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

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| In the Matter of | ) | |
| | ) | |
| Empowering Broadband Consumers Through Transparency | ) | CG Docket No. 22-2 |
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To: The Commission

# JOINT COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION AND WISPA – *BROADBAND WITHOUT BOUNDARIES*


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## TABLE OF CONTENTS

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| | | |
|---|---|---|
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## I. SUMMARY AND INTRODUCTION

NTCA–The Rural Broadband Association ("NTCA") and WISPA – *Broadband Without Boundaries* ("WISPA") (together, "Joint Commenters") hereby respond to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1] With more than 1,500 small broadband providers among their combined memberships, the associations have historically supported appropriately tailored regulation, including rules that promote transparency to inform consumers of a provider's performance and network management – so long as those requirements do not impose disproportionate regulatory burdens and costs on smaller providers.[2] Although the broadband label mandated by the Infrastructure Investment and Jobs Act

[1] *Empowering Broadband Consumers Through Transparency*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-86 (rel. Nov. 17, 2022) ("*Report and Order*" or "*FNPRM*").

[2] NTCA and WISPA filed Joint Comments and Joint Reply Comments in the underlying proceeding. *See* Joint Comments of NTCA and WISPA, CG Docket No. 22-2 (filed March 9, 2022) ("Initial Joint Comments"); Joint Reply Comments of NTCA and WISPA, CG Docket No. 22-2 (filed March 24, 2022) ("Initial Joint Reply Comments"). NTCA and WISPA also have advocated jointly on behalf of smaller providers in earlier proceedings. *See, e.g.*, Letter from Elizabeth Barket, CCA, *et al.*, to Marlene H. Dortch, FCC Secretary, GN Docket No. 14-28 (filed Dec. 1, 2016); Letter from Elizabeth Barket, CCA, et al., to Marlene H. Dortch, FCC Secretary, GN Docket No. 14-28 (filed Dec. 7, 2016); Letter from Steven K. Berry, CCA, et al., to Hon. Tom Wheeler, et al., GN Docket No. 14-28 (filed Dec. 1, 2016). *See also* Request for Stay filed by CCA, et al., GN Docket No. 14-28 (filed Jan. 17, 2016).

("Infrastructure Act") and implemented in the *Report and Order* may present challenges in implementation, the Joint Commenters appreciate the reasonable restraint exercised by the Commission to mitigate costs in the creation and display of the label and by hewing generally to the simplicity Congress envisioned when it adopted Section 60504 of the Infrastructure Act. Moreover, the Joint Commenters acknowledge and appreciate the Commission's recognition that providers with fewer than 100,000 subscribers should have additional time to comply with the label requirements.[3]

Adopting proposals suggested by the questions posed in the *FNPRM*, however, would upset the balance the Commission crafted in adopting the *Report and Order*, imposing additional burdens that would outweigh any potential consumer benefits. Moreover, it would depart from the simplicity sought by Congress in requiring the creation of an easy-to-follow label. The Joint Commenters urge the Commission to resist making changes to the only recently adopted and yet-to-be-implemented label requirements.

## II. DISCUSSION

### A. THE COMMISSION SHOULD ENABLE FLEXIBLE ACCESSIBILITY STANDARDS AND NOT REQUIRE PROVIDERS TO CREATE AND POST LABELS IN LANGUAGES OTHER THAN THOSE IN WHICH THEIR SERVICES ARE MARKETED

#### 1. The Commission Should Refrain from Imposing Specific Website Accessibility Rules

As set forth in their Initial Joint Comments and subsequent filings in this proceeding, the Joint Commenters have emphasized their abiding commitment to meet the needs of their customer bases. At the same time, it is essential to differentiate between the operational models

[3] *See Report and Order* at 39, ¶ 119.

of small, locally operated companies and large providers serving markets nationwide. The former, based in their communities, have natural incentives to make all reasonable efforts to reach every consumer in their limited markets. And yet, as small companies, they are much more likely to suffer from the negative impacts of broad regulatory mandates that may require costly and burdensome processes whose goals could be met by more limited and targeted individual customer interactions.

