

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Empowering Broadband Consumers Through) CG Docket No. 22-2
Transparency)

To: The Commission

**JOINT REPLY COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION AND
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

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NTCA–The Rural Broadband Association (“NTCA”) and the Wireless Internet Service Providers Association (“WISPA”) (together, “Joint Commenters”) hereby respond to certain of the initial comments submitted in the above-captioned docket.¹

I. SUMMARY AND INTRODUCTION

The Commission is required by Section 60504(a) of the Infrastructure Investment and Jobs Act (“Infrastructure Act”)² to adopt a label that would disclose certain information to consumers as they consider decisions to purchase broadband service, including pricing and performance characteristics, and to allow consumers to compare those services. In our initial Joint Comments,³ NTCA and WISPA urged the Commission to adopt a simple, consumer-friendly label identifying those aspects of the broadband offering upon which consumers typically rely in making their decisions – pricing and performance – and to refrain from complicating the label with unnecessary and burdensome language that is typically not as

¹ *Empowering Broadband Consumers Through Transparency*, Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-7 (rel. Jan. 27, 2022) (“*NPRM*”).

² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (“Infrastructure Act”).

³ Joint Comments of NTCA and WISPA, CG Docket No. 22-2 (filed March 9, 2022) (“Joint Comments”).

relevant to consumer decision-making or could even engender confusion by overwhelming consumers. The Joint Commenters also asked the Commission to focus on compliance and not enforcement for the initial period following the effective date of the new rules, and to afford small providers a one-year period to comply with the new rules.

These positions enjoyed strong support in the record. As a general proposition, providers urge the Commission to adopt a simple label that will not be complicated or confusing to consumers, and which will allow them to make meaningful and straightforward comparisons among broadband services. In contrast, other commenters seeking labels as a repository for all information about a provider's broadband service overstate – and in fact would undermine – the goals established by Congress that the Commission is charged with implementing. For example, and as discussed more fully below, disclosing packages that consumers no longer can purchase does not achieve these goals. In similar vein, providers have the incentive to prominently post promotional pricing to attract customers, and lower pricing available for a temporary period should not be required to appear on the label, much less changed every time a new promotion is offered. The Commission also should require the label to be available at the point of sale, rather than at third-party locations well beyond those web or physical locations.

For small providers, the Commission should afford additional time to implement the new labeling requirements. Small providers lack the internal human resources to simply and quickly meet new regulatory obligations and must budget for external expertise to convert their existing disclosure statements into the new format. The Commission also should defer enforcement activities during a reasonable implementation period.

II. DISCUSSION

A. THE INFRASTRUCTURE ACT DOES NOT REQUIRE THE COMMISSION TO ADOPT THE ENTIRE 2016 BROADBAND LABEL

A number of commenters agreed with the Joint Commenters that the Commission is not bound by the Infrastructure Act to adopt the 2016 broadband label “safe harbor” *in toto*.⁴ For example, USTelecom explained that Congress’ direction to the Commission to establish rules for the use of the labels “as described” in the 2016 Public Notice

does not require strict adherence to every aspect of the label as defined by the 2016 Public Notice. Indeed, Congress clearly contemplated some variation between the labels described in the 2016 Public Notice and the labels adopted through this proceeding given the Congressional direction to the Commission to hold hearings to assess how consumers evaluate broadband plans.⁵

The Competitive Carriers Association (“CCA”) similarly observed that the Infrastructure Act “does not require the Commission to adopt the 2016 labels precisely in form or substance, but rather simply directs the Commission to ‘require the display of broadband consumer labels, as described in’ the 2016 Public Notice.”⁶ Connected Nation agreed, stating that the statutory language “endorses the *principle* of broadband consumer labels, which are *exemplified* by the

⁴ *See id.* at 5-6.

⁵ Comments of USTelecom – The Broadband Association, CG Docket No. 22-2 (filed March 9, 2022) (“USTelecom Comments”) at 6 (citation omitted).

