

FCC FACT SHEET*

Empowering Broadband Consumers Through Transparency
Notice of Proposed Rulemaking - CG Docket No. 22-2

Background: On November 15, 2021, the President signed into law the Infrastructure Investment and Jobs Act. The law directs the Commission “to promulgate regulations to require the display of broadband consumer labels, to disclose to consumers information regarding broadband Internet access service plans.” It further provides that 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.”

What the Notice of Proposed Rulemaking Would Do:

- Propose to require that broadband Internet access service providers (ISPs) display, at the point of sale, labels to disclose to consumers certain information about prices, introductory rates, data allowances, broadband speeds, and management practices, among other things.
- Ask whether broadband service offerings and consumers’ use of broadband services have changed sufficiently since the Commission’s Consumer and Governmental Affairs Bureau, Wireline Competition Bureau, and Wireless Telecommunications Bureau approved labels in 2016 to necessitate modifications to the labels’ content and/or format, or whether there are any other reasons to change the content or format of the labels.
- Seek comment on where the labels should be displayed to best inform consumers.
- Seek comment on enforcement issues related to the label requirement, including how the Commission should ensure the accuracy of label content.
- Seek comment on implementation issues, including the time by which broadband providers should be required to display the labels.
- Propose to ensure that any required labels are accessible to persons with disabilities and that any broadband consumer label advances equity in the provision of and access to digital communications services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.

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

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

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. Access to accurate, simple-to-understand information about broadband Internet access services helps consumers make informed choices and is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality service.

2. On November 15, 2021, the President signed into law the Infrastructure Investment and Jobs Act.

* This document has been circulated for tentative consideration by the Commission at its January 27, 2022 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change.

1 Broadband Internet access service is defined 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.

2 The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (Infrastructure Act).

(DA 16–357), to disclose to consumers information regarding broadband Internet access service plans.”³ It further provides that 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.”⁴

3. In this Notice of Proposed Rulemaking (NPRM), we propose measures to implement these provisions of the Infrastructure Act. Specifically, we propose to require that broadband Internet access service providers (ISPs) display, at the point of sale, labels to disclose to consumers certain information about prices, introductory rates, data allowances, broadband speeds, and management practices, among other things.

4. Consistent with the Infrastructure Act, the labels we propose are those that the Commission allowed ISPs to use as a safe harbor to comply with broadband transparency requirements in 2016, which were informed by the work of the Consumer Advisory Committee (CAC).⁵ We seek comment on whether broadband service offerings and consumers’ use of broadband services have changed sufficiently since 2016 to necessitate modifications to the labels’ content and/or format, or whether there are any other reasons to change the content or format of the labels. We also seek comment on where the labels should be displayed to best inform consumers.

5. In addition to complying with the requirements of the Infrastructure Act, we expect these labels will provide the information necessary for consumers to make informed decisions about available broadband services and will promote the economic, social, and civic benefits of such services so they are available and accessible to all Americans.

II. BACKGROUND

A. Regulatory History

6. In the *2016 Public Notice*, the Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus (Bureaus) approved, with modifications, consumer broadband labels proposed by the CAC,⁶ which is composed of both industry and consumer interest representatives, including those representing persons with disabilities.⁷ There were two versions

³ *Id.* See also *Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, GN Docket No. 14-28, Public Notice, 31 FCC Rcd 3358 (CGB/WCB/WTB 2016) (*2016 Public Notice*).

⁴ Infrastructure Act § 60504(b)(1). The Infrastructure Act also directs the Commission to conduct a series of public hearings to assess how consumers evaluate broadband Internet service plans and whether required transparency disclosures, including the disclosures under 47 CFR § 8.1, are available, effective, and sufficient. See *id.* § 60504(c).

⁵ See *2016 Public Notice*. As discussed below, we seek comment in this *Notice of Proposed Rulemaking* on whether and how to modify the 2016 labels to better address consumer needs.

⁶ See *2016 Public Notice*. Attached to this *Notice of Proposed Rulemaking* in Appendices B and C are the labels approved by the Bureaus and announced in the *2016 Public Notice*. The *2016 Public Notice* was an outgrowth of the enhanced transparency requirements resulting from the *2015 Open Internet Order*. See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5666-5681, paras. 154-181 (2015) (*2015 Open Internet Order*). Among other things, the transparency rule required that broadband providers disclose information “sufficient to allow consumers to make informed choices,” which could include the information expressly required by the enhancements, *id.* at 5681, para. 182, yet the Commission declined to mandate the exact format for transparency disclosures, but instead established a voluntary safe harbor for the format and nature of the required disclosures. See *id.* at 5680, para. 179; see also 47 CFR § 8.3 (2015). The enhanced transparency rule was upheld in 2016 by the D.C. Circuit in *United States Telecom Association v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

⁷ *2015 Open Internet Order*, 30 FCC Rcd at 5680-81, paras. 179-180 (finding that the CAC’s experience with consumer disclosure issues makes it an ideal body to recommend a disclosure format that should be clear and easy to

(continued...)

of the label—one for providers of fixed broadband service and one for providers of mobile broadband service.⁸ The labels were to operate as a safe harbor format for broadband providers after enhanced transparency requirements adopted by the Commission took effect.⁹

7. The Bureaus found that the CAC’s proposed labels substantially fulfilled the Commission’s goals by providing a simple-to-understand format describing the key factors consumers needed to know when considering broadband service, including price, data allowances, speeds, and management practices.¹⁰ The Bureaus further found that the labels displayed terms in plain language that was easy to understand without overwhelming consumers with too much information. The Bureaus, however, modified the safe harbor disclosures per the Commission’s directive that the labels be similar to a nutrition label¹¹ and the CAC’s recommendation that the Commission use design expertise to make the labels consumer-friendly.¹² The Bureaus reiterated that the labels should be provided in accessible formats.¹³ Accordingly, a broadband provider that wished to qualify for the safe harbor needed to use the label format and terms as they appeared in the *2016 Public Notice*.

8. In 2017, the Commission revised the transparency rule to require providers to disclose information about their service in one of two ways—by providing the disclosure on a publicly available website or by submitting it to the FCC’s Electronic Comment Filing System.¹⁴ It also eliminated the broadband label safe harbor, suggesting such safe harbor was no longer necessary;¹⁵ eliminated certain reporting obligations for providers;¹⁶ and eliminated the exemption for smaller broadband providers.¹⁷

read—similar to a nutrition label—to allow consumers to easily compare the services of different providers and noting that the CAC is uniquely able to recommend a disclosure format that both anticipates and addresses provider compliance burdens while ensuring the utility of the disclosures for consumers). The disclosure format was to be accessible to persons with disabilities, and the CAC was to consider whether to propose the same or different formats for fixed and mobile broadband providers.

⁸ See FCC Consumer Advisory Committee Recommendation, Broadband Consumer Disclosures (Oct. 26, 2015) (CAC Broadband Label Recommendation); <https://docs.fcc.gov/public/attachments/DOC-336136A1.pdf>.

⁹ See *2015 Open Internet Order*, 30 FCC Rcd at 5881, para. 585.

¹⁰ *2016 Public Notice* at 2.

