Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

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

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I. SUMMARY AND INTRODUCTION

NTCA–The Rural Broadband Association ("NTCA") and WISPA – *Broadband Without Boundaries* ("WISPA") (together, "Joint Commenters") hereby reply to certain of the initial Comments submitted in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1] Associations representing broadband providers, large and small, uniformly agree that it would be premature or "untimely"[2] for the Commission to consider changes to the broadband label, before the initial labels have been implemented. Without sufficient time to implement and assess the adequacy of the label rules adopted in November

[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] Comments of ACA Connects, CG Docket No. 22-2 (filed Feb. 16, 2023) ("ACA Comments") at 2; *see also* Comments of NCTA, CG Docket No. 22-2 (filed Feb. 16, 2023) ("NCTA Comments") at 2 ("it is implausible to suppose that Congress intended for the Commission to immediately revisit virtually every aspect of the adopted rules before the statutorily required rules have gone into effect."); Comments of USTelecom, CG Docket No. 22-2 (filed Feb. 16, 2023) ("USTelecom Comments") at 2 ("Given that the label requirements have not yet been implemented, the Commission should first see how the labels work for consumers before considering whether any additional label information is warranted and would be consistent with the Infrastructure Act's directive."); Comments of CTIA, CG Docket No. 22-2 (filed Feb. 16, 2023) ("CTIA Comments") at 3 ("Making significant revisions to the labels . . . while the labels are being implemented and used by consumers for the first time will more likely add to consumer confusion than cure it").

2022, it is impossible to understand whether, and in what respects, those rules might be inadequate. Those commenters seeking to "overengineer"[3] or "overcomplicat[e]"[4] the broadband label may believe they are representing the public interest. But their proposals would in fact work against the consumer-oriented, user-friendly intent of the labels by saddling them with more fine print than is necessary or can be easily digested by consumers, stuffing them with information that could instead be made readily available through a simple link to the provider's web site. In contrast, commenters with practical knowledge of market demands and customer operations urge the Commission to first assess whether and to what extent the existing rules are achieving their purpose before considering changes.[5]

II. DISCUSSION

A. PROPOSALS TO INCREASE LABEL REQUIREMENTS ARE PREMATURE

Many of the comments submitted in this proceeding support are consistent with positions the Joint Commenters articulated in the initial round. These include recommendations that the Commission refrain from requiring Internet Service Providers ("ISPs" or "providers") to create labels in languages in which they do not market their services, and moreover to allow ISPs flexibility in determining the best way to ensure accessibility of their broadband labels. Many commenters also agree with the Joint Commenters that labels should not be required to display

[3] USTelecom Comments at 2.

[4] CTIA Comments at 3.

[5] The Joint Commenters note that three parties have sought clarification of certain aspects of the *Report and Order*. Joint Petition for Clarification or, in the Alternative, Reconsideration filed by ACA Connects, et al., CG Docket No. 22-2 (filed Jan. 17, 2023); Petition for Clarification or, in the Alternative, Reconsideration filed by CTIA, CG Docket No. 22-2 (filed Jan. 17, 2023); Joint Petition for Clarification or Reconsideration filed by Cincinnati Bell Telephone Company LLC, et al., CG Docket No. 22-2 (filed Jan. 17, 2023). The requested clarifications would not add new information to the label, but would provide clarity and guidance to providers.

discounted or promotional rates; network management practices and privacy policies; or information about cybersecurity. Finally, numerous commenters join the Joint Commenters in opposing requirements for complicated interactive labels. Overall, many parties urge reasonable restraint and to not amend rules that were recently adopted but which are not yet effective, and whose effectiveness therefore cannot be evaluated. The Commission crafted an appropriate balance in the *Report and Order* and should refrain from imposing additional burdens that would outweigh any potential consumer benefits. Congress sought simplicity in requiring the creation of an easy-to-follow label, and the Commission achieved that objective in the *Report and Orde*r. The Joint Commenters urge the Commission to resist unnecessary changes that will add cost, burden, and confusion to the label requirements for providers of all sizes, with no measurable benefit to consumers.

