BEFORE THE
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, DC 20503

In the Matter of	)	CG Docket No. 22-2
	)	
Empowering Broadband Consumers Through Transparency	)	OMB 3060-XXX
	)	
	)	ICR No. 202307-3060-030

PAPERWORK REDUCTION ACT COMMENTS OF AT&T

Christopher M. Heimann
David J. Chorzempa
David L. Lawson
AT&T Services, Inc.
601 New Jersey Ave NW
Suite 650
Washington, D.C. 20001
202-457-3048

Its Attorneys

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I. INTRODUCTION AND SUMMARY.

Throughout this proceeding, AT&T has voiced strong support for the Commission's efforts to ensure that broadband labels provide consumers the information they need in a readily and easily accessible format to make informed decisions when shopping for broadband services, without imposing undue burdens on providers. AT&T also understands that, to make such decisions, consumers need clear information about the taxes, fees, and rates for services they are considering purchasing and for their existing services too. We have long supported the FCC's efforts to stand up consumer broadband labels and believe that the labels can and should clearly disclose relevant fees, charges, and other information important to consumers' purchasing decisions in an easy-to-understand and efficient manner.

While we generally support the broadband labelling rules (including a requirement to disclose fees and taxes),[1] as AT&T and others explained in Comments on the Commission's initial Paperwork Reduction Act (PRA) analysis, the rules are unclear, unnecessarily burdensome, or both, in two respects: the requirement to document disclosures through alternative sales channels

[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*).

and the way in which they require providers to display fees imposed by state and local governments. We and others thus encouraged the Commission to modify those requirements in ways that would minimize burdens on broadband providers while still achieving the Commission's objectives (including providing consumers information about providers' fees so that they can compare providers' plans and understand which fees are part of a provider's rate structure as opposed to those derived from a government mandate) – as required by the PRA.[2] Commenters also demonstrated that the Commission significantly understated the costs and burdens imposed by the broadband label requirements or (in the case of the requirement to document disclosures through alternative sales channels) failed to identify, much less analyze, any of the costs and burdens imposed.[3] AT&T and others provided some examples of the ways in which the draft PRA analysis understated the burdens imposed by the broadband label requirements, and provided detailed data regarding the burdens and anticipated costs of implementing the information collection requirements (ICRs). Commenters also reminded the Commission that, in reviewing an agency's ICRs, OMB must ensure that the agency has properly documented and evaluated the costs of complying with those requirements and ensured they are the least burdensome necessary to achieve agency objectives and disapprove an information collection requirement if the agency has failed to do so.

In its final PRA analysis, the Commission failed to meet the standards required to substantiate the burdens associated with these requirements, instead stating that it disagreed that

[2] *See, e.g.,* 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) (AT&T PRA Ex Parte), citing Joint Petition for Clarification or, in the Alternative, Reconsideration filed by ACA Connects, NTCA, CTIA, USTelecom, and NCTA, CG Docket No. 22-2 (filed Jan. 17, 2023) ("Joint Petition").

[3] *Id.*

the ICRs were unclear, or that the agency had failed adequately to justify the requirements, or that they were unnecessary, or that it had failed properly to account for the costs and burdens associated with the ICRs, and reluctantly asserting that, "[n]evertheless, to address commenters concerns, . . . we upwardly adjust the burden estimates."[4] However, the Commission failed to grapple in any serious way with the commenters' concerns (simply saying something is clear does not make it so), nor does it explain how or why it upwardly adjusted its burden estimates, leaving commenters and other interested parties in the dark as to the Commission's rationale and unable to "[e]valuate the accuracy of the agency's estimate of the burden of the proposed collection of information, *including the validity of the methodology and assumptions used*."[5] Because the Commission has not provided the information necessary for OMB to perform its functions under the statute, OMB should decline to approve the ICRs and direct the Commission to revisit its analysis consistent with the requirements of the PRA.[6] At a minimum, it should reject the proposed requirements that

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[4] *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 14, 16, 17, and 19 (July 25, 2023) (ICR Supporting Statement).

