

March 9, 2022

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2

Dear Ms. Dortch,

New America's Open Technology Institute ("OTI") submits the following comments in response to the Commission's proposal to create broadband consumer labels, as mandated by the Infrastructure Investment and Jobs Act ("the infrastructure law").¹ OTI strongly supports this proposal and we appreciate the opportunity to provide feedback. OTI has advocated for the creation of these labels since 2009, and we helped develop the Commission's 2016 labels as a member of the Consumer Advisory Committee.² Based on these experiences, we submit the following comments and recommendations:

1. Broadband disclosures are opaque, confusing, and intimidating
2. The labels must promote transparency, simplicity, and competition
3. The labels can promote digital equity and other pro-consumer goals
4. The content of the 2016 labels should be updated
5. The format of the 2016 labels should be updated
6. The Commission should anticipate long-term enforcement needs
7. Small providers are market leaders on transparency
8. The Commission should solicit more public feedback

¹ Notice of Proposed Rulemaking, CG Docket No. 22-2 (Rel. Jan 27, 2022).

² See "[Broadband Truth-in-Labeling](#)," New America Foundation (2009); Emily Hong et al., "[Broadband Truth-In-Labeling: Empowering Consumer Choice Through Standardized Disclosure](#)," OTI (July 2015).

1. Broadband disclosures are opaque, confusing, and intimidating

For nearly a decade, OTI has studied broadband plans across the globe in a series we call *The Cost of Connectivity*.³ Through this research, we have reached an inescapable conclusion: broadband disclosures in the United States are extremely opaque, confusing, and intimidating for the average consumer. Providers force consumers to navigate a maze of contract terms, ancillary fees, and hidden costs. It's an environment that's ripe for billing surprises. Indeed, in 2018, 69 percent of U.S. consumers reported experiencing an "unexpected or hidden fee" from a cable, internet, or phone provider.⁴

Our research has identified several pernicious and misleading billing practices in the U.S. broadband market, including but not limited to:

Equipment fees. Fees for the rental or purchase of modems and routers are common in the U.S. market. These costs are often difficult to compare and can be quite substantial. For example, modem rental fees can add an additional 75 percent to the cost of monthly internet service.⁵ Until two years ago, Frontier even charged customers a \$10 monthly router fee *even if they used their own router*.⁶

Installation and activation fees. These one-time fees are often difficult to discern in advertising, but can substantially increase the upfront cost of service. In our most recent study, CenturyLink, Charter, Comcast, and Verizon charged \$99 or more for installation in some cities, which can increase the advertised monthly rate by as much as 500 percent.⁷

Contract length fees. Some providers charge lower rates for longer contracts, which adds more complexity to purchasing decisions. Early termination fees are also commonplace. Providers can use these fees to lock-in customers by making it prohibitively expensive to switch providers.⁸

Data overage penalties. Data caps were an increasingly common feature in our most recent study—at least in the United States. The penalty for exceeding the data cap is not always clear and varies significantly depending on usage, creating a variable cost that can be particularly burdensome for low-income consumers.⁹

Promotional rates and bundles. While time-limited discounts can seem like a good deal, providers often fail to clearly disclose the price once the promotion expires. According

³ Becky Chao and Claire Park, "[The Cost of Connectivity 2020](#)," OTI (July 2020) ("Cost of Connectivity").

⁴ Consumer Reports, "[WTFee Survey 2018 Nationally Representative Multi-Mode Survey](#)" (Jan. 3, 2019).

⁵ Cost of Connectivity.

⁶ Jon Brodtkin, "[US finally prohibits ISPs from charging for routers they don't provide](#)," Ars Technica (Jan. 7, 2020).

⁷ Cost of Connectivity.

⁸ Id.

⁹ Cost of Connectivity.

to our research, the average U.S. plan jumped \$22.64 per month after the promotion ended, although this information was some of the most difficult to obtain. Providers also take advantage of the confusion to push consumers into bundling their internet service with television and phone services that can include their own set of hidden fees.¹⁰

Speeds. Consumers struggle to determine the speeds they are paying for. A recent survey by the Leichtman Research Group found that 45 percent of consumers have no idea what broadband speed they are supposed to be getting.¹¹ Providers contribute to this confusion by advertising maximum speeds rather than typical or minimum speeds. While this tactic might help upsell customers to more expensive speed tiers, it doesn't help people identify the speeds they actually need or are likely to experience.

