

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

In the Matter of)
)
Empowering Broadband Consumers)
Through Transparency) CG Docket No. 22-2
)
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REPLY COMMENTS OF CONSUMER REPORTS & NEXT CENTURY CITIES

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I. INTRODUCTION

Next Century Cities (“NCC”)¹ with Consumer Reports (“CR”)² submits these reply comments in response to the Consumer and Governmental Affairs Bureau’s (“CGB”) request for comment on its Further Notice of Proposed Rulemaking on consumer broadband nutrition labels.³ A review of the FNPRM comments submitted by stakeholders last month revealed areas of agreement as well as disagreement with the positions stated in our comments. Both will be briefly discussed in these reply comments. Finally, though we appreciate the different perspectives of our industry colleagues, nothing submitted to the record in the FNPRM comment round has convinced us to change our views expressed last month.

As an initial matter, industry commenters⁴ suggested the Federal Communications Commission (“FCC” or “Commission”) was bound by the format and contents of the original consumer broadband label adopted by the Commission in 2016, and cautioned any further

¹ Next Century Cities is a nonprofit nonpartisan 501(c)(3) coalition of over 200 member municipalities that works collaboratively with local leaders to promote reliable and affordable broadband access for every community.

² Consumer Reports is an independent, nonprofit membership organization that works side-by-side with consumers to create a fairer, safer, and healthier world since 1936, and has been actively engaged with policymakers to increase broadband access and affordability for all consumers.

³ Empowering Consumers Through Transparency, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking at para. 131 (CGB 2022) (*hereinafter* R&O and FNPRM).

⁴ Comments of USTelecom at 2-3; Comments of ACA Connects at 3-4; Comments of CTIA at 4.

changes would contravene the will of Congress. We respectfully disagree with this interpretation of the statute.

Industry comments correctly pointed out that the law affirmatively directs the FCC to complete a rulemaking within one year to require internet service providers to display broadband labels with a reference to the 2016 label. Specifically, the statute in Section 60504(a) reads: “the Commission shall promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.”⁵

The language “as described” is not a requirement by Congress that the 2016 label must be adopted verbatim, or that the Commission could not deviate from the format or information required by the earlier label. Rather, “as described” suggests that the 2016 label should be used as a starting point for the rulemaking, and not the end point. This makes sense given the lengthy work the Commission conducted in 2015-16 via its Consumer Advisory Committee (“CAC”) to develop the broadband label, and Congress points the FCC or anyone wishing to learn more about the label to the 2016 model for a description.

Furthermore, the only mandate Congress imposes on the Commission in addition to “shall promulgate regulations” is the requirement in the very next section of the statute, Section 60504(b)(1), that the label shall include information regarding “introductory rates” and the price consumers will pay once the presumably lower introductory rate expires.⁶ Here, too, lies a disagreement with industry to which we now turn.

II. ADDITIONAL INFORMATION RE: DISCOUNTS, TAXES, AND LANGUAGES

As adopted, the R&O requires ISPs to display the full, non-discounted rate for internet service on the broadband label. Further information regarding applicable discounts, promotional rates, and the expiration date of an introductory rate can be provided via a link for interested consumers. This appears to help those who may want to know more about what they’re paying or why the displayed “rack rate” does not accurately reflect current charges. However, a link puts this content just out of reach for those that do not have the time or digital literacy skill to hunt for additional information. The general feeling from industry commentators is that listing discounts

⁵ Infrastructure, Investment and Jobs Act, Pub. L. No. 117-58, § 60504(a).

⁶ *Id.* at 60504(b)(1).

or expiration dates for promotional rates would be burdensome and could “overwhelm” consumers with too much information.

To be sure, Consumer Reports cautioned to the Commission in the original R&O proceeding that although “care must be taken not to burden the label’s current straightforward appearance with too much text or fine print that could lead to consumer confusion or indifference,”⁷ we made clear that with respect to discounts, those should be listed in the label, versus that information being available only via a hyperlink:

Discounts for paperless billing, automatic electronic payments, or other features (e.g., some, though not all, ISPs discount a consumer’s bill where a consumer-owned modem is used versus rented) should ideally be listed in the pricing section as individual discounts that consumers can avail themselves of, with a corresponding monetary value provided. Though less ideal, if the displayed base price is contingent upon a consumer subscribing to one of these features, the label should make that explicit in clear, concise language.⁸

Including this information in clear, easy-to-understand language does not risk overwhelming consumers. Similarly, we argued that an ISP’s network management practices with respect to blocking, throttling, and paid prioritization should be listed on the label. Such a disclosure need not be a lengthy, fine print explanation but rather a simple “yes or no” displayed on the label with a link made available for further information.

With respect to state and local taxes, listing them moves industry a step closer to “all-in” pricing and would require the addition of no more than one or two additional line items. As we stated last month, ISPs already calculate state and local taxes, and including even a total amount of the two on the label (tailored to a locality or even displayed after a consumer enters a service address) would not be overly burdensome.