⁶ Comments of Competitive Carriers Association, CG Docket No. 22-2 (filed March 9, 2022) (“CCA Comments”) at 2 (citation omitted). *See also* Comments of Lumen, CG Docket No. 22-2 (filed March 9, 2022) at 3 (Commission “is not required to adopt that template verbatim”); Comments of Fiber Broadband Association, CG Docket No. 22-2 (filed March 9, 2022) (“FBA Comments”) at 3 (“the statute’s use of the term ‘as described’ in the 2016 Public Notice gives the Commission sufficient flexibility to adjust the content of the labels so long as any change is consistent with the statutory directive to disclose information regarding broadband service plans and with the overall format and appearance of the labels.”) (citation omitted).

2016 Public Notice —*not* that the specific content of the labels as specified in the 2016 Public Notice is legally binding.”⁷

Commenters suggesting that the Commission “must retain all of the information contained in the broadband label” do not attempt to interpret the statutory “as described” language, instead simply claiming that “consumers have not experienced it on any scale” following the repeal of the “safe harbor.”⁸ This view does not justify enhancing the label’s contents and it certainly is not compelled by the Infrastructure Act. Rather, consistent with the Commission’s 2015 order directing adoption of the broadband label, the Commission should “tailor the labels ‘to meet . . . the *basic information needs* of consumers’ by requiring only information that is meaningful to consumers.”⁹ It is clearly within the Commission’s discretion to adopt a modified version of the 2016 broadband label.

As the Joint Commenters discussed in our initial comments, the Commission also must adhere to the requirements of the Regulatory Flexibility Act, as amended (“RFA”).¹⁰ ACA Connects similarly noted that the Commission cannot ignore the RFA, stating that “in adopting broadband label requirements pursuant to Section 60504 [of the Infrastructure Act], it is entirely

⁷ Comments of Connected Nation, Inc., CG Docket No. 22-2 (filed March 9, 2022) at 2 (citation omitted) (emphases in original).

⁸ Comments of Consumer Reports, et al., CG Docket No. 22-2 (filed March 9, 2022) at 7. *See also* Comments of New America’s Open Technology Institute, CG Docket No. 22-2 (filed March 9, 2022) (“OTI Comments”) at 6-7 (“we do not recommend removing any key elements of the 2016 labels.”).

⁹ USTelecom Comments at 5, quoting *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5680 (2015) (emphasis added). *See also* FBA Comments at 3 (“the statute gives the Commission leeway, which it should use, to amend or adjust the content of the label so it provides information most relevant to consumers about broadband service plans.”).

¹⁰ *See* Joint Comments at 6 (“government agencies must consider the effects of their regulatory actions on small entities and mitigate them where possible,” quoting *Report on the Regulatory Flexibility Act FY 2020*, Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272, Office of Advocacy, U.S. Small Business Administration (July 2021)).

appropriate for the Commission to consider ways of mitigating the economic impact of its requirements on small broadband providers.”¹¹ Thus, in considering the record, the Commission must account for the latitude afforded by the Infrastructure Act’s language; the factors most relevant to consumer choice; and the requirement to consider the economic impacts of its rules on small providers.

B. THE INTENT OF THE LABEL IS TO PROVIDE BASIC AND CLEAR INFORMATION TO ENABLE CONSUMER COMPARISON SHOPPING AND THE COMMISSION SHOULD REJECT EFFORTS TO EXPAND THE SCOPE OF FORMAT, PRESENTATION AND CONTENT

1. Labels Should Provide Basic Information

Commenters that provide broadband internet access services were consistent: labels should be clear, simple, and unburdened by information that strays beyond that which is useful for consumers who are “comparison shopping.” Although several commenters intimated that providers may intentionally leave critical information obscured, firms and trade associations representing broadband providers affirmed principles NTCA and WISPA noted in their initial Joint Comments, specifically, that providers in a competitive marketplace “have every incentive to ensure they are providing prospective customers with the information they want and need”¹² Firms seeking honest relationships with their consumers, and particularly small, locally-operated businesses such as those of the Joint Commenters’ members, would be ill-advised to not take the first steps in enabling clear information to their prospective customers.

¹¹ Comments of ACA Connects, CG Docket No. 22-2 (filed March 9, 2022) (“ACA Connects Comments”) at 15 (citing RFA, 5 U.S.C. § 603).