¹¹ See *2015 Open Internet Order*, 30 FCC Rcd at 5680, para. 179.

¹² See CAC Broadband Label Recommendation at 8, https://apps.fcc.gov/edocs_public/attachmatch/DOC-336136A1.pdf.

¹³ See *2015 Open Internet Order*, 30 FCC Rcd at 5680, para. 180. As part of its recommendation, the CAC also suggested approaches for accessibility. See Consumer Advisory Committee Recommendation, Broadband Consumer Disclosures, Section V, Disability Access *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-336136A1.pdf.

¹⁴ *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 444, paras. 228-29 (2017) (*Restoring Internet Freedom Order*); see also amended transparency rule at 47 CFR § 8.1(a) (“Any person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance characteristics, 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 and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.”).

¹⁵ *Restoring Internet Freedom Order*, 33 FCC Rcd at 445, para. 231.

¹⁶ *Id.* at 442, paras. 225-26.

¹⁷ *Id.* at 443, para. 227.

Finally, the Commission also withdrew the direct notification requirement adopted in 2015.¹⁸

B. The 2021 Infrastructure Investment and Jobs Act

9. In 2021, Congress enacted and the President signed the Infrastructure Act, which, in relevant part, directs the Commission “[n]ot later than 1 year after the date of enactment of th[e] Act, to 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.”¹⁹ Further, the Infrastructure Act requires that any broadband consumer label adopted by the Commission “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.”²⁰

10. The Infrastructure Act also directs the Commission to conduct a series of public hearings to assess: 1) how consumers evaluate broadband Internet access service plans; and 2) whether disclosures to consumers of information regarding broadband Internet access service plans, including the disclosures required under 47 CFR § 8.1, are available, effective, and sufficient.²¹

III. DISCUSSION

11. We initiate this proceeding to implement section 60504 of the Infrastructure Act, and propose to require ISPs to display the 2016 labels, with any necessary modifications.

12. As a preliminary matter, we seek comment on the extent to which the Infrastructure Act requires or permits the Commission to depart from the labels described in the *2016 Public Notice*. For example, section 60504(a) directs the Commission to adopt broadband consumer labels “as described” in the notice.²² Meanwhile, the law also directs the Commission to ensure that the broadband labels we adopt include information regarding whether the offered price is an introductory rate, which is information that may not be included with sufficient specificity in the labels approved in 2016.²³

13. Further, the law also requires the Commission to conduct a series of public hearings to assess, *at the time of the proceeding*, how consumers evaluate broadband Internet access service plans and whether disclosures to consumers, including the disclosures required by the transparency rule, are sufficient.²⁴

A. Proposed Broadband Consumer Labels

14. The Infrastructure Act directs the Commission to adopt rules requiring the display of

¹⁸ See *2015 Open Internet Order*, 30 FCC Rcd at 5677, para. 171 (adding a requirement to directly notify end users “if their individual use of a network will trigger a network practice, based on their demand prior to a period of congestion, that is likely to have a significant impact on the end user’s use of the service”).

¹⁹ Infrastructure Act § 60504(a). On July 9, 2021, the President issued Executive Order 14036, which, in relevant part, encourages the Commission to consider “initiating a rulemaking that requires broadband service providers to display a broadband consumer label, such as that described in the [*2016 Public Notice*] so as to give consumers clear, concise, and accurate information regarding provider prices and fees, performance, and network practices.” See Executive Order No. 14036, Promoting Competition in the American Economy, 86 FR 36987 (Jul. 9, 2021).

²⁰ Infrastructure Act § 60504(b)(1).

²¹ See *id.* § 60504(c). The Commission will announce the dates of such hearings, which we expect will inform our conclusions in this proceeding, in a forthcoming Public Notice and will provide notice of the hearings separately in the Federal Register as soon as such dates are determined.

²² Infrastructure Act § 6504(a).

²³ See *id.* § 60504(b)(1).

²⁴ See *id.* § 60504(c) (emphasis added).

broadband consumer labels, as described in the Commission's 2016 *Public Notice*.²⁵ We therefore propose to adopt the 2016 labels subject to appropriate modifications as described below, which we tentatively conclude include critical information consumers need today to make informed decisions in the broadband marketplace. We seek comment on this determination and further ask whether anything has changed since the CAC developed the labels that suggests we should consider updating the labels in terms of content and format, and providing new guidance about where ISPs must display such labels.

15. We also seek comment on how consumers evaluate broadband service plans and whether the 2016 labels will assist consumers with the purchase process. Should we consider updating the labels to assist consumers with: 1) selecting a broadband provider; 2) selecting a broadband service plan; 3) managing use of a broadband service plan; and 4) deciding whether and when to switch an existing broadband provider or plan? We also seek comment on how ISPs currently disclose information about their broadband services.²⁶ How should their current practices inform our decisions about the labels we adopt going forward?

1. Content

16. We propose to adopt the content of the 2016 labels, both for fixed and mobile broadband services, with appropriate modifications. As reflected in Appendix B, the 2016 labels for fixed broadband service include the following content: 1) pricing; 2) monthly data allowance; 3) overage charges; 4) equipment fees; 5) other monthly fees; 6) one-time fees; and 7) early termination fees. The 2016 labels also include information on performance (speed, latency, and packet loss) and on network management practices. As reflected in Appendix C, the 2016 labels for mobile broadband service include information on: 1) pricing; 2) when you exceed data allowance; 3) other included services/features; 4) other monthly fees; 5) one-time fees; 6) service contract terms; 7) early termination fees; and 8) "bring your own device" information. The mobile broadband labels also include performance information (speed, latency, and other services on the network) and network management practices. Both the fixed and mobile broadband labels include a link to the provider's privacy policy and a link to how to file complaints and inquiries.

17. We propose to adopt the 2016 labels because section 60504 of the Infrastructure Act directs us to begin our inquiry there.²⁷ We also believe that the content of the 2016 labels, which appear to include information consumers continue to need to know to make informed decisions and are a product of a considered, deliberative process, continue to be relevant. We seek comment on whether the 2016 labels' content sufficiently includes all the information consumers need to make informed decisions. Conversely, is there 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?

18. *Introductory Rates.* The Infrastructure Act states that the labels we adopt "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."²⁸ The 2016 label for fixed broadband services requires the provider to identify the monthly charge for service (or non-promotional price for a month-to-month plan) and to identify any promotional pricing separately. The 2016 label for mobile broadband services similarly requires the provider to list the monthly charge, i.e., the non-promotional price for the plan, and to identify separately on the label any promotional offers or discounts. We seek comment on whether the 2016 labels satisfy the Infrastructure Act's requirement that any label make clear whether the price offered is an introductory rate and what the price will be when the introductory period ends. Further, is the information related to introductory rates and subscription rates contained in the labels

²⁵ Infrastructure Act § 60504(a).

²⁶ See transparency rule at 47 CFR § 8.1(a).

²⁷ See Infrastructure Act § 60504(a) (directing the Commission 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). . .").

²⁸ *Id.* § 6504(b)(1).

readily available to consumers and easy to understand?

