

**BEFORE THE
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, DC 20503**

In the Matter of)	CG Docket No. 22-2
)	
Empowering Broadband Consumers Through)	OMB 3060-XXX
Transparency)	
)	FR ID 51257

**PAPERWORK REDUCTION ACT COMMENTS OF
USTELECOM – THE BROADBAND ASSOCIATION, CTIA, NCTA – THE INTERNET
& TELEVISION ASSOCIATION, WISPA – *BROADBAND WITHOUT BOUNDARIES*,
AND ACA CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION**

I. INTRODUCTION

USTelecom—The Broadband Association, CTIA, NCTA – The Internet & Television Association, WISPA – Broadband Without Boundaries, and ACA Connects – America’s Communications Association (the Associations) support the Federal Communications Commission’s (Commission) goal of providing simple, clear, and accurate information to consumers to aid their broadband purchasing decisions.¹ At the same time, the Commission is obligated under the Paperwork Reduction Act (PRA)² to take “every reasonable step” to ensure that its broadband labels information collection is the least burdensome necessary to achieve program objectives.³ The Commission must also “ensure the greatest possible public benefit from and maximize the utility of” the broadband labels information collection.⁴ In reviewing an

¹ See *Empowering Broadband Consumers Through Transparency*, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (rel. Nov. 17, 2022) (*Report and Order*).

² 44 U.S.C. §§ 3501-3520.

³ 5 C.F.R. § 1320.5(d)(1)(i).

⁴ 44 U.S.C. § 3501(1).

agency's Information Collection Request (ICR), OMB must ensure these criteria are satisfied.⁵ If they are not, OMB must disapprove the information collection.⁶

The Commission's broadband labels ICR imposes significant burdens on broadband providers, including smaller providers, that have not been adequately noticed, analyzed, or addressed by the Commission.⁷ As outlined herein and in comments submitted in response to the Commission's earlier PRA notice,⁸ two particular aspects of the *Report and Order* impose significant information collection burdens without countervailing consumer benefits: (1) documenting consumer interactions regarding labels that occur through alternative sales channels; and (2) displaying certain fees imposed by state and local governments.⁹ As discussed below, multiple trade associations jointly filed a petition for reconsideration ("Petition") of these two issues, proposing less burdensome alternatives for each that would still accomplish the Commission's stated goals. The Commission's grant of the petition on both issues would address the concerns raised in these comments. Unless and until the Commission takes this step and makes corresponding changes to the ICR, OMB should decline to approve the ICR.¹⁰

⁵ 5 C.F.R. § 1320.5(e).

⁶ 5 C.F.R. § 1320.5(f).

⁷ *Information Collection Being Submitted for Review and Approval to Office of Management*, 88 Fed. Reg. 47878 (July 25, 2023) (*ICR Notice*).

⁸ *See* 88 Fed. Reg. 7973 (Feb. 7, 2023) (*PRA Notice*).

⁹ *See generally* Comments of CTIA, CG Docket No. 22-2 (Apr. 10, 2023) (CTIA Comments); Comments of USTelecom – The Broadband Association, CG Docket No. 22-2 (Apr. 10, 2023) (USTelecom Comments).

¹⁰ *See* ACA Connects, NTCA, CTIA, USTelecom, & NCTA, Joint Petition for Clarification or, in the Alternative, Reconsideration, CG Docket No. 22-2, at 4 (Jan. 17, 2023) (Joint Petition), attached hereto as Exhibit A. Commission public records indicate that on August 3, 2023, a draft order addressing petitions for reconsideration in this proceeding was circulated, but the agency has not made that draft public and has not yet adopted the order. *See* <https://www.fcc.gov/items-on-circulation>. We welcome prompt resolution of these issues by the Commission, consistent with the Joint Petition.

II. THE INFORMATION COLLECTION REQUIREMENTS IMPOSED IN CONNECTION WITH ALTERNATE SALES CHANNELS PROVIDE NO CONSUMER BENEFIT AND ARE EXTRAORDINARILY BURDENSOME TO IMPLEMENT.

The *Report and Order* states that a broadband “[p]rovider[] shall document each instance when it directs a consumer to a label at an alternative sales channel, such as in a retail location or over the phone, and retain such documentation for two years.”¹¹ The Commission further stated in its supporting statement to OMB that the broadband provider will be required to “include the identity of *each consumer*” to whom the label is shown.¹² The supporting statement clarifies that the alternative sales channel requirement will be applied in a manner that is extremely, and unnecessarily, burdensome for providers, and that also will harm consumers by invading their privacy.

