



February 15, 2023

SUBMITTED ELECTRONICALLY VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Schools, Health & Libraries Broadband Coalition (SHLB) Request for Clarification of Broadband Label Requirements for Services Offered in the E-rate and Rural Health Care Programs, in Empowering Broadband Consumers Through Transparency, CG Docket No. 22-2

Dear Secretary Dortch:

The Schools, Health & Libraries Broadband (SHLB) Coalition¹ respectfully submits this request to support calls to clarify the labeling requirements for broadband services provided in the E-rate and Rural Health Care (RHC) programs pursuant to the Commission’s 2022 *Label Order*.² Specifically, SHLB asks the Commission to clarify that the broadband label requirements applicable to broadband Internet access service plans provided in the E-rate and RHC programs apply only to mass-market Internet services and not to non-mass market (i.e. enterprise and special access) services purchased by E-rate and RHC program applicants.

The SHLB Coalition applauds the Commission’s efforts in adopting its broadband labeling requirements in furtherance of providing broadband consumers “access to clear, easy-to-understand, and accurate information” which is “central to a well-functioning marketplace that

¹ The SHLB Coalition is a broad-based public interest coalition of organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB Coalition members include representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer advocates. See <http://shlb.org/about/coalition-members> for a list of SHLB Coalition members.

² *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (Nov. 17, 2022) (Label Order); See Cincinnati Bell Telephone Company LLC d/b/a altafiber Network Solutions, et al., Joint Petition for Clarification or Reconsideration, CG Docket No. 22-2 (Jan. 17, 2023) (requesting clarification or reconsideration of the Commission’s application of broadband labels for enterprise and special access broadband services provided in the E-rate and RHC programs.).

encourages competition, innovation, low prices, and high-quality services.”³ SHLB agrees that consumers should have the ability to choose the broadband services that meet their specific needs through an understandable and transparent information-sharing process, which the Commission aims to achieve through its *Label Order*.

The SHLB Coalition thus supports the application of the Commission’s label requirements to mass-market broadband services offered in the E-rate and RHC programs. We believe that such disclosures would especially benefit the smaller and more rural schools, libraries and rural healthcare providers that often purchase standard “off-the-shelf” Internet access service.

Applying label requirements to the more sophisticated, non-mass-market enterprise service offerings in these programs, however, would be counter-productive and may negatively impact competition in the marketplace. Custom-designed broadband services may include a variety of features and functions – such as cybersecurity, network deployment details, network management practices, privacy protections, filtering, etc. – that cannot be easily summarized on a label. Schools, libraries and healthcare providers that purchase custom-designed services will have these features and functions specified in a contract. A label would either be unnecessarily duplicative of what is contained in the contract or add confusion for these anchor institutions. A label requirement for non-mass-market enterprise services might also discourage broadband providers from participating in the competitive bidding process at all, leaving anchor institutions with fewer options to meet their specific broadband needs.

In Paragraphs 16 and 17 of the *Label Order*, the Commission discussed how the labeling requirements apply to different types of Internet service offerings. First, it stated that “the label requirement applies to ‘broadband Internet access service plans,’”⁴ and defined these services pursuant to Section 8.1(b) of the Commission’s rules as “‘a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.’”⁵ Second, the Commission stated that “‘enterprise service offerings or special access services are not ‘mass-market retail services,’ and therefore, not covered by [its] label requirement.’”⁶ In this discussion, the Commission pointed to determinations from the *2015 Open Internet Order* and the *2017 Restoring Internet Freedom Order*, stating that “‘mass-market retail services’ do not include enterprise service offerings or special access services, which are typically offered to larger

³ See *Label Order*, FCC 22-86 ¶1.

⁴ Congress directed the Commission “to require the display of labels that disclose information regarding ‘broadband Internet access service plans’” in the Infrastructure Investment and Jobs Act. See *id.*, ¶16 (citing The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021)).

⁵ *Id.*; 47 C.F.R. § 8.1(b).

⁶ *Label Order*, FCC 22-86, ¶17.

organizations through customized or individually negotiated arrangements.”⁷ The Commission further stated that “[n]othing has changed to alter our view regarding service offerings to large customers (or other entities) that are not mass-market retail services; these services are not covered by the disclosure requirements here.”⁸ Based on the points made in these paragraphs, it follows that the label requirements apply to mass-market broadband services, but *not* to enterprise service offerings or special access services.

Unfortunately, subsequent language in the *Label Order* introduces some confusion with regard to E-rate and RHC program participants. In Paragraph 18, the Commission refused to interpret Section 8.1(b)’s definition of “broadband Internet access service plans” to *exclude* service providers that participate in the E-rate and RHC programs from the label requirements.⁹ Here, it clarified that “the Infrastructure Act’s label requirement drew upon the Commission’s broadband label efforts associated with the *2015 Open Internet Order*” which “relied on a definition of broadband Internet access service . . . that included E-Rate and RHC services within the universe of mass-market retail services encompassed by that definition.”¹⁰ In this discussion, the Commission provided a footnote stating, “We require E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC competitive bidding processes, whether or not such provider defines their offered service as an ‘enterprise’ service.”¹¹ (Footnote 36). Further in the *Label Order*, the Commission once again addressed the E-rate and RHC programs stating, “we require E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC Program competitive bidding process.”¹² (Paragraph 96). Here, however, the Commission included another footnote stating that, “Whether the service actually falls under the standards for enterprise services and special access services addressed in paragraph 17 above, and not the service provider’s name for the service, will determine whether the labeling exemption for enterprise services and special access services applies.”¹³ (Footnote 215).

The language in Footnote 36 may cause confusion among both providers and consumers of E-rate and RHC Internet services about whether the Commission requires a broadband label for *non-mass-market enterprise retail service offerings* provided in the E-rate and RHC programs. One could interpret Footnote 36 to require broadband labels for *all* broadband service offerings in the E-rate and RHC programs, regardless of whether those services constitute non-mass-market enterprise services. This would, however, be inconsistent with the Commission’s

⁷ *Id.* (citing *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5683-84, para. 189 (2015) and *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 318-319, para. 21 n.58 (2017)).

⁸ *Id.*

⁹ *See Id.* ¶18.

¹⁰ *Id.*

¹¹ *Id.* n.36.

¹² *Id.* ¶96.

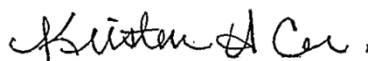
¹³ *Id.* n.215.

statements in Paragraphs 16 and 17 that differentiate the applicability of label requirements based on the service offered (i.e. whether a mass-market or non-mass-market enterprise retail service is offered). Alternatively, one could read Footnote 36 as consistent with Footnote 215, where the Commission clarified that the labeling exemption for enterprise service offerings addressed in Paragraph 17 is determined by the type of service offered, rather than how a provider simply names or defines that service.

The SHLB Coalition does not dispute the Commission's reasoning that the label requirements extend to the E-rate and RHC programs, but requests clarification that the requirements apply *only* to mass-market retail services provided to these consumers. Accordingly, the SHLB Coalition requests that the Commission clarify that the language in Footnote 36 does not apply the *Label Order's* requirements to non-mass-market enterprise or special access services provided in the E-rate and RHC programs. Consistent with Paragraphs 16 and 17, the label requirements should apply *only* to broadband Internet access service plans offered in these programs, which is defined to include only mass-market retail services pursuant to section 8.1(b) of the Commission's rules.

Thank you in advance for considering this request. Please contact me if you have any questions or if we can provide additional information.

Respectfully Submitted,



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