

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

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

**REPLY COMMENTS OF
THE CITY OF BOSTON, MASSACHUSETTS, TEXAS COALITION OF CITIES FOR
UTILITY ISSUES AND NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS**

Gerard Lavery Lederer
McKenzie Schnell
BEST & KRIEGER LLP
1800 K Street N.W., Suite 725
Washington, DC 20006
Gerard.Lederer@BBKLaw.com

*Counsel for the City of Boston,
Massachusetts and the Texas Coalition of
Cities for Utility Issues*

Nancy L. Werner, General Counsel
National Association of
Telecommunications Officers and Advisors
3213 Duke Street, Suite 695
Alexandria, VA 22314
NWerner@NATOA.org

March 24, 2022

EXECUTIVE SUMMARY

The City of Boston, the Texas Coalition for Utility Issues (“TCCFUI”) and the National Association of Telecommunications Officers and Advisors (“NATOA”) applaud Congress, President Biden and the FCC for this effort to explore how to ensure that broadband labels provide consumer meaningful insights.

Boston, TCCFUI and NATOA strongly supports the implementation of the 2016 labels, with:

- (1) the addition of minor modifications accounting for meaningful content, such as the Affordable Connectivity Program, as well as for notification procedures;
- (2) a machine-readable, standardized format;
- (3) display location requirements on an ISP’s website, consumers’ monthly bills and other communications; and
- (4) a requirement that includes options for viewing the broadband labels in multiple languages and in a manner that is accessible to persons with disabilities.

Finally, Local Government recommends that the Commission seek additional public input on the type of information, beyond that required in the proposed label, that would be helpful to consumers.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
I. INTRODUCTION	1
II. PROPOSED BROADBAND CONSUMER LABELS	3
A. Additional Content Should Be Added to 2016 Labels.....	3
1. Introductory Rates.....	3
2. Service Levels and Bundles.....	4
3. Additional Content.....	5
4. Affordable Connectivity Program.....	7
5. Direct Notification of Terms.....	8
B. A Standardized Format Is the Best Means for Facilitating Transparency	8
C. Broadband Labels Should Be Displayed on Websites and During All Communications, Including In-Person	9
D. Broadband Labels Should Foster Inclusivity and Accessibility	10
III. RELATIONSHIP TO TRANSPARENCY RULE	11
IV. ENFORCEMENT ISSUES.....	12
IV. CONCLUSION.....	13

Before
The Federal Communications Commission
Washington DC

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

**REPLY COMMENTS OF
THE CITY BOSTON, MASSACHUSETTS, TEXAS COALITION OF CITIES
FOR UTILITY ISSUES AND NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

I. INTRODUCTION

The City of Boston, Massachusetts,¹ the Texas Coalition of Cities for Utility Issues² and the National Association of Telecommunications Officers and Advisors³ (“Local Government”)

¹ Dating to 1630, Boston is the largest city in New England and capital of the Commonwealth of Massachusetts. Boston is home to approximately 690,000 people from all walks of life and is also home to numerous universities and robust technology and finance sectors. Each of these groups is particularly attuned to the critical importance of wireline and wireless broadband access and affordability to enable participation in the digital age. The City of Boston, through the offices of the Mayor, strives to ensure the City and all its residents, in single family homes and multiple dwelling units as well as visitors have competitive, affordable, and robust access to modern communications services.

² The Texas Coalition of Cities For Utility Issues (“TCCFUI”) is a coalition of more than 50 Texas municipalities dedicated to protecting and supporting the interests of the citizens and cities of Texas with regard to utility issues. The Coalition is comprised of large municipalities and rural villages. TCCFUI monitors the activities of the United States Congress, the Texas Legislature, the Public Utility Commission of Texas, the Texas Railroad Commission, and the Federal Communications Commission on utility issues of importance to cities.

