

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

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

ORDER ON RECONSIDERATION

Adopted: August 25, 2023

Released: August 29, 2023

By the Commission:

I. INTRODUCTION

1. As required by the Infrastructure Investment and Jobs Act (Infrastructure Act),<sup>1</sup> the Commission adopted a Report and Order requiring broadband Internet service providers (ISPs or providers) to display, at the point of sale, labels that disclose certain information about broadband prices, introductory rates, data allowances, and broadband speeds, and to include links to information about their network management practices, privacy policies, and the Commission’s Affordable Connectivity Program (ACP).<sup>2</sup> The Commission also adopted requirements for the label’s format and display location to ensure consumers can easily compare a provider’s services as well as services between different providers. Consumer access to clear, easy-to-understand, and accurate information is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services.

2. We now address three petitions requesting that the Commission clarify and/or reconsider certain label requirements.<sup>3</sup> In doing so, we affirm our requirement that providers display all monthly fees with respect to broadband service on the label to provide consumers with clear and accurate information about the cost of their broadband service. We thus decline providers’ request that they not disclose those fees or that they instead display an “up to” price for certain fees they choose to pass through to consumers. Similarly, we preserve the label’s simplicity and ease of comparison by declining wireless providers’ request to include potentially complex and lengthy details about data allowances on the label, and instead affirm that providers can make those details available to consumers on a linked website.

3. Next, we clarify that a broadband label is only required in E-Rate and Rural Health Care (RHC) Program competitive bids for standard mass-market broadband Internet services requested by a school, library, or health care provider, and that E-Rate and RHC service providers need not include a label for enterprise and special access services provided through those programs. We also reconsider the

<sup>1</sup> The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (Infrastructure Act).

<sup>2</sup> See Empowering Broadband Consumers Through Transparency, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (2022) (Broadband Label Order).

<sup>3</sup> See ACA Connects—America’s Communications Association, CTIA, NCTA—The Internet & Television Association, NTCA—The Rural Broadband Association, and USTelecom—the Broadband Association, Joint Petition for Clarification or, in the Alternative, Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (ACA Connects Joint Petition); Cincinnati Bell Telephone Company LLC d/b/a altafiber Network Solutions, Crown Castle, Metro Fibernet, LLC, and Uniti Fiber LLC, Joint Petition for Clarification or Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (Cincinnati Bell Joint Petition); CTIA—The Wireless Association, Petition for Clarification or, in the Alternative, Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (CTIA Petition).

requirement to document each instance when a provider directs a consumer to a label at an alternative sales channel and to retain such documentation for two years. In addition, we make clear that wireless providers that opt to include government taxes in their base monthly price may note on the label that government taxes are included.

4. Our decisions here preserve consumer access to clear, easy-to-understand, and accurate information about the cost for broadband services and will empower consumers to choose services that best meet their needs and match their budgets and ensures that they are not surprised by unexpected charges or service quality that falls short of their expectations.

## II. BACKGROUND

5. The Infrastructure Act, 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.”<sup>4</sup> Further, the Infrastructure Act requires that the label “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.”<sup>5</sup>

6. On January 27, 2022, we released a Notice of Proposed Rulemaking initiating a proceeding to implement section 60504 of the Infrastructure Act.<sup>6</sup> Consistent with the Infrastructure Act’s mandate, we proposed a requirement that ISPs display broadband consumer labels that the Commission approved in 2016 as a safe harbor from enforcement of the broadband transparency requirements.<sup>7</sup> The Commission also conducted three public hearings, which informed the record.<sup>8</sup> Commenters and hearing participants agreed that labels are a simple and clear means to disclose information about broadband services but many urged us to modify the 2016 labels to better assist consumers in their purchasing decisions.<sup>9</sup>

7. On November 14, 2022, we adopted a new broadband label to help consumers comparison shop among broadband service plans.<sup>10</sup> Specifically, we required ISPs to display, at the point of sale, a broadband consumer label containing critical information about the provider’s service offerings, including information about pricing, introductory rates, data allowances, performance metrics, and

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<sup>4</sup> Infrastructure Act § 60504(a). Before enactment of the Infrastructure Act, the President issued Executive Order 14036, which, in relevant part, encouraged 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 (July 9, 2021).

<sup>5</sup> Infrastructure Act § 60504(b)(1). The Infrastructure Act also directed 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. See *id.* § 60504(c). The Commission conducted three public hearings to solicit input from various stakeholders on the content, format, and location of the labels. See FCC, Broadband Consumer Labels, *Public Hearings on Broadband Labels* (Mar. 11, 2022, Apr. 7, 2022, and May 25, 2022), <https://www.fcc.gov/broadbandlabels>.

<sup>6</sup> See *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (rel. Jan. 27, 2022) (*Broadband Label NPRM*).

<sup>7</sup> *Id.*, para. 14.

<sup>8</sup> See *supra*, note 5.

<sup>9</sup> *Broadband Label Order*, para. 11 & note 20.

<sup>10</sup> *Id.*, para. 12.

whether the provider participates in the ACP.<sup>11</sup> We required that ISPs display the label for each stand-alone broadband Internet access service they currently offer for purchase, and that the label link to other important information such as network management practices, privacy policies, and other educational materials.<sup>12</sup>

8. In addition to label content, we adopted requirements for the label’s format and display location to ensure consumers can make side-by-side comparisons of various service offerings from an individual provider or from alternative providers—something essential for making informed decisions.<sup>13</sup> In this way, the label resembles the well-known nutrition labels that consumers have come to rely on when shopping for food products.

