



Brian Hurley
Vice President of Regulatory Affairs
ACA Connects—America's Communications Association
2415 39th Place, NW
Washington, DC 20007

bhurley@acaconnects.org
(202) 573-6247

April 27, 2022

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

**Re: *Ex Parte* Presentation of ACA Connects—America's Communications Association;
CG Docket No. 22-2, *Empowering Broadband Consumers Through Transparency***

Dear Ms. Dortch:

On April 25, 2022, Ross Lieberman and I of ACA Connects—America's Communications Association ("ACA Connects") met by videoconference with the Consumer and Governmental Affairs Bureau staff copied on this letter. In a separate teleconference, we met with Michael Nencik of the Office of Commissioner Brendan Carr. Both meetings were in reference to the Notice of Proposed Rulemaking ("NPRM") issued in the above-captioned proceeding.¹

Consistent with ACA Connects' prior filings,² we explained in both meetings that the Commission's task in this proceeding is relatively straightforward. In adopting broadband label requirements as mandated by Congress, the Commission should aim to ensure that the labels are simple, easy to understand, and convey the most important information that consumers need to know when shopping for broadband service. The Commission should also ensure that any requirements it adopts are well-tailored to meet the needs of consumers and do not impose burdens that outweigh the costs.

With the foregoing principles in mind, we made the following recommendations regarding specific issues under consideration in the proceeding.

¹ See *Empowering Broadband Consumers Through Transparency*, Notice of Proposed Rulemaking, CG Docket No. 22-2, FCC 22-7 (2022).

² See ACA Connects Comments, CG Docket No. 22-2 (filed Mar. 9, 2022); ACA Connects Reply Comments, CG Docket No. 22-2 (filed Mar. 24, 2022).

First, we explained that the Commission should allow providers to continue to follow approved methodologies in reporting network performance on broadband labels. On the 2016 labels, fixed broadband providers were required to disclose actual speeds and latency, and were directed to do so consistent with the Commission’s prior enforcement guidance for transparency disclosures.³ This guidance explains that providers may follow a variety of methodologies in meeting their obligation to disclose accurate information about the performance of their broadband services.⁴ In the 2015 Order, the Commission explained that a virtue of this guidance is that “permit[s] measurement methodologies to evolve and improve over time.”⁵ The guidance has now been in effect for over a decade, and nothing in the statute suggests that Congress intended the Commission to follow a different approach for the broadband labels.

Though some parties urge the Commission to impose more prescriptive performance measurement requirements on broadband providers in connection with broadband labels, we explained that such proposals go beyond the scope of this proceeding.⁶ The adoption of more prescriptive requirements in this area would also lengthen the implementation timeline by imposing new obligations that, for smaller providers especially, could take years to implement. At any rate, such requirements are unnecessary. Most significantly, there is no evidence of systemic or widespread deficiencies in broadband performance reporting from providers operating under the existing guidance. Moreover, the broadband labels, by their nature, will be open to public scrutiny, and there will be ample opportunity to hold providers accountable for providing the actual speeds they claim. Finally, because the existing guidance permits methodologies to evolve over time, there is no need for the Commission to set in stone any particular methodology.⁷

Next, we discussed additional steps the Commission can take to minimize the technical and operational complexity of its requirements without sacrificing the needs of consumers.

- Accessibility. We appreciate the importance of ensuring that broadband labels are accessible to persons with disabilities. As we explained, we agree with the general

³ See NPRM, appx. B.

⁴ See *FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance With Open Internet Transparency Rule*, GN Docket No. 09-191 et al., Public Notice, 26 FCC Rcd 9411, 9415 (2011); see also *Guidance on Open Internet Transparency Rule Requirements*, GN Docket No. 14-28, Public Notice 31 FCC Rcd 5330, 5331 (2016).

⁵ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5675 ¶ 166 (2015) (“2015 Order”).

⁶ Notably, the NPRM does not seek comment on the adoption of new or more prescriptive methodologies for reporting network performance on broadband labels.