³ The members of the National Association of Telecommunications Officers and Advisors (“NATOA”) includes local government officials and staff members from across the nation whose responsibility is to develop and administer communications policy and the provision of such services for the nation’s local governments.

submit these Reply Comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking⁴ (“Notice”) regarding broadband consumer labels. Local Government agrees with industry commenters that broadband labels should be simple,⁵ but simple labels must convey meaningful information. Broadband labels that are clear and transparent can serve as a valuable tool for consumers as they navigate the marketplace.

Updates to the 2016 labels can assist consumers with the purchase process of broadband service plans and the selection of a broadband provider and more broadly, assist with closing the digital divide. How Internet service providers (“ISPs”) currently disclose information about their broadband services is often confusing and ultimately, detrimental to consumers. Therefore, Local Government strongly supports the implementation of the 2016 labels, with: (1) the addition of minor modifications accounting for meaningful content, such as the Affordable Connectivity Program, as well as for notification procedures; (2) a machine-readable, standardized format; (3) display location requirements on an ISP’s website, consumers’ monthly bills and other communications; and (4) a requirement that includes options for viewing the broadband labels in multiple languages and in a manner that is accessible to persons with disabilities. Local Government also supports the work of the FCC’s Consumer Advisory Committee in

⁴ *In re Empowering Broadband Consumers Through Transparency*, GN Docket No. 22-2, *Notice of Proposed Rulemaking* (Jan. 27, 2022) (“Notice”).

⁵ Comments of CTIA – The Wireless Associated (“CTIA”) at 2 (filed March 9, 2022) (“In determining the best course for implementing the IIA’s broadband labels provision, the Commission should ... [f]ocus on the fundamental purpose of the labels—providing clear, simple, targeted information to consumers at the point when they are making purchase decisions.”); Comments of INCOMPAS at 3 (filed March 9, 2022) (“INCOMPAS and its members support the broadband label and agree with the Commission that access to accurate, simple-to-understand information about BIAS from different providers helps consumers make informed choices and is central to a well- functioning marketplace that encourages competition, innovation, low prices, and high-quality service.”).

recommending potential updates to the 2016 labels and looks forward to reviewing the Committee's recommendations.

II. PROPOSED BROADBAND CONSUMER LABELS

The FCC seeks comment on whether the 2016 labels' content sufficiently includes all the information consumers need to make informed decisions.⁶ Conversely, the FCC asks if there is information contained in the 2016 labels that is no longer necessary to serve the goals of the Infrastructure Act or the Commission, or might overwhelm consumers with too much information.⁷

A. Additional Content Should Be Added to 2016 Labels

Generally, the 2016 labels contain sufficient content, though the content is not easily understandable. Therefore, for consumers to make more informed decisions, these modifications should be made.

1. Introductory Rates

Under the Infrastructure Act, broadband consumer labels “shall include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.”⁸ Requiring information pertaining to the

⁶ Notice at ¶ 17. The Commission asks a preliminary question regarding “the extent to which the Infrastructure Act requires or permits the Commission to depart from the labels described in the 2016 Public Notice.” *Id.* at ¶ 12. Local Government believes that the Act authorizes the Commission to make changes to the 2016 labels. The Act references the labels “described in” the 2016 Public Notice rather than the labels “approved” in the Notice, demonstrating that Congress did not expect the Commission to be confined to those labels. Further, as stated in the Notice (at ¶ 12), Congress expressly requires the new labels to include introductory rate information that may not be reflected in the 2016 labels, again indicating Congress did not limit the Commission’s ability to depart from those labels.

⁷ Notice at ¶ 17.