This alternate sales channel requirement was neither raised in the Commission’s *Notice of Proposed Rulemaking*¹³ nor is there any reference to such a proposal by *any* party in the record. Rather, this obligation appeared for the first time in the *Report and Order* without the benefit of public comment on the concept or its costs and benefits, nor explanation of the Commission’s reasoning, and is not codified in the Commission’s rules. And the requirement to record customer identities was not explicitly mentioned in the *Report and Order*; rather, it was clearly stated for the first time in the aforementioned supporting statement.

¹¹ *Report and Order* ¶ 95.

¹² See Office of Information and Regulatory Affairs, Office of Management and Budget, Empowering Broadband Consumers Through Transparency, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-86 (Broadband Consumer Label), Supporting Statement OMB 3060-XXXX at 16 (July 25, 2023) (ICR Supporting Statement).

¹³ *Empowering Broadband Consumers Through Transparency*, Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-7 87 Fed. Reg. 6827 (Jan. 27, 2022).

Moreover, it is unclear what benefit this documentation requirement will have, particularly for consumers.¹⁴ The *Report and Order* already ensures that consumers will have access to the labels in alternate sales channels by requiring providers “that use alternate sales channels (e.g., company retail locations, third-party owned retail locations, or over the phone) to make the label available to consumers at each point of sale.”¹⁵ And with the clarification of the rule in the supporting statement that would require verification and retention of the identity of each consumer, this requirement—as consumer advocates have pointed out—will be affirmatively detrimental to consumers. ALLvanza, a nonprofit organization that advocates for the Latino community and other underserved communities, made this clear in filed a letter with the Commission:

[W]e are concerned that the requirement in the Commission’s Order that a provider must “document each instance when it directs a consumer to a label at an alternative sales channel” will have a chilling effect on adoption. This is especially because given that [*sic*] the provider will be required to “include the identity of each consumer” to whom the label is shown. This requirement raises serious consumer privacy concerns as providers will need to collect identifying information from prospective customers. Additionally, consumers may not want to disclose their personal information while shopping for broadband services, especially if they are first time adopters. Many Latinos are already hesitant and/or unwilling to provide identifying information to companies or the government due to privacy concerns, fear of discrimination, potential immigration status issues, mistrust of institutions, and cultural preferences for privacy. Requiring consumers to provide identifying information, while shopping, can negatively impact Latinos and prevent them from taking full advantage of the many opportunities afforded by broadband and continued innovation.¹⁶

And further, this requirement may actually be detrimental to consumers by disrupting the shopping process. Indeed, the customer service representative will need to pause in the process

¹⁴ See Joint Petition at 11.

¹⁵ *Report and Order* ¶ 95.

¹⁶ See Letter from Rosa Mendoza, Founder, President and CEO, ALLvanza, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 22-2 (Aug. 2, 2023).

to collect and record identifying information from the consumer. Consumers should not be required to provide private information, which a provider may later be required to disclose to the government, simply to shop for broadband service.¹⁷

By contrast, the burden associated with this documentation requirement is very high. Depending on their size and geographic reach, broadband providers interact with hundreds, thousands, or millions of customers and prospective customers through alternate sales channels, such as over the phone and in retail locations, each year. Many providers also take advantage of temporary “pop-up” sales outlets at local events such as fairs or exhibitions. Providers will already be creating processes to ensure that consumers using alternate points of sale are provided with the label. Creating another system by which customer-facing employees must record and securely store the details of when, how, and with whom they share the label in every consumer interaction would impose significant burdens from a training and systems perspective especially for smaller providers that may lack the resources to engage in the recordkeeping the *Report and Order* appears to require.

However, the supporting statement summarily rejected these concerns, merely concluding without any support “that the justification for the requirement to document when a label is provided to a consumer at an alternate sales channel is apparent in the Commission’s *Broadband Label Order*.”¹⁸ But this falls quite short of OMB’s requirement “that agencies describe the need for the information” and that “[w]ithout a clear justification, OMB cannot

¹⁷ ICR Supporting Statement at 16 (stating that documenting the identity of each consumer is necessary to allow the Commission to investigate and enforce providers’ obligation to make the label available at each point of sale).

¹⁸ *Id.* at 15. The ICR Supporting Statement claims that the Commission imposed the requirement “so that the Commission can properly enforce the rules,” but the Commission made no such statement when it adopted the rules.

approve the collection.”¹⁹ Moreover, the Commission is obligated to “ensure that the proposed collection of information . . . [i]s the least burdensome necessary for the proper performance of the agency’s functions to comply with legal requirements and achieve program objectives.”²⁰

Indeed, the Petition proposes a far less burdensome approach that would still meet the Commission’s objectives: that providers establish a set of business practices to cover alternate sales channels, retain documentation about those practices, and provide such documentation upon request to the Commission.²¹ The Commission’s adoption of this proposal already raised in the record will achieve the goal of further reducing information collection burdens and ensure that the information being collected has practical utility and minimizes paperwork burdens on all respondents, including small providers. OMB should not approve the proposed information collection absent this modification.