Importantly, we fear that the current R&O may fall short of the statutory requirement to make clear whether or not the listed price on the label is “introductory rate” and if so, what the price will be once the introductory period is over. By choosing to require the full, non-discounted rate to be displayed on the label, consumers with a lower,

⁷ Comments of Consumer Reports at 6 (Filed Mar. 09, 2022).

⁸ *Id* at 7.

promotional rate will not see the actual price they are paying (for a limited time presumably) on the label at the point of sale. The only way that price is discovered is via a link under the rules enacted by the FCC in November.

However, as we argued both last year and last month,⁹ the label *must be explicit* whether a consumer is paying a promotional price—even if the full price is listed on the label—and crucially, *when the promotional rate expires*. Anything less does not satisfy the one thing the law mandates to be included in the label.

Finally, while English and Spanish may be the two most spoken languages in the United States, Americans speak a variety of languages nationwide.¹⁰ Making broadband labels available in languages such as Simplified and Traditional Chinese, Korean, Vietnamese, Tagalog, and Arabic (the next five most spoken languages in America) expands accessibility to populations who speak the next five most spoken languages in the United States.¹¹

Internet service providers (“ISPs”) have incentives to only market their materials in English and Spanish instead of languages potentially spoken by large portions of the communities they serve. Every person in every community must be able to access their provider’s broadband nutrition label. Without doing so the Commission cannot fulfill Congresses’ intent to promote understanding about broadband service plans.¹²

III. AN INTERNET PRICE MUST BE DISCLOSED FOR BUNDLED PLANS

The FNPRM asks if further information regarding bundled plans (where internet service is packaged and sold with video and/or phone service) should be included in the label, presumably in the form of line items for those additional services, or worse yet, a bundled price without a breakdown of the rates for the individually bundled services. On this issue, we are in agreement with our industry colleagues, *provided that a label disclosing the price for internet service* is displayed to the consumers who are receiving

⁹ Comments of Consumer Reports at 7-8 (Filed Mar. 8, 2022); Comments of Next Century Cities and Consumer Reports at 6-7 (Filed Feb. 16, 2023).

¹⁰ United States Census Bureau, What Languages Do We Speak in the United States? (Dec. 6, 2022), <https://www.census.gov/library/stories/2022/12/languages-we-speak-in-united-states.html>.

¹¹ *Id.*

¹² Infrastructure, Investment and Jobs Act, Pub. L. No. 117-58, § 60504 (2021).

that service as part of a bundled package—this is our understanding of what the R&O requires.

As cited in our February comments, many consumers of bundled services cannot find a price for internet service on their monthly bill for no other reason than that the ISP chooses not to list it.¹³ A label tailored specifically for internet service as the statute requires—even if that internet service offering is bundled with other services—solves this problem.

We agree with comments submitted by USTelecom, CTIA, ACA and NCTA that further requiring the label to list the price for additional services (e.g, video or phone) and presumably the fees that accompany them (e.g., broadcast TV fee, regional sports fee, set-top box or DVR fees, etc.) treads towards a lengthier label that strays from a clear description of internet price and features. Here is a case where that additional information is appropriately cited and provided to the consumer in the label via a link.

However, should the Commission adopt our suggestion that relevant discounts be listed on the label, any applicable “bundled discount” (which are a common feature of bundles) that serves to lower the internet price should be included in the label.

IV. CONCLUSION

The R&O struck a compromise between industry and public interest groups like Next Century Cities and Consumer Reports by adopting a consumer broadband label that will better equip consumers to answer the question: what am I paying for internet service? And in many cases, the why given the proliferation of fees and discounts attached to service plans offered by ISPs. Industry disagrees with any further requirement that discounts be spelled out in the label, despite the benefit such transparency would bring to consumers who simply want to know what they’re paying each month for internet service.

But make no mistake, the practice of attaching fees and discounts to internet service which can obscure the price or change it over time is a deliberate choice exercised by ISPs. If a less confusing pricing model were adopted, complying with the broadband

¹³ Comments of Next Century Cities and Consumer Reports at 7 (Filed Feb. 16, 2023).

label would certainly be less burdensome or onerous upon providers. That decision rests with industry, and the presence of less complex pricing schemes in the marketplace suggests that it is possible.

As a final matter, though the R&O declined to require the broadband label appear on a consumer's monthly bill, we would be remiss if we did not remind the Commission that millions of existing consumers will not see the label when it is rolled out later this year unless they switch providers or subscribe to a new service plan offered by their ISP. This is a lost opportunity to make the label available to the widest number of consumers, and nothing in the statute prohibited the FCC from doing so. Indeed, the original NPRM contemplated this possibility, and CR and others strongly argued that the Commission should extend the label's display to monthly bills.¹⁴

Tens of thousands of consumers agree. After the R&O was finalized last November, Consumer Reports contacted its membership and asked them to sign a petition urging the FCC to require the broadband label to appear on the monthly ISP bills.¹⁵ More than 30,000 signed the online petition, and we felt it necessary to honor their participation by inserting the petition into the record.

¹⁴ Comments of Consumer Reports at 4-5 (Filed Mar. 8, 2022).

¹⁵ The text of the CR petition can be found at: <https://action.consumerreports.org/20221117broadbandlabelfcc>.