⁸ Infrastructure Act § 60504(b)(1).

monthly service charge and promotional pricing for broadband services is not the same as requiring that a label make clear whether the price offered is an introductory rate and what the price will be the introductory period ends. Therefore, “[t]o satisfy the statute, the expiration date of the promotional discount must be added.”⁹

Furthermore, the information related to introductory rates and subscription rates contained in the labels are neither readily available to consumers nor easy to understand. Local Government, like other commenters, are all too familiar with reports of confusing advertising practices and promotional rates making it difficult for consumers to comprehend the costs associates with their broadband service.¹⁰ As NYPSC noted, one major category associated with this confusion “relates to the lack of consumer understanding of introductory offers, limited time offers, and price increases following low ‘teaser’ rates.”¹¹ Local Government emphatically agrees with NYPSC that the “importance of providing this information to consumers, in a direct and easily understandable format, cannot be overstated.”¹²

2. Service Levels and Bundles

If the Commission’s goal for this Notice is in fact to display easy-to-understand labels to allow consumers to comparison shop for broadband services,¹³ then the labels should include whether the pricing is contingent on purchasing a bundle as well as information about the quality

⁹ Comments of Consumer Reports (with Public Knowledge and Common Sense Media) (“Consumer Reports”) at 8 (filed March 9, 2022).

¹⁰ *Id.* at FN. 6 (filed March 9, 2022). (“CR members shared stories of confusing advertising practices and promotional rates, and some members reported how fees make it difficult for them to understand the costs associates with their internet service.”).

¹¹ Comments of the New York State Public Service Commission (“NYPSC”) at 2 (filed March 9, 2022).

¹² *Id.*

¹³ Notice, Appendix D, at ¶ 2.

of such services. Bundled services are a key component of pricing options and are therefore, a necessary component of broadband consumer labels. Thus, where part of a bundled package, the broadband label must make clear whether the broadband pricing is contingent on purchasing the bundle and also reflect the broadband component of the bundled price. However, the benefit of listing bundled services in the labels is meaningless to consumers without also including information about quality. Therefore, with respect to service descriptions that reference “up to” as a measurement, Local Government fully agrees with the City of New York that the Commission should “articulate a clear and empirical metric as a standard practice, including a minimum level that indicates the baseline guarantee.”¹⁴

3. Additional Content

The Notice sought comment on whether there is additional content for the labels not included in the 2016 labels that it should consider, given changes in the broadband marketplace.¹⁵ For instance, should the labels include information about whether there are any limitations when consumers use multiple devices on the same broadband plan?¹⁶ Should the labels make clear when the offered rate is contingent on consumer consent to particular restrictions, *e.g.*, paperless billing, electronic payment, rental of equipment, and/or enrollment in related services?¹⁷ The FCC seeks comment on whether such information or other content should be added to the broadband consumer labels and, if so, how and where it should be presented.

¹⁴ Comments of the City of New York (“NYC”) at 2 (filed March 9, 2022).

¹⁵ Notice at ¶ 20.

¹⁶ *Id.*

¹⁷ *Id.*

Local Government believes that the 2016 labels would benefit from relevant, additional content that provides further transparency for consumers. One such modification that the Commission should consider is the inclusion of jitter. “Because jitter identifies the amount of inconsistency in latency, it should be included alongside latency in the label. Consumers interested in broadband for videoconferencing, in particular, will benefit from having a measure of delay variability, in addition to the underlying measure of delay.”¹⁸

Additionally, Local Government agrees with commenters that suggest that the Commission should consider the impact of equipment ownership on the calculations that consumers make when assessing broadband service pricing. ISPs should be required to disclose plans to stop supporting customer premises equipment as soon as plans for termination are known.¹⁹

“Furthermore, broadband labels should include information on ... the existence of an exclusive marketing agreement and relevant terms or conditions that could impact the consumer.”²⁰ The City of Boston has long advocated for transparency as to the existence of exclusive marketing agreements and the terms within such agreements. “While exclusive marketing agreements ‘do not completely prevent tenants from choosing from various providers,’ they do ‘make choice difficult since only one company is permitted to market its

¹⁸ Comments of the Massachusetts Department of Telecommunications and Cable (MassDTC) at 8 (filed March 9, 2022).