The Commission should decline to impose additional website accessibility requirements, as a few commenters previously suggested. For example, the City of New York proposed requiring providers to display labels in Braille or via a QR code with a tactile indicator for blind or visually impaired consumers.[4] Even if well intended, this sort of mandate can impose significant and ongoing costs that must be allocated across a small provider's relatively limited customer base. The Joint Commenters accordingly recommend that any rules in this regard be crafted to contemplate the taking of "reasonable measures" that will promote accessibility to consumers and flexibility in the manner in which such accessibility is provided. In the alternative, if the Commission determines to adopt specific requirements relating to Braille or tactile indicators, or similar accessibility measures as presented in the *FNPRM*, then the Commission should exempt small providers from those specific obligations and instead limit their obligations to those that are administratively and commercially reasonable.

The Commission also seeks comment on whether it should adopt specific criteria to govern ISP posting of information on their websites in an accessible format.[5] Specifically, the Commission asks whether, for example, it should adopt specific criteria based on Web Content

[4] *See* Comments of the City of New York, CG Docket No. 22-2 (filed March 9, 2022) at 4.

[5] *FNPRM* at 44, ¶ 133.

Accessibility Guidelines ("WCAG") standards. The Joint Commenters note that certain of the WCAG guidelines are already addressed by measures to be undertaken pursuant to the *Report and Order*. For example, in the *FNPRM,* the Commission notes that "The WCAG also suggest providing definitions of words or phrases used in an unusual or restricted way, including idioms and jargon and abbreviations."[6] But the *Report and Order* itself already requires ISPs to provide a link to the Commission's own web-based glossary, where the Consumer and Governmental Affairs Bureau ("CGB") will provide definitions of terms used on the label.[7] Accordingly, requiring individual ISPs to produce the same information would be not only duplicative but would also substantially increase operational costs. Providing a link to a common CGB glossary is a far more efficient and reasonable approach. Moreover, CGB maintenance of the glossary will ensure a consistent set of consumer-facing definition of broadband "idioms and jargons and abbreviations" that may evolve over time. The CGB glossary should adequately facilitate the comparison-shopping goals envisioned by Congress and the Commission in this proceeding.

### 2. The Commission Should Refrain from Imposing Additional Requirements to Publish Labels in Non-English Languages

In the *Report and Order*, the Commission requires each ISP to make the labels available in English and any other languages in which it markets its services in the United States.[8] The Joint Commenters submit that this is a reasonable conclusion. Moreover, it is consistent with other current and proposed requirements. For example, the draft American Data Privacy and Protection Act would require covered entities to publish notices in non-English languages if the entity provides the product or service or otherwise carries out activities related to the product or

[6] *Report and Order* at 20, ¶ 61.

[7] *Id.* at 20, ¶ 59.

[8] *FNPRM* at 44, ¶ 134.

service in that language.[9] The Joint Commenters, however, oppose a requirement to make the label available in languages other than those in which an ISP markets its services. Such a mandate would impose costly, unwarranted, and unnecessary burdens, especially on small providers. Broadband providers that market their services in a language other than English have presumably identified that language as prevalent in their market and necessary to reach their customers. ISPs have sufficient incentive to assess their respective service areas and customer base, and therefore market accordingly. The costs of marketing in multiple languages are significant and ongoing as marketing campaigns change, yet ISPs that do so have determined through careful market analysis that those additional marketing costs are warranted by the potential customer bases in their community. Such measured analyses are warranted considering the costs implicated by non-English marketing. Broadly-drawn regulatory intervention, in contrast, should not suppose a keener sense of the local market.

The Commission asks, "What are the burdens, if any, associated with requiring providers to make the label available in languages in which they do not market their services?"[10] These include, *inter alia,* costs of hiring translation experts; experts in non-English language idiomatic expression to reflect technical, cultural and other terms of art; and, additional print and electronic formatting for non-English languages, including added costs for languages that are not written in Roman characters. Notably, these would not be one-time costs, but would rather be incurred every time a provider desired to change label information or offer a new product. This by itself could act as a disincentive to lower prices and new product offerings as the costs of implementing revisions to labels for multi-language publication and display must be factored

[9] American Data Privacy and Protection Act, §§ 2(1)(B)(v), 202(c), (e)(2), H.R. 8152, 117th Cong (2021-2022).