Collectively, these elements create byzantine pricing schemes that are inscrutable to the average consumer. Even with a team of researchers, it took OTI almost a year to collect standardized data on these pricing schemes. Key information is often sidelined to terms and conditions pages, PDF attachments that are only accessible through small hyperlinks on the bottom of websites, or otherwise buried in the fine print of service agreements. None of this indicates a well-functioning market.

It's time for the Commission to end this Wild West atmosphere and bring some transparency to the broadband market. The Commission's proposal for an internet pricing label comes at a pivotal time for digital equity. OTI's most recent *Cost of Connectivity* study found substantial evidence of a broadband affordability crisis in the United States. Most U.S. cities in our dataset ranked among the world's most expensive, consistent with prior studies that found people can expect to pay more for internet service in the U.S. than in Asia or Europe.¹² Meanwhile, the COVID-19 pandemic has made internet connectivity a necessity for full participation in American life, economic opportunity, and education. The need for a consumer broadband label has never been more urgent.

2. The labels must promote transparency, simplicity, and competition

Label implementation will likely be time-consuming and involve complicated tradeoffs. During this process, the Commission must not lose sight of three core principles: transparency, simplicity, and competition. To stay grounded in these principles, the Commission should ensure that, at a minimum, the labels achieve the following objectives:

¹⁰ Geoffrey A. Fowler, "[How Internet and TV providers get away with jacking up your bill](#)," Washington Post (July 13, 2021).

¹¹ Leichtman Research Group, "[87% of U.S. Households Get an Internet Service at Home](#)" (Dec. 28, 2021).

¹² Cost of Connectivity.

The labels must help consumers understand what they are paying for. The need for transparency in the broadband market is difficult to overstate. Internet service plans are notoriously opaque, as OTI's research and other studies have consistently demonstrated.¹³ ISPs have long kept pricing data hidden in a black box, leaving consumers, researchers, and policymakers in the dark. In mandating the creation of the label, Congress has recognized the need to finally open this black box. The Commission must keep the fundamental need for transparency and consumer understanding at the forefront of the label's development. Informed consumers are empowered consumers, and clarifying the opaque terms and conditions associated with broadband service could make consumers less vulnerable to misleading marketing.

The labels must help consumers avoid hidden costs. The labels should simplify the needlessly complicated world of internet pricing. Consumers are currently expected to navigate a byzantine maze of ancillary fees, promotional rates, and fine print, making it difficult to determine total cost. People should not have to wait until their monthly bill arrives to know how much they owe. The label should end this guessing game by prominently displaying the total monthly cost, inclusive of ancillary fees, in a clear and simple manner. Bundles and promotional rates should not be so complex that ISPs cannot communicate the total cost to prospective customers.¹⁴ The Department of Transportation adopted similar rules for the airline industry to combat the proliferation of hidden ancillary fees for luggage.¹⁵

The labels must help consumers comparison-shop. A well-executed label should standardize information about broadband service in a manner that makes it easy for consumers to compare plans. This would foster competition by lowering the switching costs associated with gathering information and evaluation. President Biden endorsed the label in a recent executive order partly based on its ability to promote competition in this manner.¹⁶ However, we must acknowledge that comparison-shopping is a pipe dream for the many households that are only served by one provider. The Commission is taking steps to expand broadband options for many Americans, such as those living in multi-tenant environments¹⁷, and the label should be designed to complement those efforts.

¹³ Penelope Wang, "[Protect Yourself From Hidden Fees](#)," Consumer Reports (May 2019).

¹⁴ The complexity of bundles and promotional rates has been characterized as an intractable barrier to collecting pricing data, but this assertion lacks evidence. See Ex Parte of Public Knowledge, Common Cause, OTI, Next Century Cities, and the National Hispanic Media Coalition, GN Docket No. 19-285 (Jan. 21, 2020) at 5 ("The Commission staff expressed concern with the practical implementation of collecting price data from broadband providers... If experts at the Commission cannot parse the confusing nature of ISPs' pricing schemes, how are consumers expected to navigate hidden fees themselves?").

¹⁵ Mike M. Ahlers and Jeanne Meserve, "[DOT to airlines: No hidden fees](#)," CNN (April 20, 2011).

¹⁶ [Executive Order](#) 14036 § 5(l), 86 Fed. Reg. 36987, "Promoting Competition in the American Economy" (July 9, 2021).

¹⁷ Report and Order and Declaratory Ruling, GN Docket No. 17-142 (Rel. Feb. 15, 2022).