¹⁹ *Id.* at 5 (filed March 9, 2022); Comments of NYPSC at 2 (filed March 9, 2022) (“The NYPSC also believes that proper transparency requires that the Label include information such as limitations on the usage of multiple devices with the service and whether the offered rate is contingent upon the use of options such as paperless billing or provider-supplied rental equipment.”).

²⁰ Comments of NYC at 2 (filed March 9, 2022).

services to tenants. Tenants are not aware of the different options they have, or are even given incorrect information, so they cannot effectively make a choice.”²¹

4. Affordable Connectivity Program

The Commission should require that broadband labels include information about the ACP. “[P]roviding explicit notice in the Label to all consumers on the availability and opportunities provided for in the ACP would facilitate a functional and simple way of reaching those people who have made the decision to seek out broadband, but who may be unaware of the availability of these low-cost options.”²² Local Government acknowledges industry’s concern that “ACP discounts interact with standard rates in ways that are far too complex to represent on the broadband labels.”²³ Therefore, it seems appropriate that the labels simply provide the name of the payment assistance program as well as a link to additional information and the requirements for qualification.²⁴ However, “inclusion of the ACP in the Label ... should not be a substitute for an ISP’s primary mode of advertising and notification. It should simply be an additional and easy way to reinforce the ACP’s availability to a core group of customers.”²⁵

²¹ Comments of Boston, GN Docket No. 17-142, at 7-8 (filed Oct. 20, 2021).

²² Comments of NYPSC at 2 (filed March 9, 2022).

²³ Comments of AT&T at 16 (filed March 9, 2022).

²⁴ Comments of the South Carolina Department of Consumer Affairs at 2 (filed March 9, 2022) (“The Department recommends that information about the Affordable Connectivity Program be included in the broadband labels to increase awareness of its existence. The labels should mention, at a minimum, the name of the payment assistance program and provide a link to additional information and the requirements for qualification. This information could be listed in the “Choose Your Service Data Plan” section.”).

²⁵ Comments of NYPSC at 2 (filed March 9, 2022).

5. Direct Notification of Terms

Local Government supports a direct notification requirement for current customers for changes to terms in the labels after their initial display. AT&T claims that “any attempt to incorporate such mid-course notifications into this labelling regime would be both unnecessary and burdensome.” But, AT&T’s statement that “[a]ny changes to other items on the broadband label, such as latency, would have less impact on a customer and thus should not require a notification”²⁶, fails to appreciate the significance of this information to consumers, especially as more people are working remotely. In order to balance the cost and benefits of such a notice requirement, Local Government endorses the proposal of Starry that reasonable consumer communications thresholds should be developed in order to minimize notice fatigue.²⁷

B. A Standardized Format Is the Best Means for Facilitating Transparency

A machine-readable, standardized format would be most beneficial in providing clarity to consumers and the ability to monitor compliance. If the goal is to promote ease and clarity for consumers, concerns over ISP flexibility is trumped by the practicality of standardization. Standardizing the labels facilitates a streamlined means of comparison for consumers to shop between multiple ISPs and between different offerings of a single ISP. “Standardizing the label content means not only that the labels should look the same, but also that they should reflect the same information, measured in the same way.”²⁸ Not only would a machine-readable format be beneficial to consumers, but it “would ease the reporting burden for providers” because “providers often change, update, or add to their service offerings at some point, the machine-

²⁶ Comments of AT&T at 19 (filed March 9, 2022).

²⁷ Comments of Starry Inc. (“Starry”) at 2 (filed March 9, 2022).

