

**Before the  
FEDERAL Communications COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF NEW AMERICA’S OPEN TECHNOLOGY INSTITUTE**

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## I. INTRODUCTION

New America's Open Technology Institute (OTI) submits these comments in response to the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the proceeding to create broadband consumer labels, as mandated by the 2021 Infrastructure Investment and Jobs Act (IIJA).<sup>1</sup> OTI is a strong supporter of this proposal and appreciates the opportunity to provide additional feedback. We have advocated for the creation of broadband consumer labels since OTI proposed the concept in 2009,<sup>2</sup> helped develop the Commission's 2016 labels as a member of the advisory committee, and engaged with the Commission throughout this current proceeding.<sup>3</sup>

The FNPRM requests information on a broad range of details regarding how the Commission can ensure the labels are successful in their important goal: informing consumers about their broadband choices. The Commission is rightly concerned about including the appropriate information to meet consumer needs while being careful to not go overboard in a manner that creates additional confusion. Based on our experience, we can respond to a number of the questions the Commission lays out in the FNPRM.

## II. ACCESSIBILITY AND LANGUAGES

OTI was among the advocates who asked the Commission to ensure that labels will be presented in a number of appropriate languages, and we appreciate the Commission's attention to this matter.<sup>4</sup> Given the crucial nature of broadband services to accessing life-altering opportunities, we believe the Commission should go as far as possible in requiring providers to make the label available in languages other than those in which they market their services. Marketing decisions are made with regard to a provider's bottom line and an understanding of what languages are necessary to reach the largest number of consumers as cheaply as possible.

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<sup>1</sup> Further Notice of Proposed Rulemaking, CG Docket No. 22-2 (17 November 2022), <https://docs.fcc.gov/public/attachments/FCC-22-86A1.pdf>.

<sup>2</sup> See Emily Hong et al., "Broadband Truth-in-Labeling," New America Foundation (2009) [https://newamericadotorg.s3.amazonaws.com/documents/2009\\_Truth\\_in\\_Labeling.pdf](https://newamericadotorg.s3.amazonaws.com/documents/2009_Truth_in_Labeling.pdf); "Broadband Truth-In-Labeling: Empowering Consumer Choice Through Standardized Disclosure," OTI (July 2015), <https://static.newamerica.org/attachments/4508-broadband-truth-in-labeling-2/Broadband%20Truth-in-Labeling%202015.c9ecf56cc29149488ad3263779be60b0.pdf>.

<sup>3</sup> See, e.g., Comments of New America's Open Technology Institute (9 March 2022), <https://newamericadotorg.s3.amazonaws.com/documents/86e6ea1b-9e83-4b49-8fe9-792ac8136c42.pdf>.

<sup>4</sup> *Id.*

This means that even if a provider chooses to market their services only in the most common or dominant language, there could be large numbers of individuals in a given service area that rely on other languages. Yet these individuals also need broadband services and understandable consumer labels could be their only viable way of obtaining reliable information on competing internet plans.

OTI supports the Commission requiring that providers accommodate as many consumers as possible by making labels available in multiple languages in a community based on the Census Bureau's American Community Survey, and mirroring the languages available locally for certain federal benefits and services. Websites like CDC.gov and Healthcare.gov, for example, are available in 15 non-English languages, including Arabic, Chinese, Farsi, Polish, Spanish, and Tagalog.<sup>5</sup> Because broadband access is essential for all U.S. residents, it is only reasonable to expect the most critical information to be available in the same set of languages as essential government services. If, as the Commission intends, the information on the label is kept to a clear, accessible minimum, the burden on providers of providing a mere 15 translations should be entirely reasonable.

### **III. PRICE INFORMATION**

The Commission's questions on price information are well-founded and reflect a key goal of broadband consumer labels: providing consumers with the information they need without overwhelming or confusing them. The tendency of providers to offer a confusing constellation of discounts that makes comparison shopping difficult is a root cause of the problem that broadband consumer labels are designed to solve in the first place. In the interest of properly informing consumers as to what they can expect to pay, OTI urges the Commission to require information on available discounts and location-specific taxes. This would also have the benefit of illuminating discounts that consumers may not know exist.