There is no evidence of deficiencies in the label requirements adopted by the Commission, and indeed there *can be no evidence of deficiency* since the newly adopted label requirements have not yet been tested. Nonetheless, several parties suggest additional prescriptive measures that, even if well-intentioned, would ultimately impose counterproductive outcomes. To begin the process of developing an effective label, the Commission charged a task force (the Consumer Advisory Committee ("CAC")) to respond to Congressional directives and develop approaches intended to enhance basic comparison shopping among broadband services. Looking toward the simplicity of the ubiquitous nutrition label, the CAC advanced a proposal for a compact, accessible label to describe broadband services (including price, capabilities, and other basic information). The Commission explored various options and permutations in the *NPRM* and, responding to rational concerns and informed by Congressional intent, crafted a balance that results in customer accessibility of essential information. The Commission added

certain enhancements to the CAC's initial concept, including a requirement for ISPs to publish labels in languages in which they market and provide their services. Although several issues remain the subject of petitions for reconsideration,[6] overall the rules achieve fundamental objectives desired by Congress.

Against this backdrop, the timing of the *FNPRM* begs consideration. As ACA notes, the Commission does not explain why it imagines revising rules before those requirements become effective and before their effectiveness can be assessed.[7] ACA adds that it is far too early to conclude that more onerous, prescriptive, or burdensome rules are necessary to fulfill the goals of the statute.[8] USTelecom echoes this sentiment, cautioning that the Commission should first see how the labels work for consumers before considering whether additional information is warranted.[9] USTelecom affirms that the Commission followed the spirit and the letter of the statute in the *Report and Order,* and that "[d]rastically departing from the content and format of the 2016 label . . . would be inconsistent with the Infrastructure Act and would disregard the 'extensive work' of the CAC in designing the 2016 labels."[10] NCTA observes, "It's implausible to suppose Congress intended for the Commission to immediately revisit almost every aspect of the adopted rules before statutorily required rules have gone into effect."[11] And CTIA notes astutely that revising the labels just as broadband shoppers are beginning to use them for the first time will cause confusion, ultimately undermining their effectiveness.[12] Accordingly, the Joint

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[6] *See id.*

[7] ACA Comments at 5.

[8] *Id.*

[9] USTelecom Comments at 2.

[10] *Id.* at 3 (internal citation omitted)

[11] NCTA Comments at 2.

[12] CTIA Comments at 6.

Commenters urge the Commission to pause contemplated changes to the label rules and to defer such consideration until such time as there is record evidence that adjustments are necessary.

B. A CONCISE LABEL REMAINS THE GOAL AND MOST USEFUL APPLICATION

Key points of the Joint Commenters' advocacy have been their exhortation for simple, clear labels that convey essential information, and to avoid requirements that would create confusion for consumers and place undue burdens on small providers. And yet, even as Congress established guidelines and the Commission's CAC envisioned a reasonable manifestation of those standards, certain commenters propose changes that will add little, if any, gains for consumers as a practical matter, while imposing significant, if not untenable, obligations on providers. Several proposals extend far beyond a simple conveyance of concise specifications to suggest expansive, bloated expositions of information far beyond the normative contents of a simple label. For example, the Massachusetts Department of Television and Cable[13] proposes that labels disclose the sunset dates for support of consumer equipment, a requirement that would stretch from one end of the proverbial horizon to the other, given the numerous CPE options available to consumers as well as the fact that in many instances, third-party suppliers define the duration for which equipment will be supported.[14] In another example of how certain proposals drift unmoored from practicality and Congressional intent, other commenters propose that labels disclose the provider's "stance on net neutrality."[15] Without engaging deeply on this proposal, the Joint Commenters note in the first instance that policy

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[14] Comments of Massachusetts Department of Television and Cable, CG Docket No. 22-2 (filed Feb. 14, 2023) at 2.

[15] Comments of the City of Longmont and City of Loveland, CG Docket No. 22-2 (filed Feb. 14, 2023) ("Longmont/Loveland Comments") at 5.

advocacy positions are entirely immaterial to price and service labels. Moreover, even if the slenderest of rationalization could be found to require providers to state their policy platform on a label (assuming they have one), advocacy issues contemplate varied and complex nuances that cannot be boiled down to a simple, easily digestible statement on a label. This proposal is inappropriate to the goals of the label, impractical to its design, and well beyond the scope of this proceeding. This example illustrates the extent to which certain parties wish to expand labels from a display of information about broadband prices, rates, data allowances and broadband speeds to an all-encompassing compendium that is neither necessary nor useful to the ordinary consumer.

The overarching goal of the label is to provide clear and concise information to consumers as they compare broadband service offerings. As cautioned by the Joint Commenters earlier in this proceeding, the Commission must resist inclinations toward "infobesity," specifically, including so much information in the labels that they become effectively useless to consumers by undermining their utility as a tool for efficient information.[16] Indeed, as CTIA also notes, the core purpose of the label is to provide clear and simple information at the point of sale[17] explaining that "the benefits of simplicity should govern in considering the label's content, and the goal of transparency must be balanced against the effects of information overload."[18] The Joint Commenters accordingly urge the Commission to confine the label to essential basic information and refrain from expanding the label into unwieldy design and content.

