

State of Stakeholder Opinion on the Federal Communication Commission's Broadband Transparency Inquiry

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Introduction

In January of 2022, the Federal Communications Commission (FCC or Commission) published a Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2] on broadband transparency. Although the Commission sought comments on a range of matters relating to improved transparency for broadband consumers, the focal conversation of this NPRM sought to understand whether it was appropriate to mandate modifications, or other general changes, to broadband label content and format. The second and third aims of the NPRM sought to examine where the labels should be displayed and how the Commission should enforce label requirements and label content accuracy. In response to this NPRM and request for comments, 44 entities and individuals offered input. Of these forty-four agencies, more than half ($n = 36$) were in support of broadband transparency for consumers. The majority of comments were initial comments, with only three reply comment filings. Several representative stakeholders, industries, and entities were selected to discuss prevalent sentiments and themes across all filings. This policy brief summarizes stakeholders' overarching state of opinion on broadband transparency.

Full Broadband Transparency

Content and Placements

Electronic Privacy Information Center's (EPIC)¹ comments focused specifically on the type of information that should be included in the "Nutrition" style label for broadband transparency. EPIC focuses on collecting consumer data and data disclosure on the "privacy" section of the "Nutrition" style label. Like several other stakeholders,² EPIC discusses the importance of requiring providers to offer transparent data disclosure statements at the granular

¹ Butler, A., Iorio, M., Weiner, J., Frascella, C. (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

² The following filer also focused on data disclosure and privacy: The New York State Public Service Commission (NYPSC).

level and other privacy-related matters (such as data retention and collection).³ EPIC also argues that the label requirement should be implemented for all plans for which there are active users.⁴

Similarly, Consumer Reports (CR)⁵ also offered recommendations that the Commission require labels for phones "on the initial point of sale, but also on each and every monthly bill that reflect any service changes" (p. 2). Moreover, CR suggests that all phone plans, "current and past plans should be displayed on a separate webpage, an archive, with their corresponding labels, within a reasonable backwards-looking timeframe" (p. 4). The label, according to CR, should also broadly include network management practices. For content requirements specifically, CR argues that ISPs "must disclose whether they engage in blocking, throttling, and paid prioritization" (p. 7).

Overall, as it pertains to content, full broadband transparency commenters felt strongly about the availability and clarity of information. In the context of *how* content should be presented on the label, CR indicated that "a mere link taking consumers away from the advertised plans to view the label is not sufficient" (p. 3). Information should be transparent and easy to understand on the label. Moreover, according to CR, "all advertised service plans on an ISP's website should display the label in close proximity" (p. 3).

Formatting

For commenters who strongly supported broadband transparency, many agencies argued for a uniform format of broadband information. AARP⁶ indicated that "the Commission should require that all fixed and mobile ISPs use a uniform format to enable side-by-side comparisons of either the fixed or mobile broadband offerings" (p. 3). AARP further asserts that "to ensure that the labels are informative, the Commission should require that ISPs provide information in language that is not unnecessarily complex" (p. 6). Several other entities also expressed similar stances.⁷

³ The Measurement Lab offered a similar opinion on the matter asserting that the Commission should be cautious of allowing ISPs to oversimplify summary statistics and data.

⁴ Consumer Reports (CR) offered a similar opinion on the matter.

⁵ Schwantes, J. (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

⁶ Certner, D., Roycroft, T. (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

⁷ Consumer Reports (CR), NYC's Office of Technology and Innovation, and CTIA.

In the majority opinion of broadband transparency, stakeholders agreed with the Commission to mirror the FDA's nutrition labels for foods so that consumers can evaluate various broadband considerations, such as pricing for broadband usage. AARP and several other commenters also provided sample text in the nutrition format, demonstrating how information could be clearly, and accessibly formatted for all consumers.⁸ While the City of New York's Office of Technology and Innovation (OTI)⁹ extended the conversation of accessible formats to explicitly consider an "accessible alternative for information displayed on printed materials or boxes" (p. 4). Their comments recommend accessible formats "such as braille or a QR code with a tactile indicator for blind or visually impaired consumers to feel where to point their camera" (p. 4).