9. Following the adoption of the *Broadband Label Order*, we received three petitions asking the Commission to clarify and/or reconsider certain label requirements. In the first petition, ACA Connects et al. ask the Commission to clarify or reconsider the requirements to: 1) itemize on the label all discretionary monthly fees that the provider passes through to the consumer; and 2) document consumer interactions regarding labels that occur through alternative sales channels (e.g., retail stores, kiosks, on the phone).<sup>14</sup>

10. In a second petition, a coalition of companies that provide customized broadband services to schools, libraries, and health care providers through the E-Rate and RHC Universal Fund Service (USF) programs requests that the Commission clarify that a broadband label is only required in E-Rate and RHC Program competitive bids for standard *mass-market* broadband internet services.<sup>15</sup> They urge the Commission not to apply broadband labeling requirements to negotiated, non-mass-market services.<sup>16</sup> The coalition specifically asks us to clarify that footnote 36 in the *Broadband Label Order* was meant to underscore that, regardless of the service provider’s “definition” or “name” for its offering, the enterprise/special access exemption applies when the service offering is customized for the beneficiary.

11. Finally, in the third petition, CTIA requests that the Commission clarify that the labels should accommodate the service options that wireless providers make available to consumers, even if they do not fit into the format of the label template. CTIA requests that providers be permitted to describe their offerings—specifically with regard to government taxes and data allowances—in alternative ways, as long as the disclosures are clear and accurate.<sup>17</sup>

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<sup>11</sup> In the Infrastructure Act, Congress appropriated \$14.2 billion to transform the Emergency Broadband Benefit Program into the Affordable Connectivity Program (ACP), which provides eligible low-income households discounted Internet service and a one-time discount on a connected device from a participating provider with a co-pay. *See Affordable Connectivity Program, Emergency Broadband Benefit Program*, WC Docket Nos. 21-450 and 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (Jan. 21, 2022) (*ACP Order*). The ACP provides a monthly discount of up to \$30 for broadband service and up to \$75 a month for households on qualifying Tribal lands. *See* 47 CFR § 54.1803(a).

<sup>12</sup> As discussed in the *Broadband Label Order*, most providers will have six months from announcement of the Office of Management and Budget’s (OMB’s) approval of the rules to comply with the new label requirements, while smaller providers will have a year to come into compliance. *See Broadband Label Order*, section III.G. (Implementation Timelines).

<sup>13</sup> *Broadband Label Order*, paras. 64-74, 88-99.

<sup>14</sup> *See* ACA Connects Joint Petition at 1.

<sup>15</sup> *See* Cincinnati Bell Joint Petition at 1.

<sup>16</sup> *See id.*

<sup>17</sup> *See* CTIA Petition at 2-3. On January 31, 2023, the Commission published notice of the petitions for reconsideration in the Federal Register. *See* Federal Communications Commission, Empowering Broadband Consumers Through Transparency, Petition for Reconsideration, 88 Fed. Reg. 6219 (Jan. 31, 2023) (setting February 15, 2023 as the due date for oppositions and February 27, 2023 for replies to oppositions).

### III. ORDER ON RECONSIDERATION

12. On reconsideration of the *Broadband Label Order*, we affirm our determinations that providers must itemize monthly discretionary fees on the label and state how much data is provided with the service plan, as outlined by the label template. We also clarify that E-Rate and RHC service providers are not required to include a broadband label for enterprise and special access services provided through those programs. In addition, we revise the Commission’s requirement to document each instance when a provider directs a consumer to a label at an alternative sales channel and to retain such documentation for two years. And we make clear that providers that opt to include government taxes in their monthly base price may state on the label that government taxes are included.

#### A. Identifying Additional Monthly Provider Fees on Labels

13. We affirm that providers must itemize the fees they add to base monthly prices, including fees related to government programs they choose to “pass through” to consumers, such as fees related to universal service or regulatory fees. We thus affirm that consumers should know both the total cost of service and what goes into that cost to both budget and comparison shop between plans and providers. Clear itemization of all fees – including those related to regulatory programs – is essential to our goal of empowering consumers to make good purchase decisions.<sup>18</sup>

14. We therefore reject ACA Connects et al.’s request that providers simply state on the label that additional fees may apply and that these fees may vary depending on location.<sup>19</sup> We also reject their alternative proposal that providers identify “generally the maximum dollar figure that could be passed through to the consumer per month, rather than requiring providers to itemize each and every fee.”<sup>20</sup> Neither would accomplish the Label goal of empowering good consumer decisions because they leave consumers unable to reliably predict the cost of particular plans for purposes of comparison shopping. Providing specific fee amounts also accords with the approach reflected in the *2016 Public Notice* that Congress directed the Commission to consider in adopting the Label, and we are not persuaded to depart from that approach in this regard.<sup>21</sup>

15. We also disagree that clear disclosure of these fees “has the potential to cause significant confusion for consumers and add unnecessary complexity for providers” due to the “huge variety and quantity of fees on broadband providers.”<sup>22</sup> Providers must itemize the fees on consumer bills, and we see no reason why consumers cannot assess the fees at the point-of-sale any less than they can when they receive a bill. Providers are free, of course, to not pass these fees through to consumers to differentiate their pricing and simplify their Label display if they believe it will make their service more attractive to consumers and ensure that consumers are not surprised by unexpected charges.

16. Further, we are not persuaded that it will be burdensome for ISPs to itemize on the label those fees they *opt* to pass along to consumers above the monthly price, particularly since providers acknowledge being able to describe such fees to a consumer over the phone and on a consumer’s bill once

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<sup>18</sup> *Broadband Label Order*, paras. 24, 33. We are referring only to monthly discretionary fees that providers pass through to their customers as a result of certain regulatory or government programs. Consistent with petitioners’ request, we are not reconsidering the requirement to list all “one-time” fees providers charge when a consumer first signs up for service.