These objectives promote transparency, simplicity, and competition. However, there is one principle with which they are likely incompatible: flexibility. 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 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.

3. The labels can promote digital equity and other pro-consumer goals

In addition to the primary objectives discussed above, a well-executed label could yield secondary benefits that help consumers and advance digital equity.

Affordable Connectivity Program. The labels could strengthen consumer trust and participation in the Affordable Connectivity Program. Consumer trust in ACP is not a given. Many consumers have been burned by promises of low-cost deals during the pandemic that failed to materialize. Moreover, consumers are generally wary of telecom contracts as they fear hidden fees.¹⁸ Our *Cost of Connectivity* research demonstrates that this fear is warranted.¹⁹ Lack of transparency erodes consumer trust and can be a particularly strong deterrent for low-income consumers. ACP plans that are marketed with the typically opaque ISP disclosures could further dissuade eligible households. The labels could mitigate this mistrust by communicating the total cost of ACP service in a standardized, clear format. Moreover, the labels could include specific information about a provider's participation in ACP with instructions on where to find information about eligibility and enrollment. Given the program's relatively low rates of participation and public awareness, the label's potential to strengthen ACP should be seen as a significant benefit.²⁰

Deflationary Impact. The labels could put downward pressure on broadband prices. One of the lessons of E-Rate modernization is that price transparency can be deflationary. The per Mbps price for E-Rate service fell by 90 percent after the Commission enacted mandatory transparency that let schools know what others were paying.²¹ As former Chairman Wheeler recently explained, "The market is a wonderful enforcer if the purchaser

¹⁸ Marguerite Reardon, "[It Takes a Village: Solving the Broadband Adoption Problem in Rural America](#)," CNET (Feb. 23, 2022) ("His research on programs like Comcast's Internet Essentials found that low-income households are especially leery about outreach from internet service providers because they worry programs to help make service more affordable are a marketing ploy or scam with prices jumping after six months.").

¹⁹ *Cost of Connectivity*.

²⁰ Linda Hardesty, "[AT&T survey finds most consumers aren't aware of broadband subsidies](#)," Fierce Telecom (Jan. 26, 2022).

²¹ [Written Testimony](#) of Tom Wheeler Before the House Committee on Energy & Commerce (March 22, 2021) ("Wheeler testimony"); Wireless Telecommunications Bureau Report, "[E-Rate Modernization: Progress and the Road Ahead](#)" (Jan. 18, 2017).

is well informed and, for instance, knows what others are paying for a service.”²² A similar dynamic could occur if the labels allow consumers to identify better deals, negotiate cheaper rates, and force providers to respond with lower prices.²³

Customer Service. The labels could lead to meaningful improvements in customer service—an area where many ISPs have a long history of failure. For example, in 2012 the Commission fined Comcast for hiding information about a mandatory standalone internet plan and failing to properly train phone agents.²⁴ In 2021, Verizon agents reportedly misinformed consumers about their eligibility for the Emergency Broadband Benefit and tried to upsell more expensive plans.²⁵ In some cases, agents may have simply struggled to keep up with a provider’s myriad products. In other cases, customer service training that emphasizes upselling might deliberately incentivize agents to mislead consumers. The labels would mitigate this confusion by giving agents a simple, standardized resource to use in training and interactions with customers. The labels could also reduce the need to contact the provider for answers to simple questions, thereby easing the burden on customer service agents.

4. The content of the 2016 labels should be updated

We support the Commission’s proposal to use the 2016 label as a baseline for the new label. However, consumer behavior and the market have changed over the past six years in ways that necessitate content changes. Chiefly, the COVID-19 pandemic upended society in lasting ways. Internet usage skyrocketed during the pandemic as work and school shifted online.²⁶ Analysts expect high usage rates and elements of remote work to persist beyond the pandemic.²⁷ Additionally, the infrastructure law makes the label mandatory—an important change from 2016, when the label was voluntary.

The Commission should update the content of the labels to reflect the past six years of changes in society and federal law. Importantly, we do not recommend removing any key

²² Wheeler testimony at 11.

²³ Blair Levin, “Will ISP Price Transparency Be Deflationary?” New Street Research (Jan. 23, 2022).

²⁴ [News Release](#), Federal Communications Commission, “FCC Resolves Investigation of Comcast-NBCU Broadband-Related Merger Conditions; Ensures Consumer Access to Reasonably Priced Broadband Internet Service” (June 27, 2012).