[10] *Id.*

into revenue projections. The Joint Commenters acknowledge that the existing regulation to make labels available in non-English languages when the provider markets in those languages will impose additional costs. But in those instances, certain of the so-called "sunk costs" of obtaining and executing translation services have been incorporated in the initial marketing. In contrast, requiring non-English labels where the ISP *does not even market in that language* will initiate continuing costs that are unprecedented, unforeseen, undesired, and unneeded given the marketplace.

The Joint Commenters additionally note Federal agencies regulating food, pharmaceuticals, and workplace safety do not impose non-English language requirements, and in fact have declined specifically to implement such measures. Without diminishing the importance of broadband connectivity, food, pharmaceuticals, and workplace conditions implicate factors that affect, quite literally, human health and safety. And yet Federal agencies overseeing those industries have relied on English as the *lingua franca* to convey critical information to consumers. In fact, the very source of inspiration for this proceeding, namely, Food and Drug Administration ("FDA") nutrition labels, are not subject to non-English language requirements.

The nutrition facts label has evolved through several iterations that affect not only content but format as well.[11] And through these iterations, the FDA has *specifically and*

[11] These format updates include, *inter alia,* such measures as specifications for the relative type size for different information as well as font effects such as requirements to print certain information in bold typeface. The content of the labels, as well, has been updated over time to both eliminate and add certain information. For example, the FDA removed "Calories from Fat" but retained other fat information. Similarly, the FDA revised requirements to include Vitamin D and potassium but made the inclusion of Vitamins A and C voluntary. The FDA also evaluated the relative effectiveness of pie charts, graphs, or other visual representations to convey information about macronutrients. And yet in this extensive course that considered everything from substantive content to graphic composition, the FDA has not implemented a non-English language requirement.

*consistently declined* to require manufacturers to publish in non-English languages. During the most recent revision of the nutrition label, the FDA addressed comments suggesting educational campaigns should "reach consumers who are least likely to understand and use the label, including lower income consumers, [and] communities with diverse languages and literacy levels . . ." The FDA related that some commenters observed that people with lower educational attainment or income would be "significantly less likely to correctly assess the Nutrition Facts,"[12] but reiterated the role of its own suite of "various educational materials (*e.g.,* videos, an array of public education material and brochures (in English and Spanish)) on numerous nutrition topics . . . ." as the best course. As is clear, the FDA considered specifically differences among various communities that implicate health concerns, but did not foist upon food manufactures obligations to tailor messaging for separate demographics. It instead relies on its educational materials. This approach appears analogous to the Commission's self-hosted broadband glossary and leads to the conclusion that providing information on the Commission's planned glossary webpage in additional languages is the best path toward resolving the Commission's language barrier concerns.

Similarly, in the context of medications with literal life and death implications, adverse drug interactions, and side effects, the FDA does not require warnings, instructions, or information to be provided in non-English languages. As another example, non-English language requirements do not attach to general health and welfare requirements under the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") regulations. While OSHA regulations require employers to provide non-English verbal instruction to satisfy

[12] *See Food Labeling: Revision of the Nutrition and Supplement Facts Labels,* Docket No. FDA-2012-N-120, RIN 0910-AF22, Food and Drug Administration, U.S. Department of Health and Human Services, 81 Fed. Reg. 103, 33742, 33749 (2016). The FDA considered a full panoply of concerns as it revised the nutrition label requirements.

requirements relating to hazardous chemicals in a work area, OSHA does not require that even its seminal "Job Safety and Health: It's the Law!" poster be published in non-English languages. In comparison, there is no apparent basis for a requirement to provide transactional information such as broadband prices, late fees, and speed tiers *where the provider does not even market in that language* is not . Therefore, the proposal to extend non-English language label requirements to service areas in which the provider does not market in a non-English language should be rejected.

