

Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF NATIONAL DIGITAL INCLUSION ALLIANCE

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INITIAL COMMENTS OF THE NATIONAL DIGITAL INCLUSION ALLIANCE

The National Digital Inclusion Alliance (NDIA) respectfully submits the following initial comments in response to the Commission's Notice of Proposed Rulemaking In the Matter of Empowering Broadband Consumers Through Transparency (CG Docket No. 22-2).

National Digital Inclusion Alliance (NDIA) is a non-profit, 501(c)(3) organization that advances digital equity by supporting community programs and equipping policymakers to act. Working collaboratively with more than 650 digital inclusion practitioners in 46 states, NDIA advocates for equitable internet access, tech devices, digital skills training, and tech support.

NDIA commends Congress for addressing the urgent need for internet service provider transparency in Section 60504 of the Infrastructure Investment and Jobs Act (IIJA). We also commend the Commission for acting quickly to implement this statute through this proceeding, and the NPRM's thoughtfulness and detail.

Since NDIA's inception, our affiliates have repeatedly relayed to us that one of the most important elements of their digital inclusion work is to support low-income community members in finding home broadband internet options that are both robust and affordable. Ready access to reliable information regarding true consumer costs, data speeds and quality of locally available internet services is critical for this purpose.

Unfortunately, despite the Commission's existing transparency requirement¹ that information is too often unavailable, both to prospective consumers and to organizations like our affiliates who work to assist them.

Among the types of information which wireline internet providers often completely fail to make public on their websites are:

- providers' prevailing standard rates for internet plans that are offered with time-limited discounted rates for new customers;
- the amounts of monthly fees and surcharges routinely added to customers' bills;
- upload speeds associated with advertised download speeds.

¹ "Any person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services... Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission." [See *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Order, Report and Order, 33 FCC Rcd 311 (2018)]

Other types of pricing and service information may be technically disclosed on wireline providers' sites, but only accessible to the public through a careful examination of footnotes, "learn more" links, obscure "policy" pages, and other forms of "small print". Often access to basic information depends on giving the provider a proposed service address. In these cases the providers' websites may be "publicly available" and "easily accessible", but the actual disclosures aren't.

Hard-to-find pricing and service disclosures frequently include:

- monthly equipment rental charges;
- separate monthly charges for ordinary use of a provider's equipment, such as the Wi-Fi capability of a Wi-Fi gateway/modem;
- the degree to which advertised prices are conditioned on paperless billing and automatic credit card payments;
- in the case of some providers' DSL offerings, the availability of the Internet service only to customers who pay separately (or via "bundles") for fixed telephone lines which they might otherwise not want or need;
- the geographic availability of advertised technologies and speeds (for example, whether fiber-to-the-premises service, or a higher-speed tier of cable modem service, is available at all in a consumer's state or community).

Internet providers' widespread practice of withholding and/or obscuring basic facts about their pricing and service, in violation of the intent if not the letter of the Commission's existing transparency requirement, makes it very hard for ordinary consumers to make informed, apples-to-apples comparisons among providers and plans. It seriously inhibits the efforts of NDIA's affiliates and other digital inclusion practitioners to assist lower-income consumers find their best broadband options. And it prevents policymakers and the public from grasping the true extent of the nation's broadband affordability problem – an effect which NDIA suspects is "a feature, not a bug" for some providers.

Congress' decision to restore, by statute, the broadband consumer label system adopted by the Commission in 2016, but abandoned less than two years later before it could be effectively implemented, is an historic step in the right direction. The Commission is moving in a timely fashion to implement its Congressional mandate. This proceeding has the potential to create a "new normal" in which genuine transparency regarding internet pricing and services replaces the secretive, opaque and sometimes manipulative practices now common to the industry.

The NPRM poses a long series of detailed questions regarding the adoption of the 2016 labels; the degree to which they fully comply with the intent of Section 60504 of the IIJA; the extent of the Commission's authority to revise them to comply more fully in the light of possible changes in consumer priorities and needs; what revisions in format and content should be considered; where and how internet providers should be required to display the labels, etc. NDIA recognizes the importance of

these detailed requests for public comment, and we are impressed by the thoughtfulness and thoroughness of their approach. We feel confident that the Commission will do a good job of addressing these details, based in part on the careful work that went into the 2016 effort.

But here we want to address several higher-level imperatives that, in NDIA's view, will determine the actual usefulness of the label system to consumers, organizations providing digital inclusion assistance, and policymakers.

These imperatives are:

- Enforcement of providers' label obligations
- Broad access to label data for the general public, not just a provider's current or prospective customers at "point of sale"
- Public availability of simple, verifiable "bottom line" numbers for key consumer comparables, including
 - total monthly cost of service (before and after new-customer discounts),
 - total one-time cost of service acquisition, and
 - promised upload and download speeds.

Enforcement of providers' label obligations

As outlined above, the Commission's existing transparency rule has frequently been "honored in the breach" by major wireline internet service providers. If this pattern of non-compliance and pseudo-compliance continues, broadband consumer labels will have little value.

Questions 20 and 21 ask for comments regarding the Commission's enforcement authority in this area, whether broadband label compliance enforcement should operate under existing or newly adopted, separate rules, and how the Commission can identify and enforce against inaccurate information. These are important issues and we look forward to seeing the responses of other commenters.

