



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

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

Reply Comments of AARP

March 24, 2022

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About AARP

AARP is a nonprofit, nonpartisan organization with a membership of nearly 38 million. As the largest membership organization representing the interests of all older Americans nationwide, AARP is greatly concerned about the health, safety, and financial security of older Americans, including those living on low and fixed incomes. AARP advocates for affordable and accessible telecommunications services at both the state and federal level.

Introduction

AARP's review of the opening comments reveals widespread support among consumer advocacy groups, as well as individual consumers,¹ for broadband labels in the spirit of those contained in the 2016 *Public Notice*. Major service providers concede that the Commission must adopt labels,² and smaller ISPs voice support the use of labels.³ As noted by Consumer Reports, et al., the essential nature of broadband services require clear labels to cut through the confusing practices employed by some ISPs.

Consumers understand that broadband internet access is essential. Yet, despite how crucial the service has become to daily life, consumers often find themselves stuck with unreliable or slow internet service, data caps, quietly expiring promotional rates, and bills filled with mysterious fees, which make it difficult to budget and to comparison shop (for those consumers who have a choice of provider). And for still more consumers, some bills for bundled service packages fail to even list a separate line item for the cost of internet service, leaving those consumers wondering just how much they are paying for broadband each month.

Consumers will benefit greatly from the kind of common-sense transparency—the likes of which have been standard for essentials like cars since the 1950s and packaged foods since the 1990s—that this label will offer. Transparency helps empower consumers to, at a minimum in the ISP marketplace, discover the price they are paying for a product and its features, and for some, compare competing products to help make informed purchasing decisions.⁴

Other parties express similar sentiments.⁵

In the reply comments that follow AARP will address arguments raised by some parties that would undermine the effectiveness of broadband labels. In light of the statutory requirements associated with broadband labels, AARP believes that the Commission must adopt a robust set of

¹ Comment of Matt Vander Werf, January 31, 2022; Comments of Paul Taylor, March 14, 2022; Comment of David Williams, February 4, 2022.

² AT&T Comments, p. 1; CTIA Comments, p. 1; Lumen Comments, p. 2; NTCA, et al. Comments, p. 2; USTelecom Comments, p. 1; Verizon Comments, p. 1.

³ Ohio Transparent Telecom Comments, 1st unnumbered page; Sonic, et al. Comments, page 1 of 1; SpaceX, Inc. Comments, p.1; Starry, Inc. Comments, p. 1; Viasat, Inc. comments, p. 1.

⁴ Consumer Reports, et al. Comments, pp. 2-3.

⁵ See, for example, Asian Americans Advancing Justice Comments, 3rd unnumbered page; Broadband Access Ohio Comments, 2nd unnumbered page; Connecticut Office of State Broadband, et al. Comments, p. 1; Institute for Local Self Reliance Comments, p. 3; Massachusetts Department of Telecommunications and Cable Comments, p. 2; National Broadband Mapping Coalition, 1st unnumbered page; National Digital Inclusion Alliance Comments, p. 1; New America's Open Technology Institute Comments, pp. 3-4; New York Public Service Commission Comments, p. 2; South Carolina Department of Consumer Affairs Comments, 1st unnumbered page.

labeling requirements, such as those advocated by AARP,⁶ and ensure that labels are properly displayed through meaningful enforcement mechanisms.

While this reply will address many topics raised by various parties in the opening comments, our decision to not address a specific issue raised by a party should not be taken as a concession of the issue by AARP.

Comparison Shopping Benefits Requires Standardized Labels

In opening comments AARP noted that one of the benefits of standardized labels is to enable comparison shopping.⁷ Other parties also address the importance of standardized labels. Consumer Reports, et al. note “Standardization is essential for consumers to make comparisons and for information to be presented in a consistent way.”⁸ Massachusetts Department of Telecommunications and Cable states “Standardizing label content allows consumers to comparison shop between multiple ISPs and between different offerings of a single ISP.”⁹ ACA Connects notes that the labels should “provide consumers with a user-friendly tool that makes it easier to ‘comparison shop’ among offerings.”¹⁰ CTIA states that “labels will aid consumers with comparison shopping because the most salient details will be clearly presented upfront.”¹¹ Lumen notes that “the government interest is ... to pursue the laudable goal of better enabling better comparison shopping by consumers.”¹² Similar comments are made by others.¹³ However, some commentors state that ISPs should have “flexibility” when providing labels to consumers, which would undermine standardization and comparison shopping.

For example, AT&T states that the Commission should give providers “the flexibility to add explanations and context on the label to ensure that consumers do not get an inaccurate impression from rate information that is overly simplistic.”¹⁴ AT&T does not explain how the inaccurate impressions might emerge, but AARP believes that the format of the 2016 labels does not result in an “overly simplistic” representation. Rather, the 2016 labels provide the foundation for a standardized labeling framework that will enable the reporting of key information needed for comparison shopping.

⁶ AARP Comments, March 9, 2022.

⁷ AARP Comments, pp. 6, 18, 20.

⁸ Consumer Reports, et al. Comments, p. 6.

⁹ Massachusetts Department of Telecommunications and Cable Comments, p. 2.