<sup>19</sup> ACA Connects Joint Petition at 6.

<sup>20</sup> *Id.* at 6.

<sup>21</sup> See *Broadband Label NPRM*, Appendices B, C (providing the fixed and mobile broadband labels from the *2016 Public Notice*).

<sup>22</sup> ACA Connects Joint Petition at 4.

the consumer subscribes to service.<sup>23</sup> We also find that any such burdens are far outweighed by the benefits to consumers when they are shopping for service. And, as emphasized below, ISPs could alternatively roll such discretionary fees into the base monthly price, thereby eliminating the need to itemize them on the label.<sup>24</sup>

17. Moreover, we are not persuaded that a provider will be forced to list on the label “potentially hundreds of fees for all jurisdictions in its footprint,” when only a subset of fees listed would actually apply to an individual customer.<sup>25</sup> We do agree, however, that such a practice would “make the labels very lengthy and unwieldy, diminishing their utility to consumers and undermining their purpose.”<sup>26</sup> We, therefore, reiterate that labels must be accurate based on the consumer’s location. Identifying fees that do not apply to a consumer in a particular geographic location would effectively render comparison shopping impossible—a primary purpose of the label. And burying the fees that do apply on a lengthy list of those that do not risks displaying a label that is simply inaccurate. Thus, we find that listing fees on the label that are irrelevant to a particular consumer shopping for broadband service is inconsistent with the goals of the Infrastructure Act.

18. Finally, we disagree, for the reasons above, that identifying the maximum out-of-pocket fees a prospective customer may be responsible for if they subscribe to the service “gives the customer critical information about the service they are considering in a much more efficient and effective manner than attempting to itemize fees on a jurisdiction-specific basis.”<sup>27</sup> We believe that identifying a maximum dollar figure that a customer would pay in additional provider fees per month does not sufficiently disclose to consumers what they will be charged for and how those fees compare to another provider’s service offerings.

19. We also emphasize, however, that if the provider does not impose additional discretionary fees on top of the base monthly price, but instead incorporates them into the monthly price, the provider can state “None” on the label template.<sup>28</sup>

## **B. Describing Data Allowances on Labels**

20. We affirm that providers should keep their descriptions of any data allowances simple on the Label and should only describe data allowance details in their more complete service descriptions in their advertising materials and on websites. Our conclusion supports a main goal of the Label, to require providers to simply, clearly, and consistently describe their services to enable consumers to comparison shop.

21. We therefore deny CTIA’s request that wireless providers be able to use multiple lines of data allowance descriptions on the Label.<sup>29</sup> CTIA states that wireless providers offer consumers data allowance options that differ from those offered by wireline providers and that such data allowance

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<sup>23</sup> See *id.* at 7; see also Letter from Jordan Goldstein, SVP Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 2-4 (June 8, 2023) (Comcast *ex parte*) (supporting the petitioners’ request and arguing that itemizing discretionary fees would substantially increase the burden on providers to generate and maintain their labels).

<sup>24</sup> See *infra*, para. 19.

<sup>25</sup> See ACA Connects Joint Petition at 8.

<sup>26</sup> See *id.* at 8.

<sup>27</sup> See *id.* at 10.

<sup>28</sup> See *Broadband Label Order*, para. 24, n.49 (“A provider that opts to combine all of its monthly discretionary fees with its base monthly price may do so and list that total price. In that case, the provider need not separately itemize those fees in the label.”).

<sup>29</sup> CTIA Petition at 7.

options may vary between handsets and hotspots.<sup>30</sup> We agree that consumers may want to see these details before purchase, but believe consumers are best served by a high-level description of data allowances on the Label, and that allowing providers to clutter the Label with detail about those allowances would undermine its simplicity and utility.

22. Our conclusion is consistent with the *Broadband Label Order*, where we required providers to identify the amount of data included with the monthly price in the label template.<sup>31</sup> We explained that providers must disclose any charges or reductions in service for any data used in excess of the amount included in the plan.<sup>32</sup> We also concluded that providers must identify the increment of additional data, e.g., “each additional 50GB,” if applicable, and disclose any additional charges once the consumer exceeds the monthly data allowance.<sup>33</sup> We clarify here that the increment of additional data and the additional charges should be associated with the data tier of the data cap on the label. We further stated that limits on data usage are critical pieces of information for consumers, along with any additional charges the provider may assess once a consumer exceeds such a cap.<sup>34</sup> But we emphasized that it is important to keep the label information as simple as possible for consumers and to require providers to comply by including links to their websites for more detailed information about data allowances.<sup>35</sup>

23. Finally, we disagree with commenters that suggest that wireless providers will have to modify or otherwise limit their competitive service offerings to fit the label framework.<sup>36</sup> Instead, we reiterate that, if providers wish to provide more detailed information about their data allowances, including different allowances for handsets and hotspots, they may do so through links to their websites.<sup>37</sup> We also conclude that the link must be included in the “Data Included with Monthly Price” section of the label such that “Data Included” would appear as a hyperlink to more information on the provider’s website regarding its data allowance options.

### C. Labels for E-Rate and Rural Health Care (RHC) Programs

24. We grant the Cincinnati Bell Joint Petition and affirm our determination in the *Broadband Label Order* that “enterprise service offerings or special access services are not ‘mass-market retail services,’ and therefore, not covered by our label requirement.”<sup>38</sup> As explained in the order, the Infrastructure Act requires the display of labels for “broadband Internet access service plans.” Broadband Internet access service is currently defined in section 8.1(b) of our rules as “a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.”<sup>39</sup> We confirmed in the order that “mass-market retail services” do not include enterprise service offerings or special access services, which

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<sup>30</sup> *Id.* at 2-3.