19. *Service Levels and Bundles.* We recognize broadband service offerings can include numerous characteristics based on differing service levels, features, add-ons, consumer location, and other factors. Is flexibility in the labels' content necessary or wise to avoid the possibility that consumers could be overwhelmed with information? Should labels include services bundled with broadband such as video, telephony, or mobile services? Should such information include any information about the quality of the bundled services, e.g., whether video is limited to 480i or allows 1080p or 4K quality?

20. *Additional Content.* Is there additional content we should consider, given changes in the broadband marketplace, that providers were not required to include in the 2016 labels? For example, in 2017, the Commission required broadband providers to disclose whether they engage in blocking, throttling, or paid prioritization.²⁹ Should the labels include information about whether there are any limitations when consumers use multiple devices on the same broadband plan? 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? We seek 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.

21. *Affordable Connectivity Program.* We seek comment on whether and how to include information about the Affordable Connectivity Program (ACP) in the broadband labels.³⁰ The Infrastructure Act requires providers to notify consumers about the existence of the ACP and how to enroll in the program "when a customer subscribes to, or renews a subscription to, an internet service offering of a participating provider."³¹ In the ACP Public Notice, the Wireline Competition Bureau asked for comment on the type of disclosures the Commission should require providers to make regarding the ACP to consumers.³² Should the Commission require that the broadband labels include information about the ACP? To what extent can broadband labels be used to promote awareness of the ACP and how to enroll? How might those disclosures be presented on the labels?

22. *Direct Notification of Term Changes.* Should the Commission adopt a "direct notification" requirement for changes to terms in the labels? If so, how should providers notify consumers directly of any changes in terms of service or of any other changes to the information contained in the labels displayed to consumers when they purchased service? Should we adopt a timeframe within which providers must make such notifications? Should we require that the notifications be sent in advance of the changes taking affect? If so, how far in advance?

2. Format

23. We also propose to adopt the format of the 2016 labels, which resemble the nutrition labels the United States Food and Drug Administration (FDA) has prescribed for food products, and seek comment on whether the format sufficiently displays information to consumers in an effective and helpful way. When creating the recommended broadband labels, the CAC consulted with representatives of the Consumer Financial Protection Bureau (CFPB) with expertise in consumer disclosures in the financial

²⁹ *Restoring Internet Freedom Order*, 33 FCC Rcd at 440, para. 220.

³⁰ The Infrastructure Act extends and modifies the Commission's existing Emergency Broadband Benefit Program to a longer-term broadband affordability program called the Affordable Connectivity Program (ACP). See Infrastructure Act, div. F, tit. V, secs. 60501, 60502(a)-(b); *FCC Seeks Comment on the New Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453 (WCB 2021) (*Affordable Connectivity Program Public Notice*).

³¹ Infrastructure Act, div. F, tit. V, sec. 60502(a)(3)(B), § 904(b)(10)(A) (2021).

³² *Affordable Connectivity Program Public Notice* at paras. 99-105.

industry (e.g., credit cards, mortgages, prepaid cards)³³ and incorporated CFPB recommendations on typeface, font size, and ample white space. While the CAC did not prescribe specific format requirements, it expected participating ISPs to follow the general principles in designing the broadband consumer labels.

24. We believe that in directing the Commission “to require the display of broadband consumer labels,” section 60504 of the Infrastructure Act gives the Commission authority to mandate not only what information is disclosed in the labels, but also the specific formats for the labels. We therefore propose to adopt the format of the 2016 labels for the broadband labels in this proceeding, based on the considerable work the CAC did in adapting the format to broadband service and relying on the CFPB and the FDA for guidance. We seek comment on this proposal. Are there any changes we should consider to the format? Should we allow ISPs any flexibility in displaying the label contents to reflect the variety of formats consumers use to learn about and subscribe to broadband services? How can we provide this flexibility without weakening the effectiveness of the preferred format of the 2016 labels? How can we ensure that any such flexibility would not undermine consumers’ ability to comparison shop between services and providers? Should we require that the labels be provided in a machine-readable format with standard, labeled fields to ensure that third parties and consumers can more readily compare across multiple providers?³⁴

25. The Commission will be undertaking a separate rulemaking to implement section 60502(c) of the Infrastructure Act, which requires the Commission to conduct an “annual collection . . . of data relating to the price and subscription rates of each internet service offering of a participating provider under the Affordable Connectivity Program.”³⁵ The Infrastructure Act further requires that the Commission “shall rely on the price information displayed on the broadband consumer label . . . for any collection of data . . . under section 60502(c)”³⁶ In order to rely on such data, the Commission will need a means by which to associate the broadband-label information with the data collected under section 60502(c). One means of making that association would be for the Commission to collect all the broadband-label data, with each plan having a unique identifier that could be referenced in the section 60502(c) data collection. Another approach would be for the Commission to require all ISPs to make

³³ For example, pursuant to the 1988 Fair Credit and Credit Card Disclosure Act amending the 1968 Truth-in-Lending Act, credit card companies must list, on all solicitations, long-term interest rates in at least 18-point type and all other rates, terms and conditions in at least 12-point type. All credit card companies use the same format, making it easier for consumers to compare rates offered by various companies. *See* Fair Credit and Credit Card Disclosure Act, Pub. L. 100-583, 102 Stat. 2960, amending the 1968 Truth-in-Lending Act, 15 U.S.C. § 1601-1677(f). Congress also amended the Truth-in-Lending Act to require enhanced consumer disclosures on credit card billing statements. *See* Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. 111-24, 123 Stat. 1743-47. Similarly, the Automobile Information Disclosure Act requires automobile manufacturers to disclose on a label affixed to the car safety ratings information, including “information describing the nature and meaning of the crash test data presented” as well as a “graphic depiction” of the safety rating. The information must be presented in a “legible, visible, and prominent fashion” constituting at least 8% of the total area of the label, or other specified dimensions. *See* Automobile Information Disclosure Act, 15 U.S.C. § 1232(g); Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1941-42.

³⁴ The OPEN Government Data Act, of 2018, Pub. L. No. 115-435 (2019) §§ 201-202, Title II of the Foundations for Evidence-Based Policymaking Act, requires agencies to use a machine-readable format when making data publicly available. *See* 44 U.S.C. § 3506(b)(6); *id.* §§ 3502(17), (20), (22) (defining “data asset,” “open Government data asset,” and “public data asset”). The term “machine-readable,” when used with respect to data, means “data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost.” *Id.* § 3502(18). *See also* Infrastructure Act § 60504(b)(2) (FCC “shall rely on the price information displayed on the broadband consumer label . . . for any collection of data relating to the price and subscription rates . . . under section 60502(c)”; *id.* §§ 60502(c)(4) (data collected under subsection (c)(1) must be made publicly available “in a commonly used electronic format.”).

³⁵ Infrastructure Act § 60502(c)(1).

³⁶ *Id.* § 60504(b)(2).

information about each plan available in a machine-readable format via an Application Program Interface (API) so that the Commission could access the broadband-label information for any plan included in the ISP's submission to the section 60502(c) collection. We seek comment on these two alternative approaches and their relative burdens on ISPs. We also seek comment on other approaches we should consider to fulfill the statutory requirements of section 60502(c).