¹⁰ ACA Connects, Comments p. 5.

¹¹ CTIA Comments, pp. 6-7.

¹² Lumen Comments, p. 16.

¹³ National Digital Inclusion Alliance Comments, 5th unnumbered page; New America Broadband Comments, p. 4; SpaceX Comments, p. 2; Starry, Inc. Comments, pp. 3-4.

¹⁴ AT&T Comments, p. 3.

Alternatively, Competitive Carriers Association states that with regard to matters of “promotional details or information on other factors that impact services performance, the Commission’s rules should be flexible enough to permit, but not require, the inclusion of that information on a label.”¹⁵ AARP disagrees with this perspective. The Infrastructure Investment and Jobs Act (*IJJA*) states that the Commission must promulgate rules that “require the display of broadband consumer labels,” identifying for inclusion both information from the 2016 labels and additional information, such as introductory rates.¹⁶ The 2016 Labels included information on service performance and on promotions. Adopting the Competitive Carriers Association’s perspective could result in labels that are inconsistent with the provisions of the law.

Lumen’s suggestion that the FCC’s Consumer Advisory Committee (CAC) intended “that a significant level of provider flexibility and discretion as to the precise make-up of a label was built-in”¹⁷ is not supported by the CAC’s October 26, 2015 report to which Lumen cites.¹⁸ Nor should the Commission accept Lumen’s claim, supported again by reference to the CAC’s October 26, 2015 report, that it would be acceptable for the labels to “include multiple service offers in a single form.”¹⁹ The *IJJA* does not reference the CAC’s work and is very clear that the format for labels required to comply with the law must be based on the FCC’s 2016 *Public Notice*,²⁰ not the CAC’s October 26, 2015 report, as claimed by Lumen.

Likewise, Verizon’s claim that providers should be given “substantial flexibility” to implement disclosures in a “manner designed to be understandable by customers”²¹ leaves too much discretion with ISPs. Verizon provides examples from its web site that Verizon claims “displays information in a way that allows customers to easily compare the key terms of related plans.”²² On this matter, Verizon overlooks the critical outcome that will result from the *statutory requirement* that the Commission adopt labels “as described” in the 2016 Public Notice, that is, the enabling of comparison shopping across service providers.²³ While Verizon’s web materials enable, to some extent, comparison of Verizon’s own offerings, they do not enable the comparison of Verizon’s offerings with the offerings of other service providers.

¹⁵ Competitive Carriers Association Comments, p. 6.

¹⁶ *IJJA*, Sec. 60504(a).

¹⁷ Lumen Comments, p. 6.

¹⁸ Lumen references the CAC’s October 26, 2015 report but provides no direct quote or page reference from that CAC report. Lumen Comments, pp. 6-7, footnote, 15.

¹⁹ Lumen Comments, p. 5, citing to the CAC’s October 26, 2015 report.

²⁰ *IJJA*, Section 60504(a): “the Commission shall 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.”

²¹ Verizon Comments, p. 6.

²² Verizon Comments, p. 13.

²³ *IJJA*, Section 60504(a).

Even for Verizon’s own offerings, Verizon’s marketing materials fail to provide key details that would assist with consumer choice, and broadband labels would clear up that lack of essential information. For example, Verizon provides screen shots from Verizon Wireless marketing materials²⁴ that Verizon claims are “easy to digest.”²⁵ However, these Verizon marketing materials identify no less than four alternative flavors of “unlimited” 5G access—(1) the “5G Start” plan that promises “5G Access,” (2) the “5G Play More” plan that provides “5G total access with 5G Ultra Wideband” and also includes “50 GB premium network access, then unlimited data,” (3) the “5G Do More” plan, which appears to be identical to the “5G Play More” plan in service characteristics, but includes an alternative set of “Plan Perks,” and finally (4) an offer called the “5G Get More” plan with “5G total access with 5G Ultra Wideband” and “Unlimited premium network access.”²⁶ While each of these service offerings prominently feature use of the term “unlimited,” clicking through various dropdown menus ultimately reveals that only *one* of the four services shown in Verizon’s Attachment A in fact has unlimited access—the most expensive “5G Get More” option. The other “unlimited” options face limits under certain conditions. Finally, Verizon’s information does very little to enable comparison shopping with other wireless carriers’ service plans as Verizon shuns the use of readily comparable metrics (such as “typical data speed”) and uses instead proprietary service descriptions (such as “premium network access”) that ultimately do not offer a measurable point of comparison across service providers.²⁷ Verizon’s Attachments clearly indicate the pressing need for information that will enhance consumers’ ability to make comparisons across service offerings made by a single ISP, as well as service offerings from alternative ISPs.

AARP believes that the 2016 broadband labels, as updated with AARP’s suggestions, will allow ISPs to bring to consumers’ attention prices of stand-alone broadband month-to-month offerings, as well as those that are part of bundles, or offered as a term contract. This provides a reasonable degree of flexibility to the ISPs. AARP believes that additional flexibility must be limited and that the Commission should monitor labels to ensure that ISP “explanations and context” or efforts to make labels more “understandable” do not result in misleading or confusing information being provided in the labels. As put eloquently by New America’s Open Technology Institute:

Some providers may push for maximal flexibility in the labels, as they did in 2016, and the Commission should be skeptical. Congress directed the Commission to create the

²⁴ Verizon Comments, Attachment A.