²⁵ Geoffrey A. Fowler, “[The government has a program to cut your Internet bill. Verizon was using it to force you onto a new data plan.](#)” Washington Post (May 21, 2021).

²⁶ Stephen Shankland, “[Broadband use surged more than 30% during pandemic, industry group says.](#)” CNET (April 7, 2021); Mike Robuck, “[OpenVault: Covid-19 pandemic drives 51% spike in broadband traffic in 2020.](#)” Fierce Telecom (Feb. 10, 2021).

²⁷ Sara Fischer & Margaret Harding McGill, “[Broadband usage will keep growing post-pandemic.](#)” Axios (May 4, 2021); Jim Clifton and Ben Wigert, “[Bet on It: 37% of Desks Will Be Empty.](#)” Gallup (Dec. 7, 2021).

elements of the 2016 labels. Rather, the following recommendations indicate areas for improved content.

Total monthly cost. The new label should clearly identify the total monthly cost. As discussed above, consumers often struggle to identify total cost of service. This information was not part of the 2016 label, which includes disclosures on many important price elements but did not aggregate them into the all-in cost that many consumers are seeking. Failure to include the total cost is akin to the FDA nutrition labels not displaying the total calorie count for a serving of food.

Performance metrics. The 2016 label for fixed broadband instructed providers to identify “typical” download and upload speeds and latency, a vague term that could refer to average, median, or expected service levels. The new fixed label should require *median* speeds and latency, given that the Commission has already recognized medians as a preferable metric in this context.²⁸ Medians are less useful for mobile service, which is more variable, so the mobile label should require a *standardized range* for speed and latency. For example, the label could align with the Connect America Fund’s reporting ranges.²⁹ In addition, the Commission should issue specific guidance on how to measure speed and latency to prevent providers from using inaccurate methodologies. The Commission should also consider including jitter in the label’s performance metrics.

Privacy. A major change since the 2016 label’s creation was the adoption and subsequent repeal of the Commission’s broadband privacy rules. The 2016 label’s privacy section may have been designed with those rules in mind, but their repeal renders that design outdated. Nonetheless, broadband privacy remains an important concern. Recent studies by the Federal Trade Commission and Ranking Digital Rights outlined many ways in which ISPs fail to protect user data or disclose their privacy practices.³⁰ The Commission should determine whether it can add privacy elements to the new label, such as disclosures about user data collection, retention, and tracking.

Network management practices. The network performance section of the 2016 label leaves much to be desired. Our *Cost of Connectivity* research found that most ISPs do not adequately disclose network management practices.³¹ In some cases, network management was relegated to hyperlinks that were broken. The Commission should consider adding more relevant information to the label, such as the following table:

²⁸ Federal Communications Commission, “2016 Measuring Broadband America Fixed Broadband Report: A Report on Consumer Fixed Broadband Performance in the US” (2016) at 7.

²⁹ [Order](#), WC Docket No. 10-90 (Rel. July 6, 2018).

³⁰ Federal Trade Commission, “[A Look At What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Services Providers](#)” (Oct, 21, 2021); Zak Rogoff and Veszna Wessenauer, “[2020 Corporate Accountability Index: AT&T Inc.](#),” Ranking Digital Rights (accessed March 7, 2022).

³¹ Cost of Connectivity.

APPLICATION-SPECIFIC NETWORK MANAGEMENT PRACTICES

Name of Practice	When Triggered	Effect
video throttling	video downloads and video streaming	download speed limited to 1.5 Mbps
mobile hotspot	always	download speed reduced to 600 kbps

SUBSCRIBER-TRIGGERED NETWORK MANAGEMENT PRACTICES

Name of Practice	When Triggered	Effect
lower priority than highest tier plan	always	w/ congestion, decreased speed
heavy data user	> 50 GB	w/ congestion, decreased speed