III. THE REQUIREMENT TO DISPLAY FEES IMPOSED BY STATE AND LOCAL GOVERNMENTS IS UNNECESSARY FOR CONSUMERS AND WILL ADD SIGNIFICANT UNWARRANTED COMPLEXITY AND BURDEN.

The broadband labels information collection requirements related to the pass-through of fees imposed by state and local governments do not pass muster under the PRA. Capturing the wide variety of state and local fees on the labels, as the Commission has required, will entail the creation of individualized labels for each jurisdiction that imposes such fees. For some providers, this will require *thousands* or *tens of thousands* of labels, yet the Commission has

¹⁹ Office of Management & Budget, Office of Information & Regulatory Affairs, *Questions and Answers When Designing Surveys for Information Collections*, at 9 (Jan. 20, 2006), https://www.esd.whs.mil/Portals/54/Documents/DD/info_collect/files_public/survey_collection_guidance.pdf?ver=2017-04-11-095255-297.

²⁰ 5 C.F.R. § 1320.5(d)(1)(i).

²¹ See CTIA Comments, at 4; USTelecom Comments, at 5-6; see also Joint Petition at 4.

based its burden estimates on the view that there will be only *five* labels, on average, per provider.

Broadband providers are subject to numerous and varied government fees that they may (but are not required to) include in consumers' bills—for instance, assessments for using public rights-of-way. The same rationale for the labels' treatment of taxes applies to these government-imposed fees and so the Commission should treat them the same way it treats taxes on the labels – namely, by allowing labels simply to state that fees will apply and may vary by location. Instead, the *Report and Order* treats the pass-through of government-imposed fees the same way it treats provider-imposed fees, which are unlikely to be as varied as state and local fees.²² Specifically, Paragraph 33 of the *Report and Order* requires providers to display all “charges that providers impose in their discretion, *i.e.*, charges not mandated by a government,” including the pass-through of government-imposed fees.²³ However, in addressing taxes that vary by location, the *Report and Order* recognized that itemizing those taxes on the label “may be difficult and potentially confusing for consumers,” and allowed providers to state simply that taxes will apply and may vary depending on location.²⁴

Thus, providers must *either* have a distinct label for each city or state that imposes such fees, or list fees for all jurisdictions on the label for a particular service package. The first option would be incredibly onerous on providers of all sizes without any countervailing consumer benefit and the second option risks causing significant consumer confusion, the exact opposite of

²² See *Report and Order* ¶ 33.

²³ *Id.*

²⁴ *Id.* ¶ 36.

the goal the Commission seeks to achieve.²⁵ First, creating a distinct label for each city or state that imposes such fees would greatly increase the time and cost required to comply with the broadband labels information collection. Depending on their size and geographic footprint, providers would need to create potentially hundreds or thousands of different labels to account for geographic variability and ensure that their systems properly queue the label specific to that location when the customer inputs their address. Even smaller providers serving multiple small communities face the same problem. Further, this could create additional complications at alternate sales channel locations that may be visited by customers from multiple jurisdictions. Indeed, as the Commission acknowledges, there is data in the record that this requirement will result in some providers needing to create tens of thousands of labels.²⁶ This is exponentially more than the Commission’s estimate of *five* labels per provider.²⁷ The Commission has not satisfied its obligation under the PRA to show that this burden is justified, particularly given its reasoned decision regarding taxes. Certainly, the information collection burdens can be reduced.

The second option—displaying potentially hundreds of fees for all jurisdictions in a provider’s footprint in one place—would result in a very lengthy and unwieldy standardized label for a particular plan, of which only a small subset of fees (or none) listed that would

²⁵ *Report and Order* ¶ 36 (finding that taxes should not be included on the label because “they often vary according to the consumer’s geographic location, so either including them in the total monthly price or itemizing them on the label may be difficult and potentially confusing for consumers”); *see also id.* ¶ 3 (stating the label should “contain[] the key information consumers need to make smart choices without overwhelming them with information or unnecessarily burdening providers”).