¹² Comments of CTIA, CG Docket No. 22-2 (filed March 9, 2022) (“CTIA Comments”) at 2. *See also* Comments of AT&T, CG Docket No. 22-2 (filed March 9, 2022) (“AT&T Comments”) at 1; ACA Connects Comments at 4.

Assertions that carriers obscure critical information¹³ emanate from parties that lack the day-to-day experience with customers that actual broadband providers have. That experience with customers *effectively compels* providers to present clear, unambiguous information in a manner that assists, rather than confuses, customers. Assuming *arguendo* that service providers were inclined to shroud important information, any underlying incentives toward those ends would be effectively cancelled by countervailing interests to forge transparent, successful relationships with consumers. Parties that propose expansive label requirements generally lack the perceptual experience of actual customer service and interaction. Accordingly, the positions advocated by those parties to create burdensome labels reflect a perceptual justification that while potentially seeking well-intentioned solutions would actually create a more burdensome consumer experience. In contrast, the actual experience of providers that interact with and serve customers informs and illuminates the information consumers most desire, and the presentation most useful to them. Service providers are accordingly uniquely positioned to identify the aspects of broadband internet access service that are most important to customers, and therefore most suitable for a quick-and-clear-to-read label. As the Commission is aware, there are myriad factors in the design of networks, technology, and traffic management that form the user experience. And yet those parties that work with and serve customers daily understand that the vast majority of typical consumers are primarily interested in price and performance. This includes, simply, providing “[m]eaningful insight into the broadband plans they are considering without including hypertechnical information that is meaningless to consumers . . .”¹⁴ It is

¹³ See Comments of the Institute for Local Self-Reliance, CG Docket No. 22-2 (filed March 9, 2022) (“ILSR Comments”) at 3.

¹⁴ USTelecom Comments at 2.

important that label requirements comport to the goal of helping consumers with apples-to-apples comparisons as they shop.

To be sure, there is, as ADTRAN noted, a “tension between terse and complete.”¹⁵ AT&T offers a sensible approach, advocating for labels that convey basic information and enabling the use of links to bring users to more detailed information.¹⁶ And it is important to recall that the original intent of the labels was simply to provide a safe harbor for requirements to convey appropriate information to consumers, rather than a specific mandate to publish labels in a particular form with prescribed content.¹⁷

Marketplace participants and other commenters also preach simplicity. Both CTIA and Starry cite an independent Harvard Business Review article confirming that consumers want simplicity.¹⁸ Moreover, the Consumer Advisory Committee (“CAC”) that recommended labels at the Commission’s request originally advised a clear, basic approach.¹⁹ The ultimate safe harbor approved by the Bureau represented a “golden mean” at which the right information is conveyed without overburdening or confusing the customer.²⁰ The Commission should

¹⁵ Comments of ADTRAN, Inc., CG Docket No. 22-2 (filed March 9, 2022) (“ADTRAN Comments”) at 4.

¹⁶ AT&T Comments at 10.

¹⁷ See ACA Connects Comments at 1; AT&T Comments at 7.

¹⁸ CTIA Comments at 6 (“What consumers want from marketers is, simply, simplicity.”); Starry Comments at 6 (“[t]he single biggest driver of stickiness[, the likelihood that a customer will follow through on an intended purchase, continue to purchase the product, and recommend it to others], by far, was ‘decision simplicity’—the ease with which consumers can gather trustworthy information about a product and confidently and efficiently weigh their purchase options.”).

¹⁹ See “Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels,” Public Notice, Docket No. 14-28, DA 16-357 (Apr. 4, 2016), citing FCC Consumer Advisory Committee Recommendation, Broadband Consumer Disclosures (Oct. 26, 2015) (<https://www.fcc.gov/encyclopedia/consumer-advisory-committee-recommendations-2014-thru-2016>) (visited Mar. 23, 2022).