[16] Joint Comments of NTCA and WISPA, CG Docket No. 22-2 (filed Feb. 16, 2023) ("NTCA/WISPA Joint Comments") at 10.

[17] CTIA Comments at 1.

[18] *Id.* at 4.

C. THE RECORD DEMONSTRATES PRECEDENTS AND BENEFITS OF APPROACHES FOR ACCESSIBLITY DRIVEN BY PRACTICAL EXPERIENCE AND LOCAL AWARENESS

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

The Joint Commenters acknowledge the usefulness of Web Content Accessibility Guidelines (WCAG). At the same time, consistent with the very name, the Joint Commenters urge the Commission to view the WCAG as *guidance* rather than to incorporate their specific sections by reference into promulgated regulations. Providers can look toward WCAG or other standards to craft reasonable ways to facilitate accessibility among various users based upon local needs, practical experience, and discerned consumer demand. Other parties concur with the Joint Commenters and recommend the Commission to not require adherence to enumerated WCAG standards.[19] USTelecom notes that the Commission has not prescribed specific accessibility standards in other proceedings.[20] Instead, to the extent the Commission promotes accessibility, it should instead establish a reasonable zone of compliance and refrain from incorporating specific WCAG guidelines, especially for small providers where there will be a monetary cost to comply.[21] Accordingly, the Joint Commenters recommend that the Commission use the WCAG guidelines to inform, but not mandate, provider practices.

[19] *See* Comments of Blooston Rural Carriers, CG Docket No. 22-2 (filed Jan. 17, 2023) ("Blooston Comments") at 2; USTelecom Comments at 8.

[20] USTelecom Comments at 9.

[21] Small providers are not likely to have in-house legal departments and therefore, would need to engage consultants and/or legal counsel to comply with the WCAG guidelines. This is a major cost burden.

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

Many commenters concur that ISPs should not be required to produce labels in languages in which they do not market their services.[22] Parties identify correctly that requirements to publish in languages in which the company does not market its services would impose substantial burdens on providers, especially small providers. Certain competing recommendations, however, evidence the very burdens that Joint Commenters and others have elucidated. For example, some commenters propose that materials should be "written in simple English that can be easily translated"[23] However well-intentioned, such requirements would pose impracticable, if not effectively impossible, burdens on providers. In the first instance, while the Joint Commenters agree that the purpose of the label is to present clear and concise information in an efficient and understandable manner, certain of the terminology as required by the Commission are themselves terms of art that could require pages to explain if the label was limited only to "simple English." For example, the Commission requires labels to list speeds in "Mbps" and latency in measurements abbreviated as "ms." These by themselves beg numerous questions, including: For what are Mbps and ms abbreviations? What is a megabit? What is speed? What is latency? What is the impact of latency on service? What are "good" numbers for speed and latency? To be sure, the Commission-managed glossary of common terms will go a long way toward answering these questions for the typical consumer. But the very reason for

[22] *See* ACA Comments at 9, 10; USTelecom Comments at 9; Comments of John Starulakis, LLC, , CG Docket No. 22-2 (filed Feb. 16, 2023) ("JSI Comments") at 5, 6; Comments of The Rural Wireless association, CG Docket No. 22-2 (filed Feb. 16, 2023) ("RWA Comments") at 1; Comments of the Small Company Coalition, CG Docket No. 22-2 (filed Feb. 16, 2023) ("Small Company Coalition Comments") at 2, 3; Comments of WTA – Advocates for Broadband, CG Docket No. 22-2 (filed Feb. 16, 2023) ("WTA Comments") at 2, 3.

[23] Comments of Asian American Tech Table, et al, CG Docket No. 22-2 (filed Feb. 16, 2023) ("Asian American Comments") at 4.

the glossary is to explain in more detail the efficiently summarized and abbreviated information on the label. Proposals that ISPs should also be required to verify the accuracy of their translations[24] further illustrate the impractical scope contemplated by certain commenters. This recommendation supposes that ISPs, and especially small ISPs such as those within the respective memberships of the Joint Commenters, would be responsible to not only retain translation experts but to effectively attest to their skills in the translation of idiomatic expressions and technical terms of art and assume the additional enforcement risk.