²⁶ ICR Supporting Statement at 17; *see also* Letter from Ian Dillner, Associate General Counsel, Federal Regulatory & Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 22-2 (May 4, 2023); Letter from Linda Vandeloop, AVP, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 22-2 (May 5, 2023); Letter from Jordan Goldstein, SVP, Regulatory Affairs, Comcast Corporation, to Marlene Dortch, Secretary, FCC, CG Docket No. 22-2 (June 8, 2023).

²⁷ *See* ICR Notice at 47879.

actually apply to each individual customer. This would greatly diminish the labels’ utility to consumers and undermine their purpose.²⁸ Just as the Commission concluded not to require the display of taxes on the label,²⁹ it would also be unwise to require display of other government-imposed fees; rather, the labels are designed to display a subset of generally applicable data points about the broadband service plans available for purchase.³⁰ There is no justification in the record for the Commission’s distinction between the two and thus OMB cannot determine that “the burden of the collection of [this] information is justified by its practical utility.”³¹ The Commission’s supporting statement also suggests that providers have a third option – raising their base price to recover these fees rather than itemizing them and passing them through to customers.³² While some providers have adopted such an approach, many providers do not find that an attractive option because it deprives consumers of information regarding fees imposed by state and local officials. In addition, to the extent that those fees are treated as a cost of doing business and spread across all consumers, as the Commission suggests, it would have the effect of recovering those costs from consumers that live in jurisdictions that do not impose any fees.

Once again, the Petition proposes alternative approaches that would provide equal or greater benefit to consumers while minimizing information collection burdens, yet the Commission did not address, or even acknowledge, those alternatives in its ICR. One option proposed in the Petition is that the Commission can clarify that providers may note that these

²⁸ *See Report and Order* ¶¶ 3, 36, 89.

²⁹ *Id.* ¶ 33.

³⁰ *See id.* ¶ 3 (the labels are intended to provide “the *key* information consumers need”) (emphasis added).

³¹ 5 C.F.R. § 1320.5(e).

³² ICR Supporting Statement at 17.

fees vary by location the same way they will for taxes.³³ The second is that the Commission could clarify that providers can identify the maximum dollar figure that will be passed through to consumers each month.³⁴ Adoption of either will enhance the utility and clarity of the information collected while simultaneously minimizing burdens for both large and small providers, as required by the PRA.³⁵ OMB should not approve the proposed information collection without one of these two modifications.

IV. CONCLUSION

The Associations support the purpose of the broadband labels—to provide simple, clear, and accurate information to consumers to aid their broadband purchasing decisions. OMB, however, must reasonably ensure that the Commission has adequately guarded against unjustified burdens that do not benefit consumers. The Commission missed the mark on two issues, both of which would generate excessive burdens relative to the public benefit they would provide. The Commission has before it a Petition that proposes alternative approaches on both issues that would substantially reduce those burdens while still achieving the objectives of the labels, but it has not adequately addressed those alternatives. Accordingly, OMB should not approve the Commission’s broadband labels ICR without the modifications proposed in the Petition and discussed herein.

³³ CTIA Comments at 6; USTelecom Comments at 4-5; Joint Petition at 9.

³⁴ CTIA Comments at 6; Joint Petition at 9.

³⁵ *See* 5 C.F.R. § 1320.5(d).

August 24, 2023

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Empowering Broadband Consumers)	CG Docket No. 22-2
Through Transparency)	
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**JOINT PETITION FOR CLARIFICATION OR,
IN THE ALTERNATIVE, RECONSIDERATION**

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**JOINT PETITION FOR CLARIFICATION OR,
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ACA Connects–America’s Communications Association, CTIA, NCTA–The Internet & Television Association, NTCA–The Rural Broadband Association, and USTelecom–The Broadband Association (collectively the Associations), pursuant to 47 C.F.R. § 1.429, seek clarification or, in the alternative, reconsideration, of two elements of the *Report and Order and Further Notice of Proposed Rulemaking (Report and Order and FNPRM)* adopted by the Federal Communications Commission (FCC or Commission) in the above-referenced proceeding.¹ Specifically, to promote the goals of Congress and the Commission while avoiding unwarranted consumer confusion and costly administrative burdens, the Associations request further guidance on or review of requirements to: (1) display certain fees imposed by state and local governments; and (2) document consumer interactions regarding labels that occur through alternative sales channels. By clarifying, or reconsidering and providing, that the approaches suggested herein are consistent with the *Report and Order* and corresponding rules, the Commission can further Congress’ intent and achieve its policy goals in a more effective and efficient manner that meets the needs of consumers.

¹ *Empowering Broadband Consumers Through Transparency*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-86 (Nov. 17, 2022) (*Report and Order*).