²⁵ Verizon Comments, p. 4.

²⁶ Verizon Comments, Attachment A. Also see: <https://www.verizon.com/plans/unlimited/#plans>

²⁷ For example, for the “50 GB premium network access” plans, Verizon simply informs consumers that “In times of congestion, your smartphone and mobile hotspot data may be temporarily slower than other traffic after exceeding 50 GB/mo/line of 5G Nationwide / 4G LTE data.” How much slower and the impact that the reduction in speed might have on the customer’s service is left unstated. <https://www.verizon.com/plans/unlimited/#plans>

labels because the status quo is too flexible and too confusing. Consumers need standardization, not a label that is so flexible that it merely replicates the status quo.²⁸

Consumers Should have Access to a Broadband Label for their Current Service

USTelecom argues that allowing existing customers to have access to broadband labels for their service would “intrude into the provider-customer relationship.”²⁹ USTelecom asserts that changes to specific details of a subscriber’s plan, “such as price,”³⁰ “would not be helpful for comparison shopping.”³¹ AARP disagrees with USTelecom’s perspective. Certainly, an event such as a price change could be a trigger for consumers to seek an alternative service provider. Thus, AARP believes that service providers should provide consumers updated labels, which highlight changes to the consumer’s legacy service label, when there are changes to the terms and conditions of the subscriber’s plans.³²

AARP addressed the issue of grandfathered services in opening comments and stated that service providers should, going forward, maintain labels for all future grandfathered services.³³ Other parties addressed the issue of grandfathered services. ACA Connects states that grandfathered plans should be excluded arguing that service providers may maintain a large number of legacy plans.³⁴ AT&T offers a similar opinion,³⁵ as does Competitive Carriers Association,³⁶ and Lumen.³⁷ CTIA argues in a similar vein that labels for plans that are no longer available for purchase “no longer provide useful information.”³⁸ AARP disagrees with these parties. Comparison shopping requires that a consumer know the characteristics of their current service, so as to make decisions about alternatives. This is also the perspective of Consumer Reports, et al., and others.³⁹

AARP’s recommendation that an archive of labels be maintained going forward is a reasonable middle ground on this issue. To ensure that ISPs do not avoid label creation by grandfathering

²⁸ New America’s Open Technology Institute Comments, p. 5.

²⁹ USTelecom Comments, p. 5.

³⁰ USTelecom Comments, p. 4.

³¹ *Id.*

³² AARP Comments, p. 17. Consumer Reports, et al. indicate that an archive should be maintained “within a reasonable backwards-looking timeframe,” Consumer Reports Comments, p. 4.

³³ AARP Comments, p. 5.

³⁴ ACA Connects Comments, p. 8.

³⁵ AT&T Comments, p. 3.

³⁶ Competitive Carriers Association Comments, p. 5.

³⁷ Lumen Comments, p. 4.

³⁸ CTIA, p. 13.

³⁹ Consumer Reports, et al. Comments, p. 4 identify a “reasonable backwards-looking timeframe.” EPIC also advocates for an archive of grandfathered plans. EPIC Comments, p. 12.

all current customers, ISPs should be required to produce labels for all services that have been offered for sale to new customers since January 1, 2021.⁴⁰

Direct Customer Notification of Changes to Labels is Essential

In response to the NPRM's question regarding "direct notification" associated with changes to terms in the labels,⁴¹ AARP stated that the labels should be incorporated into the direct notification process.⁴² When terms of service change, customers should be notified, and the labels should be used to illustrate changes in the terms of service. AARP notes that the 2016 labels were designed to be presented in electronic format,⁴³ and the provision of updated labels in electronic form through an ISP web site will enable consumers to undertake both side-by-side comparisons of the change to their existing service, as well as side-by-side comparisons between the revised service offer and alternatives available from other service providers.

Some parties oppose the use of labels in the notification process. For example, ACA Connects states that broadband providers already notify their customers of changes and that the "subscriber that is considering a change to its service plan or provider may consult the relevant broadband labels in the same manner as any other consumer, making 'direct notifications' unnecessary."⁴⁴ However, the problem with ACA Connects' perspective is that absent notice of change that includes a link to the label associated with the service to which a specific consumer subscribes, it is not clear how the customer would be able to find the appropriate label for their newly changed service.

ADTRAN states that direct notification using the labels "goes well beyond the role of the consumer broadband labels serving as a standard means of consumers comparing the broadband offerings to make an informed purchase."⁴⁵ ADTRAN's statement does not make sense. How can consumers use labels to make an informed purchase unless they know the impact of the changes to terms and conditions as illustrated in the label?

Lumen opposes the direct disclosure requirement by claiming that a direct notification "requirement would not be logical since existing customers have already made their choice."⁴⁶

⁴⁰ AARP believes that the back dating to January 1, 2021 will discourage providers from grandfathering all current service offers that are available to new customers to avoid providing labels to customers who subscribe to those services.

⁴¹ NPRM, p. 10.

⁴² AARP Comments, p. 17.