Other recommendations similarly reach far beyond reasonable implementation of a label requirement. For example, one commenter notes that some languages do not have written alphabets, and that the Commission must consider this when drafting rules.[25] The potential for such confusion only increases when contemplating the production of labels in languages that do not have a written alphabet. Others propose that labels should be provided via videos with ASL, and that "ISPs should provide 'direct video calling' which will allow ASL users to engage in one-on-one conversations in their native language directly and in real-time with ASL fluent customer service agents."[26] Clearly, these proposals do not account for the difficulties, costs and burdens for small providers to include these additional labels or other means of communications, and accept the additional enforcement liability that an overreaching language publication requirement inherently entails.

The interest of many groups in identifying resources and ways in which to engage more consumers is encouraging, as it demonstrates broad recognition of the need for broadband.

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[24] Comments of AARP, CG Docket No. 22-2 (filed Feb. 16, 2023) ("AARP Comments") at 2.

[25] Asian American Comments at 4.

[26] Comments of Communications Services for the Deaf, CG Docket No. 22-2 (filed Feb. 16, 2023) at 2, 6.

However, the Joint Commenters join others in concluding that the Commission struck the right balance when it aligned non-English language requirements with the provider's practices and best indications of the market it serves, specifically requiring labels in languages in which the provider markets or otherwise offers its services. Even where Census or other data indicates Low English Proficiency speakers in a particular region, overall feasibility and practicalities may weigh against the inclination to create numerous specialized labels or require other means of communications with consumers. In initial comments, the Joint Commenters described the costs of translation and production, which are amplified by the technical nature of the label contents and highly specified industry terms of art therein. Even commenters urging multiple language productions acknowledge that readily available technologies enable users to "cut and paste" labels into translation apps, allowing individuals to obtain information and ultimately achieving greater digital literacy and participation in communities.[27] This aligns with the Commission's conclusion in the *Report and Order,* specifically, that the obligation to produce labels in non-English languages should trigger only when the company markets in that language.[28] Sufficient third-party resources are available when individual, rather than larger market, needs may arise.

Remarkably, however, some commenters seem to recommend that ISPs produce sales materials for those who are not able to read: One commenter urges the Commission to implement label requirements that "accommodate consumers who are unable to read provider marketing materials or face a language barrier."[29] The Joint Commenters do not discount the

[27] Asian American Comments at 4.

[28] *Report and Order* at 28, ¶ 84.

[29] Comments of Next Century Cities, CG Docket No. 22-2 (filed Feb. 16, 2023) ("Next Century Cities Comments") at 2.

obstacles of illiteracy and language barriers generally. But, in assessing the reasonableness of obligations, the Joint Commenters submit that common business practices *and current regulations that govern the inspirational nutrition labels* offer sufficient, significant, and dispositive guidance for Commission action here. In short, the record overwhelmingly lacks evidence of instances or industries in which firms must publish materials in prescribed languages. As described in our initial Joint Comments, the Food and Drug Administration ("FDA"), upon whose nutrition labels the broadband labels are based, does not impose requirements for the publication of food nutrition or even pharmaceutical information in non-English languages, despite the fact that food and pharmaceutical consumption can implicate actual life and death consequences. Broadband providers, like other firms, consider many factors when creating marketing and promotional materials, and their incentives in a free market should sufficiently inform the marketing of services in non-English when normal and ordinary business practices support such efforts. Stated differently, where ISPs see a justifiable and market-driven need to market in multiple languages, they do so. The record has produced neither evidence nor justification to depart from either normal business practices or the standards established by the FDA in matters that affect, literally, health and safety.[30]

[30] The Greenlining Institute submits that costs should not trouble ISPs, as the "cost of translation is approximately $25.00 per translation." Opening Comments of the Greenlining Institute, CG Docket No. 22-2 (filed Feb. 16, 2023) ("Greenlining Institute Comments") at 4. The Joint Commenters submit that this estimate is disconnected entirely from the realistic costs of retaining a translator; verifying the translation of technical and terms of art; setting labels in language-appropriate typeset, including languages that are not written in common Roman characters; adhering to specific formatting rules that may not accommodate non-English languages; and the ongoing costs of updating non-English languages.