I. INTRODUCTION AND SUMMARY.

In the Infrastructure Investment and Jobs Act (IIJA), Congress directed the Commission to adopt rules that require broadband providers to display a consumer broadband label in a way that offers consumers basic information about broadband service.² In particular, the legislation explicitly directs the Commission “to require the display of broadband labels, as described in the Public Notice issued on April 4, 2016 (DA 16-357).”³ The 2016 labels referenced in the IIJA initially were developed by the FCC’s Consumer Advisory Committee (CAC) on a unanimous basis and subsequently approved by the Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus.⁴

In response to the *Notice of Proposed Rulemaking (NPRM)* initiating this proceeding,⁵ each of the undersigned Associations expressed general support for the adoption of rules based on the 2016 label.⁶ Several of the Associations also participated in a CAC Broadband Labels Working Group created to make recommendations on two particular issues: (1) how to define the “point of sale” for purposes of the label requirement;⁷ and (2) how introductory rates impact a consumer’s decision to purchase broadband service and as a result, how to apply the

² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (IIJA). Section 60504(a) of the 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.” *Id.*, div. F, tit. I, § 60504(a).

³ *Id.*

⁴ See *Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, Public Notice, 31 FCC Rcd. 3358-59 (2016) (2016 Public Notice).

⁵ *Empowering Broadband Consumers Through Transparency*, Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-7 (rel. Jan. 27, 2022) (*Notice or NPRM*).

⁶ See, e.g., Comments of NCTA – The Internet & Television Association, CG Docket No. 22-2, at 9-15 (filed Mar. 9, 2022); Comments of ACA Connects, CG Docket No. 22-2, at 2-3 (filed Mar. 9, 2022); Comments of USTelecom – The Broadband Association, CG Docket No. 22-2, at 1-2 (filed Mar. 9, 2022); Comments of CTIA, CG Docket No. 22-2, at 3, 5-8, 11-13 (filed Mar. 9, 2022).

⁷ See Letter from Alejandro Roark, Chief, Consumer and Governmental Affairs Bureau, to Steve Pociask and Debra Berlyn, CAC (Feb. 24, 2022).

“introductory rate” language in the IIJA.⁸ The Working Group found that “the labels should be concise, accurate, and easy to understand and provide only the information necessary for consumers to make informed decisions about available broadband services.”⁹ The Working Group also recognized that points of sale include both provider websites as well as many alternative sales channels, *i.e.*, offline points of sale including stores, kiosks, and telephone calls. In light of this and other findings, the Working Group recommended that the required disclosure of the label is satisfied on a provider’s website by a conspicuous link or icon, but that more flexibility would be needed with alternative sales channels.¹⁰ Regarding the display of rates, the Working Group recommended that the Commission require that the month-to-month rate for stand-alone broadband service be displayed on a label, and “[i]f applicable, available promotional or discounted rates and their duration shall be provided via link or noted on a label.”¹¹ All of these findings and recommendations were adopted by the full CAC, representing consensus among consumer advocates and industry stakeholders alike.¹²

In the *Report and Order*, the Commission implemented the IIJA label requirement by adopting rules regarding the content of the labels, how they should be displayed on provider websites, and how they should be provided to consumers using “alternate sales channels.” In large part the rules follow the approach adopted with the 2016 labels.

The Associations now seek clarification or reconsideration regarding two elements of the rules that depart from the 2016 approach required by Congress and that will be challenging to implement without such guidance. First, the requirement in Paragraph 33 that providers display

⁸ See *id.*; see also IIJA, § 60504(b)(1).

⁹ See FCC Consumer Advisory Committee, Recommendation Regarding Consumer Broadband Labels at 2 (Apr. 26, 2022) (CAC Recommendation), <https://www.fcc.gov/news-events/events/2022/04/consumer-advisory-committee-meeting-april-2022>

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

all recurring monthly fees “that [they] impose in their discretion, *i.e.*, not mandated by a government,”¹³ has the potential to cause significant confusion for consumers and add unnecessary complexity for providers. State and local governments impose a huge variety and quantity of fees on broadband providers. In lieu of itemizing these fees on the label, the Associations propose that providers be deemed in compliance with the requirement if they include a statement similar to what they provide regarding tax disclosures: that these fees may change from time-to-time in response to state and local government actions. In the alternative, the Associations ask for clarification that that they be deemed in compliance if they identify generally the maximum dollar figure that will be passed through per month. Both of these approaches achieve both Congress and the Commission’s goals of informing consumers and do so in a more streamlined and simple manner that will benefit consumers by making their expected monthly fees easier to understand. They also avoid the complexity and potential consumer confusion of maintaining and presenting information on labels that may vary considerably by state and locality.