[5] 5 C.F.R. § 1320.8(d)(1)(ii) (emphasis added). The rules define "burden" broadly (the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information") and the burden estimate must account for:

> (i) [r]eviewing instructions; (ii) [d]eveloping, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information; (iii) [d]eveloping, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information; (iv) [d]eveloping, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information; (v) [a]djusting the existing ways to comply with any previously applicable instructions and requirements; (vi) [t]raining personnel to be able to respond to a collection of information; (vii) [s]earching data sources; (viii) [c]ompleting and reviewing the collection of information; and (ix) [t]ransmitting, or otherwise disclosing the information.

Id. at § 1320.3(b).

[6] As noted above, AT&T generally supports the Commission's broadband label rules. However, the PRA performs an important function in forcing agencies to confront the costs and burdens of regulatory requirements and requiring them to minimize those costs and burdens to the extent practicable. It also

ISPs: (1) document instances in which consumers are directed to a label at an alternative sales channel, and (2) list on labels each non-mandatory state and local fee passed through to customers. It also should direct the Commission to consider the less burdensome alternatives proposed in the record.

II. THE ICR SUPPORTING STATEMENT'S ANALYSIS OF THE ALTERNATIVE SALES CHANNEL AND FEE DISCLOSURE REQUIREMENTS ARE LEGALLY DEFICIENT.

The PRA was enacted to "minimize the paperwork burden" of federal information collection requirements,[7] and thus required agencies to obtain OMB approval before any such requirements can be enforced.[8] OMB, in turn, may not approve any proposed information collection unless it determines that the collection is "necessary" for the "proper performance of the functions of the agency, including whether the information shall have practical utility."[9]

To facilitate OMB review, the PRA requires an agency to develop "a functional description of the information to be collected,"[10] and its Federal Register notice must set forth "a summary of

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enables the public generally to understand the costs associated with government regulation, which is essential to our democratic process. These considerations are particularly important here because, in the same order in which it adopted the broadband label requirements, the Commission included a Notice of Proposed Rulemaking to consider proposals that would dramatically expand those requirements and impose much higher more costs and burdens on the industry with little or no corresponding benefit in terms of providing consumers information they need to make informed decisions about their broadband service options at the point of sale – which was the explicit purpose of the broadband label requirement in the IIJA. AT&T thus encourages OMB to direct the Commission to revisit its analysis of the costs and burdens of all of the broadband label rules consistent with the requirements of the PRA.

[7] Tozzi v. EPA, 148 F. Supp. 2d 35, 38 (D.D.C. 2001); 44 U.S.C. § 3501(1).

[8] See 44 U.S.C. § 3512; see also Saco River Cellular, 133 F.3d at 29-31 (without OMB approval, an agency's data collection requests need not be followed).

[9] 44 U.S.C. § 3508; see also Tozzi, 148 F. Supp. 2d at 38 ("The OMB must determine whether the [information collection] request is necessary to enable the agency to function and of public utility.").

[10] 44 U.S.C. § 3506(c)(1)(A)(ii); 5 C.F.R. § 1320.8(a)(2).

the collection of information."[11] The Federal Register notice also must contain "an estimate of the burden that shall result from the collection of information" so that interested parties can comment on this estimate.[12] An agency must provide an estimate for *each* proposed information collection, which must be "objectively supported"[13] and demonstrate that it is the "least burdensome necessary for the proper performance of the agency's functions."[14] The agency also must provide sufficient information to allow interested parties to "[e]valuate the accuracy of the agency's estimate of the burden of the proposed collection of information, *including the validity of the methodology and assumptions used*."[15] In turn, Congress has required that OMB, in reviewing information collections, "shall . . . minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected,"[16] and authorized OMB to disapprove an information collection or instruct the agency to make substantive or material changes if the agency has failed to meet the foregoing requirements.[17]

As discussed herein, the Commission's ICR Supporting Statement fails to meet the requirements of the Paperwork Reduction Act with respect to the information collection requirements relating to alternative sales channels and the display of fees imposed by state and

[11] 44 U.S.C. § 3507(a)(1)(D)(ii)(II); 5 C.F.R. § 1320.5(a)(1)(iv)(B)(2).