D. THE RECORD DEMONSTRATES THAT LABELS SHOULD NOT INCLUDE DISCOUNTED AND PROMOTIONAL RATES

The Joint Commenters address proposals to require providers to display additional information about variables beyond the cost of standalone broadband service.[31] The Joint Commenters do not dispute that consumers may face a plethora of discounts and service agreements, and that this wealth of offerings may complicate comparison shopping. But the range of tailored offerings is a beneficial outcome when providers operate in a free and competitive marketplace. Some commenters suggest that labels include a "comprehensive cost section that includes all pricing options for a given plan," or that separate pricing costs be made available for bundled services.[32] These recommendations at once implicate and run against the grain of several overarching concerns. Labels for bundled services neither accommodate "apples-to-apples" comparisons nor further the public interest. The potentially vast differences among bundled service offerings could create unwieldy labels; providers would be left to devise numerous labels to reflect pricing as variables among broadband speed, video offerings, etc., bear upon price. These are factors beyond the basic, elemental data that is ordered for the label pursuant to the *Report and Order.* In fact, one party urges that labels prioritize information about discounts, yet also declares consumers are confused by billing information about bundles, fees, and discounts.[33] The Joint Commenters in no way support any approaches that would attempt to deliberately obscure or "hide" charges, fees, or other conditions of service. Rather, the Joint Commenters suggest that the successful implementation of labels will rely on clear, easy to understand information that enables efficient "apples-to-apples" comparison shopping.

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[31] *See, e.g.,* AARP Comments at 3; Greenlining Institute Comments at 4.

[32] Next Century Cities Comments at 6, 7.

[33] Comments of the National Digital Inclusion Alliance, CG Docket No. 22-2 (filed Feb. 15, 2023) at 3.

Labels for bundled offerings, especially as they might be used to compare different bundled offerings from different providers, would in contrast instill more confusion than clarity.

E. THE RECORD DEMONSTRATES THAT THE COMMISSION SHOULD NOT REQUIRE BROADBAND PROVIDERS TO INCLUDE ADDITIONAL PERFORMANCE INFORMATION ON BROADBAND LABELS

Speed and Latency

Based on the underlying record, the Commission determined that the broadband label must provide the provider's "typical" speed and latency for each service tier it offers.[34] The Commission reasoned that "the speed a customer will experience can vary depending on the consumer's equipment, how many devices are operating in the household, network congestion, network usage of nearby customers, and the distance to a cell site (for wireless broadband)."[35] As ADTRAN explains, "consumer broadband service is normally offered on a "best efforts," basis, rather than pursuant to "service level agreements" negotiated with business customers.[36] Moreover, the Commission provided guidance on how fixed broadband providers could measure "typical" performance, stating that they "may use the methodology from the MBA program to measure actual performance, or may disclose actual performance based on internal testing, consumer speed test data, or other data regarding network performance, including reliable, relevant data from third-party sources."[37]

The Commission's solution as adopted in the *Report and Order* is sufficient and enables providers multiple avenues by which to calculate the data that would be presented on the label.

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[34] *Report and Order* at 13, ¶ 37.

[35] *FNPRM* at 45, ¶ 138 (footnote omitted).

[36] Comments of ADTRAN, Inc., CG Docket No. 22-2 (filed Feb. 16, 2023) ("ADTRAN Comments") at 5 (citation omitted). *See also id.* at 6 ("The speed experienced by the consumer will thus depend on factors

The Commission should once again here give the requirements it has already adopted time to be implemented and observed, and only consider further action in terms of measuring performance related to label claims if it is found that the disclosures are failing to provide consumers with a realistic perspective of the experience that can reasonably be expected in subscribing to the service. It is also worth noting that the Commission has its enforcement authority to govern compliance with the existing requirement to disclose "typical" speeds and latency. The agency has also given providers guidance to deter misrepresentation. The threat of enforcement for non-compliance is an important part of the Commission's overall regulatory scheme for the broadband label.

Reliability

In addition to the Joint Commenters, other parties recognized the difficulties and the lack of utility that disclosing reliability information on the broadband label would engender. For example, the Mississippi Center for Justice expressed its concern that including reliability, privacy policies and network management policies on the label "would deter consumers from using the labels. . . . Adding reliability metrics and these policies risks creating an overly detailed label with overly technical jargon."[38] JSI agreed that such disclosures "will only complicate the label, which is meant to be simple and easy to understand."[39]

within and outside the service provider's control, further supporting the use of 'typical' to characterize the speed included in the consumer broadband label.")

[37] *Report and Order* at 14, ¶ 39 (citation omitted).

[38] Comments of the Mississippi Center for Justice, CG Docket No. 22-2 (filed Feb. 8, 2023) ("MCJ Comments") at 2.

[39] JSI Comments at 4-5.

Other groups representing broadband providers agreed with the Joint Commenters[40] that historical reliability is not predictive of future reliability and "poses significant complexities and difficulties."[41] WTA explained that "outages can be caused by a variety of factors, ranging from unpredictable and difficult-to-prevent line cuts by animals or construction crews to somewhat predicable seasonal weather conditions to inadequate or negligent network maintenance or operation"[42] – events for which past circumstances have no bearing on future circumstances. The Small Company Coalition provided other examples, noting that "outages and other service-interrupting events rarely occur in a network-wide manner. Rather, specific incidents such as automobile accidents taking down aerial fiber on telephone poles, wildlife and environment-caused cable degradation, and other anomalous incidents result in portions of the network going 'down.'"[43] Reliability, then, is not a function of poor network quality, as one commenter suggests,[44] but of an infinite number of external and unpredictable events that can occur at any time.