<sup>31</sup> See *Broadband Label Order*, para. 15 (showing broadband label template).

<sup>32</sup> *Id.*, para. 35.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See Competitive Carriers Association Comment at 2.

<sup>37</sup> *Broadband Label Order*, para. 35. Providers may also include more detailed information on data allowances in their promotional and/or educational materials.

<sup>38</sup> *Id.*, para. 17. See also Cincinnati Bell Joint Petition at 1.

<sup>39</sup> 47 CFR § 8.1(b).

are typically offered to larger organizations through customized or individually negotiated arrangements, and that such services are not covered by the label disclosure requirements.<sup>40</sup>

25. Based on the petition and commenters' filings, we recognize that footnote 36 of the order, which stated that "we require E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC competitive bidding processes, whether or not such provider defines their offered service as an 'enterprise' service," may have resulted in some confusion.<sup>41</sup> We agree that, to the extent that broadband label requirements generally exclude enterprise/special access service offerings, it makes most sense in this context to take a uniform approach, including with respect to services in the E-Rate and RHC programs.<sup>42</sup> Thus, we clarify that footnote 36 does not contradict our determination regarding enterprise service offerings or require broadband labels for *all* broadband services in the E-Rate and RHC programs. Rather, we emphasize that, regardless of how the provider names or defines its offering, the manner in which the service is offered is dispositive of whether the labeling requirements apply.<sup>43</sup> We therefore affirm here that the enterprise/special access "exemption" discussed in the *Broadband Label Order* typically applies when the service offering is customized for the beneficiary through individually negotiated agreements.<sup>44</sup>

26. We also reiterate, however, that the label requirements continue to apply to mass-market broadband services offered in the E-Rate and RHC programs and agree with commenters that "such disclosures would especially benefit the smaller and more rural schools, libraries and rural health care

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<sup>40</sup> *Broadband Label Order*, para. 17; see also *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5683-84, para. 189 (2015) (*2015 Open Internet Order*); *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 318-319, para. 21 n.58 (2017).

<sup>41</sup> Petitioners also argue that footnote 215 of the *Broadband Label Order*, which states that, "[w]hether the service actually falls under the standards for enterprise services and special access services addressed in paragraph 17 above, and not the service provider's name for the service, will determine whether the labeling exemption for enterprise services and special access services applies" appears to contradict footnote 36. See Cincinnati Bell Joint Petition at 4.

<sup>42</sup> As Petitioners point out, paragraph 18 of the *Broadband Label Order* stated that "[t]he Infrastructure Act expressly defines 'broadband Internet access service' by reference to the definition in section 8.1(b) of our rules, and the Commission previously had interpreted that rule to include E-Rate and RHC services." Cincinnati Bell Joint Petition at 3 n.6 (quoting *Broadband Label Order*, para. 18). We reconsider the implications of that language in this context, making clear the uniform treatment of enterprise/special access service offerings for purposes of our broadband label requirements.

<sup>43</sup> See Coalition of Concerned Carriers Comment at 3 (arguing that the language in footnote 36 was meant to address the same point raised in footnote 215—whether a service is a mass-market retail service or an enterprise service is determined by the manner in which the service is offered, and not by the service provider's name for the service); USTelecom Reply at 2 (supporting granting the petition and stating that reconciling footnotes 36 and 215 suggests that the Commission intended to make clear that, regardless of how the provider names or defines its offering, the manner in which it is offered is dispositive of whether the labeling requirements apply).

<sup>44</sup> See *Broadband Label Order*, para. 17. While we clarify that service offerings to large customers (or other entities) that are not mass-market retail services are not covered by the disclosure requirements here, we do not do so for all the reasons petitioners and commenters raise. For example, we are not persuaded that it would be overly burdensome for wholesalers and resellers to create labels for their larger customers or that the labels would be confusing for the customers themselves. See *id.*; see also Cincinnati Bell Joint Petition at 6; Schools, Health & Libraries Broadband Coalition Comment at 2 (arguing that a label would either be unnecessarily duplicative of what is contained in the contract or add confusion for schools, libraries, and healthcare providers that purchase custom-designed services); Education Networks of America, Inc, ENA Services, LLC, and Zayo Group, LLC Ex Parte at 1 (arguing that the provision of broadband labels for customized services will not help E-rate or rural health care entities make better informed service selections).

providers that often purchase standard ‘off-the-shelf’ Internet access service.”<sup>45</sup> We see no reason why the E-Rate and RHC bidding processes means that such consumers would not benefit from the label. The definition in section 8.1(b) of the Commission’s rules includes ISPs participating in the E-Rate and RHC programs and, thus, they must provide labels to prospective customers during the competitive bidding process, during which time customers define the services that they need and providers put forward bids.<sup>46</sup>

#### **D. Documenting Interactions with Consumers at Alternate Sales Channels**

27. In response to the ACA Connects Joint Petition, we reconsider the requirement that a provider must document each instance when it directs a consumer to a label at an alternative sales channel (e.g., retail stores, kiosks, and over the phone) and retain such documentation for two years.<sup>47</sup> In doing so, we grant ACA Connects’ request and clarify in accordance with such request that the requirement will be deemed satisfied if: 1) the provider establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within 30 days.<sup>48</sup> No commenter opposed Petitioners’ request.

