May 24, 2023

Marlene Dortch
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Empowering Broadband Consumers Through Transparency
CG Docket No. 22-2
Notice of Ex Parte Presentation

Dear Ms. Dortch:

On May 22, 2023, Louis Peraertz, Vice President Policy, WISPA - *Broadband Without Boundaries*, Steve Coran, Counsel to WISPA, and Joshua Seidemann, Vice President Policy and Industry Innovation, NTCA–The Rural Broadband Association (the Parties), met with Alejandro Roark, Mark Stone, Kristi Thornton, Zac Champ, Aaron Garza, Erica McMahon, and Edyael Casaperalta of the Consumer and Government Affairs Bureau via videoconference to discuss broadband labels.

The Parties expressed appreciation for the overall conclusions of the Broadband Labels Order.[1] Notwithstanding several issues that are subject to pending Petitions for Reconsideration,[2] the Parties noted the Order represents a balanced outcome of interests. Notably, the Order sets the stage for labels that are clear, easy to understand, and not overburdened by information that is neither useful to the average consumer nor the desired outcome of enabling comparison shopping by consumers. The labels hew largely to the recommendations of the Consumer Advisory Council; permit technically and administratively manageable links to network management and privacy policies; and allow for a binary "yes/no" indicator for participation in the Affordable Connectivity Program. The Parties also registered their appreciation for the extended implementation deadlines for small providers, noting that their respective members are typically small companies serving only several thousand customers with staffs averaging between 10-40

[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) (referred to hereinafter as Order or Further Notice).

[2] *Joint Petition for Clarification or, in Alternative, Reconsideration of ACA Connects, et al.,* Docket No. 22-2 (Jan. 17, 2023); *Petition for Clarification or, in the Alternative, Reconsideration of CTIA,* Docket No. 22-2 (Jan. 17, 2023); *Joint Petition for Clarification or Reconsideration of Cincinnati Bell Telephone Company, et al.* Docket No. 22-2 (Jan. 17, 2023).

employees. Accordingly, these member companies often outsource legal and regulatory functions to outside counsel and management consultant firms. These same dynamics inform the Parties' concerns with certain issues considered in the Further Notice of Proposed Rulemaking.

As an overarching concern, the Parties noted the prematurity of the Further Notice. The Parties proposed instead that the Commission allow the rules promulgated in the Order to become effective and, after a sufficient term of implementation, then assess whether any adjustments or enhancements are necessary. In contrast, the rules adopted in the Order are not yet effective, and neither industry, consumers, nor the Commission have had an opportunity to evaluate their effectiveness. The absence of any evidence that the not-yet-implemented rules are inadequate or insufficient undermines any effort to adjudge the supposed need for additional requirements. Moreover, certain of the proposals in the Further Notice stray far beyond the scope of the Congressional mandate as articulated in the Infrastructure Act, and risk both overloading the labels with unnecessary material as well providers with unduly burdensome obligations. Neither outcome will serve consumers or the overall intent of the labels.

The Parties reiterated positions set forth in their comments and reply comments on the Further Notice.[3] Specifically, the Parties explained that the Web Content Accessibility Guidelines provide valuable guidance toward the goal of ensuring web accessibility but urged the Commission to rely upon those standards as *guidelines* rather than to incorporate them into regulatory requirements. The Parties also explained that the resources and abilities of small providers would be stretched beyond reasonable measure were the Commission to require providers to produce labels in languages in which those providers do not even market their services. The Parties acknowledged the rational conclusion of the Order that providers must produce broadband labels in non-English languages in which they market their services but explained that extending that requirement to languages in which the provider does not otherwise engage would be unduly costly and burdensome. The Parties noted that for small providers especially, the expenses of hiring translators who possess not only conversational skills but also the ability to translate highly technical terms of industry art would be at best difficult and at worst impose substantial and unreasonable costs. The Parties emphasized the commitment of their small and generally locally operated businesses to serve all prospective customers but cited the potential burdens associated with creating complex and comprehensive print and web-based materials for potential market audiences of very limited proportions. The Parties noted as well that the Food and Drug Administration (upon whose nutritional labels the broadband labels are based) does *not* require food or pharmaceutical labels to be produced in non-English languages.

The discussion of multiple permutations of labels also included the Parties' positions that labels ought to remain focused on core elements of price, capacity, and performance. The Parties explained that the intent of the labels to enable efficient and user-friendly comparison-shopping

[3] Joint *Comments of NTCA–The Rural Broadband Association and WISPA – Broadband Without Boundaries*, Docket No. 22-2 (Feb. 16, 2023).

tools would be undermined were the Commission to require labels for discounted and promotional pricing and/or bundled services. Discounts and promotions of short terms or limited applicability (*i.e.,* family plans, student discounts, senior citizen rates) contemplate rates, terms, bundles, and conditions that would create a collection of labels so large and differentiated as to be effectively useless in enabling efficient comparison shopping among users. Rather than facilitating apples-to-apples comparison shopping, a broad collection of labels for vastly differentiated services and offerings would offer only a confusing collection of unrelatable and disparate information, as opposed to a basis for efficient and useful comparison shopping. Providers also are not limited by the label in how they market their services, and could use means other than their labels to promote discounted pricing.

The Parties reiterated their positions on performance, cybersecurity, and network management. The Parties explained that performance is best expressed in terms of "typical" performance metrics, rather than "average" units. The Parties explained that "average" represents mathematical results based on historical conditions that may have no bearing on future off-network events. The Parties invoked the 2012 derecho that struck the metro Washington DC region as an example of an event that can have a profound impact on average network performance metrics but which offers little predictability of current or future performance. Regarding security practices, the Parties explained that the provision of information regarding a provider's various strategies would provide a roadmap for adversarial interests. Finally, the Parties noted that the Commission already requires the disclosure of network management practices, and that listing these long and detailed policies on labels would be duplicative and burdensome, and would bloat the labels into unreadable documents that would discourage careful consumer review and comparison. The Parties also distinguished between web-based labels and dynamic labels; the latter could contemplate interactive labels that require degrees of complex web design beyond the reasonable scope of purpose of the label, and beyond the reasonable resources of providers to design, execute, and amend as may be necessary. The Parties recommended that a fillable PDF or similar label format from the Commission would provide a valuable safe harbor for providers.

The Parties also discussed the cost estimates of compliance that the Commission developed as part of the Paperwork Reduction Act (PRA) process. The Parties explained that the PRA burden projections underestimated both the costs and time involved in creating and publishing labels in both print and web media, especially for smaller providers that do not have in-house capabilities. The Parties explained that the very reason for the extended implementation timeline for small providers (specifically, that small providers generally lack internal staff that could implement the label requirements and therefore can be expected to seek outside assistance) in fact creates the very costs that the PRA Notice estimates project as "zero." The Parties explained GS-based rates bear no relation to much higher fees smaller providers will need to expend on attorneys, engineers, technical writers, and web administrators. Nor did the PRA Notice estimate appear to contemplate updates to the labels when circumstances change (*e.g.,* pricing, taxes), or explain how the time-in estimates were calculated or project the potential exponential increases that can

trigger as multiple labels must be created. The Parties noted that their opposition to the PRA estimates is not intended to delay implementation, but to rather request the Commission to "return to the drawing board" to generate more realistic cost estimates upon which further public comment could be sought prior to OMB approval.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is filed with ECFS.

Respectfully submitted,

s/*Joshua Seidemann*
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