5. The format of the 2016 labels should be updated

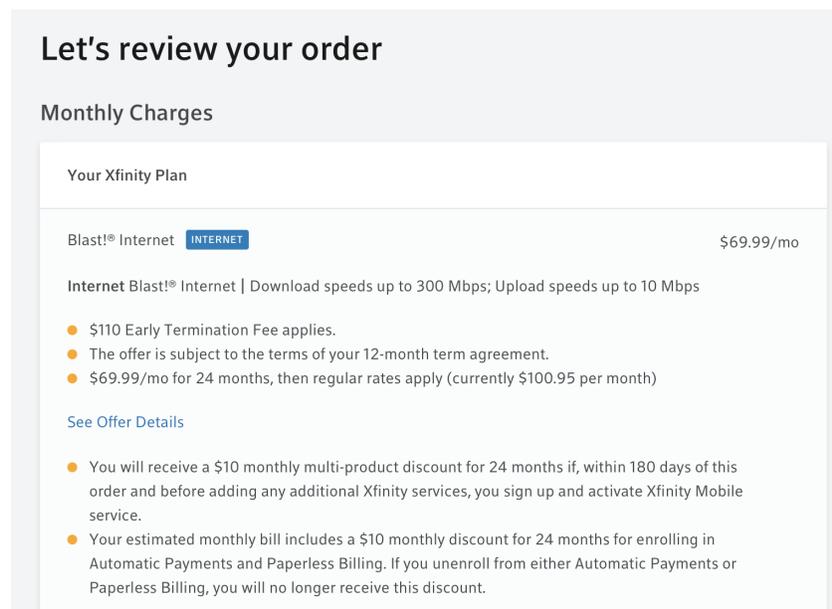
We support the Commission's proposal to mirror the overall design of the 2016 label, but recommend several formatting changes to ensure the labels are (1) prominently displayed, (2) available in multiple languages, and (3) machine-readable.

Display location. The label will not be effective if consumers do not see it. Therefore, the Commission should enact strong rules on display location. ISPs are adept at burying key details amid poor website design, so it is imperative that the rules articulate clear and specific requirements that providers cannot evade.

First and foremost, providers must be required to prominently display the label. This means it has to be more than just a hyperlink to a separate page or pop-up window. The label must be visible to the consumer when they are interacting with the provider's marketing materials and billing system. The best way to ensure prominence is to require display in multiple locations: on the provider's website and smartphone app, in marketing materials, at retail locations, and available for customer service agents to refer to in telemarketing calls. The Commission should also publish the labels collectively on a government website and integrate the labels into any relevant Commission resources, such as the forthcoming broadband availability maps.

Additionally, the Commission should adopt an expansive definition of “point of sale.” Some ISP ordering systems conceal key information until after the customer has entered address and credit card information.³² Although people should see the label at the point of final purchase, this should not be the *first* place they see it. The label must also be displayed before this step, in an upfront manner that allows prospective customers to compare plans by merely browsing the website, app, or other marketing materials. The label should also be displayed *after* final purchase, on the customer’s monthly bill. This will help customers remember what they signed up for, promote accountability, and provide a means of notifying the customer if the provider changes any of the label’s contents.

The importance of display location rules becomes apparent when examining provider websites. For example, this screenshot is from the final page of Comcast’s ordering system, which was dubbed “infuriating” by journalist Jon Brodtkin:³³



Source: Ars Technica

The page reveals critical information about speeds and an expensive early termination fee. “Refusing to tell a prospective customer what they're paying for until after they submit credit card information is simply ridiculous,” Brodtkin wrote.³⁴

³² Jon Brodtkin, “[Comcast hides upload speeds deep inside its infuriating ordering system](#),” Ars Technica (March 3, 2021) (“Brodtkin story”); Geoffrey A. Fowler, “[How Internet and TV providers get away with jacking up your bill](#),” Washington Post (July 13, 2021).

³³ Brodtkin story.

³⁴ Id.

Pop-up windows are frequently used to obscure information. The Washington Post recently took aim at pop-ups in Comcast's ordering system:

The screenshot shows a Comcast service page with several callouts:

- Turns out, to Comcast, \$90 does not actually mean \$90.** (Points to the price \$90.00/mo)
- Doesn't mention I could be charged up to \$100 more if I go over a data-use cap.** (Points to the 'Internet: Download as fast as 600 Mbps' section)
- There are clues hidden here.** (Points to the 'Pricing & Other Info' link)
- Even this price is temporary.** (Points to the '12 Month Term Agreement' text)

Other visible text on the page includes: "Download speeds up to 800 Mbps", "140+ Channels", "X1 STARTER PRO+ DOUBLE PLAY INCLUDES:", "Free Getting Started Kit and shipping for 24 months", "Includes \$10/mo automatic payments and paperless billing discount for 24 months", and "Add to Cart".