²⁰ See CTIA Comments at 5.

accordingly hold fast to the original intent of the label design and reject recommendations that would expand the labels to include such details as those pertaining to equipment rental; Wi-Fi rates; paperless billing; bundles; and other information²¹ that is beyond the scope of a simple broadband label design. In fact, the sample label designs provided by AARP illustrate the risk of “infobesity” noted in the Joint Commenters’ initial filing: the scope of information as presented in the AARP sample templates is increased to a point at which either the label size increases dramatically or the size of the letters is decreased beyond the point of accessible readability.²² Starry perhaps sums it up best: “For consumers to fully realize the benefits of broadband labeling, the label must provide sufficient information that is relevant to consumers, without overdoing it.”²³

2. Labels Should Encompass Current Service Offerings and Their Basic Rates

These principles surrounding simplicity encompass the suite of services for which a label requirement would be mandated. Specifically, any label requirement should apply to currently offered services, only. The 2016 labels were designed for shoppers of new services.²⁴ Labels should not include so-called “grandfathered services” or those that are no longer available to consumers.²⁵ In the first instance, the goal of the label is to assist consumers shopping for services; no rational objective is achieved by requiring companies to publish labels for services

²¹ See Comments of National Digital Inclusion Alliance, CG Docket No. 22-2 (filed March 9, 2022) (“NDIA Comments”) at 2.

²² See Comments of AARP, CG Docket No. 22-2 (filed March 9, 2022) (“AARP Comments”) at 7, 13.

²³ Comments of Starry, Inc, CG Docket No. 22-2 (filed March 9, 2022) (“Starry Comments”) at 5.

²⁴ USTelecom Comments at 7.

²⁵ See ACA Connects Comments at 8; AT&T Comments at 16, 17; CCA Comments at 1; Comments of NCTA – The Internet & Television Association, CG Docket No. 22-2 (filed March 9, 2022) (“NCTA Comments”) at 4.

that are no longer offered for new subscriptions. AT&T cites the “administrative nightmare” if a provider were required to create and publish labels for grandfathered and discontinued services.²⁶ ADTRAN underscores that multiple service offerings can change, and that the fundamental value of a label is to “assist with current sales.”²⁷ In similar vein, the Commission should reject suggestions that providers offer a separate label for every plan, regardless of the number of plans or types of services that are offered in bundles.²⁸ All such entreaties to move toward a disclosure system replete with the most minute detail of every offering put the entire system at serious risk of collapsing under its own weight, deterring consumers from consulting the labels for fear of becoming overwhelmed and receiving little meaningful aid in the process. A more rational approach could be a hyperlink to a webpage at which those separate plans might be listed.

Toward these ends, the Commission should decline to adopt rules that would require providers to reflect periodic discounts on the labels. As noted above, providers have every incentive to convey clear and accurate information about their offerings. This includes, of course, discounts and promotions that providers may offer periodically. In no rational construct would providers *hide* information about promotions or lower rates. Yet neither should this be confused to create a mandate to reform and revise labels every time a provider runs a promotion to offer discounted rates to consumers. An obligation to revise labels each time a promotion is offered (for example, a Black Friday or Back-to-School sale) would require companies to continually revise website displays; providers utilizing hard-copy printed materials would be burdened with extraordinary waste and printing costs to create, print, and distribute hard copies

²⁶ AT&T Comments at 17.

²⁷ ADTRAN Comments at 10, 11.

²⁸ AARP Comments at 4.

that have a limited useful life. As CTIA explained, promotions are dynamic and not suited to labels; USTelecom advises against mandating disclosure on labels of “temporal” offerings.²⁹ Moreover, the CAC itself found that “promotions tend to vary geographically and be of limited duration and displaying them in the Broadband Consumer Disclosure could add unnecessary complexity.”³⁰

The guardrail against unnecessary complexity also advises against including “all in” costs on labels.³¹ Many variable factors that are solely within the choice of a consumer inform the cost of a monthly service plan. These include, but are limited to, the type of modem or wireless device a user might select. Moreover, many users self-provision devices such as routers or mobile phones. It would be functionally impossible for providers to convey an “all in” cost *beyond* basic rate information because the actual total monthly cost is often beyond the administration of the provider. The confounding extent to which these recommendations would extend also include overly burdensome suggestions to make labels interactive. The Joint Commenters urge unequivocal rejection of suggestions that providers be required to produce dynamic labels that adjust to the user inputs of information such as the number of devices a user might connect, the activities in which a user might engage and how the user ranks them, and the suitability of the connection for a catalogue of applications.³² The goal of providing clear, basic information is also met by declining to mandate labels that provided staggered information

²⁹ CTIA Comments at 3; USTelecom Comments at 4.