28. We agree with petitioners that this clarification will avoid unnecessary burdens and costs on providers that may risk diverting resources to otherwise assist consumers with making broadband purchases at alternative sales channels.<sup>49</sup> We share their concerns that creating an additional system by which customer-facing employees are required to record the details of when and how they share the label in every customer interaction may impose significant costs on providers. We are persuaded by petitioners that providers deal with millions of customers and prospective customers by phone, in retail locations, and at “pop-up” sales outlets such as fairs or exhibitions, and that it may be challenging for providers to capture and retain such documentation when consumers are provided with access to the labels at each and every point of sale.<sup>50</sup>

29. We believe that permitting providers to alternatively establish business practices and training materials to ensure labels are distributed consistently and accurately in retail stores and other sales channels will sufficiently protect consumers.<sup>51</sup> It is also consistent with our online point-of-sale requirements, whereby providers need not document each time a consumer views a label on their websites; they must instead archive all labels after they are removed from their websites and maintain such archive for at least two years after the service plan is no longer offered to new customers. As with archived labels, which must be provided to the Commission, upon request, within 30 days, we also find that, should the Commission request a provider’s training materials and business practice documentation for alternate sales channels, ISPs must provide such information within 30 days. As a result, we amend section 8.1(a)(2) of the Commission’s rules to clarify that the requirement to document interactions with consumers at alternate sales channels will be deemed satisfied if, instead, the provider: 1) establishes the

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<sup>45</sup> See Schools, Health & Libraries Broadband Coalition Comment at 2. We note that petitioners support the adoption of broadband labeling requirements for mass-market retail services. See Cincinnati Bell Joint Petition at 1.

<sup>46</sup> *Broadband Label Order*, para. 96.

<sup>47</sup> See *id.*, para. 95.

<sup>48</sup> ACA Connects Joint Petition at 4-5, 11. Providers may also comply with the requirement as described in the *Broadband Label Order* instead (i.e., that they document each instance when a consumer is provided a label at an alternative sales channel and retain such documentation for a period of two years).

<sup>49</sup> ACA Connects Joint Petition at 5, 11; see also WISPA – Broadband Without Boundaries Comment at 3; CTIA Reply at 3 (each supporting the petition); Comcast *ex parte* at 4 (arguing that creating and maintaining “such an extremely large number of otherwise-unnecessary records imposes substantial additional burdens” on providers).

<sup>50</sup> ACA Connects Joint Petition at 11-12.

<sup>51</sup> See Competitive Carriers Association Comment at 3 (supporting the petition and arguing that, in the absence of clear rule language on referring consumers to labels in alternative sales channels, there is an increased risk of inconsistent implementation).



business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within 30 days.

#### **E. Identifying Government Taxes on Labels**

30. We grant CTIA's request to clarify that wireless providers have the flexibility to state "taxes included" or add similar language to the label template when the provider has chosen to include taxes as part of its base price.<sup>52</sup> CTIA contends that some wireless providers have chosen to build taxes into the monthly prices that they advertise. No party opposed this request.

31. We agree with CTIA that the labels should accommodate tax-included pricing in keeping with the fundamental purpose of providing consumers with clear and accurate information, and that this was the *Broadband Label Order's* intent.<sup>53</sup> We believe our clarification will benefit consumers by helping them understand the total price for a provider's service at the point of sale. And, unlike the discretionary provider fees we address above, providers must assess a specific amount of taxes on consumers; thus, consumers generally are not comparison shopping based on such taxes and how they are identified on the label. We therefore agree that providers may modify the label template to accommodate this practice. Specifically, they may include a statement on the label that government taxes are "included" in the monthly rate or some similar language in place of the statement that the amount of government taxes "varies by location."

32. We also agree with CTIA that "[s]tating that 'taxes will apply' or that they 'vary by location' where [taxes] have already been factored into the quoted prices would not be accurate and would confuse consumers, not help them, which is a result the Commission surely did not intend."<sup>54</sup> We therefore make clear that providers may only avail themselves of our clarification when they have included all taxes in their monthly base price and may not rely on general statements that taxes may apply if such taxes are not included in the base price.

#### **F. Effective Date**

33. We make the revisions to section 8.1(a)(1) and section 8.1(a)(2) of the codified rules effective upon publication in the Federal Register.<sup>55</sup> In addition, because these revisions are interrelated with revisions to section 8.1 adopted in the *Broadband Label Order*,<sup>56</sup> we set consistent compliance dates.

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<sup>52</sup> CTIA Petition at 6.

<sup>53</sup> *Id.* at 5.

<sup>54</sup> *Id.* at 6; *see also* Competitive Carriers Association Comment at 2 (agreeing with CTIA that wireless providers should not have to modify or otherwise limit their competitive service offerings to fit a labelling framework so long as their service offerings are depicted clearly, completely, and accurately).

<sup>55</sup> We find good cause to make these changes effective upon Federal Register publication under 5 U.S.C. § 553(d)(3). *See, e.g., Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (discussing the evaluation of good cause under 5 U.S.C. § 553(d)(3)). Because compliance with the label rule is not yet required, we do not find any unfairness to any party from making the rule change effective upon Federal Register publication at this point, since affected parties still will have a significant period of time—one year after the removal or amendment of 47 CFR § 8.1(a)(7) for providers with 100,000 or fewer subscriber lines and six months after the removal or amendment of 47 CFR § 8.1(a)(7) for all other providers—before compliance would be required. At the same time, taking this approach enables us to harmonize the timing of compliance with the various rules and requirements for broadband labels.

<sup>56</sup> In the *Broadband Label Order*, the Commission adopted a one-year implementation period following completion of OMB review for providers with 100,000 or fewer subscriber lines applicable to the section 8.1 revisions except, as to the revision to section 8.1(a)(2) to make labels accessible in online account portals and the revision to section 8.1(a)(3), it adopted a one-year implementation period for all providers. *Broadband Label Order*, para. 118. The Commission adopted a six-month implementation period following completion of OMB review for the revisions to 8.1 for all other providers, concluding that it was warranted to ensure that ISPs can implement the necessary changes

(continued....)

