



March 24, 2022

Via Electronic Submission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

Re: Empowering Broadband Consumers Through Transparency (CG Docket No. 22-2)

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“the Chamber”) appreciates the opportunity to submit reply comments on the Federal Communications Commission’s (“the Commission”) Notice of Proposed Rulemaking on the above referenced proceeding (“Notice”), which would require the display of broadband consumer labels to provide consumers information on broadband internet access service (“BIAS”) plans.¹

As an overarching consideration, the Chamber believes well-designed broadband consumer labels can provide useful information to consumers consistent with a light-touch regulatory approach and the First Amendment. We, therefore, offer the following recommendations for the Commission to consider:

First, broadband consumer labels should be simple to understand by consumers and remain focused on information necessary for consumers to make an informed choice when purchasing BIAS plans. Section 60504 of the Infrastructure Investment and Jobs Act (“IIJA”) directs the Commission to “promulgate regulations to require the display of broadband consumer labels, *as described* in the Public Notice of the Commission issued on April 4, 2016” in addition to information relating to introductory rates (emphasis added).² The Chamber recommends that the Commission generally utilize the broadband consumer labels adopted by the Commission in 2016, which will provide consumers with sufficient information to make informed decisions. We are concerned with proposals some commenters offered that would mandate ISPs provide additional information beyond IIJA’s statutory requirements, including more

¹ Empowering Broadband Consumers Through Transparency, Notice of Proposed Rulemaking, FCC-22-7 (rel. Feb. 7, 2022) (“Notice”).

² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (IIJA).

detailed information on network management practices and performance metrics.³ Mandating the provision of even more information risks overloading and confusing consumers, thus adversely impacting the overall objective of the rulemaking.⁴

Second, the Commission should consider costs to implement any new broadband consumer labeling requirements and take measures to reduce the compliance burden on impacted entities. For example, broadband consumer labels should be accessed electronically, considering that requiring paper copies in thousands of ISP locations and retail outlets would present a significant burden on ISPs.⁵ Moreover, in an era when terms and conditions and other important consumer information can be shared through QR codes, email, text communications, and other forms of electronic delivery, it makes little sense to require the physical display of broadband consumer labels. ISPs regularly update plans and offer new products to consumers and find that electronic updates are far more effective and efficient than reprinting and distributing such items to retail outlets and other locations.⁶ Consumer confusion could also arise if a retail outlet inadvertently provides an older label.

Third, while the Chamber supports utilizing the 2016 broadband consumer labels, we also recommend that ISPs be given the flexibility to voluntarily provide additional information on the label that may be helpful to consumers and reduce confusion.⁷ This could be additional information on optional ISP service offerings or links to educational information to help minimize consumer misconceptions, particularly on performance characteristics and network management practices, which may be challenging for many consumers to fully understand.⁸

Fourth, the Chamber notes that ISPs already have substantial incentives to provide consumers with information regarding BIAS plans given the need to compete for consumers in the marketplace and engender the trust of consumers. Moreover, it is critical that the Commission recognizes that, outside of broadband consumer labels, consumers can access information on BIAS plans from numerous sources, including from retailers, consumer reviews, third party reviews from the press, and marketing and advertising. These information sources are all basic building blocks to inform consumers on a wide range of products, not just BIAS plans.

Finally, the Chamber appreciates the Commission's consideration of the impact of broadband consumer labels on the First Amendment's long-standing

³ See Open Technology Institute comments at 7-8.

⁴ See USTelecom comments at 5.

⁵ See AT&T comments at 21.

⁶ Id.

⁷ See NCTA comments at 15-16.

⁸ See NCTA comments at 16.

protections of commercial speech.⁹ The Chamber believes that any laws that regulate commercial speech merit careful review by agencies and courts considering they “skew the marketplace of ideas in the government’s preferred direction.”¹⁰ We concur with some commenters that mandatory broadband consumer labels raise First Amendment concerns.¹¹ The Commission should conduct a careful review of the impact of mandatory consumer broadband labels on the First Amendment and appropriately tailor any mandatory labels to avoid any constitutional pitfalls.

We look forward to collaborating with the Commission to ensure a robust marketplace for broadband internet access services. If you have any questions, please reach out to Matt Furlow at mfurlow@uschamber.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Furlow', with a stylized flourish at the end.

Matt Furlow
Policy Director
Chamber Technology Engagement Center
U.S. Chamber of Commerce

⁹ *Notice*, FCC-22-7 at 6830, para 23.

¹⁰ Brief for the Retail Litigation Center et al. as Amici Curiae Supporting Petitioners at CTIA – The Wireless Association v. City of Berkeley, No. 19-439 (U.S. Oct. 31, 2019).

¹¹ *See* AT&T comments at 7; NCTA comments at 4.