit and impose substantial new and continuing burdens, they are inappropriate for *all* mobile broadband providers, particularly smaller providers. To the extent the Commission retains the enhanced transparency requirements, CTIA urges the Commission to permanently exempt smaller providers from them and use a definition of smaller providers that more adequately captures the entities upon which the expanded rules will likely be a burden.

Respectfully submitted,

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