³⁰ NCTA Comments at 11 *citing* CAC (internal citation omitted). *See also* ACA Connects Comments at 9.

³¹ *See* Comments of Space Exploration Technologies Corporation, CG Docket No. 22-2 (filed March 9, 2022) (“SpaceX Comments”) at 2.

³² Comments of Bayle Smith-Salzberg and Jonah Kaye, CG Docket No. 22-2 (filed March 9, 2022) at 3. The comments list Netflix as an example that providers would be required to include.

reflecting Affordable Connectivity Program (“ACP”) rates. Providing dual rates (or triple rate notices for providers that serve both Tribal and non-Tribal areas) would be confusing for customers because not all customers are eligible for the ACP.³³ At most, a statement or link informing consumers of low-income programs should suffice.³⁴

And yet several commenters suggest improperly expanding the labels to include information not related to comparison shopping, and to be published in numerous separate formats, that distort the goal of simplicity, manageability and objectivity from the rational goals envisioned by the CAC. The Commission should reject squarely such recommendations as to include badges connoting certain societal policy goals (however worthy)³⁵ or to publish in multiple languages.³⁶ As noted above, providers have every incentive to increase their market share and can be expected *on their own accord* to publish relevant sales and promotional information *outside the confines of the label* as they may determine best for building their subscriber base given the communities they serve. Unfortunately, several commenters incorrectly interpret *consumer shopping* for industrial research. The goal of providing information to the consumer is met by sharing information at the provider website or, as suggested by the Joint Commenters, via an electronic interface such as a tablet at the point of sale. Likewise, the goal of enabling consumer comparison shopping is not served by compelling providers to place the label beyond the point of sale. The Joint Commenters similarly oppose recommendations that labels be published and available at off-site locations such as libraries and

³³ CCA Comments at 5.

³⁴ See AT&T Comments at 15; CCA Comments at 5.

³⁵ NDIA Comments at 5.

³⁶ Comments of Massachusetts Department of Telecommunications and Cable, CG Docket No. 22-2 (filed March 9, 2022) (“MDTC Comments”) at 7.

social service organizations – well beyond the point of sale – or that they be published with an aim of providing broadband information access to third parties for their independent research and aggregation.³⁷ These recommendations are inconsistent with the goal of the label, which is to provide “real-life consumers” with the ability to comparison shop.³⁸

This goal, then, also contravenes (as the Joint Commenters described in their initial comments) any requirement that labels be published in machine-readable format. NCTA agrees that machine readability is not necessary to further the goal of enabling comparison shopping.³⁹ Recommendations that machine readability would “promote the creation of third-party shopping tools” veer from the intent of the CAC and the usefulness of the labels, which are intended to benefit consumer shopping, not overarching market research.⁴⁰ The goal is to create an accessible conveyance of information at the point of sale where consumers themselves are in need of making informed decisions; this is distinctly separate and apart from establishing publication requirements at a “central portal” or for third parties.⁴¹ The Commission should accordingly reject suggestions to require a glossary of terms and/or explanatory webpages⁴² and return to the original intent of the CAC, namely, to provide a clear, simple, and basic platform by which consumers can comparison shop.

And because the label is intended to align to consumers’ shopping needs, it is clear that it should be required at the point of sale only. Moreover, inasmuch as “point of sale” may include

³⁷ See NDIA Comments at 3, 4; ILSR Comments at 8.

³⁸ CCA Comments at 6.

³⁹ NCTA Comments at 17.

⁴⁰ See AARP Comments at 3, 18.

⁴¹ See *id.* at 18; ILSR Comments at 6.