As the Commission seeks comment on whether "ISPs [should] base the languages available on the consumer or network location,"[13] the Commission offers, by way of example, whether the required languages would "comport with the Census Bureau's American Community Survey data or another identifiable metric."[14] Notwithstanding the Joint Commenters' overall opposition to expanding the current language requirements, the Joint Commenters recommend that if the requirements were to be amended, then the Commission should implement a tiered small provider exemption that aligns to both the size of the provider and the network location. Specifically, *all* small providers should be exempt from such a requirement for the reasons stated above. Moreover, if non-English language requirements are set to reflect the network location, or data reflected in the American Community Survey or similar metric, then service areas subject to such regulations and defined by those standards whose populations are equal to or less than 100,000 should be exempt from the requirements, even if the provider is a unit of a larger holding company.

[13] *FNPRM* at 44, ¶ 134.

[14] *Id.*

The Commission also asks whether providers should be required to translate their labels into other languages upon the request of any consumer considering purchase of the provider's service.[15] Such an inquiry must be put into realistic perspective. According to Translators Without Borders, there are between 380 and 450 spoken languages in the United States. The 2018 American Community Survey reports that approximately 78% of U.S. households speak only English at home. A requirement to translate labels into other languages upon request would be simply unmanageable even if it were limited to the top ten non-English languages (including Spanish, numerous varieties of Chinese, Tagalog (including Filipino), Vietnamese, Arabic, and French). These requirements would be especially burdensome to small providers whose markets *by definition* are so small as to make the availability of translators, speakers, and experts in non-English languages far more difficult and costly than in larger and thus more diverse service areas. For all of the foregoing reasons, the Joint Commenters urge the Commission to limit non-English label publication obligations to those languages in which the ISP chooses to market its services.

### B. THE COMMISSION SHOULD NOT REQUIRE PROVIDERS TO UPDATE THEIR LABELS TO INCLUDE DISCOUNTED AND PROMOTIONAL RATES

The *Report and Order* requires that labels display the base monthly "retail" price for standalone broadband, *i.e.,* the price for service before applying discounts including, *inter alia,* paperless billing or autopay, as well as any one-time and recurring monthly fees.[16] The Commission rejected proposals that sought to impose on ISPs requirements for "additional information that affects the bottom-line price consumers pay each month," including bundled

[15] *Id.*

[16] *Report and Order* at 9, ¶ 23.

services.[17] In the *FNPRM*, the Commission seeks comment on whether these discounts or other variables, such as location-specific taxes, should be included in labels after all.[18]

The Joint Commenters submit that, in the interest of assuring customers can make apples-to-apples comparison for broadband services, the labels should focus on core elements of the standalone broadband price and not extend to discounts or taxes. Discounts and taxes can vary not only by jurisdiction but also by customer, carriers, and which services are included within the bundle selected by the individual consumer. Providers may offer student or senior citizen discounts, or special pricing for not-for-profit organization or customers who opt-in to family or other group plans. Moreover, as discussed further below, customers may be able to choose whether a bundle includes wired or wireless voice, wired or wireless data, video, or other services and features as part of the bundle each prefers, allowing customers to tailor offerings to meet their individual needs. Requiring labels to accommodate every potential permutation of service offering and conform to each state and local jurisdiction would risk overwhelming both providers and consumers, in effect turning broadband providers into *de facto* tax accountants. Providers would be faced with an exponential expansion of label obligations, as each individual package could require multiple labels to reflect targeted plans. And customers could be inundated with numerous labels to sift through, giving rise to "infobesity," noted in the Initial Joint Comments and referring to the phenomenon of including so much information as to undermine the value of *any* of the information.[19] Furthermore, such a requirement would be

[17] *Id.* at 9, ¶ 24.

[18] *FNPRM* at 45, ¶ 135.

[19] Initial Joint Comments at 9; Initial Joint Reply Comments at 8.

entirely unnecessary, as ISPs will have every incentive to advertise discounts and bundled plans.[20]

The Commission also seeks comment on whether the label should include pricing information for bundles.[21] The Joint Commenters note that while a single "all in" price may on the surface seem like a helpful device, it would only undermine the Commission's interest in enabling apples-to-apples consumer comparisons. As noted above, bundled services can include everything from voice service to video to wireless accounts to web hosting to security systems. Moreover, these various different bundles may include, or may not include, lease or installment purchase fees for modems, routers, set top boxes, or other customer premises equipment, some of which may not be offered on a monthly basis. And, bundled service offerings often include a mix-and-match approach to premium channels. A requirement to create labels for bundled services could conceivably implicate a requirement to create separate labels for customers who, for example, subscribe to the provider's video service including premium sports but not premium movie channels, alongside labels for customers who subscribe to both, or neither, or those who combine even so-called "basic" channels on an *a la carte* basis. Even if providers were able to reasonably manage this library of labels, the utility for most consumers would be minimal, if it were to exist at all.