3. Display Location

26. 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. We seek comment on this proposal. In addition, we 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? We also seek comment on how the labels should be displayed at other points of sale, such as at retail locations, on apps, on online platforms, on other digital locations, and on telemarketing calls. Should ISPs provide hardcopies of the labels in retail locations? Should their telemarketing representatives email, or otherwise make available to, consumers labels before consumers make a purchase? Are there other marketing channels we should consider in developing this requirement? Should these be included in bills or other communications about changes in service?

4. Accessibility

27. We emphasize our commitment to ensuring that broadband networks are accessible to and usable by individuals with disabilities. In 2015, the Commission stipulated that ISPs that wished to avail themselves of the transparency safe harbor needed to ensure that the broadband consumer label was accessible to persons with disabilities.³⁷ The CAC determined that participating ISPs can best ensure accessibility to printed and online information by relying on well-established legal requirements included in the Americans with Disabilities Act³⁸ and by following the guidance developed by the Web Accessibility Initiative.³⁹ The CAC found that relying on these guidelines provides the best likelihood of

³⁷ 2015 *Open Internet Order*, 30 FCC Rcd at 5680, para. 180.

³⁸ For information distributed in print, the CAC stated, “[w]hen providing the Broadband Consumer Disclosure in print form at retail locations, participating broadband providers are expected to follow the ADA and associated guidance provided by the Department of Justice, including giving primary consideration to the individual’s choice of alternate format, including “[q]ualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments” (citing 28 CFR §. 36.303, at <https://www.ada.gov/reg3a.html#Anchor-97857>). A provider may deliver printed materials to a consumer by e-mail if such an approach is acceptable to the consumer. The CAC also referenced The American Printing House for the Blind’s (APH) print guidelines as the most concise and relevant set of recommendations for readable design: <http://www.aph.org/research/design-guidelines> (noting the APH Guidelines cover the effective usage of whitespace, heading elements, tables, and more), along with The National Federation of the Blind, which has helpful information about preparing documents in Braille at <https://nfb.org/braille-resources>.

³⁹ The CAC cited The World Wide Web Consortium (W3C) as having established the Web Content Accessibility Guidelines (WCAG) and stated that “[t]hese guidelines are intended to serve as a standard for web content accessibility that meets the needs of individuals, organizations, and governments internationally. Participating providers are strongly encouraged to consult WCAG 2.0 for guidance on presentation of the Broadband Consumer Disclosure on their web sites.” See CAC Broadband Label Recommendation at 7, https://apps.fcc.gov/edocs_public/attachmatch/DOC-336136A1.pdf. We note that the WCAG guidelines evolve over time. See WC3 Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) Overview,

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ensuring that consumers with disabilities will be able to access necessary information about broadband services. We seek comment on whether such guidelines remain accurate today and how best to ensure that any required labels are accessible to persons with disabilities.

B. Relationship to Transparency Rule

28. We seek comment on the interplay between our existing transparency rule⁴⁰ and the proposed broadband labels. The Commission's broadband transparency requirement provides that "[a]ny person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance characteristics, 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 and entrepreneurs and other small businesses to develop, market, and maintain internet offerings."⁴¹

29. We observe that there may be differences between the information required by the transparency rule and the proposed broadband labels. We therefore seek comment on the interplay between the two. Should display of the proposed labels fully satisfy the current transparency rule? In what ways does the transparency rule require disclosures beyond those in our proposed labels? Alternatively, do the broadband consumer labels require disclosures beyond the scope of the existing transparency rule? Will the broadband consumer labels' requirements necessitate further changes to the Commission's transparency rule? If so, how should we resolve potential inconsistencies? The draft proposed rule in Appendix A reflects the view that display of the broadband labels would be necessary for compliance with the general transparency rule. We nevertheless seek comment on alternative rule formulations that would reflect different possible approaches to the relationship between the two and that sufficiently satisfy the objectives outlined in this NPRM.

C. Enforcement Issues

30. We seek comment on issues related to enforcement of the proposed broadband labels. What is the extent of our authority under the Infrastructure Act to enforce the broadband consumer labels as an entirely separate requirement from the transparency rule, or as an adjunct of our transparency rule, which was promulgated pursuant to our authority under the Communications Act? We ask that commenters address the scope of our enforcement authority, particularly in light of Commission precedent in this area.⁴² Should the Commission adopt rules specifically governing enforcement of the broadband label requirement, or should the Commission employ the same enforcement rules and requirements that it relies on in other contexts?

31. Finally, we seek comment on how to evaluate and enforce the accuracy of the information presented in the broadband consumer labels. How can the Commission verify the accuracy of the information that a broadband provider uses in a broadband consumer label? How best can the Commission confirm that any variance between the disclosed performance metrics and actual performance as experienced by individual consumers is or is not consistent with normal network variation? How should the Commission enforce against inaccuracies in the provided information?

D. Implementation and Other Issues

32. We seek comment on the best ways for providers to implement the proposed labels,

<https://www.w3.org/WAI/standards-guidelines/wcag/> (explaining that WCAG 2.0 was published in Dec. 2008, WCAG 2.1 in June 2018, and WCAG 2.2 scheduled for release in 2021) (last visited Nov. 17, 2021).

⁴⁰ 47 CFR § 8.1.

⁴¹ *Id.* § 8.1(a).

⁴² See *2015 Open Internet Order*, 30 FCC Rcd at 5705-5720, paras. 228-272 (designing an enforcement process for the open Internet rules); see also *Restoring Internet Freedom Order*, 33 FCC Rcd at 488-90, paras. 297-303 (revising the Commission's enforcement practices adopted in the *2015 Open Internet Order*).

including the timelines within which they should implement them. We expect providers to develop and implement procedures reasonably designed to ensure compliance with the proposed labels' requirements and, as part of that process, to notify employees, sub-contractors, agents or other persons acting on behalf of the provider in marketing the provider's services of these disclosure 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.

33. In order to allow sufficient time for providers to implement the measures necessary to comply with these requirements, we propose to make these rules effective six months following publication in the Federal Register of the Office of Management and Budget's (OMB's) approval of the adopted rules. Is six months sufficient for both large and smaller providers? Should the Commission adopt a different implementation timeline or temporary exemption for smaller providers to allow them more time to come into compliance with the labels' requirements, and do we have the discretion to do so? We seek comment on the proposed implementation period(s) generally. Finally, we seek comment on whether there are alternative ways, other than different implementation timeframes, to minimize the economic impact on smaller service providers while achieving the Commission's transparency objectives.

34. As part of our continuing effort to advance digital equity for all,⁴³ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, we invite comment on how any broadband consumer labels can advance equity in the provision of and access to digital communications services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.⁴⁴ Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

35. We also seek comment on whether and how the broadband consumer labels can be used to facilitate equal access to broadband Internet access services. Section 60506(b) of the Infrastructure Act requires that the Commission "adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective. . . ."⁴⁵ Are there particular label requirements that would support Commission efforts in this regard?