The common provider practice of "bundling" services to provide an overall discount must not become a way for providers to hide the true cost of internet service; thus, it is important that bundled services are also subject to labeling requirements to the extent that they impact the cost of the broadband access service. Research from Consumer Reports points out that some

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<sup>5</sup> See cdc.gov, healthcare.gov.

companies do not include a cost breakdown of their bundles on monthly bills that makes it clear what the consumer is paying for broadband.<sup>6</sup> By breaking down the individual prices of different aspects of a bundle, for instance the price of TV, phone, and internet service included, a broadband consumer label for bundled services can help consumers determine whether bundling actually poses a better deal, or if mixing and matching plans from different providers would better suit their needs.

#### **IV. PERFORMANCE INFORMATION**

##### **A. Speed**

OTI reiterates our past support for using median speeds and latency to identify a fixed broadband plan's "typical" speed.<sup>7</sup> Given that mobile service is more variable than fixed, the mobile broadband label should instead use a standardized range for speed and latency. The Connect America Fund's reporting ranges continue to serve as a ready guide.<sup>8</sup> The Commission should also be sure to issue guidance that defines a specific methodology for providers to measure and report speeds, ensuring that speed information is accurate and facilitates meaningful comparison shopping.

Additionally, it may be unclear to many consumers what a particular internet speed means for them, and whether it fits their needs. The Commission should consider providing links (or more information via an interactive "expand" function, see section VI: Format Issues) to information on what level of speed is appropriate for certain levels of internet use. For example, 25mbps download speeds may serve one person well, but larger households using more devices may benefit from higher speeds.

##### **B. Reliability and Cybersecurity**

The Commission is right to consider including metrics for reliability and cybersecurity in the label. Both concepts are important to consumers as a measure of the true quality of a

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<sup>6</sup> James K. Willcox, "You May Be Paying Too Much for Your Internet." Consumer Reports (17 November 2022), <https://www.consumerreports.org/electronics-computers/telecom-services/you-may-be-paying-too-much-for-your-internet-a7157329937/>.

<sup>7</sup> Comments of New America's Open Technology Institute (9 March 2022),

<https://newamericadotorg.s3.amazonaws.com/documents/86e6ea1b-9e83-4b49-8fe9-792ac8136c42.pdf>.

<sup>8</sup> Order, WC Docket No. 10-90 (Rel. July 6, 2018) [https://docs.fcc.gov/public/attachments/DA-18-710A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/DA-18-710A1_Rcd.pdf)

provider's service; an otherwise attractive plan with high speeds and a fair price would not be as attractive knowing that it provides unreliable service or poses a risk to a consumer's privacy and security.

These issues are, however, highly complex, and we encourage the Commission to implement reliability and cybersecurity metrics in a way that is easily understood. The FNPRM mentions as a potential reliability metric a monthly percentage indicator of how often the service is available or unavailable.<sup>9</sup> This is an excellent case in point for consumer understanding. Does 90% network availability constitute a favorable score? It may be a solid percentage on an exam, but experiencing service interruptions for a full 10% of the month would be highly inconvenient, particularly if that 10% of downtime occurred during key hours for the user. A 70% score could seem average or even favorable, when in fact service that is down 30% of the month is severely compromised. This metric alone doesn't tell the typical consumer much, except perhaps in comparison to other plans. Cybersecurity standards are even more complex, failing to lend themselves to simple metrics.

In light of these issues, OTI urges the Commission to explore creating standards or grades for reliability and cybersecurity that would allow the label to display a simple message rather than complicated metrics. For instance, a plan could earn five stars or an A+ rating, which are easily grasped by consumers and allow them to benefit from the Commission's expertise rather than making educated guesses or digging through dense additional information.

## **V. NETWORK MANAGEMENT AND PRIVACY**

The label's inclusion of key ISP network management practices, including blocking, throttling, and paid prioritization, is highly important. OTI does not consider the current requirement of a link to the provider's own web page explaining network management practices sufficient to help consumers understand the implications of these practices, or even find the right information.