[12] 44 U.S.C. § 3507(a)(1)(D)(ii)(V); 5 C.F.R. § 1320.5(a)(1)(iv)(B)(5).

[13] 5 C.F.R. § 1320.8(a)(4).

[14] 5 C.F.R. § 1320.5(d)(1)(i); see also 44 U.S.C. § 3506(c)(3)(C) (requiring agencies to certify that each information collection "reduces to the extent practicable and appropriate the burden" of such collections); 5 C.F.R. § 1320.8(a)(5).

[15] 5 C.F.R. § 1320.8(d)(1)(ii) (emphasis added).

[16] 44 U.S.C. § 3504(c)(3).

[17] See id. at § 3507(e)(1).

local governments, and thus does not provide OMB the information necessary to evaluate the costs and benefits of these requirements. OMB thus should not approve these two information collection requirements, rather it should direct the Commission to adopt less burdensome alternatives.

A. THE COMMISSION HAS FAILED ADEQUATELY TO JUSTIFY THE COLLECTION RELATED TO ALTERNATIVE SALES CHANNELS.

In the *Report and Order,* the Commission required that "[p]roviders shall document each instance when it directs a consumer to a label at an alternative sales channel and retain such documentation for two years."[18] The order provided no guidance regarding the substance of this requirement, which appeared for the first time in the order (it was not raised in the Commission's *Notice of Proposed Rulemaking*), nor did it cite any support for the requirement in the record.[19] As a consequence, as AT&T and others pointed out in comments on the Commission's initial PRA analysis, it is entirely unclear what providers are required to document (a tally of the instances, the customer's name, or the customer's name and address) or when such documentation is required.[20] Neither the order nor the Commission's initial PRA analysis shed light on these issues. Nor did the initial PRA analysis even mention the requirement, except in passing. The Commission thus provided no estimate of the costs and burdens of this requirement as required by the PRA, explain the purpose of the requirement, identify steps taken to minimize its burdens, or show that the benefits of the requirement outweigh those burdens. In their comments on the Commission's initial PRA analysis, AT&T and others pointed out these deficiencies and explained that creating a system to comply with the alternate sales channel requirement would be a monumental task given

[18] *Report and Order* ¶ 95.

[19] *Id.* citing no comments in support of the requirement or any reference to it in the Commission's NPRM.

[20] *See* AT&T PRA Ex Parte.

the thousands of alternate sales channels through which their services are sold and the tens of thousands of alternate channel employees that would have to be trained.[21]

In the ICR Supporting Statement, the Commission failed to correct any of these failings. Apart from declaring that "[w]e disagree" that the requirement is unclear, the Commission responded simply:

> We believe it is unambiguous that this would include the identity of *each* consumer and that a "count of consumers" or the failure to identify how the label was provided to the consumer would not be sufficient to allow the Commission to investigate and enforce providers' obligation to make the label available to consumers at each point of sale. The Commission similarly stated (in the context of the requirement to archive labels displayed on websites and at alternate sales channels for two years) that, without such documentation, "the Commission would be unable to fully investigate consumer complaints alleging, for example, that a service provider failed to comply with the broadband label requirements or that a particular label was inaccurate."[22]

However, asserting that the requirement that a provider "document *each instance* when it directs a consumer to a label at an alternative sales channel"[23] "unambiguous[ly] . . . include[s] the identity of *each* customer" does not make it so. The language of the *Order*, as opposed to the *post hoc* assertions in the ICR Supporting Statement, does not clearly require service providers to collect the "identity of *each* customer."[24] It is equally susceptible to a reading that a provider may simply tally the *"instance[s]*" in which a consumer is directed to a label at an alternative sales channel, or it could be read (as the ICR Supporting Statement asserts) to require collection of the "identity of *each* customer,"[25] or to require documentation of each such customer's name and address. The

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[21] *Id.*

[22] *ICR Supporting Statement* at 16.