Thus, consistent with the *Broadband Label Order*, the compliance dates for the amendments to section 8.1(a)(1) and section 8.1(a)(2) in this Order on Reconsideration will be one year following completion of the Office of Management and Budget (OMB) review and modification of section 8.1(a)(7) for providers with 100,000 or fewer subscribers and six months following completion of OMB review and modification of section 8.1(a)(7) for all other providers.<sup>57</sup> The forthcoming Public Notice by the Consumer and Governmental Affairs Bureau will announce the compliance dates for the rules adopted in the *Broadband Label Order* and in this Order on Reconsideration accordingly.

#### IV. PROCEDURAL MATTERS

34. *Paperwork Reduction Act of 1995 Analysis.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees, and we received no comment. In this present document, we have assessed the effects of permitting providers to establish the business practices and processes it will follow in distributing the label through alternative sales channels in lieu of documenting each instance they direct consumers to the label and to note on the label that government taxes are included in the monthly price, and find that there are no additional burdens for small businesses with fewer than 25 employees.

35. *Supplemental Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>58</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>59</sup> This Order on Reconsideration discusses amendments to the rules adopted in the *Broadband Label Order*. Accordingly, the Commission prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) concerning the possible impact of the rule amendments on small entities. The Supplemental FRFA is set forth in Appendix B.

36. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that these rules are “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

37. *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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

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in a cost-effective way that makes sense for their individual business models and potential customers. *Id.*, para. 117. The Commission stated that the respective six-month and one-year implementation periods would commence following OMB review of those rules and modification of section 8.1(a)(7) of the rules. *Id.*, paras. 117, 164; 47 CFR § 8.1(a)(7).

<sup>57</sup> The Commission has sought Paperwork Reduction Act (PRA) review of the information collections in the *Broadband Label Order* and will do so for the information collections in this Order on Reconsideration in a separate submission to OMB.

<sup>58</sup> 5 U.S.C. §§ 601–612. The RFA 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).

<sup>59</sup> 5 U.S.C. § 605(b).

38. *Availability of Documents.* The Order on Reconsideration will be available via ECFS. This document will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document 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.

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

## V. ORDERING CLAUSES

40. **IT IS ORDERED**, pursuant to sections 4(i), 4(j), 13, 201(b), 254, 257, 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 163, 201(b), 254, 257, 301, 303, 316, 332, section 60504 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (2021), and section 904 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), as amended, that this Order on Reconsideration **IS ADOPTED**, and that Part 8 of the Commission's rules, 47 CFR Part 8, is amended as set forth in Appendix A.

41. **IT IS FURTHER ORDERED** that this Order on Reconsideration **SHALL BE EFFECTIVE** upon publication in the Federal Register. Compliance with the amendments to section 8.1(a)(1) of the Commission's rules, 47 CFR § 8.1(a)(1), which may contain new or modified information collection requirements, will not be required until the later of: i) the compliance dates for the amendments to section 8.1(a)(1) effected in FCC 22-86, to be announced by the Consumer and Governmental Affairs Bureau, which will be one year after OMB completes its review of requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for providers with 100,000 or fewer subscribers and six months after OMB completes its review of the requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for all other providers; or ii) completion of OMB review of any information collection requirements in the amendments to section 8.1(a)(1) in this Order on Reconsideration that the Consumer and Governmental Affairs Bureau determines is required under the Paperwork Reduction Act. Compliance with the amendments to section 8.1(a)(2) of the Commission's rules, 47 CFR § 8.1(a)(2), which may contain new or modified information collection requirements, will not be required until the later of: i) the compliance dates for the amendments to section 8.1(a)(2) (other than the requirement to make labels accessible in online account portals) effected in FCC 22-86, to be announced by the Consumer and Governmental Affairs Bureau, which will be one year after OMB completes its review of the requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for providers with 100,000 or fewer subscribers and six months after OMB completes its review of the requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for all other providers; or ii) completion of OMB review of any information collection requirements in the amendments to section 8.1(a)(2) in this Order on Reconsideration that the Consumer and Governmental Affairs Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Consumer and Governmental Affairs Bureau to announce the compliance dates for section 8.1(a)(1) and section 8.1(a)(2) by subsequent Public Notice and to cause section 8.1(a)(1) and section 8.1(a)(2) to be revised accordingly.

42. **IT IS FURTHER ORDERED** that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of any aspect of this Order on Reconsideration will commence on the date that a summary of this Order on Reconsideration is published in the Federal Register.

43. **IT IS FURTHER ORDERED** that the Petitions for Reconsideration filed by ACA Connects et al., Cincinnati Bell et al., and CTIA in CG Docket No. 22-2 on January 17, 2023, **ARE GRANTED IN PART and otherwise DENIED**.

44. **IT IS FURTHER ORDERED** that the Commission's Office of the Managing Director, Reference Information Center, **SHALL SEND** a copy of this Order on Reconsideration, including the

Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

45. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Evaluation and Records Management, **SHALL SEND** a copy of this Order on Reconsideration in a report to be sent to Congress and to the Governmental Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**Final Rules**

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

**PART 8 – INTERNET FREEDOM**

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

**AUTHORITY:** 47 U.S.C. 154, 201(b), 257, 303(r), and 1753.

2. Section 8.1(a) is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

(a) \* \* \*

(1) Any person providing broadband internet access service shall create and display an accurate broadband consumer label for each stand-alone broadband internet access service it currently offers for purchase. The label must be prominently displayed, publicly available, and easily accessible to consumers, including consumers with disabilities, at the point of sale with the content and in the format prescribed by the Federal Communications Commission (Commission) in figure 1 to this paragraph (a)(1). [include updated label template in CFR]