Source: Washington Post

Another example of pop-up disclosures from Optimum Internet:

The screenshot shows a large pop-up window titled "Optimum Offer Disclaimers" with the following text:

400 Mbps Internet Offer Disclaimer

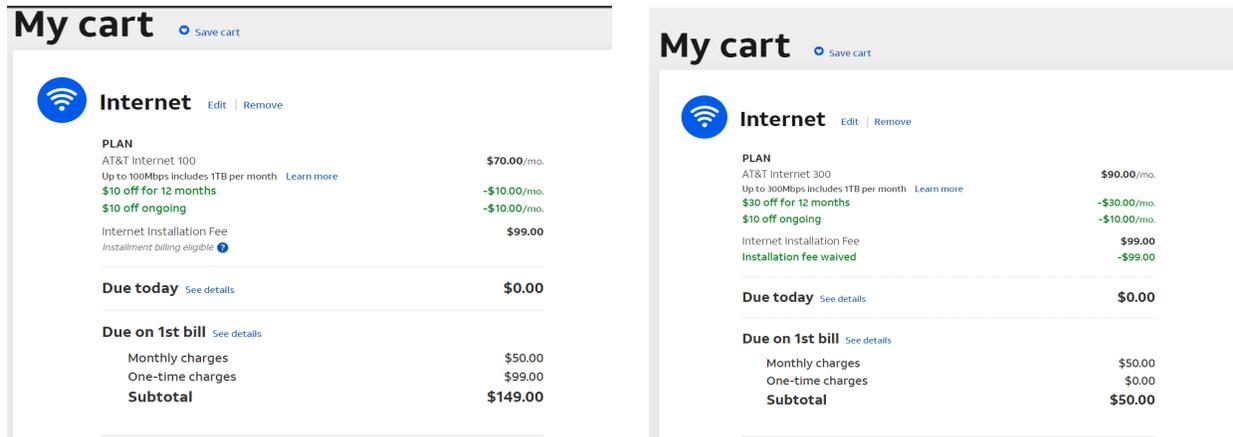
OFFER for new residential customers. Former accts; prev not in good standing or have disconnected svcs within past 30 days or for seasonal move not eligible.

Restrictions apply. Offer is not transferable, may not be combined w/other offers, is limited to advertised level of svcs, and is not available in all areas. Other terms & conditions apply. PRICE FOR LIFE (PFL): Applies to base price for Internet or Internet/video service, equipment charges and optional phone service. All other fees, surcharges and taxes subject to change. Must maintain all svcs at req'd level and be in good standing to maintain PFL pricing. PFL pricing applies to life of current account holder and is non-transferable. EQUIP & TAXES & FEES: Free standard installation with online orders. Modem-lease will be charged \$10.00 a month. Depending on location, some or all service and equipment rates, plus certain add'l charges, are subject to state and/or local fee. A Network Enhancement Fee of \$3.50, all other fees, equipment charges, surcharges and taxes will be added to the monthly bill. OPTIMUM INTERNET: Minimum system requirements and equipment configurations apply. Speed claims: Advertised speed for wired connection. Up to 400 Mbps Download/up to 40 Mbps Upload. Many factors affect speed, see optimum.com/speedfactors. Actual speeds may vary & are not guaranteed. Unlimited data subject to reasonable network management practices employed to minimize congestion or other service degradation. Free Smart Router available with leased modem. Limit 1 router per household. Terms & conditions apply. CONTRACT BUYOUT: Must provide copy of bill from competing provider, in same name and at same address, showing early termination fee (ETF) amount and that you were an active customer with the competitor at time of sale without a past due balance. Bill may be submitted by email to proconfirmation@optimum.com or by mail to Altice USA, Attn: Sales Support, 200 Jericho Quadrangle, 2nd Floor, Jericho, NY 11753. Once all documents are received, you will receive a bill re: @compnd.

At the bottom of the pop-up, there are three buttons: "View More Details", "Disclaimer", and "View More Details".

Source: OTI

This final example from our *Cost of Connectivity* study shows how poor design can even prevent comparison-shopping between plans from the same provider:



Source: OTI

The left-hand screenshot shows the cost of AT&T’s 100 Mbps plan, while the right-hand screenshot shows the cost of AT&T’s 300 Mbps plan. The faster plan actually costs two-thirds less than the slower plan due to a waived installation fee, but that information is not revealed until one of the final checkout screens. Consumers can only see this detailed billing once they submit an address and click through numerous windows.