The Commission has established useful parameters for a broadband label: price; capacity; and performance. Those basic enumerated elements offer useful metrics for comparing service offerings. Adding innumerable pricing variables and tax information to them risks a

[20] The currently adopted label allows providers to include a link to website information regarding discounts and bundled offerings.

[21] *FNPRM* at 45, ¶ 136.

maze of compliance for providers – especially small providers lacking the substantial resources to customize labels with more fine print – and offer little, if any, added value to consumers.

### C. THE COMMISSION SHOULD NOT REQUIRE BROADBAND PROVIDERS TO INCLUDE ADDITIONAL PERFORMANCE INFORMATION IN BROADBAND LABELS

The Commission seeks comment on a number of additional disclosures to the broadband label related to broadband performance. Each of these should be rejected.

***Speed***

The rules adopted in the *Report and Order* require broadband providers to disclose on the broadband label the "typical" speed of the service tiers they offer.[22] The *FNPRM* seeks comment "on whether there are more appropriate ways to measure speed and latency other than 'typical' for purposes of the label disclosure such as average or peak speed and latency."[23]

The Commission should not adopt any new or additional requirements other than the requirement to display the "typical" speed the ISP offers. First, the average consumer is most likely to be concerned with the typical experience s/he expects to receive overall and would find confusing multiple disclosures of speed and latency values that unnecessarily complicate decision-making. Second, the requirement to measure speed and latency to derive an "average" imposes uncertain, but not insubstantial costs, which would be compounded over time as the "average" changes based on changes to the network. In fact, speed and latency variations experienced by the customer can result from factors outside the provider's network, making measuring an "average" speed a moving target and one that does not yield corresponding

[22] *Report and Order* at 13, ¶ 37.

[23] *FNPRM* at 45, ¶ 138.

consumer benefits. Accordingly, a disclosure of "typical" speeds is a more efficient and useful measurement.

***Reliability***

Likewise, the Commission should refrain from requiring providers to display some form of reliability measurement on their broadband labels.[24] Because the frequency and duration of past outages are not predictive of future reliability, any requirement that providers report an uptime percentage could be inaccurate and misleading. Factors outside the network, such as off-net fiber cuts, natural disasters and power outages (to name a few), and their impact on reliability, cannot be anticipated, and historical circumstances may have little or no bearing on the customer experience going forward. Moreover, within both wired and fixed wireless networks, *perceived* reliability may differ from *actual* reliability as user experience depends upon, *inter alia,* the number of connected devices at the user location, the vintage of equipment being utilized to discern performance, and internal network configurations of the customer's choosing and design. Contrary to the Commission's view, it is not "relatively straightforward" for providers to measure availability in terms of the percentage of time the service is down[25] since circumstances beyond the control of the broadband provider (for example, off-network events) can affect reliability, while issues at the customer's own premise can affect the user's perception of reliability even while network service from the home to IP hand-off is working as it should. Nor would such disclosure be especially helpful as a measure of future performance a consumer should expect to receive.

[24] *FNPRM* at 46, ¶ 141.

[25] *Id.*

Nevertheless, should the Commission decide to require the label to recite some measure of "reliability," the Joint Commenters urge a simple estimate of "hours up/hours down," with a permissible statement explaining that factors beyond the network operator's control may affect reliability. Indeed, to avoid liability in overstating or misstating the uptime percentage, providers may wish to disclose the events that could affect the percentage they disclose, given their inherent inability to accurately predict future events affecting reliability and their consequences.[26] Those sorts of "your mileage may vary" disclosures would bog down the label with more fine print, which would contravene the goal of a simple, consumer-friendly label Congress intended.