(2) Broadband internet access service providers shall display the label required under section 8.1(a)(1) at each point of sale. “Point of sale” is defined to mean a provider’s website and any alternate sales channels through which the provider’s broadband internet access service is sold, including a provider-owned retail location, third-party retail location, and over the phone. For labels displayed on provider websites, the label must be displayed in close proximity to the associated advertised service plan. “Point of sale” also means the time a consumer begins investigating and comparing broadband service offerings available to them at their location. For alternate sales channels, providers must document each instance when it directs a consumer to a label and retain such documentation for two years. This requirement will be deemed satisfied if, instead, the provider: 1) establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within thirty days. “Point of sale” for purposes of the E-Rate and Rural Health Care programs is defined as the time a service provider submits its bid to a program participant. Providers participating in the E-Rate and Rural Health Care programs must provide their labels to program participants when they submit their bids to participants. Broadband internet access service providers that offer online account portals to their customers shall also make each customer’s label easily accessible to the customer in such portals.

(3) \* \* \*

\* \* \* \* \*

3. Section 8.1(b) is amended by revising paragraph (b) to read as follows:

(b) Broadband internet access service is 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. This term also

encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part. For purposes of paragraphs (a)(1) through (6) of this section, “mass-market” services exclude service offerings customized for the customer through individually negotiated agreements even when the services are supported by federal universal service support.

\* \* \* \* \*

## APPENDIX B

## Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Broadband Label NPRM*.<sup>2</sup> The Commission sought written public comment on the proposals in the *Broadband Label NPRM*, including comment on the IRFA.<sup>3</sup> The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (FRFA) in the *Broadband Label Order*.<sup>4</sup> This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) incorporates by reference the FRFA in the *Broadband Label Order* and reflects changes to the Commission's rules arising from actions taken in the Order on Reconsideration (*Order*) in response to three Petitions for Reconsideration of the *Broadband Label Order* filed by ACA Connects et al., Cincinnati Bell et al. and CTIA<sup>5</sup> and conforms to the RFA.<sup>6</sup>

**A. Need for, and Objectives of, the Order on Reconsideration**

2. The *Order* addresses issues resulting from the Commission's efforts to implement the Infrastructure Investment and Jobs Act (Infrastructure Act) which 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."<sup>7</sup> In response to the Infrastructure Act, the Commission adopted the *Broadband Label Order*, requiring broadband labels so that consumers have access to clear, easy-to-understand, and accurate information about broadband services that encourages competition, innovation, low prices, and high-quality services. The information broadband Internet service providers (ISPs) are required to include in the labels empowers consumers to choose services that best meet their needs and match their budgets and ensures that they are not surprised by unexpected charges or service quality that falls short of their expectations. The *Order* grants some of petitioners' requests and denies other requests to ensure that the labels the Commission adopted remain a simple and clear means to disclose information about broadband services and to ensure consumers have the information they need to make educated decisions about purchasing broadband Internet access service. The *Order* therefore affirms some of the Commission's determinations in the *Broadband Label Order* and reconsiders some others, so the labels do not

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (rel. Jan. 27, 2022) (*Broadband Label NPRM*).

<sup>3</sup> *Id.* at Appx. B.

<sup>4</sup> See *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (2022) (*Broadband Label Order*).

<sup>5</sup> See *ACA Connects—America's Communications Association, CTIA, NCTA—The Internet & Television Association, NTCA—The Rural Broadband Association, and USTelecom—the Broadband Association*, Joint Petition for Clarification or, in the Alternative, Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (ACA Connects Joint Petition); *Cincinnati Bell Telephone Company LLC d/b/a altafiber Network Solutions, Crown Castle, Metro Fiber, LLC, and Uniti Fiber LLC*, Joint Petition for Clarification or Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (Cincinnati Bell Joint Petition); CTIA, Petition for Clarification or, in the Alternative, Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (CTIA Petition).

<sup>6</sup> 5 U.S.C. § 604.

<sup>7</sup> The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (Infrastructure Act) (citing *Consumer And Governmental Affairs, Wireline Competition, And Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, Public Notice, 31 FCC Rcd 3358 (2016)).

overwhelm consumers with too much information or overburden providers.

3. Specifically, the Commission grants the Cincinnati Bell Joint Petition and affirms the determination in the *Broadband Label Order* that “enterprise service offerings or special access services are not ‘mass-market retail services,’ and therefore, not covered by our label requirement.”<sup>8</sup> The *Order* clarifies that footnote 36 of the *Broadband Label Order*, which stated that the Commission requires “E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC competitive bidding processes, whether or not such provider defines their offered service as an ‘enterprise’ service,” was not intended to contradict the Commission’s determination regarding enterprise service offerings or to require broadband labels for *all* broadband services in the E-Rate and RHC programs. Rather, the Commission emphasizes in the *Order* that regardless of how the provider names or defines its offering, the manner in which the service is offered is dispositive of whether the labeling requirements apply.

4. The Commission also reconsiders the requirement that a provider must document each instance when it directs a consumer to a label at an alternative sales channel (e.g., retail stores, kiosks, and over the phone) and retain such documentation for two years.<sup>9</sup> In doing so, the Commission grants ACA Connect et al.’s request and clarifies that the requirement will be satisfied if the provider instead: 1) establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within thirty days. The Commission agrees with petitioners that this clarification will avoid unnecessary burdens and costs on providers that may risk diverting resources to otherwise assist consumers with making broadband purchases at alternative sales channels.

5. Additionally, in the *Order* the Commission clarifies that wireless providers have the flexibility to make clear on the labels whether government taxes will be added to the monthly base price by adding “taxes included” or similar language as appropriate to the label template. The Commission agrees that some providers include government taxes in their monthly base price and that doing so could benefit consumers in helping them understand the total price for a provider’s service at the point of sale. Therefore we determined that providers may modify the label template to accommodate this practice.