⁴³ "The primary focus of these discussions was how such disclosures should be presented on company websites because that is the primary means by which consumers are likely to compare competing offerings." FCC Consumer Advisory Committee Recommendation, October 26, 2015, p. 6. <https://docs.fcc.gov/public/attachments/DOC-336136A1.pdf>

⁴⁴ ACA Connects Comments, p. 10.

⁴⁵ ADTRAN Comments, p. 10.

⁴⁶ Lumen Comments, p. 12.

Lumen is incorrect to imply that consumers do not continue to make marketplace choices simply because they have selected a service provider. Changes in prices or terms and conditions may be a trigger for customers to evaluate their choice and consider other service providers (should they be available).

AT&T argues that direct notification of changes using the labels would generate customer confusion.⁴⁷ AT&T states that when AT&T “sends a customer any type of mid-course notification of this kind, it tends to drive calls to customer care representatives.”⁴⁸ It seems to AARP that the provision of information to consumers using the broadband labels would reduce the customer confusion that AT&T’s current practices appear to be generating. By enabling side-by-side comparisons of changes to service plans, consumers are more likely to gain a clear understanding of the impact of changes made to their service plan, reducing the need for calls to ISP business offices.

Starry, Inc. does not oppose outright the use of labels to inform customers of changes to terms and conditions.⁴⁹ However, Starry, Inc. argues that notifying customers by “emailing all customers anytime the price of any service offering reflected in the label changes, even if this is a relatively rare occurrence, would result in some customers receiving an unnecessary and potentially confusing notice.”⁵⁰ AARP does not propose that modifications to any element of any label triggers notification of all customers. Rather, customers should only receive notice that is relevant to the changes affecting the services to which the customer subscribes. Consumers should be fully informed of service changes and should have ready access to easy-to-understand information about their plan, making the use of broadband labels to inform consumers of changes a reasonable requirement.

Introductory Rates Must be Defined by the Commission and Identified in the Labels

In addition to AARP,⁵¹ many commentators recognize the statutory requirement resulting from the *IIJA* for the broadband labels to include information on introductory rates.⁵² On the other hand, NTCA, et al. suggest that the Commission need not include information on introductory rates or promotions. According to NTCA, et al., “No harm accrues to a consumer who expects to pay

⁴⁷ AT&T Comments, p. 19.

⁴⁸ AT&T Comments, p. 19.

⁴⁹ Starry, Inc. Comments, p. 8.

⁵⁰ Starry, Inc. Comments, p. 8.

⁵¹ AARP Comments, p. 3.

⁵² See, for example, ACA Connects Comments, p. 10; ADTRAN Comments, p. 4; AT&T Comments, p. 5; Cloudflare Comments, p. 1; Competitive Carriers Association, p. 3; Connecticut Office of State Broadband, et al., p. 3; CTIA Comments, p. 12; Consumer Reports, et al. Comments, p. 8; INCOMPAS Comments, p. 2; Lumen Comments, p. 3; New York City Comments, p. 1.

one price but is then billed for a lower price. Regulatory intervention to require providers to share information about lower prices is neither necessary nor warranted.”⁵³ NTCA, et al. overlook the fact that introductory or promotional rates also may result in consumers expecting one price but being billed a *higher* price once the promotion or introductory rate expires.

Lumen claims that it does not use introductory rates, and requests that the Commission allow providers to state that a “provider does not currently offer introductory rates but does reserve the right to adjust rates going forward subject to notice and other requirements in customer’s subscriber agreement.”⁵⁴ Lumen’s statement represents a distinction without a difference—rates that expire soon after the initial purchase are “introductory rates” regardless of what the service provider calls them. Providers should not be able to quote rates that are “not introductory” and change the rates a short time later. AARP recommends that initially quoted rates must be in effect for at least 24 months and that the Commission require carriers to classify a rate as “introductory” if it is to be in effect for less than 24 months. It is clear from the *IJJA* that consumers should be fully informed regarding introductory broadband rates, as evidenced by the fact that the provision was written into the law. The Commission should reject Lumen’s and NTCA, et al.’s opinions on the matter of introductory rates and promotions.

Information on the Affordable Connectivity Program Should be Included in the Labels

In addition to AARP,⁵⁵ several commentors advocate for inclusion of information on the Affordable Connectivity Program (ACP) to be included in the labels.⁵⁶ However, some parties argue that information regarding the ACP should not be included in the labels. For example, Competitive Carriers Association argues that information regarding the ACP would be “unwieldy.”⁵⁷ Lumen states that information about ACP would result in consumers who would become “overwhelmed with information.”⁵⁸ NTCA, et al. argue that information on a “raw discounted rate” on a label would lead to confusion.⁵⁹ AARP disagrees with these statements, and these parties provide no persuasive evidence supporting the proposition that information on the ACP should not be included with the labels. As illustrated in AARP’s model labels, the provision of a link contained in the label that informs consumers of the existence of the ACP,

⁵³ NTCA, et al. Comments, p. 10, footnote 27.

⁵⁴ Lumen Comments, p. 9.

⁵⁵ AARP Comments, p. 10.