***Cybersecurity***

The Commission should refrain from requiring providers to disclose their cybersecurity practices at the point of sale.[27] Disclosing cybersecurity practices, by any means, necessarily would reveal to the public potential cybersecurity vulnerabilities that would invite cybercriminals to steal customers' private and sensitive information, harm the provider's network and internal systems, conduct ransomware, and a host of other severe consequences for providers and their customers. Such unreasonable and unnecessary disclosure requirements are tantamount to posting the lock's combination on the outside door of a safe. In addition, a provider's cybersecurity practices should not be disclosed to an individual consumer upon request for the same reasons explained above. While a consumer may have good intentions to request such information, it is impossible for a provider to verify or dispute the intentions of the

[26] *See Report and Order* at 17, ¶ 48 (citing Initial Joint Comments).

[27] *FNPRM* at 46, ¶ 143.

consumer. Nor should determination of a customer's real intentions be the responsibility of any provider.

Although many federal and state laws require business entities to implement and maintain reasonable security practices and procedures to protect consumer personal information from unauthorized or illegal access, collection, use, or disclosure, few also require public disclosure of such security practices and procedures.[28] Moreover, if disclosure is required it is an industry standard practice given the advice of professional and certified consultants to limit the disclosures of cybersecurity practices and procedures given the proprietary nature of the information and very high risk that such information will be used by threat actors, domestic and foreign. It is sufficient to disclose generally in a privacy policy that the business uses reasonable administrative, physical and technical safeguards to protect personal information.[29] If applicable, the business may also simply state that it complies with the Payment Card Information Data Security Standard for credit card processing. Other general information disclosed publicly may

[28] *See, e.g.*, Gramm-Leach-Bliley Act Safeguards Rule, 16 C.F.R. Part 314 (requiring standards for developing, implementing, and maintaining reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer financial-related information). California was the first state to require a business to have a privacy policy. Cal. Bus. & Prof. Code §§ 22575-22579. However, the California Online Privacy Protection Act of 2003 does not require the privacy policy to disclose security practices and procedures to consumers. *See id.* Neither does the California Consumer Privacy Act, as amended ("CCPA"), the most stringent consumer privacy law in the country. Cal. Civ. Code § 1798.0100 et al. The CCPA only requires that a business "implement reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure in accordance with Section 1798.81.5." *Id.* § 1798.0100(e). Moreover, the CCPA recognizes that certain practices and procedures pertaining to the protection of consumer personal information can be proprietary to the business. *Id.* § 1798.0100(f) ("Nothing in this section shall require a business to disclose trade secrets, as specified in regulations adopted pursuant to paragraph (3) of subdivision (a) of Section 1798.185."). None of the four states that have recently adopted comprehensive consumer privacy laws require public disclosure of security practices and procedures. *See infra* note 44.

[29] Reasonable or appropriate administrative, physical and technical safeguards are required under Federal privacy and security laws. *See supra*, note 28; *see also* the HIPAA Security Rule, 45 C.F.R. Part 160 and Part 164, subparts A and C.

include whether the business encrypts Personal Information and imposes certain obligations on third-party service providers, such as not disclosing Personal Information outside of the business relationship or with other third parties for marketing or advertising purposes. It is not advisable to provide details regarding security or cybersecurity practices or procedures to the public.

If the Commission imposes public cybersecurity disclosure requirements, such disclosures must be limited to general statements and not be compelled to disclose details regarding a provider's cybersecurity practices and procedures. General statements regarding cybersecurity practices include, but are not limited to, whether the provider takes reasonable administrative, physical, and technical safeguards to protect against cybercrime, and whether its management (including the board of directors) have a direct role in assessing and managing cybersecurity risks and conducts oversight over the provider's implementation of cybersecurity policies, procedures, and strategies. The truthfulness of general statements can be verified by a regulatory agency or law enforcement and any misrepresentations are enforceable under state and federal deceptive and unfair trade practices laws,[30] or as unjust and unreasonable practices under Title II of the Communications Act of 1934, as amended, for common carriers.[31]

Further, any such disclosures should be incorporated into the privacy policy, and not included as part of the broadband label. The privacy policy is a natural and more appropriate vehicle. Consumers are already aware of and familiar with privacy policies.