²⁸ Comments of MassDTC at 3 (filed March 9, 2022).

readable requirement is a more effective approach than requiring ISPs to establish a unique identifier for each service offering.”²⁹

Local Government encourages the Commission to explore a uniform label to afford consumers the ability to compare ISPs offerings across all delivery formats. Local Government recognizes NYPSC’s point that the existence of two distinct formats for fixed verses mobile broadband delivery may be unnecessary so long as the standard label provides customers needed insights into the performance and capabilities of the various delivery services.³⁰ Empowering consumers must be the Commission’s goal, not concerns over lost flexibility raised by providers regarding standardization. In addition, the Commission can rely upon “the creativity of ISPs to further explain the details of their service offerings to appeal to a wide range of audiences” outside the context of the label.³¹

C. Broadband Labels Should Be Displayed on Websites and During All Communications, Including In-Person

In addition to requiring 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, broadband labels should be included in consumers’ monthly bills and other communications. Consumers’ exposure to the labels should also occur in-person. Providers of wireless services, with physical locations at which customers can sign up for new service, should be required to have the labels either in printed form or available to view online via a device provided by the provider.³² The Commission should specify that the location of broadband consumers labels on

²⁹ Comments of ILSR at 7 (filed March 9, 2022).

³⁰ Comments of NYPSC at 2 (filed March 9, 2022).

³¹ Comments of Consumer Reports at 6 (filed March 9, 2022).

³² Comments of ILSR at 5 (filed March 9, 2022).

an ISP website cannot go just anywhere but rather, in a prominent and easily accessible location. As ILSR noted, even though a number of providers posted service and pricing information online, they “did so in a way that was effectively impossible for a potential subscriber to find. One provider buried the information within a link under the site footer which appeared to bring users to a page outlining legal terms.”³³

Local Government aligns with commenters who advocate for including broadband labels in initial communications and monthly bills to facilitate maximum exposure to the labels.³⁴ “This approach represents the best way to expose the largest number of consumers to the label, and affords opportunities to update consumers on any changes of service (expiring promotions, fee increases, new features, increased speeds, etc.).”³⁵

D. Broadband Labels Should Foster Inclusivity and Accessibility

Local Government stands with commenters that champion broadband consumer labels as a means to foster inclusivity. “To ensure equitable access to such information by all consumers, the Commission should consider a requirement that includes options for viewing the broadband

³³ Comments of ILSR at 4 (filed March 9, 2022).

³⁴ Comments of Consumer Reports at 3 (filed March 9, 2022) (“unless consumers regularly encounter the broadband label, what is and what is not displayed in it, or what format the label takes will not matter. Therefore, CR strongly recommends the label be included in every new and existing consumer’s monthly bill.”) (“We further agree that the label should be required at the point of sale, which for many consumers will mean online on an ISP’s website. A mere link taking consumers away from the advertised plans to view the label is not sufficient. All advertised service plans on an ISP’s website should display the label in close proximity, allowing for pop-outs if necessary to display the label in a larger format.”); Comments of ILSR at 5 (filed March 9, 2022) (“The label should be presented to the potential subscriber before their credit card information is solicited. It should be presented alongside the subscriber’s bill each month, and the subscriber should also be presented with the label whenever any of its content changes.”); Comments of NYPSC at 3 (filed March 9, 2022) (“Ideally, any time an ISP sends contractual information to a consumer, in either electronic or hard copy format, the Label should also be provided in a similar format.”).

³⁵ Comments of Consumer Reports at 3 (filed March 9, 2022).

labels in languages other than English and in a manner that is accessible to persons with disabilities.”³⁶ Local Government agrees with ILSR that implementing a machine-readable format would assist in accessibility by making language translation and other accessibility transformations automated and therefore, easier.³⁷ In regards to how to best ensure that required labels are accessible for those with disabilities, Local Government defers to expertise and input of the American Council of the Blind.³⁸

III. RELATIONSHIP TO TRANSPARENCY RULE

The FCC seeks comment on the interplay between the existing transparency rule and the proposed broadband labels. Specifically, the FCC asks if display of the proposed labels fully satisfy the current transparency rule.³⁹ Local Government suggests the FCC would benefit from additional information, gathered from the required public hearings, on the type of information consumers use to make their broadband choices. The current transparency rule requires providers to, among other things, “publicly disclose accurate information ... sufficient to enable

³⁶ Comments of NYC at 3 (filed March 9, 2022).