Second, Paragraph 95 of the *Report and Order* requires providers to create and retain documentation regarding “each instance when [a provider] directs a consumer to the label at an alternative sales channel.”¹⁴ The Associations urge the Commission to clarify that the requirement is satisfied if providers establish the business practices and processes they will follow in distributing the label through alternative sales channels, retain training materials and related business practice documentation for two years, and provide such information to the

¹³ *Report and Order*, ¶ 33 n.63 (“These discretionary charges include those the provider collects to recoup from consumers its costs associated with government programs but where the government has not mandated such collection, e.g., USF contributions.”).

¹⁴ *Id.*, ¶ 95. There was no discussion of such a requirement in the *NPRM* and no explanation of why the requirement was adopted, and as a result, there was no support in the record for the imposition of such a requirement.

Commission upon request. By clarifying the type of documentation required to satisfy the *Report and Order*, the Commission can help ensure the referral processes provide consumers with access to the label while avoiding unnecessary burdens that risk diverting resources away from assisting customers in gaining helpful information to inform their broadband purchase.

The clarifications proposed by the Associations can achieve the Commission's policy objectives in a manner that avoids confusion for consumers and inordinate burdens for providers. Further, such clarifications will ensure that providers uniformly comply with the requirements rather than interpreting such requirements differently. Absent the requested clarifications, there are significant questions as to whether these two requirements satisfy the Commission's obligations under the IIJA, the Administrative Procedure Act (APA),¹⁵ and the Paperwork Reduction Act (PRA).¹⁶ We encourage the Commission to grant this petition expeditiously so that providers will have the clarity necessary to effectively implement the label requirements to the benefit of consumers.

II. THE COMMISSION SHOULD CLARIFY OR RECONSIDER THE REQUIREMENT REGARDING HOW PROVIDERS DISPLAY FEES IMPOSED BY STATE AND LOCAL GOVERNMENTS.

The Associations and their member companies are committed to ensuring that consumers have accurate and transparent information regarding product and service offerings and associated prices and billing, both before and after buying decisions are made. Consistent with these principles, the Associations acknowledge the desired usefulness of informing consumers about the taxes and fees that could be applied to a service. But the variety and quantity of fees that might apply to a broadband service depending on the customer's location, the services provided,

¹⁵ See 5 U.S.C. § 553.

¹⁶ See 44 U.S.C. § 3506.

and the types of fees that may apply, adds a substantial amount of complexity to an exercise that is intended to simplify the purchasing process for consumers.

In most respects, the *Report and Order* handles these issues reasonably. Though the Commission requires providers to explicitly identify on the label all recurring and non-recurring provider-imposed fees that might apply to a service, including equipment fees, installation and activation fees, late payment charges, and early termination fees,¹⁷ it takes a different approach with respect to taxes. Recognizing that “applicable taxes often vary according to a customer’s geographic location” and therefore “itemizing them may be potentially confusing for consumers,” the Commission appropriately does not require providers to list taxes on the label but requires only a statement that additional taxes may apply.¹⁸

However, the *Report and Order* may be read to treat the pass-through of government-imposed fees the same way as provider-imposed fees, rather than more appropriately treating them the same way as taxes are treated.¹⁹ Specifically, in Paragraph 33 the *Report and Order* requires providers to display all government-imposed fees “that providers impose in their discretion, *i.e.*, not mandated by a government,”²⁰ The Associations seek clarification or reconsideration that providers will be deemed in compliance with the requirement if they include a statement on the label that additional fees may apply and that they may vary depending on location, rather than explicitly identifying each and every fee that may apply. At minimum, the Associations seek clarification that providers will be deemed in compliance if they 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.

¹⁷ *Report and Order*, ¶¶ 33-34.

¹⁸ *Id.*, ¶ 36.

¹⁹ *See id.*, ¶ 33.

²⁰ *Id.*, ¶ 33.

Broadband providers may be subject to a huge quantity and variety of government fees depending on the geographic areas they serve, the technology they use, and the services they provide. For example, a significant number of states require voice providers to contribute to a state Universal Service Fund (USF), and those contribution levels vary frequently, both in the amount of the fee and the manner in which it is assessed (per-line or percentage of revenue). Because mobile broadband offerings typically include a voice component, there may be USF fees for each state that may fall under this rule. Moreover, some states impose other types of fees on broadband providers as well.²¹ Local governments also impose fees on at least some types of broadband providers. These may include county line charges, 911 surcharges, or other assessments placed upon companies using public rights of way.