The Joint Commenters recognize that the U.S. Securities and Exchange Commission has proposed rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incident reporting by public companies that are subject

[30] *See* Sec. 5 of the FTC Act, 15 U.S.C.§ 45; *see also* State Little FTC Acts, *e.g.*, R.I. GEN. LAWS § 6-13.1-3.

[31] 47 U.S.C. § 201(b).

to the reporting requirements of the Securities Exchange Act of 1934.[32] But, entities subject to the SEC's jurisdiction are very large companies with a wealth of financial and human resources, unlike WISPA and NTCA's members. Importantly, the purpose of the SEC's proposed disclosure requirements is to protect investors, not consumers.[33]

Significantly, any public disclosure of a broadband provider's internal and proprietary cybersecurity practices would be totally inconsistent with and undermine the extensive multi-prong efforts of the Federal government to protect the Nation's critical infrastructures[34] – a top priority of the Biden-Harris Administration.[35]

In sum, the proposals to disclose specific cybersecurity practices and procedures to consumers by any means is unreasonable and very burdensome on providers, as well as a potential threat to a provider's operations *and* national security, far outweighing any alleged benefit to consumers.

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[32] Press Release, *SEC Proposes Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies*, U.S. Securities and Exchange Commission (March 9, 2022), *available at* https://www.sec.gov/news/press-release/2022-39.

[33] *Id.* ("Today, cybersecurity is an emerging risk with which public issuers increasingly must contend. Investors want to know more about how issuers are managing those growing risks. A lot of issuers already provide cybersecurity disclosure to investors. I think companies and investors alike would benefit if this information were required in a consistent, comparable, and decision-useful manner. I am pleased to support this proposal because, if adopted, it would strengthen investors' ability to evaluate public companies' cybersecurity practices and incident reporting.").

[34] *See e.g.,* FCC Public Notice, *FCC Urges Communications Companies to Review Cybersecurity Practices to Defend Against Cyber Threats to Critical Infrastructure*, DA 75-22 (Jan. 22, 2022) (highlighting *Understanding and Mitigating Russian State-Sponsored Cyber Threats to U.S. Critical Infrastructure*, the joint advisory issued by the Federal Bureau of Investigation, National Security Agency, and Cybersecurity Infrastructure Security Agency (Jan. 11, 2022), *available at* https://www.fcc.gov/document/fcc-urges-communications-companies-review-cyber-practices.

[35] The White House, *Fact Sheet: Biden-Harris Administration Delivers on Strengthening America's Cybersecurity* (Oct. 11, 2000), *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/11/fact-sheet-biden-harris-administration-delivers-on-strengthening-americas-cybersecurity/#:~:text=The%20State%20and%20Local%20Cybersecurity,information%20systems%20and%20critical%20infrastructure.

## D. THE COMMISSION SHOULD NOT ADOPT ANY NEW NETWORK MANAGEMENT OR PRIVACY POLICY DISCLOSURE REQUIREMENTS

Notwithstanding its prudent decision to require providers to disclose network management practices through a link on the label,[36] the Commission now revisits whether the label itself should nonetheless include more specific disclosures.[37] The record did not support this suggestion before, and it is unlikely to do so here for the very same reasons – adorning the label with too much information is not a consumer-friendly way to enable comparison shopping.

***Network Management Practices***

The Commission notes that the *Report and Order* requires the broadband label to link to the provider's website for more information on network management practices.[38] The *Report and Order* observes that a link "best meets the needs of consumers and fulfills Congress' directive"[39] and explains that "the transparency rules seek to enable a deeper dive into the details of broadband internet service offerings. . . ."[40] This reasoning still holds true – the separate transparency requirements remain best for consumers, and there is no reason for the label to include (nor any benefit to be derived from) more specific disclosures about blocking, throttling and paid prioritization.[41] Burdening the label itself with the transparency requirements, already required by other separate Commission rules, would turn the label into an undigestible document that would ultimately discourage consumers from reading it, thereby defeating its very purpose.

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[36] *See Report and Order* at 17, ¶ 49.

[37] *FNPRM* at 46-47, ¶ 145.

[38] *Id.* at 46, ¶ 145.