[23] *Report and Order* at ¶ 95 (emphasis added).

[24] *ICR Supporting Statement* at 16 (emphasis in original).

[25] Certainly, ALLvanza (a nonpartisan nonprofit organization that advocates on behalf of Latinos and other underserved communities) did not read it that way. Shortly after the Commission published its ICR

point is, the order does not clearly identify what is required, nor how the Commission itself will interpret the requirement in the future if it is approved. As a consequence, neither interested parties nor OMB can fairly identify, much less calculate, the costs and burdens of complying.

In response to the claim that the order fails to justify the alternative sales documentation requirement or to calculate its costs and burdens, the ICR Supporting Statement again resorts to *ipse dixit*, asserting "[w]e believe that the justification . . . is apparent" in the order."[26] It claims that, "[b]ased on the extensive record developed in the proceeding . . . the Commission determined that the best way to ensure the labels are, in fact, provided at alternate sales channels and that those labels are accurate, is for providers to document when customers are directed to the labels and to retain such documentation for two years."[27] Of course, however extensive the record in this proceeding may have been, the Commission cited no support in the record for the documentation requirement because there was none (unsurprisingly since neither the Commission in the NPRM nor any commenter in its comments proposed it). Nor does the ICR Supporting Statement cite any record evidence or anything in the text of the Order to support its assertion that the Commission "determined that the *best way*" to ensure labels are provided at alternate sales channels was to impose the alternate sales channel documentation requirement, which is not surprising since the

Supporting Statement in the Federal Register, ALLvanza filed an *ex parte* expressing concern about the suggestion that the alternative sales channel requirement could include the obligation to identify each consumer, observing that such a requirement "raises serious privacy concerns" and could harm the Latinos who already may be hesitant or unwilling to provide identifying information to companies or the government due to privacy concerns, fear of discrimination, potential immigration status issue, among other reasons. Letter of Rosa Mendoza, President and CEO, ALLvanza, to Marlene H. Dortch, Secretary, FCC, Ex Parte, CG Docket No. 22-2 (filed August 8, 2023). Given the very real concerns it identified, if ALLvanza thought the alternative sales documentation requirement could be read to require providers to collect the identities of each consumer (much less that it did so "unambiguously") it would have voiced these concerns earlier.

[26] *ICR Supporting Statement* at 15.

[27] *Id.* at 15-16.

requirement appeared for the first time in the order, which considered no other alternatives. In any event, whether the Commission deems the requirement to be the "best way" to ensure compliance is irrelevant. The PRA demands that the Commission demonstrate that the requirement is the "least burdensome necessary for the proper performance of the agency's functions."[28] Here, the Commission failed to consider any alternative, including a far less burdensome proposal in the record that a provider could satisfy this requirement by establishing methods and procedures for providing labels through alternate sales channels, retaining documentation about those practices, and providing such documentation upon request to the Commission.[29] It thus has not shown that the collection it adopted is the least burdensome necessary to perform the agency's functions, and OMB should not approve the collection until it does so.

Nor does the ICR Supporting Statement remedy the Commission's failure to provide any estimate of the costs and burdens associated with the alternate sales channel documentation requirement. To be sure, the Commission acknowledged parties' concerns in this regard, and that parties had provided data regarding the volume of sales through alternative sales channels.[30] The Commission nonetheless dismissed these concerns and data, asserting that "we believe such estimates about the number of times a provider must direct a consumer to a broadband label at alternate sales channels are not useful to this analysis."[31] It is hard to see what data would have

[28] 5 C.F.R. § 1320.5(d)(1)(i); see also 44 U.S.C. § 3506(c)(3)(C) (requiring agencies to certify that each information collection "reduces to the extent practicable and appropriate the burdens" of such collections); 5 C.F.R. § 1320.8(a)(5).