36. In implementing the broadband consumer labels requirement, we seek comment on the cost effectiveness of the proposals viewed as a whole. Are the costs to ISPs of adding extra information to labels at the point of sale relatively small, when considered against the benefits additional labeling would provide consumers? What are the most cost-effective ways of making labels available to consumers?

⁴³ Section 1 of the Communications Act of 1934, as amended, provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

⁴⁴ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

⁴⁵ Infrastructure Act § 60506(b).

E. Legal Authority

37. In this NPRM, we propose rules to protect consumers and promote transparency by requiring disclosure through labels of the terms and prices that are relevant in consumers' decisions to purchase and manage broadband services. We believe the Infrastructure Act affords the Commission legal authority to adopt the proposed labels' requirements for ISPs.

38. In addition, we note that the D.C. Circuit severed and upheld the Commission's 2010 transparency rule in *Verizon v. FCC*.⁴⁶ While the majority did not expressly opine on the legal authority for the Commission's prior transparency rule, we believe that, like the 2010 transparency rule, the labels we propose to adopt fall well within multiple, independent sources of the Commission's authority. The D.C. Circuit also affirmed the Commission's reliance on statutory authority under prior section 257 of the Communications Act (now moved in part to section 13 of the Act) for the transparency rule adopted there.⁴⁷ We also seek comment on the use of Title III authority, insofar as the broadband label requirements apply to wireless licensees. Do our proposed broadband labeling requirements also advance other statutory goals? If so, what are those?

39. When the Commission has adopted disclosure requirements in the past, such as the transparency rule and its truth-in-billing requirements, it has evaluated its approach to ensure it was consistent with the First Amendment.⁴⁸ We thus likewise seek comment on any First Amendment considerations relevant here.

40. The Infrastructure Act directs the Commission to promulgate rules to require the display of broadband consumer labels, and the Commission's other statutory obligations include protecting consumers from unjust or unreasonable charges and practices.⁴⁹ We believe our proposed regulations are designed to directly advance the government's substantial interest by providing consumers with the basic tools necessary to understand the broadband services they are purchasing and the prices for those services. In addition, they are designed to protect consumers from contracting for service where the terms of service are either unexplained or presented in a confusing manner. We encourage parties to address First Amendment issues in their comments, particularly with respect to the specific labels we propose. We ask parties to address how our proposed regulation in the area of consumer disclosures meets the requirements of *Zauderer* and the three prongs of the *Central Hudson* test. Parties should address specifically how our proposals harmonize with Commission precedent in this area and relevant case law.

IV. PROCEDURAL MATTERS

41. *Initial Paperwork Reduction Act of 1995 Analysis*. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the

⁴⁶ *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014). The D.C. Circuit also upheld the Commission's broadband transparency rules in 2019. See *Mozilla v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).

⁴⁷ *Mozilla v. FCC*, 940 F.3d 1, 46-49 (D.C. Cir. 2019).

⁴⁸ See, e.g., *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7530-33, paras. 60-64 (1999); *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), Consumer Information and Disclosure, Truth-in-Billing, and Billing Format*, CG Docket Nos. 11-116, 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4482-84, paras. 129-35 (2012) (applying *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) (*Zauderer*)) to cramming rules adopted there before going on to find that the rules also satisfy *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980) (*Central Hudson*) to the extent that standard applied); *Restoring Internet Freedom Order*, 33 FCC Rcd at 448-50, paras. 235-38 (concluding that the Commission need not resolve whether *Zauderer* or *Central Hudson* applied because the transparency rule satisfied even the *Central Hudson* standard).

⁴⁹ 47 U.S.C. § 201(b).

Paperwork Reduction Act of 1995, Public Law 104-13.⁵⁰ In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4),⁵¹ we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁵²

42. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁵³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Notice of Proposed Rulemaking. The IRFA is contained in Appendix D.

43. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁵⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

44. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

45. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁵⁵ In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission’s office located at 9050 Junction Drive, Annapolis, MD 20701.⁵⁶

⁵⁰ Public Law 104-13.

⁵¹ Public Law 107-198.

⁵² 44 U.S.C. § 3506(c)(4).

⁵³ 5 U.S.C. § 603.

⁵⁴ 47 CFR §§ 1.1200 *et seq.*

⁵⁵ *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁵⁶ *See Amendment of the Commission’s Rules of Practice and Procedure*, Order, 35 FCC Rcd 5450 (OMD 2020).

46. Pursuant to section 1.49 of the Commission's rules, 47 CFR § 1.49, parties to this proceeding must file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

47. *Materials in Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

48. *Availability of Documents.* Comments, reply comments, *ex parte* submissions, and this Notice of Proposed Rulemaking will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

49. *Additional Information.* For additional information on this proceeding, contact Erica H. McMahon, Erica.McMahon@fcc.gov or (202) 418-0346, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

50. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i), 4(j), 13, 201(b), 257 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 163, 201(b), 257, 303(r), and section 60504 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, that this Notice of Proposed Rulemaking is hereby **ADOPTED**.

51. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

52. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules for Public Comment

The Federal Communications Commission proposes to amend Part 8 of Title 47 of the Code of Federal Regulations as follows:

PART 8 – INTERNET FREEDOM

1. The Authority citation for Part 8 is amended to read as follows:

AUTHORITY: 47 U.S.C. 154, 201(b), 257, ~~and~~ 303(r), and the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (2021).

2. Section 8.1(a) is amended to read as follows:

(a) Any person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance characteristics, 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 and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. Such disclosure shall be made via a broadband consumer label that is ~~publicly available, easily accessible website or through transmittal to the Commission.~~ **prominently displayed, publicly available, and easily accessible at the point of sale in the format prescribed by the Commission:**

- (1) For fixed broadband, as described in “Fixed Broadband Consumer Disclosure Label”;
- (2) For mobile broadband, as described in “Mobile Broadband Consumer Disclosure Label.”

Appendix B

Fixed Broadband Consumer Disclosure Label From the *2016 Public Notice*

Broadband Facts

Fixed broadband consumer disclosure

Choose Your Service Data Plan for *[provide name of speed tier offered]*

Monthly charge for month-to-month plan **\$[]**
[provide non-promotional price of stand-alone broadband service on a month-to-month basis]

Monthly charge for *[]* contract plan **\$[]**
[identify length of available long-term contracts – provide one row for each available option; provide price of stand-alone broadband service available under each long-term contract option]

Click here for other [pricing options](#) including promotions and options bundled with other services, like cable television and wireless services.