⁵⁶ ADTRAN Comments, p. 14; Asian Americans Advancing Justice, et al., 2nd unnumbered page; CTIA Comments, p. 10; Hughes Network Systems, p. 1; National Digital Inclusion Alliance Comments, 7th unnumbered page; New America’s Open Technology Institute, p. 5; New York City Comments, p. 2; South Carolina Department of Consumer Affairs Comments, 2nd unnumbered page; USTelecom Comments, p. 2.

⁵⁷ Competitive Carriers Association Comments, p. 5.

⁵⁸ Lumen Comments, p. 6.

⁵⁹ NTCA, et al. Comments, p. 15.

eligibility requirements, and eligible services results in an appropriate amount of information being delivered to consumers on the ACP.⁶⁰

Network Management Information Should be Included in the Labels

Like AARP,⁶¹ Consumer Reports et al.⁶² and New York City⁶³ state that disclosures of blocking, throttling, and paid prioritization should be included in the network management practices of the label. However, some other parties oppose the inclusion of this information. For example, ADTRAN argues that including information on blocking, throttling, or paid prioritization in the labels would be “irrelevant and/or confusing.”⁶⁴ ADTRAN also claims that disclosure of this information would restore “vestiges of the Open Internet regime, which was supplanted by the *Restoring Internet Freedom Order*.”⁶⁵ However, ADTRAN either ignores, or is unaware of, the fact that the *Restoring Internet Freedom Order* requires disclosure of blocking, throttling, and paid prioritization practices, among others.⁶⁶ Lumen, on the other hand, argues that inclusion of information on blocking, throttling, and paid prioritization “would increase the likelihood that consumers are overwhelmed with information,”⁶⁷ but provides no basis for its conclusion. AARP believes that the Commission should reject these perspectives on network management and require the reporting of network management practices as shown in AARP’s opening comments.

Machine-Readable Format Should be Required for the Labels

The machine-readable format is much more than an efficient means by which the FCC can collect data from ISPs to populate standardized labels. As noted by New America’s Open Technology Institute:

The Commission should make the label machine-readable to facilitate research, consumer education, and new tools that enable comparison shopping. Importantly, a machine-readable format would enable third parties to conduct research on broadband affordability. OTI’s Cost of Connectivity studies rely on ISP advertising—a time-consuming and laborious process that many organizations are unable to undertake. Additionally, the lack of standardization in current disclosures makes comparative analysis challenging. Machine-readable data could open up a new world of pricing

⁶⁰ AARP’s proposal appears to be consistent with AT&T’s request that information on the ACP be provided “through a link to another site.” AT&T Comments, p. 15.

⁶¹ AARP Comments, p. 11.

⁶² Consumer Reports, et al. Comments, p. 7.

⁶³ New York City Comments, p. 2.

⁶⁴ ADTRAN Comments, p. 8.

⁶⁵ ADTRAN Comments, p. 8.

⁶⁶ *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, January 4, 2018, ¶220.

⁶⁷ Lumen Comments, p. 6.

research and encourage others to enter this field. OTI has long lamented the lack of other broadband pricing studies and would welcome the competition from label-derived data.⁶⁸

New America's position is similar to AARP's:

"AARP believes that by requiring the disclosure of the information recommended in these comments, in a machine-readable format consistent with the 2016 labels, the FCC will provide a solid foundation for the use of the data to generate additional shopping tools tailored by third parties to meet the needs of their constituencies. For example, AARP could envision using the data to develop shopping tools for older Americans to help cut through jargon and confusing language that can often be used to describe these services."⁶⁹

Other parties also point to the benefits of the Commission requiring data to be submitted in machine-readable format.⁷⁰

On the other hand, ACA Connects states that requiring labels in machine-readable format would "tax the resources of small providers with limited in-house technical resources."⁷¹ AARP does not believe that the creation of information in machine-readable formats (such as .xml, .json, or .csv)⁷² requires any exceptional effort. Machine-readable data requires a consistent structured data format, which could be enabled by the Commission providing an API for inputting data, or by providing a template in the ubiquitous Excel format, which easily allows the creation of information in both .csv and .xml formats. Unless service providers are using pencil and paper for their record keeping, the machine-readable format requirement should impose no significant burden on the ISP.

Competitive Carriers Association also takes issue with a machine-readability requirement. They argue that machine-readability risks creating "misimpression" that consumers can "simply make an apples-to-apples comparison based solely on the information on the labels."⁷³ Competitive Carriers Association concludes that "There are differences among providers and qualities of particular providers that simply do not lend themselves to concise presentation in standardized fields on a label."⁷⁴ AARP believes that Competitive Carriers Association has turned the rationale for labels on its head. Standardized labels should be expressly designed to enable an

⁶⁸ New American Comments, pp. 11-12.

⁶⁹ AARP Comments, p. 8.

⁷⁰ Consumer Reports, et al. Comments, p. 6; Institute for Local Self Reliance Comments, p. 6; New York City Comments, p. 3; Starry, Inc. Comments, p. 9.

⁷¹ ACA Connects Comments, pp. 11-12.

⁷² "8 Steps to a Machine-Readable File of All Items & Services," <https://www.cms.gov/files/document/steps-machine-readable-file.pdf>

⁷³ Competitive Carriers Association, p. 6.