[29] See CTIA Comments, at 4; USTelecom Comments, at 5-6; see also 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) (Petition).

[30] ICR Supporting Statement at 15-16.

[31] *Id*.

been more "useful to this analysis." Nonetheless, if the Commission found the data lacking in some regards, the PRA required it to seek more data or more relevant data rather than simply dismissing the data plainly showing that it had failed to appropriately consider and balance the costs and burdens of the alternative sales channel requirement against its benefits,

The Commission appears to acknowledge its failure to do so, asserting "[n]evertheless, to address commenters' concerns, we make clear that the hours and cost estimates are included in the requirement to display labels at all points of sale;" and "[w]e also upwardly adjust the burden estimates associated with this requirement."[32] But the PRA requires more. It obligates an agency to provide an estimate for *each* proposed information collection, which must be "objectively supported,"[33] not simply lump together the costs and burdens of distinct information collections as the Commission claims to have done here. It also requires the agency to provide sufficient information to allow interested parties to "[e]valuate the accuracy of the agency's estimate of the burden of the proposed collection of information, *including the validity of the methodology and assumptions used*."[34] However, here the Commission fails to provide any information as to how it calculated the costs and burdens of the alternative sales documentation requirement or how/why it upwardly adjusted the burden estimates in response to the comments and data submitted. Its analysis is a black box that fails to provide interested parties sufficient information to "evaluate the accuracy of the agency's estimate of the burdens of this requirement on broadband providers," much less to "assess the validity of the methodology and assumptions used." OMB should not

[32] *Id.* at 16.

[33] 5 C.F.R. § 1320.8(a)(4).

[34] Id. at § 1320.8(d)(1)(ii) (emphasis added).

approve the proposed information collection until or unless the Commission remedies each of these failures.

But even if the Commission were to properly estimate the costs and burdens *to broadband providers* of complying with this information collection, OMB could not approve this requirement until or unless the Commission identifies and estimates the costs and burdens of the requirement on the thousands (if not tens of thousands) of independent retail outlets (including companies like Apple, Walmart, Best Buy, as well as the thousands of independent retailers/resellers of ISP services, such as Cricket stores, all of which are independently owned and operated) that will be responsible, in the first instance, for providing the labels to consumers and documenting each time they do. Without their cooperation and undertaking to provide and document their provision of labels to consumers, no broadband provider will be able to "document each instance when it directs a consumer to a label at an alternative sales channel." But nowhere in the *Report and Order*, the Commission's Initial PRA Analysis, or the ICR Supporting Statement does the Commission even acknowledge, much less estimate, the costs and burdens of this requirement on these alternative retail outlets. For this reason too, OMB should not approve the proposed information collection.

B. THE COMMISSION ALSO HAS FAILED TO JUSTIFY ITS REQUIREMENT THAT PROVIDERS LIST ON LABELS EACH NON-MANDATORY STATE AND LOCAL FEE PASSED THROUGH TO CUSTOMERS.

In the *Report and Order,* the Commission required ISPs to "state under 'Additional Charges and Terms' that taxes will apply and may vary depending on location, as it had in the 2016 labels."[35] In the IIJA, Congress had directed the Commission to adopt rules to require the display of broadband consumer labels "as described in the Public Notice of the Commission issued

[35] *Report and Order* at ¶ 36.

on April 4, 2016 (DA 16-357)."[36] The Commission reasoned, as it had in 2016, that "applicable taxes 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."[37]

In contrast, the *Report and Order* required providers to itemize on the label all fees imposed by state and local governments if such governments have not mandated that providers collect such fees from their customers.[38] ISPs are subject to innumerable fees (such as for access to rights-of-way) imposed by state and local governments that are analogous to state and local taxes, and which, like taxes, vary from jurisdiction to jurisdiction. The Commission asserted that, requiring ISPs to itemize such fees, would "enabl[e] consumers to understand which charges are part of the provider's rate structure, and which derive from government assessments or programs," and "allow consumers to more meaningfully compare providers' rates and service packages."[39] AT&T understands the Commission's rationale and consumers' interest in obtaining information about state and local fees, and certainly is willing to provide such information to potential customers on its labels. But consumers equally have an interest in obtaining information about state and local taxes, which the Commission declined to require ISPs to itemize because doing so would be "difficult and potentially confusing for consumers."