Language accessibility. The label should also be accessible to non-English speakers. Translations are particularly important for historically marginalized communities that already face higher barriers to internet adoption and may be more proficient in other languages. It is imperative that the Commission gets these translations right, which means considering unique dialects or terms, as well as geographical and generational nuances.³⁵ The Commission sometimes failed to capture these nuances in recent translations for the Emergency Broadband Benefit.³⁶

Machine readability. 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

³⁵ [Letter](#) from Asian Americans Advancing Justice, Benton Institute for Broadband & Society, MediaJustice, OTI, Public Knowledge on the Affordable Connectivity Program, WC Docket No. 21-450 (Feb. 3, 2021).

³⁶ [Letter](#) from the American Civil Liberties Union, Benton Institute for Broadband & Society, Common Cause, Free Press, Joint Center for Political and Economic Studies, MediaJustice, National Hispanic Media Coalition, OTI, Public Knowledge, and UnidosUS on the Emergency Broadband Benefit Program, WC Docket No. 20-445 (Feb. 26, 2021).

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 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.

6. The Commission should anticipate long-term enforcement needs

The label requires more than just good design; it also needs strong enforcement. The 2016 label never got beyond the design phase, so the Commission should assume the new label will encounter teething problems once implementation becomes mandatory. Adequate enforcement will require substantial resources and a long-term commitment.

Verifying the label's accuracy could be a particularly significant enforcement challenge. For context, consider the 2016 label's design inspiration: the Food and Drug Administration's nutrition label, which continues to require vigilant oversight more than 30 years after its creation. Accuracy has become such a problem that Congress recently introduced the Food Labeling Modernization Act, which would update the food label to "ensure consumers can make informed dietary choices without being confused or misled."³⁷ The Commission's broadband availability maps offer another instructive example. The Commission has been working for many years to fix the maps, which rely on Form 477 datasets that are self-reported by ISPs and frequently flawed. Congress enacted the Broadband DATA Act to address the problem, but the Commission has yet to release more accurate maps. If this ongoing saga is any guide, the Commission should anticipate many years of enforcement related to the label's accuracy.

It is worth noting that the Commission has a checkered history with respect to broadband transparency enforcement. Nearly four years after enactment of the Commission's 2018 transparency rule, many ISPs have not published network management and performance terms on their websites.³⁸ In 2012, the Commission investigated and fined Comcast \$800,000 for violating an order to transparently offer standalone broadband service.³⁹ Although this is an example of successful enforcement, it occurred in the narrow context of an order that applied to a single company. It is unclear if the Commission has the capacity to conduct similar enforcement activities for an industry-wide label.

³⁷ Press Release, House Committee on Energy & Commerce, "[Pallone, DeLauro, Blumenthal, Whitehouse, and Markey Introduce Food Labeling Modernization Act](#)" (Aug. 4, 2021).

³⁸ Justin Perkins, "[A Lot' of Providers Haven't Complied with FCC Transparency Order, ISP Lawyer Claims](#)," Broadband Breakfast (Feb. 15, 2022).

³⁹ Press Release, Federal Communications Commission, "[FCC Resolves Investigation of Comcast-NBCU Broadband-Related Merger Conditions; Ensures Consumer Access to Reasonably Priced Broadband Internet Service](#)" (June 27, 2012).

Accordingly, specific resources should be allocated to label enforcement. For example, the Commission could appoint an ombudsman or similar resource to facilitate consumer complaints. Enforcement often relies on companies or advocacy organizations to raise concerns, which can leave average consumers disempowered. An ombudsman could create a more direct channel of communication between consumers and the Commission.

Additionally, the Commission can strengthen enforcement at the outset by creating standardized definitions of each label element. Vague or excessively flexible definitions could become loopholes that are exploited by providers, particularly with respect to pricing or network management practices. The Commission should be deeply skeptical of flexible label definitions for this reason.

Lastly, the NPRM asks several questions about enforcement authority as it relates to the 2018 transparency rule. The infrastructure law's directive to create the label is a sign that Congress views the 2018 transparency rule as a failure. Congress clearly indicated that broadband service is not adequately transparent and created new Commission authority to address the problem. While the Commission should continue to enforce all of its existing transparency rules, the 2018 rule should not constrain the Commission's ability to enforce the label. Congress has granted separate and clear authority for this purpose in the infrastructure law.