Those advocating for reliability to be expressed on the label may have good intentions, but they cannot overcome the inherent difficulties in explaining reliability or the lack of meaningfulness with respect to future reliability. A "monthly percentage indicator of how often

[40] *See* NTCA/WISPA Joint Comments at 13.

[41] WTA Comments at 5.

[42] *Id.* at 6.

[43] Small Company Coalition Comments at 5. *See also id.* ("An ISP can accurately report 100% uptime for its network in a given period, but several end-users may disagree, as the service received in their home was interrupted due to one of the circumstances above.")

[44] Next Century Cities Comments at 8.

the service is available or unavailable"[45] or the "minutes unavailable per month"[46] might explain the past over some period of time, but it will not be able to provide information to consumers about what they can expect in the future given the myriad of unanticipated events that can occur, most of which are outside the control of the provider. Accordingly, even if those metrics were "understandable to consumers and will enable side-by-side comparisons among alternative broadband providers of service reliability"[47] or even if "some consumers wanted additional reliability details,"[48] disclosure of downtime in any form cannot accurately predict the extent of future outages and could even be misleading. For example, a provider that has a monthly downtime of one percent over some measurable period may suffer an upstream outage from a gopher cut the following month that would increase the downtime.[49]

Cybersecurity

The record strongly urges the Commission to refrain from requiring providers to disclose their cybersecurity practices at the point of sale. In addition to the Joint Commenters,[50] a number of other commenters pointed out the pitfalls and dangers of publicizing a provider's cybersecurity practices. For example, USTelecom stated that "divulging information about

[45] Comments of New America's Open Technology Institute, CG Docket No. 22-2 (filed Feb. 16, 2023) ("OTI Comments") at 4 (citation omitted). *See also* Comments of Carnegie Mellon University, CG Docket No. 22-2 (filed Feb. 16, 2023) ("CMU Comments") at 4.

[46] AARP Comments at 4.

[47] *Id.* at 5. *See also* Longmont/Loveland Comments at 7 (minutes of unavailability "would be most easily understood by consumers.").

[48] CMU Comments at 4.

[49] For these same reasons, and even more so, the Commission should not require providers to display "hard-down" time and times when service is useable but degraded. *See* ADTRAN Comments at 8-9. Introducing gradients and definitions of service degradation would introduce a whole new level of granularity and complexity that far exceeds Congressional intent and the simple, consumer-friendly label the Commission is requiring.

[50] NTCA/WISPA Joint Comments at 14-17.

broadband providers' cybersecurity policies could create a security risk by providing a roadmap for hackers."[51] Blooston Rural Carriers agreed that "labels should absolutely not be used to highlight network vulnerabilities, since this could provide a road map for malign actors to spread cyber risk."[52] The Small Company Coalition emphatically proclaimed that "[u]nder no circumstance should this information be required to be publicly displayed or contained within the labels. . . . It is difficult to imagine any such label that contains this information that would not be viewed as a bright, red target for potential bad actors; likewise, banks don't advertise their security shortcomings on their front door."[53]

Only Vantage Point asks the Commission to require the broadband label to "share with the customer at the point of sale how the carrier will protect the customer from cybersecurity risks."[54] Its sole rationale is that "[c]ybersecurity has evolved and will continue to be an important issue for customers to evaluate in broadband choices and decisions."[55] But Vantage Point also acknowledges that "[n]othing in a required label link should put the company at risk by providing a road map for a hacker or bad actor to attack."[56] These competing positions are difficult to reconcile – requiring disclosure of cybersecurity practices without exposing the broadband provider to substantial risk – and the Joint Commenters urge the Commission to not

[51] USTelecom Comments at 7.

[52] Blooston Comments at 5 (emphasis in original).

[53] Small Company Coalition Comments at 5-6.

[54] Comments of Vantage Point Solutions, Inc., CG Docket No. 22-2 (filed Feb. 14, 2023) ("Vantage Point Comments") at 7. AARP acknowledges that this proceeding is not appropriate for determining whether and to what extent cybersecurity practices should be required to be disclosed, and asks the Commission to initiate a separate proceeding. AARP Comments at 5.

[55] Vantage Point Comments at 7.