In comments on the Commission's initial PRA analysis, and in an industry petition for reconsideration, commenters pointed out that the ICR for state/local fees was unnecessarily and

[36] The Infrastructure Investment and Jobs Act, Publ. L. No. 117-58. 135 Stat. 429, § 60504(a) (2021) (IIJA).

[37] *Report and Order* at ¶ 36.

[38] *Report and Order* at ¶ 33.

[39] *Id.*

overly burdensome and would cause consumer confusion, and that the Commission had failed to justify the requirement or accurately estimate the cost of complying, as required by the PRA.[40] Parties explained that, to comply with this requirement, ISPs offering service in multiple states and localities potentially would have to list hundreds of fees for every jurisdiction in their footprint, most of which would be irrelevant for any individual consumer, causing confusion and decreasing the labels utility for consumers.[41] Alternatively, such providers would have to create distinct labels for every state and locality that imposes such fees – vastly increasing the costs and burdens to comply.[42]

Parties also pointed out that the Commission's initial PRA analysis failed to address, or even acknowledge, two proposals in the record that would serve the objective of the state/local fee ICR (which, as noted above, was to enable consumers to know which charges are part of a provider's rate structure vs. those derived from government requirements and to meaningfully compare providers' rates and service plans) while minimizing the burdens on service providers.[43] Specifically, commenters suggested that the Commission could require ISPs to include on the label a statement that state/local fees vary by location, as it required for taxes, or include a line item identifying the maximum amount in state/local fees that might be passed through to the customer.[44]

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[40] Joint Petition at 4 (noting that state and local governments impose a huge variety and quantity of fees on broadband providers, and that requiring providers to list them all would cause significant confusion for consumers and add unnecessary complexity for providers); AT&T PRA Ex Parte at 3-4 (observing that this requirement would require AT&T to create tens of thousands of labels and vastly increase its compliance costs, and providing estimates of such costs and burdens).

[41] AT&T PRA Ex Parte at 3-4; Joint Petition at 4.

[42] AT&T PRA Ex Parte at 3-4; Joint Petition at 4

[43] Joint Petition at 9; AT&T PRA Ex Parte at 3.

[44] Joint Petition at 9; AT&T PRA Ex Parte at 3.

Either would ensure that consumers are informed about state/local fee passthroughs without unnecessarily burdening providers or creating consumer confusion. In particular, the line-item proposal would provide consumers specific information about the maximum amount they could be charged for these fees – ensuring that they will not suffer sticker shock and enabling them to discern which charges are derived from government requirements and to compare providers rates and service plans. In short, to fully meet the objectives of the state/local fee ICR.

In the ICR Supporting Statement, the Commission once again failed to remedy any of the deficiencies identified by the parties. It asserted that it disagreed that requiring ISPs to display fees consumers will be required to pay is unnecessary or not useful to consumers, and parroted the Commission's conclusion that it would allow consumers to more meaningfully compare providers' rates and service packages.[45] It further asserted that "[c]ommenters may not want to disclose recurring fees they opt to pass through to consumers; however, we believe that requiring providers to disclose geographically relevant information (which types and amounts of fees that apply to consumers in certain areas) enhances the accuracy of pricing information," and observed that ISPs could roll such fees into their monthly base prices and eliminate the need to itemize fees altogether.[46] And, once again, it implicitly conceded that it had failed to accurately estimate the burdens of this requirement, stating that, considering the comments that providers might need to produce more labels than expected because of monthly fees, "we upwardly adjust the burden estimates for the creation of the label."[47]

[45] *ICR Supporting Statement* at 17.