⁷⁴ *Id.*

apples-to-apples comparison across service providers. Machine-readable data submission will promote, not hinder, comparison shopping. Outside of the information contained in the labels, ISPs are free to offer additional information on matters other than the important price and service characteristics that are conveyed in the labels. As Competitive Carriers Association suggests, that type of information may not lend itself to standardization and presentation in a label. However, that type of information is secondary to label data needed to make apples-to-apples comparisons that will enable consumers to make rational choices in the marketplace.

NTCA, et al. also argue in opposition to the machine-readable format requirement, suggesting that requiring submission in a machine-readable format will undermine the Consumer Advisory Committee's goal of producing labels in a "simple to understand format."⁷⁵ NTCA et al. continue, "This additional proposal to require machine-readable format seems to suggest (carrying the nutrition label model forward) that consumers, while grocery shopping, invoke machine-reading technology to compare sugars, carbohydrates, proteins and calories among competing cans of beans or boxes of cereal."⁷⁶ This statement indicates confusion on NTCA et al.'s part. Apparently NTCA et al. does not appreciate that machine-readable data enables data collection through a standardized format. The machine-readable data can then be used to produce "retail" labels in the format consistent with the 2016 broadband labels.

Finally, on the matter of machine-readable data, some parties indicate that the labels should be revised to present information in a format other than that associated with the 2016 *Public Notice*. For example, MIT researcher David Clark and behavioral economist Sara Wedeman argue for replacing the nutrition label format with a "Quality of Service (QoS)" and "Quality of Experience (QOE)" approach.⁷⁷ Similarly, Bayle Smith-Salzberg and Jonah Kaye argue that instead of a nutrition-style label that consumers should be able to input typical usage characteristics and receive a personalized assessment of the broadband service.⁷⁸ AARP will not argue the merits of these alternatives, but will point out that these types of ideas for alternative metrics and data presentation methods will be supported by the machine-readable format requirement. With standardized machine-readable data in hand, third parties who have ideas for alternative metrics or alternative data presentation will be able to construct various ways that data can be visualized and analyzed by consumers. New analytical and visualization tools created by third parties have the potential to deliver expanded benefits to niche customers, for example, "power users," or "first-time buyers," or those who have limited English-language skills.

⁷⁵ NTCA Comments, p. 15.

⁷⁶ NTCA Comments, pp. 15-16.

⁷⁷ Clark-Wedeman Comments, 4th unnumbered page.

⁷⁸ Smith-Salzberg & Kaye Comments, 3rd unnumbered page.

The Commission Must Enforce Label Format and Reporting and Must Also Allow the States to Enforce the Labels

Like AARP,⁷⁹ other parties point to the need for enforcement mechanisms that are incremental to those associated with the existing transparency requirements.⁸⁰ Some parties point to leveraging the 2016 enforcement guidance in the enforcement solution.⁸¹ While the 2016 guidance can contribute to the development of a new enforcement mechanism, AARP does not believe that that guidance alone is sufficient, precisely due to the expanded scope of the labels, as specified in the *IIJA*, and the need for robust enforcement mechanism to ensure that the objectives of Congress are carried out. As Connected Nation notes, “a mislabeled broadband product that fails to satisfy a consumer’s needs is problematic enough to warrant coercive interference, particularly when it has a negative impact on student learning, access to healthcare, the ability to telework or other meaningful participation in society.”⁸² Similarly, New York City states, “To incentivize the provision of accurate information and discourage provider misrepresentation of data, the Commission should consider all relevant factors that could potentially increase or maximize a penalty or forfeiture, such as the number of misrepresentations, the market share of a provider in the given geographic area of the violation, and the provider’s geographic reach.”⁸³ Institute for Local Self Reliance states that broadband labels, as a policy solution, “will fail to help customers if left unenforced.”⁸⁴ AARP agrees with these assessments of the importance of enforcement.

Like AARP,⁸⁵ both New America’s Open Technology Institute and National Digital Inclusion Alliance advocate for dedicated staff⁸⁶ or an ombudsman⁸⁷ to facilitate a direct Commission evaluation of the information contained in the labels, and the processing of customer complaints about the labels. The Commission should provide sufficient resources to contribute to an effective enforcement regime. However, enforcement of broadband labels should not be limited to the FCC.

Connecticut Office of State Broadband, et al. request that the FCC allow for concurrent jurisdiction between the FCC and state utility commissions for the enforcement of broadband labels.⁸⁸ Similarly, EPIC argues that state attorneys general and other regulators should not be precluded from investigating and bringing enforcement actions where there are alleged discrepancies between the provider’s labels and its actual offerings and practices. AARP agrees

⁷⁹ AARP Comments, p. 20.

⁸⁰ EPIC Comments, pp. 3-4; Connected Nation Comments, p. 2; New York City Comments, p. 4.

⁸¹ ACA Connects Comments, p. 3; Verizon Comments, p. 9.

⁸² Connected Nation Comments, p. 2.

⁸³ New York City Comments, p. 4.

⁸⁴ Institute for Local Self Reliance Comments, p. 5.

⁸⁵ AARP Comments, p. 20.

⁸⁶ National Digital Inclusion Alliance, 4th unnumbered page.