[56] *Id.*

require such disclosures. Even a rating system, such as that suggested by OTI,[57] would publicize network vulnerabilities and tip off would-be hackers and identity thieves. Given the weight of the record, it is clear there can be no meaningful disclosure of cybersecurity practices that does not create or exacerbate the security risk.

Moreover, any public disclosure of a provider's cybersecurity practices and procedures as part of a label or at the point of sale will undermine the Biden-Harris Administration's recently released national cybersecurity strategies to protect the investment in America's infrastructure, national security and public safety.[58] The White House acknowledged that the nation faces a "complex threat environment, with state and non-state actors developing and executing novel campaigns to threaten our interests."[59] The White House strategy sets out a path to address these threats using all "tools of national power."[60] It would be both counterintuitive and inconsistent with the White House's national strategy for the Commission to impose – for any reason – a high-risk public disclosure requirement of the cybersecurity practices and procedures of ISPs that will aide malicious adversaries and undermine the ability of such critical infrastructure to protect their network, systems *and* consumers.

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[57] OTI Comments at 4.

[58] The White House, FACT SHEET: Biden-Harris Administration Announces National Cybersecurity Strategy (March 3, 2023), *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/02/fact-sheet-biden-harris-administration-announces-national-cybersecurity-strategy/.

[59] *Id.*

[60] *Id.*

F. THE COMMISSION SHOULD NOT REQUIRE PROVIDERS TO MIGRATE THEIR NETWORK MANAGEMENT OR PRIVACY POLICY DISCLOSURE REQUIREMENTS TO THE BROADBAND LABEL

In the *Report and Order*, the Commission required the broadband label to link to the provider's website for more information on the provider's network management practices[61] and privacy policy.[62] Some commenters agreed that "[l]inking to an ISP's current privacy policy and to its website for current network management practices should be sufficient for interested consumers to obtain all the information they need on privacy and network management."[63] Other commenters explained that adding detailed network management practices and privacy policies to the label itself "would make the labels far too dense and confusing"[64] and "obfuscate the most pertinent, customer-requested information."[65] The Cities of Longmont and Loveland, Colorado also recognized this problem, stating that "[u]nderstanding that overcrowding the Labels may be contrary to the goals of this proceeding, the Cities encourage the Commission to require the Labels to display a link to a single, easily discoverable webpage describing an ISP's network management practices that will allow consumers to compare practices between providers."[66] As the Joint Commenters stated, "[b]urdening the label itself with the transparency requirements, already required by other separate Commission rules, would turn the label into an

[61] *Report and Order* at 46, ¶ 145.

[62] *Id.* at 19, ¶ 57.

[63] RWA Comments at 2. *See also* Greenlining Institute Comments, CG Docket No. 22-2 (filed Feb. 16, 2023) at 6; Blooston Comments at 5.

[64] ADTRAN Comments at 9 (citation omitted). *See also* JSI Comments at 4-5 ("Including these disclosures will only complicate the label, which is meant to be simple and easy to understand.").

[65] Small Company Coalition Comments at 6. *See also* MCJ Comments at 2.

[66] Longmont/Loveland Comments at 6.

undigestible document that would ultimately discourage consumers from reading it, thereby defeating its very purpose."[67]

Network management practices and privacy policies tend to be long and detailed documents, as necessary to comply with the Commission's existing transparency rules and state and federal privacy laws. Adding these disclosures to the label itself would lead to one of three results, all of which are contrary to the interests of consumers. First, the label itself could become so cluttered with details that consumers would choose to ignore it. Second, providers might provide less information because of the need to cram new information into the label, potentially depriving consumers of the more complete disclosures they are able to review today.[68] Third, any required updates to comply with changes in state privacy laws would require changes to both the privacy policy and the label for each service plan, an effort that would unnecessarily increase time and costs that smaller providers should not be required to bear.

Ignoring these practical considerations, a few commenters ask that network management practices and privacy policies be added to the label itself. Citing its own 2020 report, OTI states that "ISPs often do not provide adequate information on network management practices, sometimes even displaying broken links for more information on the subject."[69] But the solution to that problem is enforcement of the Commission's existing transparency requirements, not bloating the label with additional information. OTI also argues that the term "network management practices" "is unlikely to mean much to a typical consumer, sounding more like

[67] NTCA/WISPA Joint Comments at 18.

[68] However, less information regarding privacy practices also puts providers at risk of legal claims of misrepresentation or deceptive trade practices by omission. *See* Federal Trade Commission Act, 15 U.S.C. § 45. This risk compels a provider to make the label even more unwieldly.