⁴² MDTC Comments at 2, 3.

kiosks or temporary sales locations, and inasmuch as the relevant information could be provided via a QR code or by accessing an electronic medium such as a tablet, there is widespread agreement that hard copies should not be mandated,⁴³ and that web-based information can suffice.⁴⁴

3. Latency Should Reflect a Specific Metric Consumers Can Expect; Packet Loss Should Not be Included.

In initial comments, the Joint Commenters recommended that latency be expressed in measures of “not greater than,” while at the same time permitting providers to affix a discrete number to that measurement.⁴⁵ The result of that approach is that a provider could aver latency as, for example, “typically 25 milliseconds,” or if the provider recognizes greater variability in its service provide an outer boundary and aver that latency is “typically not greater than 25 milliseconds.” The Commission should reject, however, a standard definition for latency that tracks to by-comparison simple universal service definitions of above or below 100 milliseconds (or any other measure).⁴⁶ Nor should latency be scored on a scale of 1-100 or other.⁴⁷

Reported speeds and latency should contemplate the entire travel distance of the signal that is within the control of the provider. USTelecom suggests that fixed providers should have the flexibility to use the Measuring Broadband America method, actual performance based on internal testing, or other data.⁴⁸ In all events, while recognizing the role of latency in network performance, the Commission should reject overly burdensome requirements that labels display

⁴³ AT&T Comments at 21, USTelecom Comments at 3.

⁴⁴ See ADTRAN Comments at 12; ILSR Comments at 4.

⁴⁵ See Joint Comments at 12.

⁴⁶ See, e.g., SpaceX Comments at 3, 5.

⁴⁷ See Comments of NetForecast, CG Docket No. 22-2 (filed March 9, 2022) at 5.

⁴⁸ USTelecom Comments at 7.

performance for different periods or, as some commenters recommend, location-specific results that would require providers to calculate and display performance metrics on a street address basis.⁴⁹ These recommendations are far beyond any reasonable interpretation of either the CAC recommendations, the Commission’s prior work on this issue, or the newly refreshed effort arising out the Infrastructure Act.

Commenters resoundingly agree with the Joint Commenters in opposing any requirement that providers display packet loss on the broadband label. In the first and primary instance, it is a dynamic feature that cannot be fully captured, and which widely varies based on then-current network congestion.⁵⁰ Moreover, increasing buffer size to reduce packet loss would actually lead to network delay.⁵¹ Providers that understand network design and customer perceptions are clear: including packet loss would be “burdensome for providers and would provide no appreciable benefit for consumers who are trying to use the labels to order service.”⁵² As CCA noted, “[t]here is no indication that Congress intended these limited broadband labels to serve as a clearinghouse for all information consumers might deem relevant when evaluating or managing their existing services.⁵³ As such, direct notification requirements also should be rejected. Such obligations would be “disrupting and unnecessary,” and the Commission should set aside any proposals to require direct notifications.⁵⁴

⁴⁹ See MDTC Comments at 6, 7.

⁵⁰ ADTRAN Comments at 6, 7.

⁵¹ AT&T Comments at 14.

⁵² *Id.* at 3. See also ACA Connects Comments at 3, 12, and 13; NCTA Comments at 13; USTelecom Comments at 6.

⁵³ CCA Comments at 5.

⁵⁴ AT&T Comments 18, 19; see, also, ADTRAN Comments at 13.

C. THE RECORD ACKNOWLEDGES THE NEED FOR THE COMMISSION TO AFFORD SMALL PROVIDERS RELIEF FROM THE BROADBAND LABEL RULES

As some commenters pointed out, small providers are subject to existing Commission disclosure rules, without exemption, and have a track record of effective compliance with those rules. As a result, as ACA Connects observed, “because small providers are already subject to transparency obligations, consumers will not need to wait until the label requirements take effect to obtain detailed information about these providers’ offerings.”⁵⁵ In that same vein, OTI stated that “many small providers have embraced transparency.”⁵⁶

The Joint Commenters disagree, however, with OTI’s assertion that small providers’ compliance with *existing* transparency rules suggests that the Commission should “look skeptically upon claims that the label would impose unreasonable burdens.”⁵⁷ OTI overlooks the fact that those small providers that are already complying with the rules and are “market leaders on transparency”⁵⁸ would need to incur expenses and may need additional time to restate and reconfigure their disclosures to meet the new format. Moreover, OTI provided examples of small providers that are displaying pricing and speed in a transparent manner, but it fails to discuss the burdens associated with the more detailed disclosures that new rules could impose.