Most providers choose to itemize these fees on customer bills so that consumers can see the additional cost associated with various federal, state, and local fees. Providers typically provide prospective customers with estimates of these fees during the subscription process as well. But itemizing these fees for the label, as the *Report and Order* may be interpreted to require, is vastly different than doing so at the billing stage. Bills are individualized for each consumer, reflecting the services and equipment they purchase, the discounts and government benefits to which they are entitled, and the state and local taxes and fees applicable to their unique package of services for that month. Moreover, the *actual* amount charged to a customer may vary based upon the particular local jurisdiction in which that customer is served and may vary depending on changes to taxes and fees or other factors. In contrast, labels are designed to display a subset of generally applicable information about the packages of broadband services

²¹ While the *Report and Order* appropriately focuses on stand-alone broadband and does not apply to bundles, sometimes broadband services also include other services that may be assessed fees beyond that of a simple broadband service (e.g., some voice).

available for purchase. Congress did not intend the label to be a substitute for the more detailed disclosures that providers make to prospective customers through the subscription process, the customer-specific information contained in a monthly bill, or other customer service channels.

For purposes of the label, the fact that providers typically have a choice whether to pass through these government fees or internalize them does not mean they warrant different treatment from government taxes that must be passed through to consumers. As a threshold matter, whether a government-imposed charge is a “tax” or a “fee” is not always clear, so requiring disparate treatment of the two adds complexity. Moreover, the reason that the Commission identifies for not mandating an itemized display of applicable taxes – consumer confusion due to geographic variability – applies equally to itemizing the pass-through of government-imposed fees. The Commission pointed to the same reason in declining to require labels to display “all-in” pricing.²²

As a practical matter, reading the *Report and Order* either to require providers to have a distinct label for each state or city that imposes such fees, or to list fees for all jurisdictions on the label for a particular service package, risks causing significant consumer confusion and would be incredibly onerous, without any countervailing benefit for consumers. The first interpretation would onerously require providers to create potentially hundreds of different labels to account for geographic variability, and the second would require a very lengthy standardized label for each particular plan, of which only a subset of fees listed would actually apply to each individual customer. Moreover, for providers with national pricing, including a list of potentially hundreds of fees for all jurisdictions in its footprint with such fees will make the labels very lengthy and unwieldy, diminishing their utility to consumers and undermining their purpose.²³

²² *Id.*, ¶ 24.

²³ *See id.*, ¶ 3.

Instead, the Commission should clarify or revise its rules on reconsideration to deem a provider in compliance if the provider explicitly states on the label that fees may apply and that they may vary depending on location, similar to what the *Report and Order* requires for disclosures of taxes. For example:

Customer may also be responsible for payment of fees to cover fees paid by provider to state and local government agencies. In addition, government-imposed taxes will apply and may vary depending on location. These fees may change from time-to-time in response to state and local government actions.

To the extent the Commission deems clarification insufficient to address these issues, the Associations seek reconsideration of this requirement. As noted above, the *Report and Order* may be read to treat the pass-through of government-imposed fees the same way as provider-imposed fees, rather than treating them the same way that the *Report and Order* treats taxes.²⁴ This would amount to a change of course from the approach in 2016,²⁵ without any supporting analysis or discussion, and without any support in the record for such a deviation. The Commission should thus amend the rules adopted in the *Report and Order* as the Associations propose.

In the alternative, the Commission should clarify that a provider that includes on the label the general maximum level of such fees satisfies the requirement to “list” such fees. For example, after identifying all provider-imposed fees on the label, the provider could include a statement along the lines of the following:

Customer may also be responsible for payment of fees up to \$x per month to cover fees paid by provider to state and local government agencies. In addition, government-imposed taxes will apply and may vary depending on location. These fees may change from time-to-time in response to state and local government actions.

²⁴ *Id.*, ¶ 33.

²⁵ *Id.*, ¶ 36 n.71; 2016 Public Notice at 4, 9.

As with the itemized breakdown of provider-imposed fees that is discussed elsewhere in the *Report and Order*, a statement identifying the maximum level of government fees that may be passed through serves one of the primary purposes of the label – ensuring that a prospective customer knows the maximum out-of-pocket cost it may be responsible for if it subscribes to the service. This approach 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, as the *Report and Order* could be read as contemplating. This approach is also consistent with the principles identified in the CAC recommendation regarding the need for providers to “have flexibility on how to include information on the label sufficient to inform consumers” on monthly rates.²⁶

III. THE COMMISSION SHOULD CLARIFY OR RECONSIDER THE REQUIREMENT REGARDING HOW PROVIDERS MAKE THE LABEL AVAILABLE THROUGH ALTERNATIVE SALES CHANNELS.