Other Charges and Terms

Data included with monthly charge **[] GB**
[if applicable, identify the monthly data allowance associated with this plan]

Charges for additional data usage – *[provide increment of additional data, e.g., “each additional 50GB”; if applicable, identify additional charges if the monthly data allowance is exceeded]* **\$[]**

Optional modem or gateway lease – Customers may use their own modem or gateway; click here for [our policy](#) **\$[]/ month**
[at underlined language provide a link to the company’s policy with respect to customers using their own equipment; provide the monthly rental fee for any equipment available for rent]

Other monthly fees
[identify any monthly fees that the company chooses to impose in connection with the purchase of broadband service, e.g., regulatory recovery fees]

One-time fees
[identify any one-time fees that the company chooses to impose in connection with the purchase of broadband service, e.g., installation fees and activation fees. if applicable, identify any fees that will be imposed if the customer cancels broadband service before the end of a long-term contract and provide a link to a full explanation of when such fees would be triggered; if applicable, include a statement that a deposit may be required based on credit history or other factors]
[provide name of and amount of each one-time fee on a row] **\$[]**

Government Taxes and Other Government-Related Fees May Apply: Varies by location
[provide this disclaimer using this language to notify consumers that additional taxes and fees mandated by, or attributable to, government programs will be imposed – specific taxes and fees need not be identified]

Other services on network
[if applicable, in this section provide a brief description of any non-BIAS services offered by the company that might cause the customer to experience reduced performance of their broadband service; at underlined language provide a link to a full explanation of when such a situation would occur and details regarding the anticipated effect on broadband performance]

Performance - Individual experience may vary

[at underlined language provide a link to a full discussion of network performance metrics]

Typical speed downstream **[] Mbps**
[identify typical peak usage period download speeds for this tier of service, consistent with the Open Internet Orders and FCC guidance]

Typical speed upstream **[] Mbps**
[identify typical peak usage period upload speeds for this tier of service, consistent with the Open Internet Orders and FCC guidance]

Typical latency **[] milliseconds**
[identify typical peak usage period latency for this tier of service, consistent with the Open Internet Orders and FCC guidance]

Typical packet loss	[]%
<i>[identify typical peak usage period packet loss for this tier of service, consistent with the Open Internet Orders and FCC guidance]</i>	
<hr/>	
Network Management	
Application-specific network management practices?	Yes/ No
<i>[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies application-specific network management practices, when such practices are triggered, and the effect such practices could have on performance]</i>	
Subscriber-triggered network management practices?	Yes/ No
<i>[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies subscriber-triggered network management practices, when such practices are triggered, and the effect such practices could have on performance]</i>	
More details on network management .	
<i>[at underlined language provide a link to the company's full disclosure of network management practices]</i>	
<hr/>	
Privacy	
<i>[provide a link to the company's privacy policy for broadband services]</i>	See our privacy policy
<hr/>	
Complaints or Inquiries	
<i>[at underlined language provide a link to the primary customer service web page; provide a phone number for the company's customer service center]</i>	To contact us: online /(123)456-7890;
<i>[at underlined language provide a link to the FCC's complaint center; provide the phone number for the FCC's complaint center]</i>	To submit complaints to the FCC: online /(888)225-5322
<hr/>	
Learn more about the terms used on this form and other relevant information at the FCC's website.	
<i>[at underlined language provide a link to the FCC's glossary web page]</i>	

Appendix C

Mobile Broadband Consumer Disclosure Label From the 2016 Public Notice

Broadband Facts

Mobile broadband consumer disclosure

Device Compatibility

If you want to use your existing device, learn more about [compatibility](#).

[at underlined language provide a link regarding compatibility of devices if the customer brings their own device.]

If you want to obtain a device, learn more about [prices and other options](#).

[at underlined language provide a link to prices and other options for customers who wish to obtain a device from the provider]

Choose Your Data Plan - These prices do not include costs for obtaining a device from us.

	High Speed Data allowance per month		
	[]GB <i>[identify the monthly high speed data allowance associated with one of your most popular plans]</i>	[]GB <i>[identify the monthly high speed data allowance associated with one of your most popular plans]</i>	[]GB <i>[identify the monthly high speed data allowance associated with one of your most popular plans]</i>
Monthly charge	\$[] <i>[provide non-promotional price of the plan with this data allowance on a month-to-month basis]</i>	\$[] <i>[provide non-promotional price of the plan with this data allowance on a month-to-month basis]</i>	\$[] <i>[provide non-promotional price of the plan with this data allowance on a month-to-month basis]</i>
When you exceed the data allowance	[] <i>[if applicable, identify additional charges or other outcomes if the monthly data allowance for this plan is exceeded]</i>	[] <i>[if applicable, identify additional charges or other outcomes if the monthly data allowance for this plan is exceeded]</i>	[] <i>[if applicable, identify additional charges or other outcomes if the monthly data allowance for this plan is exceeded]</i>

Learn more about [other included services/features](#).

[if applicable, at underlined language provide a link to description of other included services and features such as voice and text or tethering and hot spots.]

Additional pricing options, plans and promotions [can be found here](#).

[at underlined language provide a link to additional mobile broadband offerings, including promotional offers and plans that bundle broadband with other services]

Coverage Map

[at underlined language provide a link to coverage map]

Charges and Terms Common to All Plans

Monthly fees

[identify any monthly fees that the company chooses to impose in connection with the customer's plan (e.g., a regulatory recovery fee or administrative fee) and for which all customers are charged the same fixed amount.]

[provide name of and amount of each monthly fee on a row] **\$[]**

One-time fees

[identify any one-time fees that the company chooses to impose in connection with the purchase of broadband service, e.g., activation fees; if applicable, identify any fees that will be imposed if the customer cancels broadband service before the end of a long-term contract and provide a link to a full explanation of when such fees would be triggered]

[provide name of and amount of each one-time fee on a row] **\$[]**

Government Taxes and Fees, and Other Carrier Surcharges May Also Apply: Varies by location

Performance - [Individual experience may vary](#)

[at underlined language provide a link to a full discussion of network performance metrics]

<p>[]G</p> <p><i>[identify the primary network technology for the plan (e.g., 4G, 3G)]</i></p> <hr/> <p>Typical speed</p> <p><i>[] Mbps downstream / [] Mbps upstream</i></p> <p><i>[identify typical peak usage period download and upload speeds for this network technology, consistent with the Open Internet Orders and FCC guidance]</i></p> <hr/> <p>Typical latency</p> <p><i>Less than [] milliseconds</i></p> <p><i>[identify typical peak usage period latency for this network technology, consistent with the Open Internet Orders and FCC guidance]</i></p> <hr/> <p>Typical Packet Loss</p> <p><i>[] %</i></p> <p><i>[identify typical peak usage period packet loss for this network technology consistent with the Open Internet Orders and FCC guidance]</i></p>	•	<p>[]G</p> <p><i>[identify other network technologies for the plan (e.g., 4G, 3G)]</i></p> <hr/> <p>Typical Speed</p> <p><i>[] Mbps downstream / [] Mbps upstream</i></p> <p><i>[identify typical peak usage period download and upload speeds for this network technology, consistent with the Open Internet Orders and FCC guidance]</i></p> <hr/> <p>Typical latency</p> <p><i>Less than [] milliseconds</i></p> <p><i>[identify typical peak usage period latency for this network technology, consistent with the Open Internet Orders and FCC guidance]</i></p> <hr/> <p>Typical Packet Loss</p> <p><i>[] %</i></p> <p><i>[identify typical peak usage period packet loss for this network technology consistent with the Open Internet Orders and FCC guidance]</i></p>
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Network Management

Application-specific network management practices? **Yes/No**

[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies application-specific network management practices, when such practices are triggered, and the effect such practices could have on performance]

Subscriber-triggered network management practices? **Yes/No**

[answer yes or no; if yes, provide a brief description and a link to a full discussion that identifies subscriber-triggered network

management practices, when such practices are triggered, and the effect such practices could have on performance]

More [details on network management](#)

[at underlined language provide a link to the company's full disclosure of network management practices]

Privacy

[at underlined language provide a link to the company's privacy policy for broadband services]

See our [privacy policy](#)

Complaints or Inquiries

[at underlined language provide a link to the primary customer service web page; provide the phone number for the company's customer service center and]

To contact us: [online](#)/(123)456-7890;

[at underlined language provide a link to the FCC's complaint center; provide the phone number for the FCC's complaint center]

To submit complaints to the FCC:
[online](#)/(888)225-5322

Learn more about the [terms used on this form and other relevant information](#) at the FCC's website.