Enforcement

In their submitted comments, the American Council of the Blind (ACB)¹⁰ also provided insight on the matter of accessible labels. They recommend the FCC utilize the Americans with Disabilities Act and the Web Content Accessibility Guidelines as "baseline of alternative formats, effective communication, and accessible online information for people who are blind, low vision, and Deafblind" (p. 2). They expand on the Commission's obligation to ensure accessible labeling for people with vision disabilities by reminding the Commission to "require broadband labeling information to be provided in accessible formats in all places it is required to be displayed for all other consumers (p. 2). In support of these accessibility requirements is the National Digital Inclusion Alliance (NDIA). NDIA emphasizes that despite current transparency regulations, many ISPs are not consistently offering pertinent information on their websites, such as "the amounts of monthly fees and surcharges routinely added to customers' bills" (p. 2). Their comments encourage the Commission to take a staunch approach toward ensuring compliance from companies by employing "a dedicated staff group with the responsibility capacity and tools" to enforce these rules (p. 4).

⁸ Adaptive Spectrum and Signal Alignment, Incorporated (ASSIA®) and National Broadband Mapping Coalition also indicated the type of information that should be collected along with a discussion of simple and appropriate formats.

⁹ The City of New York (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

¹⁰ Rachfal, C. (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

Also, on the matter of enforcing these proposed broadband transparencies, the New York City's (NYC) OTI offers their feedback on how best to enforce these regulations. OTI recommended regular auditing and reporting, as well as using consumer complaints, to examine broadband companies' reporting accuracy, such as "variances between the disclosed performance metrics and actual performance as experienced by individual consumers, as well as inconsistencies with "normal" network variations" (p. 4). Since the recommendation of the Commission and consumer advocacy companies seek to utilize the FDA's nutrition label, OTI argues that comparatively, when "food companies [provide] providing inaccurate or false information on nutrition facts labels [the products] can be forced to pull products from the market until corrective action is taken" (p. 4). OTI concludes that Internet Service Providers (ISPs) should also be subject to similar penalties that include "forfeitures assessed as continuing violations until such time as the violations are cured" (p. 4) to deter noncompliance.¹¹ Similarly, on the matter of compliance, EPIC argues for creating "a new complaint category to facilitate consumer feedback on its labels and a repository of current and historical plan labels" (p. 3). According to EPIC, the Commission "should impose forfeitures for misleading labels proportionate to the number of days between the misleading publication and corrective notification and the number of users in the misrepresented plan" (p. 4).

Stakeholders' Arguing for Limited (or Modified) Broadband Transparency

CTIA, which is comprised of telecommunications industry stakeholders, argued in their comments¹² that the labels should be simple. They also indicate that the labels should align with the rulings' proposal to "ensure that consumers have an easy way to understand broadband Internet access service providers' (ISPs') prices, performance, and network practices in a simple-to-understand format that does not overwhelm consumers with too much information." (p. 6). This sentiment aligns with most commenters who advocate for clearer information. However, CTIA's opinions diverge from the majority thereafter as it relates to *full* transparency.

¹¹ Connecticut Office of State Broadband within the Connecticut Office of Consumer Counsel and Office of Telecommunications and Broadband within the Department of Energy and Environmental Protection's Bureau of Energy and Technology Policy offered similar opinions on enforcement of broadband transparency.

¹² Leggin, S., Power, T., Bergmann, S., Bender, A. (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

CTIA, NCTA¹³, and U.S. Telecom offer dissenting opinions on full broadband transparency, specifically what plans should be covered under this label requirement. NCTA argues that "labels should only be required for plans that are available to new customers, and not for legacy or grandfathered plans" (p. 3), which differs from filers who support full consumer transparency for current and new customers. They argue that this requirement for legacy or grandfathered plans should not apply because "customers on legacy or grandfathered plans have already made an informed decision and selected a plan that suits their needs and expectations, forgoing the opportunity to switch to one of the many new plans that broadband providers offer" (p. 7). They further argue that this 2016 labeling transparency was specifically designed to aid consumers in comparison shopping but assert that legacy or grandfathered plans do not fall into this category because they cannot be "shopped." In agreement with NCTA and U.S. Telecom, CTIA argues that the Commission should not require providers "to notify their current customers of changes to terms in the labels after their initial display" (p. 8). They do not believe that the labels should address "other information related to the ongoing customer relationship" (p. 8).

Yet, it is worth noting that allowing consumers on legacy or grandfathered plans to be excluded from transparency labeling does suggest that they would be "forgoing the opportunity to switch to one of the many new plans that broadband providers offer" (NCTA, 2022, p. 7), and as a result, unable to decide if they are truly on the best plan available to them. NCTA suggests it deprives these consumers of the ability to make informed decisions. Yet NCTA continues to assert that since providers already have "existing communications in place to convey [service information to their customers]," it is not necessary for the Commission to "require providers to use the labels as a tool for communicating service information to their customers, e.g., by requiring the label to be included in subscriber bills or requiring direct notification of any changes to labels" (p. 3).