7. Small providers are market leaders on transparency

Although the broadband industry in general is notoriously opaque, many small providers have embraced transparency. A recent survey by the Institute for Local Self-Reliance found that smaller ISPs, particularly those that are municipally-run, were the most transparent about their prices and speeds.⁴⁰ Moreover, some ISPs already offer disclosures that align with the proposed label. For example, IdeaTek, a small provider in Kansas, displays easy-to-read boxes that clearly communicate price, speeds, and the provider's lack of equipment fees.⁴¹ The Commission should pay close attention to what small ISPs are already doing and look skeptically upon claims that the label would impose unreasonable burdens.

Some ISPs have found that simple, transparent pricing is a great way to differentiate themselves and attract customers who are dissatisfied with opaque alternatives. OpenCape, a Massachusetts-based provider, has suggested using the label to promote its nascent residential service.⁴² Monkeybrains emphasizes its straightforward speed commitment, noting "while many of our competitors quote *up-to* speeds, we guarantee speed

⁴⁰ Emma Gautier, "[Shopping for Broadband: Failed Federal Policy Creates Murky Marketplace](#)," Institute for Local Self-Reliance (Jan. 2022).

⁴¹ [IdeaTek Residential Fiber Offers](#) (accessed March 7, 2022).

⁴² Doug Dawson, "[Broadband Labels](#)," Pots and Pans Blog (Nov. 17, 2021).

minimums.”⁴³ Great Works Internet (GWI) also rejects “up-to” speeds and characterizes its transparent service as a “movement”:

*At GWI, we believe in transparency and trust. We believe that if you pay for a product, you should ALWAYS get that level of service and support. That is why we are introducing our Speed Guarantee. We guarantee that the fiber tier that you pay for will be at or above the speed requested; if not, call us up and we will happily take care of you. The days of “up to” speeds are over. Join the movement.*⁴⁴

Small ISPs trying to break into new markets have also eliminated many of the ancillary fees and onerous commitments that make other providers’ plans so difficult to navigate. Starry offers fixed wireless service with no data caps, a free router, no installation fees, and no long-term contract.⁴⁵ Monkeybrains also offers simple billing on a quarterly basis with no contracts.⁴⁶ All of this suggests that transparency is *good* for competition and not nearly as burdensome as larger providers have asserted. It also suggests that label compliance could be a relatively straightforward process for providers with simple billing schemes.

Accordingly, the Commission should proactively engage with small, competitive ISPs. These providers often lack the resources to participate in Commission proceedings, but their perspective could be especially valuable in the label rulemaking. The Commission should facilitate direct feedback opportunities such as listening sessions or field hearings that make it easier for these companies to participate.

Relatedly, the Commission should reject any calls to exempt small ISPs from the label. As outlined above, small ISPs are already market leaders on price and speed transparency. The Commission must ensure that *every* consumer benefits from the label, not just those who are served by the largest providers. Small ISPs disproportionately serve rural Americans, who deserve transparency just as much as other consumers. Moreover, Congress made clear in the infrastructure law that the label is mandatory for every ISP.

8. The Commission should solicit more public feedback

The instant proceeding is the Commission’s first public docket on broadband labeling. The 2016 label was developed without a public comment period and relied on Consumer Advisory Committee meetings that produced few, if any, records for the Commission to draw upon today. Moreover, the 30-day comment period is relatively short and may have foreclosed broader public participation. Nonetheless, we recognize and

⁴³ [Monkeybrains Internet Residential Offers](#) (accessed March 7, 2022).

⁴⁴ [Great Works Internet Offers](#) (accessed March 7, 2022).

⁴⁵ [Starry Internet Offers](#) (accessed March 7, 2022).

⁴⁶ [Monkeybrains Internet Residential Offers](#) (accessed March 7, 2022).

appreciate that the Commission is operating under an urgent deadline set by Congress in the infrastructure law. Accordingly, we encourage the Commission to continue soliciting feedback on the label through other avenues. For example, the public hearings mandated by the infrastructure law offer another opportunity for public input. The Commission should use the hearings to get feedback on the new label design before final rules are issued. The Commission should also conduct focus groups or other consumer research to evaluate the effectiveness of the label once it is implemented.

As a longtime proponent of pricing transparency and broadband labeling in particular, OTI strongly supports this proceeding. With careful design, execution, and enforcement, the label has the potential to meaningfully improve the consumer experience and advance digital equity in the United States. We look forward to working with the Commission, providers, and consumers to make broadband labeling a success.

Sincerely,

/s/

Joshua Stager
Claire Park
Amir Nasr

New America's Open Technology Institute
740 15th Street NW, Suite 900
Washington, D.C. 20005