⁸⁷ New America’s Open Technology Institute Comments, p. 13.

⁸⁸ Connecticut Office of State Broadband, et al., pp. 3-4.

with these parties. As the Commission has recognized, the states have the ability to enforce “such matters as fraud, taxation, and general commercial dealings.”⁸⁹ Certainly broadband labels implicate general commercial dealings and labels that misrepresent could be associated with fraud. As such, broadband labels should also be enforceable by the states. The lawfulness of the role of the states on matters associated with the sale of broadband services was emphasized by the D.C. Circuit in the *Mozilla* ruling.⁹⁰

AT&T argues that no enforcement mechanism linked to broadband labels should be adopted by the Commission,⁹¹ which is also the position of ADTRAN.⁹² AARP believes that the position of these parties must be rejected by the Commission.

To ease the burden on smaller providers, NTCA, et al. recommends that the Commission utilize a phased approach with regard to enforcement, with the focus of Commission action during the first two years being compliance audits and enforcement advisories.⁹³ Following this “beta-test” period, the Commission could enter into a “penalty phase.”⁹⁴ NTCA, et al. also recommends that the penalties should scale to the level of deficiency.⁹⁵ While AARP believes that the “beta-test” period need not extend for two years, AARP is not opposed to a phase-in of enforcement actions, as suggested by NTCA, et al. For larger providers, AARP recommends a six-month period following the initial deployment of the labels. Granting smaller providers an additional six months, for a total of 12 months, would seem to be reasonable. AARP also agrees with NTCA, et al.’s observation that the implementation process will be improved by the Commission providing sufficient scaffolding, in the form of an API or fillable broadband label templates. AARP agrees that standardization and automation will make an important contribution to a successful label implementation. While NTCA et al. mention fillable PDFs as being a potential solution, the Commission should also consider the development of an API or standardized spreadsheets that can be filled by the ISP and submitted in machine-readable format.

The Commission Should Expand Reliability Information in Future Labels

Some parties propose that the reliability information contained in the labels should be expanded to include factors beyond latency and packet loss.⁹⁶ INCOMPAS offers the most detail on this

⁸⁹ *Restoring Internet Freedom Order*, ¶196.

⁹⁰ *Mozilla v. FCC*, United States District Court for the District of Columbia, October 1, 2019, p. 135.
[https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/\\$file/18-1051-1808766.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/$file/18-1051-1808766.pdf)

⁹¹ AT&T Comments, p. 22.

⁹² ADTRAN Comments, p.

⁹³ NTCA, et al. Comments, pp. 19-20.

⁹⁴ NTCA, et al. Comments, pp. 19-20.

⁹⁵ NTCA, et al. Comments, p. 20.

⁹⁶ Adaptive Spectrum and Signal Alignment, Incorporated (ASSIA) Comments, p. 4; Smith-Salzberg & Kaye Comments, 3rd unnumbered page; INCOMPAS Comments, pp. 10-12; National Broadband Mapping Coalition, p. 3rd unnumbered page.

matter, suggesting this ISPs should have the *option* to include additional information on reliability.⁹⁷ On the other hand, Verizon states that packet loss should not be included in the labels as Verizon “would need to invest in infrastructure to monitor packet loss data.” However, Verizon’s existing service level agreements indicate that Verizon already has the capability to monitor packet loss.⁹⁸

Several parties raise the prospect of including “jitter,” the variation in latency, as a performance metric.⁹⁹ Expected jitter on an ISP’s network provides a valid point of reference in an apples-to-apples comparison across service providers. Cloudflare provides a set of “next steps” associated with improving the measurement of, and consumer understanding of, network performance characteristics that are worthy of the Commission’s attention.¹⁰⁰ Finally, as noted by ViaSat, with regard to jitter, as well as other service performance elements associated with the labels, the Commission should prescribe “standard methodologies for the measurement of performance characteristics included in providers’ broadband labels.”¹⁰¹

AARP believes that including additional information on reliability in broadband labels would be valuable. However, the ability of consumers to make side-by-side comparisons using the labels will be undermined if standardized reliability measures are not required for all ISPs. Before additional reliability measures, such as network availability and jitter, are added to the labels, the Commission should develop a uniform reporting framework for reliability measures. AARP recommends that the Commission conduct a rulemaking on broadband reliability issues and develop a standardized reporting framework prior to expanding reliability measures in future iterations of the labels.

The Commission Should Improve Privacy Disclosures for Future Labels

Several parties raise issues with privacy policies and the broadband labels. It is clear that the 2016 labels required a link to the service provider’s privacy policy, however, the 2016 *Public Notice* did not offer any specifics as to what a privacy policy should convey.¹⁰² Electronic Privacy Information Center (EPIC) encourages the Commission to require an informative privacy policy statement that will enable service users’ understanding of what is done with their

⁹⁷ INCOMPAS Comments, p. 10.

⁹⁸ See, for example, “DIR CONTRACT NO. DIR-TEX-AN-NG-CTSA-010,” <https://www.verizon.com/content/dam/verizon/business/vbm/files/contracts/texas/texas-sla.pdf>. See also “SLA-DSL Services,” <https://www.verizon.com/business/terms/ca/dsl/>.

