

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Empowering Broadband Consumers Through)
Transparency)

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby files its comments in response to the Commission’s *Report and Order and Further Notice of Proposed Rulemaking* (Empowering Broadband Consumers Through Transparency), CG Docket No. 22-2, FCC 22-86, released November 17, 2022 (“*Order*” and “*FNPRM*”).

WTA members and their Internet service provider (“ISP”) affiliates are moving forward to comply with the new broadband consumer label requirements adopted in the *Order* in accordance with the provisions and schedules set forth in Section 8.1(a)(7) of the Commission’s Rules.¹ However, WTA believes that the new rules should be fully implemented, and their impact and effectiveness monitored and assessed before additional labelling mandates are considered or adopted. Moreover, the primary benefit of a label – the presentation of critical service and price information to customers in an easily and quickly readable format – can be lost if too many labels are required or too much detail is required per label. Finally, many of the proposed additional labelling requirements entail substantial complexities, burdens and operating expenses for small ISPs that significantly outweigh their potential benefits and that are likely to harm customers by spurring rate increases.

¹WTA is aware that there are pending petitions for reconsideration and/or clarification of the *Order* that may result in changes to certain broadband consumer label requirements.

WTA

WTA is a national trade association that represents more than 360 rural local telecommunications carriers (“RLECs”) that provide voice, broadband and other services to some of the most rural, remote, rugged, sparsely populated, and expensive-to-serve areas of the United States. Some WTA members provide retail broadband Internet access services directly; others offer them through subsidiaries or affiliates. WTA members have long constructed and operated rural voice and broadband networks – very often as providers of last resort and always with the goal of serving all households that they can reach that want service – in high-cost farming, ranching, mining, mountain, forest and desert areas, as well as on Native American reservations and other Tribal Lands. The typical WTA member company serves fewer than 5,000 customers per service area and has fewer than 50 employees.

Additional Languages

WTA members must comply with the new requirements that broadband labels be made available in English and any other languages in which they market their services. However, WTA opposes the extension of this requirement beyond normal customer notice practices to a potentially cumbersome and confusing variety of languages other than those in which an ISP markets its services.

To date, WTA members have not encountered any perceptible language problems in the marketing or provision of their telecommunications and information services. Broadband service is marketed and subscribed to by households and businesses, and virtually all such households and businesses in the rural areas served by WTA members include or have ready access to individuals who can speak and read English and/or any other language (e.g., Spanish) in which the service is marketed. For example, some households may include grandparents or recent immigrants who do

not yet speak and read English, but can rely upon working age adults, school children and/or nearby relatives and friends that are fully capable of ordering broadband service and dealing with an ISP. Put another way, enclaves of households and businesses able to communicate only in an uncommon language are rare in rural areas, and people do not move to or remain in the types of small rural communities served by WTA members unless they have a reliable way of communicating with their neighbors and local businesses (including RLECs and ISPs).

Whereas WTA members have experienced no problems that would be eliminated or reduced by providing multiple versions and sets of broadband labels in additional languages, a requirement to do so would entail significant complications such as customer confusion and information overload, inaccurate translations and misinterpretations, and increased costs to update, translate, verify and replace sets of labels in multiple languages.

Given the lack of significant language problems and the likely complications of requiring labels in additional languages, the Commission should not expand its label language requirements beyond those languages in which an ISP markets its broadband services.

Price Information

The broadband label format for each broadband plan and/or service tier prescribed by the Commission in Figure 1 to Section 8.1(a)(1) of the Rules contains substantial itemized information regarding monthly and one-time fees plus general references to available discounts and bundled service options.

WTA members are very familiar with the preferences and needs of their customers and can assure the Commission that the current label format will be sufficient and satisfactory for virtually all customers. Adding more detailed information to labels regarding discounts, bundles and taxes is much more likely to reduce their value and effectiveness by overloading customers with much

more information than they want or need to compare and narrow down their choice among service options. Once they have focused upon the service or service alternatives that they prefer, customers desiring more information regarding their likely initial and monthly out-of-pocket costs can go behind the labels and request more detailed pricing information. With WTA members and other reputable service providers, customers can obtain this more detailed pricing information in a reliable written format on the ISP's website and/or in its service contract.

WTA notes in particular the difficulty of providing and maintaining accurate location-specific tax information on broadband labels. Many ISPs serve multiple taxing jurisdictions, which means that they would have to prepare multiple location-specific labels for each of their multiple broadband service plans and/or tiers, and exercise substantial vigilance to avoid mistakes where the wrong labels may be sent to or used in various taxing areas. These difficulties will be further complicated by the fact that taxing jurisdictions can change their tax rates on a regular or irregular basis. The current label format indicating that government taxes apply but vary by location strikes a very reasonable and equitable balance between informing customers that taxes will increase their out-of-pocket monthly service payments while not saddling ISPs with complicated and error-prone responsibilities to list specific taxes rates or amounts for multiple jurisdictions.