[69] OTI Comments at 5.

behind-the-scenes technical details than anything that is likely to affect one's experience—making it likely that many consumers might skip this link and not become aware of provider practices that could affect their service significantly."[70] Similarly, CMU is "not convinced that the currently required link to ISPs' website disclosures will lead to anything more comprehensible than dense blocks of text that hinder average consumers' ability to make simple comparisons across providers"[71] But OTI and CMU oddly believe that "dense blocks of text" appearing within the label itself would somehow be more helpful to consumers or that consumers would "skip" reading the required information.

The Center for Democracy & Technology and the Electronic Privacy Information Center suggest that the Commission include in the label three yes/no questions regarding the provider's use of customers' personal information.[72] While perhaps well-intentioned, the questions do not easily lend themselves to yes or no responses. For example, if a provider indicates that it does not collect or share personal information with third parties, it may be prevented from sharing that information in limited circumstances such as in response to a legitimate law enforcement request. other legal requirements, or in connection with a merger/acquisition transaction where a buyer needs to have access to customer billing information. These sorts of details and limited disclosures require clear explanation in a linked privacy policy, not in a yes-no box-check where the unhelpful answer may be "sometimes" or "in certain circumstances." A link to more thorough explanation in a privacy policy is a far better method of providing transparency to consumers. As for the suggestion that the Commission require providers to change their privacy

[70] *Id.*

[71] CMU Comments at 5.

[72] Comments of The Center for Democracy & Technology and the Electronic Privacy Information Center, CG Docket No. 22-2 (filed Feb. 16, 2023) at 7.

policies to include specific information,[73] that is beyond the scope of this proceeding. The *FNPRM* here did not provide notice that it might change the *content* of privacy policies. Moreover, the Commission's authority to mandate the content of privacy policies or to conduct a rulemaking to govern the privacy practices of non-common carrier broadband providers is open to debate.[74]

There is no reasonable basis in the record for the Commission to conclude that it should require broadband providers to migrate their network management practices and privacy policies to the label itself. Overloading the label with additional detailed information would contravene the simplicity and user-friendliness of the label Congress mandated and the Commission is implementing.

G. THE COMMISSION SHOULD NOT MANDATE INTERACTIVE LABELS

Interactive Labels and Drop-Down Menus

The Joint Commenters oppose recommendations to require the production of interactive labels; providers may have the option of producing such labels but they should not be required. As RWA observes, the creation of interactive labels involves sophisticated web design and will impose significant costs on providers.[75] Moreover, the interactive label is at odds with the intent of the label, which is to provide clean and concise presentations of essential information.[76] Providers already publish, both in response to regulatory and market demands, significant information in sales literature and on their website. The task of creating complicated interactive labels is beyond the scope contemplated in the statute and recommendations to require such

[73] *Id.* at 10.

[74] *Cf. id.* at 12-13.

[75] RWA Comments at 3.

[76] *See* ACA Comments at 11, 12.

actions should be rejected. The CAC provided good guidance to the Commission, and recommendations to convene focus groups and surveys to test the effectiveness of the labels are premature.[77]

Style Guides and Implementation Tools

The Joint Commenters recognize the usefulness of Commission guidance in the presentation of labels and commend the Commission for its inclusion of a graphic representation in 47 C.F.R. § 8.1(a)(1). Many parties recommend helpful approaches to ensure a consistent and efficient path toward label creation. For example, RWA recommends the Commission to create compliance tools for ISPs,[78] while JSI suggests a fillable label format that would comply with the Commission's vision.[79] These recommendations are echoed by Carnegie Mellon, which observes that this would provide a safe harbor for ISPs.[80] The Joint Commenters concur and support a safe harbor. While the Joint Commenters are wary of requirements that specify size, font, keening, and spacing, they support guidelines that can define a safe harbor for providers while allowing sufficient flexibility for individual design of labels to fit each provider's needs.

III. CONCLUSION

The Joint Commenters urge the Commission to stay the course and implement the label requirements it adopted in the *Report and Order*. Proposals advanced by certain commenters would reduce consumers' ability to comparison shop for broadband by cluttering the label with too much detailed information that is unnecessary or better addressed through links to other documents. Moreover, those label add-ons would have costs to providers that these commenters

[77] OTI Comments at 6.

[78] RWA Comments at 4.

[79] JSI Comments at 6.

[80] CMU Comments at 6, 7.

do not appear to have adequately considered much less weighed those costs for the perceived consumer benefits. Unless or until there is a record of non-compliance with the rules the Commission adopted that the Commission's enforcement mechanisms cannot adequately address, there is no need to change the labelling requirements.

Respectfully submitted,

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