But whatever the Commission determines in these areas, effective enforcement of the required broadband consumer label disclosures will depend on adequate staff capacity. NDIA advocates the Commission create a dedicated staff group with the responsibility, capacity and tools to:

1. receive and investigate consumer complaints about provider labels, and identify patterns of non-compliance;
2. carry out regular reviews as well as periodic formal audits of service providers' disclosures;
3. recommend enforcement actions where appropriate.

In this connection, paragraph 22 of the NPRM says: "*We expect providers to develop and implement procedures reasonably designed to ensure compliance with the proposed labels' requirements... We*

propose to adopt rules in that regard, including specifying that the provider will bear the burden to demonstrate that it has made all reasonable efforts to ensure compliance should a complaint arise or other information is brought to the Commission's attention regarding the label disclosure practices of a third party acting on the provider's behalf. We seek comment on that proposal and on any alternatives." NDIA strongly supports this proposal, noting that it implies an active enforcement regime with the staff capacity to respond to consumer complaints "or other information". Needless to say, consumer complaints regarding labels should always be assessed and acted upon, as needed, by the Commission – not simply passed along to the providers involved.

Broad access to label data for the general public

Paragraph 16 of the NPRM says (emphases added):

*We propose to require ISPs to display the labels **at the point of sale**. Specifically, we propose to require providers to prominently display the labels in a manner that is easily accessible **to consumers** and in the format prescribed by the Commission. We propose to require providers, at a minimum, to disclose the labels of any broadband service presented to consumers on an ISP's website **when a consumer browses service options**... [W]e ask for comments on exactly how the labels should be disclosed on ISPs' websites. For instance, is including a link to the label sufficient? If so, how should the link be presented to consumers? Where else on the ISP's website should the labels be displayed and/or disclosed and how should ISPs' websites be configured for search engine optimization?*

NDIA is concerned that the wording of paragraph 16 may reflect an assumption that *the intended audience for a given provider's consumer label disclosures is limited to current or prospective customers of that provider*, especially those who are actively engaged in purchasing services through the provider's website or other marketing channels. It is a short step from that assumption to the common provider practice of requiring an inquiring party to provide a current or potential service address (ostensibly their own) in order to "browse service options."

The Commission should make clear that broadband consumer labels must be displayed, on provider websites or otherwise, in ways that make them accessible to all members of the public, whether or not they are current or prospective customers of the provider in question. This genuine transparency is important for at least four reasons:

1. It will enable consumers to comparison-shop among providers and plans on their own terms, rather than providing their addresses to marketing departments before they may wish to.
2. It will enable community entities that provide assistance to consumers, such as digital inclusion programs, libraries, social service organizations, etc., to assemble accurate "apples to apples"

information about locally available internet service options for the use of those they serve. This is especially significant for programs engaged in Affordable Connectivity Program education and enrollment.

3. Similarly, it will enable online broadband consumer information services² and similar third parties to provide accurate, current price and service details from the whole range of U.S. providers, adding to the ability of millions of end users to conveniently compare providers and plans.
4. It will create the nation's first reliable, comprehensive source of residential broadband cost information for policymakers, researchers and the public, which will be particularly valuable to local and state digital equity efforts.³

NDIA asks the Commission to consider all four of these important “use cases” in determining how best to make broadband consumer labels easily accessible and useful to the entire public.

Public availability of simple, verifiable “bottom line” numbers for key consumer comparables

Paragraphs six through ten of the NPRM outline the numerous disclosures that are included in the 2016 labels as well as a variety of possible additions. In general, NDIA supports the inclusion of as much detailed consumer cost and service information in the labels as the statute permits, in the interest of maximum transparency.

We are concerned, however, that the labels' resulting small-print complexity may have the perverse effect of preventing many consumers from extracting answers to basic, bottom-line “shopping” questions:

- If I sign up for this plan, what's my *total* monthly bill?
- How much will it increase after a year?
- What's the total I'll have to pay up front?
- What download and upload speeds can I expect for my money?

For almost all consumers, but especially the least literate or sophisticated, these are the numbers needed to compare providers and plans on an apples-to-apples basis, or simply to decide whether a plan is affordable.

² e.g. BroadbandNow.com

³ Section 60504(b)(2) of the IIJA provides that “*The Commission shall rely on the price information displayed on the broadband consumer label required under subsection (a) for any collection of data relating to the price and subscription rates of each covered broadband internet access service under section 60502(c).*” This provision makes clear that Congress intended broadband labels to serve as a data source, in addition to their direct short-term utility to consumers.

The Commission should consider how these simple bottom-line disclosures could be incorporated into the label templates, or if that isn't feasible, into the transparency obligations of providers in some other way.

Other issues

Affordable Connectivity Program. Paragraph 11 of the NPRM asks: *“We seek comment on whether and how to include information about the Affordable Connectivity Program (ACP) in the broadband labels... Should the Commission require that the broadband labels include information about the ACP?... How might those disclosures be presented on the labels?”* The most important disclosure regarding ACP for any plan covered by a broadband consumer label is whether the provider is an ACP participant. If the provider is a participant, then the same eligibility criteria and \$30 (or \$75) monthly discount apply to any plan. NDIA suggests that the Commission consider creating an “ACP Equity Badge” for ACP-participant providers to attach to all their labels, incorporating a small amount of information (e.g. “\$30 ACP discount... click to learn more”) with a link to an FCC information page.