[at underlined language provide a link to the FCC's glossary web page]

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The NPRM proposes rules to implement section 60504 of the Infrastructure Investment and Jobs Act (Infrastructure Act),⁴ to ensure that consumers have an easy way to understand broadband Internet access service providers' (ISPs') prices, performance, and network practices in a simple-to-understand format that does not overwhelm consumers with too much information.

3. The Infrastructure Act directs the Commission "to 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 Further, the Infrastructure Act requires that any broadband consumer label adopted by the Commission "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."⁶

4. The NPRM proposes rules to meet its statutory obligations under section 60504 of the Infrastructure Act. Specifically, the NPRM proposes to amend section 8.1(a) of the Commission's rules to require ISPs to display labels at the point of sale to disclose to consumers certain information about prices, introductory rates, data allowances, broadband speeds, and management practices, among other things.⁷ The labels proposed are modified versions of those recommended by the Commission's Consumer Advisory Committee (CAC) in 2015, which are similar to the nutrition labels required by the United States Food and Drug Administration (FDA) on food products, and which the Commission incorporated as part of a safe harbor from the transparency requirements in 2016.⁸

5. The NPRM proposes broadband consumer labels that contain, at a minimum, the same content contained in the 2016 labels, both for fixed and mobile broadband services. To ensure that broadband consumers have the information they need to make informed decisions, the NPRM proposes

¹ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (Infrastructure Act).

⁵ *Id.* § 60504(a). *See also* *Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, Public Notice, DA 16-357, GN Docket No. 14-28, 31 FCC Rcd 3358 (CGB/WCB/WTB 2016) (*2016 Public Notice*).

⁶ Infrastructure Act § 60504(b)(1).

⁷ NPRM, para. 3, Appx. A; *see also* 47 CFR § 8.1(a).

⁸ *See 2016 Public Notice* (Bureaus approving the CAC labels as part of a transparency safe harbor); *see also* NPRM, Appx. B and C.

to adopt the content of the 2016 labels, both for fixed and mobile broadband services, with appropriate modifications. The 2016 labels for fixed broadband service include the following content: 1) pricing; 2) monthly data allowance; 3) overage charges; 4) equipment fees; 5) other monthly fees; 6) one-time fees; and 7) early termination fees. In addition, the 2016 labels also include information on performance (speed, latency, and packet loss) and on network management practices. The 2016 labels for mobile broadband service include information on: 1) pricing; 2) when you exceed data allowance; 3) other included services/features; 4) other monthly fees; 5) one-time fees; 6) service contract terms; 7) early termination fees; and 8) “bring your own device” information. The mobile broadband labels also include performance information (speed, latency, and other services on the network) and network management practices. Both the fixed and mobile broadband labels include a link to the provider’s privacy policy and a link to how to file complaints and inquiries.

6. The NPRM seeks comment on whether there is other content beyond what is in the 2016 labels that should be considered. For example, should the labels include information about whether there are any limitations when consumers use multiple devices on the same broadband plan? 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?

7. The NPRM proposes to adopt the format of the 2016 labels and require it for broadband consumer labels based on its success as a nutrition label format and the considerable work the CAC did in adapting the format to broadband service.⁹ In addition, the NPRM proposes to require ISPs to display the labels at the point of sale.¹⁰ This means disclosing the labels of any broadband service presented to consumers on an ISP’s website when a consumer browses service options. Finally, the NPRM proposes to ensure that any required labels are accessible to persons with disabilities and that any broadband consumer label advances equity in the provision of and access to digital communications services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.¹¹

B. Legal Basis

8. The proposed rules are authorized under sections 4(i), 4(j), 13, 201(b), 257, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 163, 201(b), 257, 303(r), and section 60504 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹³ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹⁴ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of

⁹ NPRM, para. 23-24.

¹⁰ NPRM, para. 26.

¹¹ NPRM, paras. 27, 34, Appx. A.

¹² See 5 U.S.C. § 603(b)(3).

¹³ See *id.* § 601(6).

¹⁴ See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

operation; and (3) satisfies any additional criteria established by the SBA.¹⁵

1. Total Small Entities

10. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹⁶ First, there are industry-specific size standards for small businesses that are used in the regulatory context. These types of small businesses represent 99.9% of all businesses in the United States, which translates to flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy. In general, a small business is an independent business having fewer than 500 employees.¹⁷ There are 30.7 million such businesses.¹⁸

11. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.²⁰ Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.²¹

12. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²² U.S. Census Bureau data from the 2017 Census of Governments²³ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁴ Of this number there were

¹⁵ See 15 U.S.C. § 632.

¹⁶ See 5 U.S.C. § 601(3)-(6).

¹⁷ See SBA, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

¹⁸ *Id.*

¹⁹ 5 U.S.C. § 601(4).

²⁰ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

²¹ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

²² 5 U.S.C. § 601(5).

²³ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five years, compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

²⁴ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local

(continued....)

36,931 general purpose governments (county,²⁵ municipal, and town or township²⁶) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²⁷ with enrollment populations of less than 50,000.²⁸ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁹

2. Broadband Internet Access Service Providers

13. Broadband Internet access service providers, including wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure, fall in the category of Wired Telecommunication Carriers.³⁰ Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.³¹ The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.³² U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.³³ Of this total, 3,083 operated with fewer than 1,000 employees.³⁴ Consequently, under this size standard the majority of firms in this industry can be considered small

governmental jurisdictions are made up of general purpose governments (county, municipal, and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes Local Governments by Type and State_2017.

²⁵ *See id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁶ *See id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁷ *See id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State Census Years 1942 to 2017.