⁷ Requiring disclosure of packet loss or any other new performance parameter (e.g., jitter) on broadband labels—which the Commission should not do—would also impose substantial burdens on providers that would complicate and lengthen the implementation timeline.

approach suggested in the NPRM, based on the Consumer Advisory Committee’s 2015 recommendation, that the Commission encourage providers to “[rely] on well-established legal requirements included in the Americans with Disabilities Act and [follow] the guidance developed by the Web Accessibility Initiative” but that it not impose new accessibility requirements that extend beyond the existing general requirements in effect today for such providers.⁸ This is a sensible approach because providers will be subject to a consistent and conforming approach across Federal agencies, which will also reduce the potential for consumer confusion. This approach will be especially beneficial for smaller providers, who have limited resources and capabilities.⁹ Imposing prescriptive new requirements on such providers in connection with broadband labels would be tremendously burdensome and is not contemplated in the statute.¹⁰

- Machine Readability and APIs – Next, we reiterated our request that the Commission not adopt requirements to display labels in a machine-readable format or submit labels to the Commission via an API, at least not for smaller providers. Because such requirements are not directly related to meeting the core purpose of the labels—providing timely information to consumers to inform shopping decisions—the Commission should not require providers to devote scarce time and resources to meeting such requirements, which would make compliance even more technically complex for smaller providers in particular.¹¹
- Historical Archive – We also explained that the Commission should not require providers to create and maintain an historical archive of past and present broadband labels, which would be enormously burdensome.¹² Requiring providers to archive labels only on a “going forward” basis would not avoid these technical and operational burdens. In any event, a label archive would not provide incremental benefits to consumers that outweigh these burdens.

⁸ See NPRM, ¶ 27; see also Department of Justice, Guidance on Web Accessibility and the ADA, <https://beta.ada.gov/web-guidance/> (last visited Apr. 27, 2022) (explaining “existing technical standards” including the Web Content Accessibility Guidelines provide “helpful guidance concerning how to ensure accessibility of website features”).

⁹ See WISPA and NTCA Comments at n.21, n.61 (discussing potential burdens for smaller providers in complying with accessibility requirements)

¹⁰ In addition, it would be counterproductive to impose more prescriptive accessibility requirements on broadband labels than apply generally to providers’ websites.

¹¹ The Commission should, however, provide a template label in the form of a fillable pdf. That would be a useful resource for smaller providers that lack in-house personnel that specialize in graphic design.

¹² See ACA Connects Reply Comments at 11-12. As we explained in our reply comments, some information on archived labels, e.g., actual speeds and latency, may change over time, and keeping this information up to date for a plethora of historical labels would be tremendously burdensome.

- Label Contents – Consistent with our prior filings, we also explained that the simplicity of the labels is key. The Commission should not add new elements to the labels suggested by various parties that would only distract, overwhelm or confuse consumers.¹³ The Commission should also omit elements of the 2016 label that are not unnecessary to help consumers make informed purchasing decisions, in particular “packet loss” and “subscriber-triggered network management practices.”¹⁴

In addition, we noted our prior recommendation that the Commission give smaller providers an additional year or more to implement the labels. There is ample precedent for granting smaller providers extra time to comply with complicated new requirements, and the statute permits doing so here. Also, broadband providers of all sizes are already subject to the transparency disclosures, so consumers will be able to find detailed information about small providers’ offerings in the meantime before the labels take effect.

Finally, we explained that the Commission should take a restrained approach to enforcement of broadband labels, especially at first. Implementing the labels will involve lots of moving parts, and there is potential for the occasional honest mistake or oversight to occur, especially during the first year that labels are implemented. We encourage the Commission to focus on helping providers rectify any shortcomings to their labels and to reserve penalties for serious or repeat offenders. Ultimately, consumers will benefit from an approach that emphasizes compliance over penalties.

¹³ See, e.g., ACA Connects Reply Comments at 15; see also NCTA Reply Comments at 7-17.

¹⁴ See ACA Connects Comments at 12-14.

Marlene H. Dortch
April 27, 2022
Page 5

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please address to the undersigned any questions regarding this filing.

Sincerely,



Brian Hurley

Cc: Mark Stone (CGB)
Kristi Thornton (CGB)
Aaron Garza (CGB)
Erica McMahon (CGB)
Mika Savir (CGB)
Michael Nemcik