[46] *Id.*

[47] *Id.*

For the most part, the Commission's response misrepresents the record and parties' comments. Commenters did not argue that the Commission should eliminate the requirement to display additional fees altogether. Rather, they urged the Commission to clarify or modify the requirement with respect to state and local fees to reduce consumer confusion and minimize the burden on providers by allowing providers either (1) to treat display such fees in the same manner as state and local taxes; or (2) to identify the maximum amount that might be passed through to consumers. Thus, commenters did not seek to conceal additional fees from consumers, as the ICR Supporting Statement snidely implied. Similarly inapposite is the Statement's suggestion that ISPs could roll such fees into their monthly price and eliminate the need to itemize fees on the labels altogether. But the Commission specifically rejected arguments that ISPs should create an all-in price for display on the labels,[48] and it should not now try to back into such a requirement by inappropriately suggesting that, if providers do so, they can avoid having to comply with an unjustified and overly burdensome requirement to disclose each state/local fee passed through to consumers.

More importantly, the PRA requires the Commission to demonstrate that the state/local fee ICR is the "least burdensome necessary for the proper performance of the agency's functions."[49] But here, the Commission failed to consider any alternative, including two, far less burdensome proposals in the record (described above) that still would have enabled consumers to determine "which charges are part of the provider's rate structure, and which derive from government assessments or programs," and "allow consumers to more meaningfully compare providers' rates

[48] *Report and Order* at ¶ 24.

[49] 5 C.F.R. § 1320.5(d)(1)(i); *see also* 44 U.S.C. § 3506(c)(3)(C) (requiring agencies to certify that each information collection "reduces to the extent practicable and appropriate the burdens" of such collections); 5 C.F.R. §1320.8(a)(5).

and service packages," which was the sole justification proffered in the *Report and Order* for the Additional Charges and Terms requirements.[50] It thus failed to demonstrate that the collection it adopted is the least burdensome necessary to perform the agency's functions as required by the PRA.

While the Commission upwardly adjusted its burden estimate for this requirement, it fails to explain how it did so or to tie its revised estimate to the data submitted in response to its initial PRA analysis, or any other data in the record. Nor did it describe or explain the assumptions underlying its original estimate or its upward adjustment. Here again, the PRA requires more; it obligates the Commission to objectively support its estimate, and to provide sufficient information to allow interested parties and OMB to "[e]valuate the accuracy of the agency's estimate of the burden of the proposed collection of information, *including the validity of the methodology and assumptions used*."[51] But the Commission's analysis is a black box that fails to do so. For this reason, too, OMB should decline to approve the proposed the state/local fee ICR and send it back to the Commission with direction to adopt a less burdensome alternative or explain why it has not done so, and to revise its burden estimate consistent with the requirements of the PRA.

[50] *Report and Order* at ¶ 33. Notably, in explaining the Additional Fees and Terms requirements, the *Report and Order* makes no reference to geography. OMB thus should disregard the ICR Supporting Statements post hoc reference to the purported benefits of "geographically relevant information," which the Commission plainly did not consider in adopting the state/local fee requirement.

[51] 5 C.F.R. § 1320.8(d)(1)(ii) (emphasis added).

III. CONCLUSION.

AT&T generally supports the broadband labels adopted by the Commission, but believes the requirements are unduly burdensome and unjustified in their treatment of certain state and local government fees and documentation of disclosures through alternate sales channels, and that the Commission's Supporting Statement for the ICRs failed to comply with the PRA. We therefore urge OMB not to approve the ICRs until it does so, particularly with respect to those two requirements.

Respectfully Submitted,

/s/ Christopher M. Heimann

Christopher M. Heimann
David J. Chorzempa
David L. Lawson
AT&T Services, Inc.
601 New Jersey Ave NW
Suite 650
Washington, D.C. 20001
(202) 457-3058

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