[39] *Report and Order* at 17, ¶ 49.

[40] *Id.* at 36, ¶ 107.

[41] *See FNPRM* at 47, ¶ 145.

***Privacy Policies***

For the very same reasons, the Commission should not adopt rules that bloat the label with providers' privacy policies.[42] As commenters previously made clear, privacy policies already are required to be disclosed elsewhere and placing them on the broadband label too would detract from the "concise" format Congress and the Commission envisioned. The Commission acknowledged astutely that privacy information "is more accurately and completely explained elsewhere on the provider's website rather than in the limited space on the label."[43] Further, privacy policies will tend to get longer and more complex as states adopt varying laws that will require ISPs to post multiple privacy policies and/or statements to accommodate numerous state privacy laws and regulations.[44] Moreover, some state laws may require a particular form or placement of privacy policies that differ from the label requirements, creating confusion or even duplicate posting. Duplicative posting is also burdensome for smaller providers and may impose additional operational costs, including additional fees from a website hosting service. The Commission correctly decided to keep the privacy policy in a separate linked document, and there are no compelling reasons to depart from that reasoned determination.

[42] *See id.* at ¶ 146.

[43] *Report and Order* at 19, ¶ 57.

[44] *See, e.g.*, California Consumer Privacy Act, as amended (Cal Civ. Code § 1798.10 et al.); Colorado Privacy Act (SB21-190); Connecticut Data Privacy Act (SB 6); Virginia Consumer Data Protection Act (SB 1392) and Utah Consumer Privacy Act (SB 227).

## E. THE COMMISSION SHOULD NOT MANDATE INTERACTIVE LABELS

***Interactive Labels and Drop-Down Menus***

The Commission seeks comment on whether it should require ISPs to include interactive options or expanded labels with additional information.[45] These would, for example, enable users to input their household Internet activity and see additional information that would estimate their Internet experience under each plan.[46] But the Commission suggests that, while interactive labels could share information that may be important to a small subset of consumers, it may be confusing to the average consumer.[47] Interactive labels could also include "expand" options that would provide additional details. The Commission suggests, as well, that providers might share that same information via graphic web content, and then asks how this information would translate to in-store displays or customer/company telephone call settings.[48]

Regulatory balance is critical – and *mandating these kinds of sales practices and marketing tools is beyond the scope of reasonable regulatory practice.* The suggestions go far beyond basic transparency and clarity and are, in essence, potential heavy-handed directives to private firms as to how to present, market, and sell their services. The Commission has authority under the Infrastructure Act to require broadband labels,[49] and the Commission has clearly exercised its regulatory imprint to promulgate Truth in Billing requirements for regulated

[45] *FNPRM* at 47, ¶ 148.

[46] *Id.*

[47] *Id.*

[48] *Id.* at 47, ¶ 149.

[49] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a), (b)(1) (2021).

common carrier services,[50] but nowhere can authority be found for the Commission to adopt this type of intensive, costly, and burdensome interactivity.

***Style Guides and Implementation Tools***

Regarding the essential broadband label as established in the *Report and Order*, a Commission-issued style guide and/or fillable PDFs could assist companies in ensuring their final label products conform to applicable guidelines and would define a clear "safe harbor" for design.[51]

## III. CONCLUSION

The Joint Commenters urge the Commission to ensure that the broadband label remains faithful to its principal purpose of informing consumers of information they need to compare and purchase retail broadband services. Encumbering the label the Commission recently adopted with unnecessary information irrelevant to promoting choice creates confusion among consumers and drives up the compliance costs for providers. For smaller providers such as NTCA's and WISPA's members, those costs create disproportionate burdens. There is no reason for the Commission to belabor the label with new requirements in the absence of failure of the adopted label to achieve its intended purpose. Instead, the Commission should give time for implementation and analysis of its existing framework as just recently adopted, and then

[50] 47 C.F.R. § 64.2401.

[51] *FNPRM* at 48, ¶ 151.

consider further prudent measures as may be deemed necessary based upon that experience and the authority clearly granted to it by the Infrastructure Act.

Respectfully submitted,

**NTCA–THE RURAL BROADBAND ASSOCIATION**

February 16, 2023

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