First, our own research has identified the difficulty of finding information on network management practices via provider websites—noting that ISPs often do not provide adequate

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<sup>9</sup> Further Notice of Proposed Rulemaking, CG Docket No. 22-2 (17 November 2022), <https://docs.fcc.gov/public/attachments/FCC-22-86A1.pdf>.

information on network management practices, sometimes even displaying broken links for more information on the subject.<sup>10</sup> It would be a mistake to rely on providers to give consumers straightforward, accurate information on network management practices given that these practices mostly constitute limits to a user’s service.

Second, the term “network management practices” is unlikely to mean much to a typical consumer, sounding more like behind-the-scenes technical details than anything that is likely to affect one’s experience—making it likely that many consumers might skip this link and not become aware of provider practices that could affect their service significantly.

We recommend the Commission include information on network management practices on the label, with a link to clear, straightforward information on the Commission’s website that explains the significance of certain practices. Below we include a visual from our prior comments<sup>11</sup> on this issue showing a potential display for network management practices:

### APPLICATION-SPECIFIC NETWORK MANAGEMENT PRACTICES

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

### 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

<sup>10</sup> The Cost of Connectivity 2020, New America’s Open Technology Institute (15 July 2020), <https://www.newamerica.org/oti/reports/cost-connectivity-2020/>.

<sup>11</sup> Comments of New America’s Open Technology Institute (9 March 2022).

Similarly, we recommend the Commission include information on providers' user data collection, retention, and tracking practices, as these implicate consumer privacy and are again unlikely to be noted if they are merely included as links.

## **VI. FORMAT ISSUES**

Recognizing the above recommendations could add to the label's length, OTI supports the Commission exploring the utility of an interactive label—particularly the ability to “expand” sections for more information. Consumers are increasingly accustomed to clicking on a “+” or similar marker to receive more detail without leaving the web page. The ability to explore additional info without clicking a link to another web page makes it easier for consumers to access the label's information, and thus we believe this interactive approach would be preferable to links for more information, where possible.

Ultimately, however, what we consider useful and accessible for consumers cannot match the lived experience of the people who will make use of these labels to inform purchasing decisions. Thus, OTI supports the Commission's idea to use focus groups and surveys to test the label's utility and to make improvements to its design. User experience (UX) design experts who focus on “human-centered design” would also be a valuable resource for the Commission to consult, offering perspectives as to how the label could best serve the people it is designed to help.

## **VII. CONCLUSION**

Broadband consumer labels are a long-overdue step towards true transparency in the opaque and confusing process of shopping for internet service. OTI commends the Commission for its focus on delivering on the IJJA's mandate for broadband consumer labels, and urges a continued focus on consumer needs. OTI reiterates the following principles we believe broadband labels must embody:

- **Labels must help consumers understand what they are paying for.** The information included on the label may be a consumer’s only hope to get an accurate picture of what they will pay without digging through fine print and complicated contracts. The label needs to be straightforward and digestible while including an accurate picture of what consumers will pay and what they receive in return, as well as any available discounts that may lower their total payment.
- **The labels must help consumers avoid hidden costs.** Ancillary fees, hidden or not, add a huge amount to the price of internet service.<sup>12</sup> Consumers need to know up front about any ancillary fees, including what those fees cover and whether they might be avoided.
- **The labels must help consumers comparison shop.** The opaque nature of shopping for broadband is a double blow to consumers: understanding what any one plan will really cost is challenging enough, but understanding enough to meaningfully compare competing plans is an order of magnitude more difficult. Broadband labels that facilitate comparison shopping promote competition. The Commission’s guidelines and enforcement must ensure that the labels are consistent, not allowing providers’ call for “flexibility” to result in opaque labels that merely reinforce the status quo. For example, the Commission should set a standard methodology for measuring and reporting speeds so that comparisons can be made effectively.

We thank the Commission for the opportunity to provide further comment in this matter, and would be happy to assist with any further questions about the implementation of broadband consumer labels.

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<sup>12</sup> See, e.g. The Cost of Connectivity 2020, “Focus on the Fees.” OTI (15 July 2020), <https://www.newamerica.org/oti/reports/cost-connectivity-2020/focus-on-the-fees>