⁹⁹ Cloudflare Comments, p. 6; Connected Nation Comments, p. 4; Massachusetts Department of Telecommunications and Cable Comments, p. 6; David Clark and Sara Wedeman Comments, 19th unnumbered page; New America’s Open Technology Institute, p. 7; ViaSat Comments, p. 2.

¹⁰⁰ Cloudflare Comments, p. 7.

¹⁰¹ ViaSat Comments, p. 2.

¹⁰² 2016 *Public Notice*, *passim*.

data, as well as providing standardized opt-out requests.¹⁰³ New America's Ranking Digital Rights also points to the inadequacy of current ISP privacy statements and policies.¹⁰⁴ AARP is supportive of these objectives, however, rather than addressing the appropriate format for privacy policies at this time, AARP encourages the Commission to continue to include the link to the service provider's current privacy policy in the label and to address the format and content of ISP privacy policies, including opt-out provisions, in a separate rulemaking.

First Amendment Issues Raised by Some ISPs are a Red Herring

AT&T, CTIA, and Lumen raise First Amendment concerns with the proposed labels.¹⁰⁵ These service providers do not provide any new argument here, but instead speculate that the broadband labels will run afoul of the established case law associated with disclosure requirements and commercial speech. AARP does not believe that this is a reasonable conclusion. The broadband label requirements do not impose any explicit restriction on ISP's ability to advertise their product. In the same manner that food nutrition labels provide impartial facts to the consumer about the nutritional profile of food products, broadband labels will provide impartial and consistent information about broadband products. As noted by Connecticut Office of Consumer Counsel, et al., the type of speech covered by existing case law is not of the variety associated with broadband labels:

The Central Hudson test applies only to those regulations that restrict commercial speech rather than compel disclosure of factually accurate commercial information. Nat'l Elec. Mfrs. Ass'n, 272 F.3d at 115. Courts only apply the Central Hudson test to commercial disclosure cases where the only state interest advanced in favor of the disclosure is the gratification of "consumer curiosity." Int'l Dairy Foods Ass'n, 92 F.3d at 73; Nat'l Elec. Mfrs. Ass'n, 272 F.3d at 115 n. 6. Such is plainly not the case for broadband nutrition labels, which are to contain factual, uncontroversial commercial information and where the *IIJA* explicitly states that the state interest in requiring nutrition labels is to "protect consumers from unjust or unreasonable charges and practices." 47 U.S.C. § 201(b). As such, the requirement for providers to employ broadband nutrition labels is a legitimate government regulation of commercial speech under the First Amendment because there [is] a rational connection between the purpose of the disclosure and the means chosen to effectuate [its] broadband nutrition labels. Zauderer, 471 U.S. at 651.¹⁰⁶

¹⁰³ EPIC Comments, pp. 4-5.

¹⁰⁴ Ranking Digital Rights Comments, p. 2.

¹⁰⁵ AT&T Comments, pp. 7-8, CTIA Comments, p. 9, Lumen Comments, pp. 15-16.

¹⁰⁶ Connecticut Office of State Broadband, et al. Comments, p. 6.

This analysis is consistent with the Commission's earlier evaluation of this matter. In the 2018 *Restoring Internet Freedom Order*¹⁰⁷ the Commission noted:

The disclosure of information regarding broadband Internet access service characteristics, rates, and terms directly advances those statutory directives. Broadband Internet access service subscribers will be able to use the disclosed information to evaluate broadband Internet access service offerings and determine which offering will best enable the use of the applications and service they desire. This helps guard against the potential barrier to entry and deterrent to technological advancement that otherwise could be faced by entrepreneurs' and small business' innovative Internet applications and service offerings, which may be dependent on the technical characteristics of broadband Internet access service.¹⁰⁸

In conclusion on this matter, the Commission can reject these ISPs' baseless claims regarding the potential for broadband labels to violate First Amendment principles.

Conclusion

AARP's review of the opening comments supports the proposition that the 2016 broadband labels provide an appropriate foundation upon which the Commission can build to satisfy the Infrastructure Investment and Jobs Act's directions regarding consumer broadband labels. The Commission should not be distracted by parties who claim otherwise. As illustrated above, those who invite the Commission to stray from the statutory requirement offer no reasonable support for their position.

While the basic framework associated with the 2016 labels continues to be appropriate, the revisions described in AARP's opening comments and in this reply are necessary to account for both the requirements of Section 60504 of the *IJA* and changing technology and marketing practices. AARP encourages the Commission to update the labels using AARP's recommendations. In addition, AARP encourages the Commission to maintain and update the labels on an ongoing basis. As noted by the FCC's Consumer Advisory Committee (CAC) when it made its recommendations, the Commission should revisit the labels at least every two years.¹⁰⁹ By now revising the labels, and updating the labels over time, the Commission will satisfy the objectives outlined by Congress in Section 60504 of the Infrastructure Investment and Jobs Act.

¹⁰⁷ *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, January 4, 2018, ¶235-238.

¹⁰⁸ *Id.*, ¶237.

¹⁰⁹ FCC Consumer Advisory Committee Recommendation, Broadband Consumer Disclosures, October 26, 2015, p. 7.