²⁸ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁹ This total is derived from the sum of the number of general purpose governments (county, municipal, and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

³⁰ *See* U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³¹ *Id.*

³² *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

³³ *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

³⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

3. Wireline Providers

14. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.³⁵ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.³⁶ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.³⁷ Of this total, 3,083 operated with fewer than 1,000 employees.³⁸ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, 1,307 Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.³⁹ Of this total, an estimated 1,006 have 1,500 or fewer employees.⁴⁰ Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

15. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers⁴¹ and under that size standard, such a business is small if it has 1,500 or fewer employees.⁴² U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.⁴³ Of that number, 3,083 operated with fewer than 1,000 employees.⁴⁴ Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁴⁵ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.⁴⁶ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴⁷ Also, 72

³⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁶ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

³⁷ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

³⁸ *Id.*

³⁹ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

⁴⁰ *Id.*

⁴¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴² See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁴³ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁵ See *Trends in Telephone Service* at Table 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁴⁶ *Id.*

⁴⁷ *Id.*

carriers have reported that they are Other Local Service Providers.⁴⁸ Of this total, 70 have 1,500 or fewer employees.⁴⁹ Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

16. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.⁵⁰ The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵¹ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.⁵² Of that number, 3,083 operated with fewer than 1,000 employees.⁵³ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁵⁴ Of this total, an estimated 317 have 1,500 or fewer employees.⁵⁵ Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

17. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for OSPs. The closest applicable NAICS Code category is Wired Telecommunications Carriers.⁵⁶ The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵⁷ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.⁵⁸ Of that number, 3,083 operated with fewer than 1,000 employees.⁵⁹ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁶⁰ Of this total, an estimated 317 have 1,500 or fewer employees.⁶¹ Consequently, the Commission estimates that the majority of OSPs are small entities.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵¹ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁵² See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

⁵³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁴ See *Trends in Telephone Service* at Table 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁵⁵ *Id.*

⁵⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁷ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁵⁸ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

⁵⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁰ See *Trends in Telephone Service* at Table 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁶¹ *Id.*

18. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁶² Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.⁶³ 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.⁶⁴ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁶⁵ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁶⁶ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

19. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.⁶⁷ The SBA has developed a small business size standard for the category of Telecommunications Resellers.⁶⁸ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁹ 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that year.⁷⁰ Of that number, 1,341 operated with fewer than 1,000 employees.⁷¹ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁷² Of this total, an estimated 857 have 1,500 or fewer employees.⁷³ Consequently,

⁶² U.S. Census Bureau, *517911 Telecommunications Resellers*, <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶³ 13 CFR § 121.201, NAICS code 517911.

⁶⁴ U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

⁶⁵ See *Trends in Telephone Service* at Table 5.3.

⁶⁶ See *id.*

⁶⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶⁸ See 13 CFR § 121.201, NAICS Code 517911.

⁶⁹ *Id.*

⁷⁰ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

⁷¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷² See *Trends in Telephone Service* at Table 5.3.

⁷³ See *id.*

the Commission estimates that the majority of toll resellers are small entities.

4. Wireless Carriers and Service Providers

20. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.⁷⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁷⁵ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁷⁶ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.⁷⁷ Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018, there are 265 cellular licensees that will be affected by our actions.⁷⁸ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁷⁹ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.⁸⁰ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

21. *Satellite Telecommunications Providers*. This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁸¹ Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules.⁸² For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.⁸³ Of this total, 299 firms had annual

⁷⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁷⁵ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁷⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁷⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁸ See <http://wireless.fcc.gov/uls>. For the purposes of this Supplemental FRFA consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁷⁹ See *Trends in Telephone Service* at Table 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁸⁰ See *id.*

⁸¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

⁸² See 13 CFR § 121.201, NAICS Code 517410.

⁸³ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410,

(continued....)

receipts of less than \$25 million.⁸⁴ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

22. *Common Carrier Paging.* As noted, since 2007, the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).⁸⁵

23. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁸⁶ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁸⁷ The SBA has approved this definition.⁸⁸ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁸⁹ Fifty-seven companies claiming small business status won 440 licenses.⁹⁰ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁹¹ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁹²

24. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of “paging and messaging” services.⁹³ Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.⁹⁴ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

25. *Wireless Telephony.* Wireless telephony includes cellular, personal communications

<https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012>.

⁸⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$35 million or less.

⁸⁵ See U.S. Census Bureau, 2007 NAICS Definitions, “517312 Wireless Telecommunications Categories (Except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁸⁶ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

⁸⁷ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁸⁸ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (dated Dec. 2, 1998).

⁸⁹ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁹⁰ See *id.*

⁹¹ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

⁹² See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁹³ *2010 Trends Report* at Table 5.3, page 5-5.

⁹⁴ *Id.*

services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).⁹⁵ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁹⁶ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁹⁷ Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.⁹⁸ Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁹⁹ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.¹⁰⁰ Therefore, more than half of these entities can be considered small.

5. All Other Telecommunications

26. The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁰¹ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.¹⁰² Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.¹⁰³ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less.¹⁰⁴ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.¹⁰⁵ Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999.¹⁰⁶ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance

⁹⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹⁶ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁹⁷ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁹⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁹ See Trends in Telephone Service at Table 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

¹⁰⁰ *Id.*

¹⁰¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See 13 CFR § 121.201, NAICS Code 517919.

¹⁰⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

¹⁰⁶ *Id.*

Requirements

27. The NPRM proposes to require ISPs to disclose, through a label similar in format to the required FDA-approved nutrition labels, certain information about the provider's performance characteristics, network practices, and commercial terms.

28. The proposed consumer broadband labels for fixed broadband service include the following content: 1) pricing; 2) monthly data allowance; 3) overage charges; 4) equipment fees; 5) other monthly fees; 6) one time fees; and 7) early termination fees. The labels also include information on performance (speed, latency, and packet loss) and on network management practices. Labels for mobile broadband service include information on: 1) pricing; 2) when you exceed data allowance; 3) other included services/features; 4) other monthly fees; 5) one-time fees; 6) service contract terms; 7) early termination fees; and 8) "bring your own device" information. The proposed mobile broadband labels also include performance information (speed, latency, other services on network) and network management practices. Both fixed and mobile broadband labels include a link to the provider's privacy policy and a link to how to file complaints and inquiries.

29. The NPRM proposes to adopt the content of the Commission's 2016 safe harbor labels, both for fixed and mobile broadband services, and to make any appropriate modifications to the labels so that they "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," as required by the Infrastructure Act.¹⁰⁷

30. The Commission proposes that the labels be provided at the point of sale and that, at a minimum, the ISPs should disclose the label on any website an ISP uses to market broadband Internet access services. The NPRM also seeks comment on how the labels should be displayed at other points of sale, such as retail locations, on apps, on online platforms, on other digital locations, and on telemarketing calls and asks whether providers should provide hardcopies of the labels in retail locations. In addition, the NPRM considers whether a provider's telemarketing representative should email, or otherwise make available to, consumers labels before consumers make a purchase and whether there are other marketing channels to consider in developing this point-of-sale requirement. The Commission also considers whether the labels should be provided in a machine-readable format with standard, labeled fields to ensure that third parties and consumers can more readily compare across multiple providers.¹⁰⁸ Further, the NPRM seeks comment on whether ISPs should be required to make direct notifications to consumers if any terms of service change after the labels are provided to consumers at the time of purchase.¹⁰⁹

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹¹⁰

32. The NPRM specifically considers the impact of the proposed label requirements on

¹⁰⁷ NPRM, para. 16; *see also* Infrastructure Act § 60504(b)(1).

¹⁰⁸ NPRM, paras. 24, 26.

¹⁰⁹ NPRM, para. 22.

¹¹⁰ 5 U.S.C. § 603(c).

smaller broadband service providers.¹¹¹ To address any concerns about compliance with the proposed rules by smaller broadband providers, the NPRM seeks comment on appropriate timeframes for smaller providers to implement the new requirements and asks whether there are any alternative ways, other than different implementation timeframes, to minimize the economic impact on smaller service providers while achieving the objectives set forth in the NPRM.

33. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

34. None.

¹¹¹ NPRM, paras. 32-33.