In a similar focus to NCTA, U.S. Telecom¹⁴ argued that ISPs should be required to only produce broadband transparency labels for existing plans. They indicate that requiring a broadband label for a "legacy plan that is no longer being offered will create confusion and frustration for consumers and not allow them to [comparatively] shop between real offers" (p. 4).

¹³ Chessen, R., Morris, S., Goldberg, V. (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

¹⁴ Eisner, D. (2022, March 9). Comments submitted in response to Notice of Proposed Rulemaking (NPRM) [CG Docket No. 22-2]. Federal Communications Commission: Washington, D.C.

In contrast to NCTA, U.S. Telecom indicates that if an existing customer wanted to compare their current plan to plans available in the market, they would do so via "their billing information" (p. 4). CTIA offered similar sentiments. CTIA indicates that "more detailed information is available elsewhere should the consumer decide to go further, for example, from a provider's sales representatives or on the provider's website" (p. 8). Therefore, further clarity via the labels is not necessary. This difference in position between NCTA, U.S. Telecom, and CTIA regarding existing customers' access to broadband plan information to comparatively shop illustrates a need for uniformity around broadband transparency. Nonetheless, U.S. Telecom further states that requiring labels makes "things unnecessarily complex and unclear for consumers" (p. 4). They extend this argument and assert that "requir[ing] providers to continually update their labels as promotional offers change, burden[s] providers without any clear countervailing consumer benefit" (p. 4).

Although NTCA, U.S. Telecom, and CTIA collectively concluded that the legacy plan reporting requirement was unnecessary, several consumer advocacy commenters disagreed, including Consumer Report (CR) and EPIC. The CR's comments argue that "all current and past plans should be displayed on a separate web page—an archive—with their corresponding labels, within a reasonable backwards-looking timeframe" (p. 4). EPIC argues that omitting legacy plans from this labeling requirement causes challenges for individuals on legacy plans to make informed decisions. EPIC furthers that beyond shopping, legacy plan reporting should be available for consumers because "the business practices that a consumer is currently subjected to are relevant privacy considerations, even outside the context of purchasing a new plan" (p. 12). As individuals should be able to assess whether they are satisfied with the current privacy contract they have under their legacy plan, EPIC also recommends including these plans in the reporting requirement.

However, in the comments of U.S. Telecom and CTIA, these entities propose an alternative to broadband labels for every product. U.S. Telecom stated that instead of "adding redundant length to every broadband label," they suggested a link "to the provider's Affordable Connectivity Program (ACP) landing page" (U.S. Telecom, 2022, p. 2). U.S. Telecom further argues that "changing the labels from a safe harbor to a requirement should not otherwise alter how providers disclose the labels as the policies underlying the labels have not changed" (p. 3). U.S. Telecom concludes with an assertion that a "publicly available, easily accessible link"

should be sufficient to comply with this updated regulation (p. 3). CTIA supports a similar plan and suggests "including a link on the broadband labels about the Affordable Connectivity Program ("ACP") but urges the Commission not to require detailed information about the ACP on the face of the labels themselves" (p. 10). Though this plan may ensure the broadband label is simple to read, text links may not be the most accessible option. Also, this option is only feasible if consumers have access to computers to view the full ACP page. Further research on this recommendation to determine whether it is appropriate is needed.

Although this policy brief focuses on a handful of stakeholders, these entities were selected based on overarching themes and overall opinions reflected across the 44 filers. The responding comments to this NPRM illustrate that many stakeholders are interested in ensuring that consumers' have transparent broadband labeling, information, and data disclosures. Even the dissenting opinions of interested stakeholders restrict their arguments to *which* products should be subjected to labeling but do not negate the importance of including the broadband transparency information on products that the 2016 ruling mandated. Some of the key takeaways from advocates of broadband transparency include improving labels to include data disclosures, privacy, and collection; comparative shopping for all customers – existing and new; enforcement comparable to FDA's policies for food labeling; and protecting vulnerable populations. In contrast, the key takeaways from the dissenting stakeholders focus on avoiding cumbersome reporting and restricted application of the labeling policy to new customers. Overall, the state of opinion for broadband labeling overwhelming leans towards greater transparency and clarity from ISPs.

Citation

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