In Paragraph 95 of the *Report and Order*, the Commission requires “ISPs that use alternate sales channels (e.g., company retail locations, third-party owned retail locations, or over the phone) to make the label available to consumers at each point of sale,” and it generally gives providers flexibility as to how to comply with this requirement.²⁷ The Associations support this flexibility, as it is consistent with the findings and recommendations of the CAC that there are myriad sales channels where consumers may seek to purchase broadband service, and that “service providers have more control over some alternate sales channels than others.”²⁸ However, with no context or explanation, the Commission goes on to state that “[p]roviders shall document each instance when it directs a consumer to a label at an alternative sales channel and

²⁶ CAC Recommendation at 4.

²⁷ *Report and Order*, ¶ 95.

²⁸ See CAC Recommendation at 2.

retain such documentation for two years.” This is the only reference to this requirement in the entire *Report and Order* and it does not appear anywhere in the actual rules. The Associations ask the Commission to clarify that the requirement is satisfied if providers establish a set of business practices they will follow in distributing the label through alternative sales channels, retain training materials and related business practice documentation for a period of two years, and provide such information to the Commission upon request.

In a market where providers compete for broadband customers, providers are highly incentivized to ensure that there is sufficient, accurate information available that meets consumers’ unique needs and that employees are properly trained to offer support to customers no matter where they seek to shop for broadband service. Consistent with the *Report and Order*, providers now must ensure consumers have access to the label as part of the sales process. However, as the CAC recognized, providers have more control over some sales channels than others, and flexibility in how to provide the label to consumers is necessary.²⁹ By clarifying that providers can satisfy the *Report and Order* by establishing a set of business practices to cover alternative sales channels, retain documentation about those practices, and provide it upon request to the Commission, the Commission can help ensure the referral processes provide consumers with access to the label while also avoiding unnecessary burdens that risk diverting resources away from assisting customers in gaining helpful information to inform their broadband purchase.

In contrast, reading the *Report and Order* to require extensive documentation of every individual customer interaction through an alternative sales channel would impose overwhelming administrative burdens for no apparent purpose. Broadband providers deal with millions of

²⁹ See *id.* at 2-3.

customers and prospective customers by phone and in retail locations. In addition to permanent retail locations, many providers also take advantage of temporary “pop-up” sales outlets at local events such as fairs or exhibitions. It will be challenging enough to develop and implement practices that ensure that consumers are provided with access to the label at every type of point of sale. Creating an additional system by which customer-facing employees would also be required to record the details of when and how they share the label in every customer interaction would impose a significant cost from a systems and training perspective and divert crucial resources away from meaningfully assisting customers with purchases. Moreover, any such tracking system would provide no benefit to the consumers whose interactions are being tracked.

To the extent the Commission finds that clarification is insufficient to address these issues, the Associations seek reconsideration of this requirement. As a preliminary matter, the Commission did not provide the notice required by the APA that it might adopt such a sweeping documentation and recordkeeping requirement. The entire discussion of alternative sales channels in the *Notice of Proposed Rulemaking* is quoted below:

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?³⁰

Nothing in the quoted discussion even hints at, let alone provides actual notice of, the adoption of a requirement to document every interaction in which a customer is presented with a

³⁰ *Notice*, ¶ 26.

label in an alternate sales channel.³¹ Compounding the lack of notice is the lack of evidence or explanation supporting adoption of this requirement or what it is intended to accomplish, nor any reference to such a proposal by any party in the record. This is not the type of reasoned decision-making that the APA demands,³² and it raises significant concerns under the PRA as well.

IV. CONCLUSION.

The Associations support the Commission's action to implement the broadband labels provision of the IIJA in a way that gives consumers access to basic information about broadband service offerings provided in a simple-to-understand manner through the various sales channels that consumers today may use to purchase broadband services. The requests set forth in this petition will help achieve these objectives by providing certainty about the Commission's requirements. Accordingly, the Associations ask that the Commission expeditiously grant this petition and clarify, or in the alternative, reconsider the provisions discussed above, and state that providers can satisfy the *Report and Order* as we propose and for the reasons explained herein.

Respectfully submitted,

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³¹ Even under the “logical outgrowth” doctrine, *See, e.g., Center for Science in Public Interest v. Perdue*, 438 F.Supp. 3d 546, 556 (D. Md. 2020), the required notice is lacking because there was no proposed rule, or even any discussion of a possible rule, regarding documentation of consumer interactions.

³² *See, e.g., FCC v. Fox*, 556 U.S. 502 (2009) (“[O]f course the agency must show there are good reasons for the new policy.”); *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 2943 (1983) (agency must examine relevant data and articulate a satisfactory explanation for its action).

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