6. The *Order* declines, however, to reconsider the requirement that providers identify and list on the label any additional fees that they charge consumers each month on top of the monthly base price. As stated in the *Broadband Label Order*, the Commission believes requiring that the labels clearly itemize any additional discretionary fees and state that additional government taxes will apply to each plan will provide consumers with a more complete understanding of the total cost for broadband service. Further, the requirement will allow consumers to more meaningfully compare providers’ rates and service packages, and to make more informed decisions when purchasing broadband services. The Commission explains that providers must list fees such as monthly charges associated with regulatory programs and fees for the rental or leasing of modem and other network connection equipment.

7. The *Order* also denies CTIA’s request to clarify that wireless providers have the flexibility to describe their data allowances on the label in ways that may be inconsistent with the adopted label template. The Commission continues to believe that consumers will be best served by simple labels that are comparable across providers. Permitting wireless providers to independently describe data allowances in various ways may hinder comparison shopping and may lead to an unwieldy or complicated label.

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<sup>8</sup> *Broadband Label Order*, para. 17. See also Cincinnati Bell Joint Petition at 1.

<sup>9</sup> *Broadband Label Order*, para. 95.



**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and FRFA**

8. In the *Broadband Label Order*, the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses.<sup>10</sup> The FRFA addressed the concerns of commenters who argued that smaller entities would face challenges in complying with the proposed label requirements given their small staffs and limited resources.<sup>11</sup> The Cincinnati Bell Joint Petition, ACA Connects Joint Petition, and the CTIA Petition addressed in the *Order*, and associated comments, did not raise any concerns with the FRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

9. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.<sup>12</sup>

10. The Chief Counsel did not file any comments in response to the rules adopted in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

11. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.<sup>13</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>14</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>15</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>16</sup>

12. As noted above, the Commission incorporated a FRFA into the *Broadband Label Order*. In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules.<sup>17</sup> The *Order* amends the final rules adopted in the *Broadband Label Order* affecting broadband Internet access service providers. Accordingly, in this Supplemental FRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities that might be significantly affected by the *Order* from the Regulatory Flexibility Analysis in the *Broadband Label Order*.

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<sup>10</sup> *Broadband NPRM*, Appx. D.

<sup>11</sup> *Broadband Label Order*, Appx. B, paras. 7-9.

<sup>12</sup> 5 U.S.C. § 604(a)(3).

<sup>13</sup> *Id.* § 604(a)(4).

<sup>14</sup> *Id.* § 601(6).

<sup>15</sup> *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.”

<sup>16</sup> 15 U.S.C. § 632.

<sup>17</sup> *Broadband Label Order*, Appx. B.

**E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

13. In the *Order*, the Commission modifies rules adopted in the *Broadband Label Order* to reconsider the requirement that a provider must document each instance when it directs a consumer to a label at an alternative sales channel (e.g., retail stores, kiosks, and over the phone) and retain such documentation for two years.<sup>18</sup> In doing so, the Commission clarifies that the requirement will be deemed satisfied if instead: 1) the provider establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within thirty days.

14. The Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions to or to quantify the cost of compliance for small entities. The Commission, however, anticipates the approaches it has taken to implement the requirements will have minimal or de minimis cost implications and should significantly reduce compliance requirements for small entities that may have smaller staff and fewer resources. As the Commission emphasizes in the *Order*, the clarification will avoid unnecessary burdens and costs on providers that may risk diverting resources to otherwise assist consumers with making broadband purchases at alternative sales channels.<sup>19</sup> The Commission agrees that requiring providers to create an additional system by which customer-facing employees are required to record the details of when and how they share the label in every customer interaction may impose significant costs on providers.

**F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

15. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”<sup>20</sup>

16. The Commission considered feedback in response to the Cincinnati Bell Joint Petition, ACA Connects Joint Petition, and CTIA Petition and evaluated it with the goal of giving broadband providers some flexibility in how they document their employees’ interactions with consumers in alternate sales channels and how they ensure the broadband labels are displayed for consumers. Instead of documenting each instance when a consumer is provided a label at an alternative sales channel in the original rule, the Commission believes requiring providers to develop business practices and training materials for their employees and to retain and make those documents available to the Commission upon request within thirty days is an alternative that will minimize the impact on small entities and continue to protect the interests of consumers for whom the label provides critical information about broadband services. This should significantly minimize any compliance costs and burdens on small entities that are subject to the label requirements.

17. The Commission considered the Petitioners’ request but declined to reconsider the requirement that providers identify and list on the label any additional fees that they charge consumers each month on top of the monthly base price. The Commission was not persuaded that it will be burdensome for providers to itemize on the label those fees that they opt to pass along to consumers above the monthly price, particularly since providers acknowledge being able to describe such fees to a

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<sup>18</sup> *Id.*, para. 95.

<sup>19</sup> *Order*, paras. 27-29 (citing ACA Connects Joint Petition at 5; WISPA – Broadband Without Boundaries Comment at 3; and CTIA Reply at 3).

<sup>20</sup> 5 U.S.C. § 604(a)(6).

consumer over the phone and on a consumer's bill once he/she subscribes to service. Further, the Commission found that any such burdens are far outweighed by the benefits to consumers.

**G. Report to Congress**

18. The Commission will send a copy of the *Order*, including this Supplemental FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>21</sup> In addition, the Commission will send a copy of the *Order*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and Supplemental FRFA (or a summary thereof) will also be published in the Federal Register.<sup>22</sup>

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<sup>21</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>22</sup> *Id.* § 604(b).