³⁷ Comments of ILSR at 8 (filed March 9, 2022).

³⁸ Comments of American Council of the Blind at 2 (filed March 9, 2022) (“The Commission must require broadband labeling information to be provided in accessible formats in all places it is required to be displayed for all other consumers. At the in-person point of sale, the Commission should require broadband label information to be provided in braille, large print, audibly, and American Sign Language (ASL). When broadband labeling information is provided digitally on a website, application, or an online platform, the Commission must require the information is provided in accessible formats and compatible with assistive technology, including screen readers, and refreshable braille displays. In the instances where broadband labeling information is provided digitally to consumers at an in-person point of sale, for example on a tablet or kiosk, the broadband labeling information and the corresponding digital device must be accessible for people who are blind, low vision, and Deafblind, including with a tactile user interface, and audio output. The Commission must require that video relay service and video calling are available to provide customer service in ASL related to broadband labeling information whether the broadband labeling information is provided in hard copy or digitally.”).

³⁹ Notice at ¶ 29.

consumers to make informed choices regarding the purchase and use of such services”⁴⁰ The proposed labels are one tool to ensure consumers have access to accurate information to enable informed decision-making, but Local Government believes it likely should be a floor, not a ceiling. In order to achieve clear, easy to read and uniform labels, a balance must be struck that means some detailed information that may be important to consumers’ decisions may not be displayed in the label. This worthwhile tradeoff should not result in diminishing the transparency rule. Additional public input can help inform the Commission on the type of information, beyond that required in the proposed labels, that would be helpful to consumers, and we suggest that information be included in the scope of the transparency rule even if it will not appear on the labels.

IV. ENFORCEMENT ISSUES

Local Government agrees with ILSR that the failure of existing measures to incentivize providers to comply with transparency requirements is evidence of the need for specific enforcement of the broadband labels rather than a reliance on the Commission’s existing enforcement measures.⁴¹ A standardized format would be most beneficial in providing clarity to consumers and the ability to monitor compliance. Local Government encourages the Commission to look into the practicality of “requiring providers to publish their labels on some centralized portal using a machine-readable format” to allow “for straightforward enforcement” as “[a]n automated process could determine whether a provider has published properly formatted labels online.”⁴²

⁴⁰ 47 C.F.R. § 8.1(a).

⁴¹ Comments of ILSR at 6 (filed March 9, 2022).

⁴² *Id.*

In addition to considering a fine system for providers that report inaccurate information, the Commission should consider withholding federal funding. “ISPs should receive multiple warnings to give time for compliance, but escalating fines if the ISP fails to comply. The Commission should also consider barring federal funding for providers repeatedly found to be in violation of the rule, whether this be as result of displaying false information or not displaying the label at all. Federal funds are taxpayer dollars that should be directed towards providers adhering to FCC policy.”⁴³

IV. CONCLUSION

Local Government applauds the Commission for its efforts to promote transparency through broadband consumers labels. Incorporating the above suggestions will further efforts to close the digital divide.

Respectfully submitted,

/s/ Gerard Lavery Lederer

Gerard Lavery Lederer
McKenzie Schnell
BEST & KRIEGER LLP
(202) 370-5304; Cell: (202) 664-4621
1800 K Street N.W., Suite 725
Washington, DC 20006

*Counsel for the City of Boston, Massachusetts and the
Texas Coalition of Cities for Utility Issues*

Nancy L. Werner, General Counsel
National Association of Telecommunications Officers and
Advisors
3213 Duke Street, Suite 695
Alexandria, VA 22314

March 24, 2021

51087.00001\34951546.3

⁴³ Comments of ILSR at 6 (filed March 9, 2022).