The Commission also should afford small providers additional relief in recognition of the economic and other burdens that immediate compliance and strict enforcement penalties will impose on those providers that lack internal resources and that often serve the most rural and

⁵⁵ *Id.* at 17.

⁵⁶ OTI Comments at 13.

⁵⁷ *Id.*

⁵⁸ *Id.* at 1.

persistent poverty areas of the country. This relief should focus on two aspects of the regulatory regime: the implementation timeline and enforcement.

1. The Record Supports Deferring Implementation of the Broadband Label Rules for Small Providers.

Among commenters representing the interests of small providers of fixed broadband service, there is agreement that the Commission should afford small providers one year from the effective date of the new rules to come into compliance. The Joint Commenters, representing more than 1,500 of the country's smallest providers, supported this recommendation by observing that "the vast majority of the Joint Commenters' members do not have in-house attorneys and compliance departments to assist in preparing their broadband labels and will need to engage outside legal resources to implement several proposed requirements."⁵⁹ ACA Connects, which includes more than 600 small and medium-sized providers,⁶⁰ also suggested "one additional year" to comply with the new rules,⁶¹ noting that:

Implementing broadband labels—however narrowly the Commission tailors its rules—will require broadband providers to complete a long list of time-consuming tasks, which include compiling all information that must be presented on the label; incorporating the information into the label format; posting labels on the website; developing and implementing procedures for making any necessary changes to the labels, including website updates; and training customer service representatives, sales agents, and other personnel.⁶²

The Joint Commenters believe that ADTRAN does not appreciate the time it will take for small providers to implement the new label, or that they will need to budget for additional resources

⁵⁹ See Joint Comments at 22.

⁶⁰ ACA Comments at 4.

⁶¹ *Id.* at 16.

⁶² *Id.*

and compliance costs.⁶³ Consistent with the RFA, and its own invitation for comment,⁶⁴ the Commission should recognize the economic impacts of the label requirements and adopt the views of NTCA, WISPA and ACA Connects – representatives of the nation’s small providers – in affording small providers one year from the effective date to display the label.

2. The Record Supports an Enforcement Regime that Prioritizes Compliance over Sanctions.

Initial comments reflect support for a regulatory structure that encourages compliance with the new rules and leniency in enforcing the rules, especially as to small providers in the early years following the effective date of the new rules. ACA Connects urged the Commission to take a “moderate approach,” agreeing with the Joint Commenters that “the Commission should allow a reasonable grace period for providers to correct relatively minor deficiencies and should reserve enforcement action for serious or repeat offenders.”⁶⁵ AT&T asked the Commission to “retain a more ‘light-touch’ regulation approach with respect to enforcement” of labelling requirements.⁶⁶ By encouraging compliance and deferring enforcement penalties, the Commission will better “deliver on its mission to foster transparency within the industry.”⁶⁷

III. CONCLUSION

The record supports adoption of a simple broadband label that is consistent with consumer decision-making and satisfies the Commission’s interest in promoting transparency for comparison shopping. The ornaments urged by some commenters detract from these objectives,

⁶³ See ADTRAN Comments at 13 (suggesting six months will be sufficient if the initial phase is “relatively simple.”).

⁶⁴ See NPRM at 10, ¶ 33.

⁶⁵ ACA Connects Comments at 18.

⁶⁶ AT&T Comments at 22.

⁶⁷ ILSR Comments at 6.

would reduce the effectiveness of the label and would increase costs and regulatory burdens for small providers that are least able to easily and quickly convert their compliant disclosure statements. To reduce these disproportionate burdens, the Commission should afford small providers additional time to meet the new labelling requirements. The Commission also should prioritize compliance, not enforcement, during an initial period following the effective date of the new rules.

Respectfully submitted,

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