Performance Information

The current broadband label format for each broadband service plan or tier requires the listing of the typical download speed, the typical upload speed and the typical latency. These are the most reasonable metrics that can be included efficiently on a label for use by customers to get a quick and relatively accurate approximation of the normal speeds of the services they are considering.

As the *FNPRM* recognizes and most customers know or will quickly learn, actual broadband speeds will vary from time to time and from location to location due to a multiplicity of factors including, but not limited to, the age and condition of the customer's own broadband devices and in-home connections; the number of devices in simultaneous use in the customer's household; the amount of usage and congestion at particular times in the customer's neighborhood and local network; and the amount of usage and congestion in the second mile and middle mile facilities that provide transport connections to and from the Internet. WTA is aware of no readily accessible or useful way that these complexities can be summarized in an accurate and intelligible manner on a broadband label. Rather, the speed and latency section of the current broadband label format will meet the needs of most prospective customers. To the extent that an ISP finds that it has a significant number of existing or prospective customers that request more detailed information regarding variations in their actual service speeds and how to upgrade their household equipment to improve their service, it can provide additional information on its website.

Reliability

Service reliability is an important performance factor that can and should be advertised by ISPs. WTA has long and consistently reminded the Commission that certain types of technologies (for example, buried fiber-to-the home) are better protected from weather and foliage conditions that can adversely impact reliability.

However, summarizing an ISP's record of reliability accurately and fairly on a broadband label poses significant complexities and difficulties. For example, outages are often unplanned incidents occurring at irregular intervals such that a metric like "Network availability = XX.XX% (Y minutes unavailable per month)" can be readily slanted to create a desired impression by manipulating the number of months or years selected as the measurement period. Moreover,

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 predictable seasonal weather conditions to inadequate or negligent network maintenance or operation. These and other divergent outage reasons are likely to be evaluated differently by various potential customers but are unlikely to be able to be clearly distinguished on a broadband label. Third, it will be very difficult to define and measure “outages” for broadband label purposes when they affect only some portions of an ISP’s network but not others. Finally, these and other complexities and differences create a significant danger that certain less scrupulous ISPs will be tempted to mislead potential customers by manipulating reliability metrics so as to create erroneous impressions that their services are much more reliable than they actually are.

WTA reiterates that ISPs providing a reliable broadband service should be permitted and encouraged to advertise such reliability via accurate statistics and descriptions of their performance record. However, it is so difficult and complicated to include accurate reliability representations in summary fashion on a broadband label that a reliability labelling requirement is more likely to mislead customers than to improve their decision process.

Cybersecurity

WTA members are working hard to monitor and improve their cybersecurity defenses and practices. In addition to WTA’s coming participation in the Commission’s pending WC Docket No. 22-21 rulemaking to review its reporting requirements with respect to customer proprietary network information (“CPNI”) data breaches, WTA and its members are actively engaged, among other matters, in the study and analyses of the National Institute of Standards and Technology (“NIST”) cybersecurity frameworks and the Cybersecurity and Infrastructure Agency (“CISA”) implementation of the Cyber Incident Reporting for Critical Infrastructure Act of 2022

(“CIRCI A”). They must also deal with a variety of state privacy, consumer protection and cybersecurity legislation and regulations.

Whereas WTA members need to monitor and improve their cybersecurity and to promptly and accurately comply with applicable federal and state data breach reporting requirements, it would not be a good idea for them or other ISPs to warn consumers – on a broadband label or other publicly available source – if they have “left certain cyber risks unmitigated by reasonable security measures.” Unfortunately, any publicly available disclosure of cybersecurity procedures or weaknesses would be much more likely to give criminal and amateur hackers a convenient road map for breaking into the ISP’s databases than to assist potential customers in comparing various ISPs and services. Such a disclosure requirement would also adversely impact the availability and cost of cybersecurity insurance policies. WTA presumes that ISP cybersecurity procedures, defenses and weaknesses will remain confidential for customer and public safety purposes.

Conclusion

WTA urges the Commission to allow the broadband label requirements adopted in the *Order* (and as modified in response to pending reconsideration/clarification petitions) to be fully implemented and monitored for efficiency and effectiveness before proceeding to consider or add further labelling requirements. Moreover, the particular additional information listed in the *FNPRM* – non-marketing languages, discounts and bundling options, local taxes, speed and latency variations, outage and reliability records, and cybersecurity practices and weaknesses – entail substantial complexities and volatility that will undercut the value of labels as a quick and readily accessible guide for consumers. Rather, they are more likely to confuse at least some customers with too many labels and/or too much information, and mislead others with changing, outdated or manipulated information. Finally, in addition to the problems impacting the usefulness

of the labels themselves, the contemplated additional label requirements will impose substantial additional burdens and operating expenses upon WTA members and other ISPs that will ultimately need to be recovered from customers.

Respectfully submitted,
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