

FCC Consumer Advisory Committee

Recommendation Regarding Consumer Broadband Labels

WHEREAS:

The FCC Consumer Advisory Committee (CAC) was asked to build on the CAC's extensive work in 2015/2016 on consumer broadband disclosures and develop recommendations on how the Commission should define "Point of Sale" for purposes of the label requirement and does the type or form of disclosure vary depending upon the nature of the consumer's interaction with the service provider, *e.g.*, in-store face-to-face with a sales representative, over the phone, on the web, at kiosks, etc. The CAC was also asked to consider how introductory rates impact a consumer's decision to purchase broadband service and how should that inform the label's display of such rates.

In 2016, the Commission issued a Public Notice approving, "with modifications, consumer broadband labels proposed by the CAC,¹ which is composed of both industry and consumer interest representatives, including those representing persons with disabilities.² There were two versions of the label—one for providers of fixed broadband service and one for providers of mobile broadband service. The labels were to operate as a safe harbor format for broadband providers after enhanced transparency requirements adopted by the Commission took effect."

In 2017, the Commission revised the transparency rule to require providers to disclose information about their service either on a publicly available website or by submitting it to

¹ See 2016 Public Notice. Attached to this Notice of Proposed Rulemaking in Appendices B and C are the labels approved by the Bureaus and announced in the 2016 Public Notice. The 2016 Public Notice was an outgrowth of the enhanced transparency requirements resulting from the 2015 Open Internet Order. See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5666-5681, paras. 154-181 (2015) (2015 Open Internet Order). Among other things, the transparency rule required that broadband providers disclose information "sufficient to allow consumers to make informed choices," which could include the information expressly required by the enhancements, *id.* at 5681, para. 182, yet the Commission declined to mandate the exact format for transparency disclosures, but instead established a voluntary safe harbor for the format and nature of the required disclosures. See *id.* at 5680, para. 179; see also 47 CFR § 8.3 (2015). The enhanced transparency rule was upheld in 2016 by the D.C. Circuit in *United States Telecom Association v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

² 2015 Open Internet Order, 30 FCC Rcd at 5680-81, paras. 179-180 (finding that the CAC's experience with consumer disclosure issues makes it an ideal body to recommend a disclosure format that should be clear and easy to read—similar to a nutrition label—to allow consumers to easily compare the services of different providers and noting that the CAC is uniquely able to recommend a disclosure format that both anticipates and addresses provider compliance burdens while ensuring the utility of the disclosures for consumers). The disclosure format was to be accessible to persons with disabilities, and the CAC was to consider whether to propose the same or different formats for fixed and mobile broadband providers.

the FCC through the FCC's filing system. The Broadband Label safe harbor was also eliminated.³

On November 15, 2021, the President signed into law the Infrastructure Investment and Jobs Act directing 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 (DA 16–357), to disclose to consumers information regarding broadband Internet access service plans."⁴ It further provides that labels "shall include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period."⁵

Point of Sale

WHEREAS:

- The labels should be concise, accurate, and easy to understand and provide only the information necessary for consumers to make informed decisions about available broadband services. They must be available to consumers at the beginning of the shopping process and the Point of Sale definition must include this shopping period.
- Points of Sale include online, phone, company specific retail store, reseller locations, and kiosks. Service providers have more control over some alternate sales channels than others. For example, there are thousands of reseller locations that may be limited in the ability to provide web or paper access to labels. One solution may be to develop best practices or a good faith effort to ensure compliance with disclosure requirements.
- Online access to labels should be intuitive and easy to find. It is reasonable to recommend that the labels be accessed with the marketing materials. Requiring a visual representation, conspicuous link, or icon of the label at the Point of Sale, including on provider's websites in close proximity to advertised plans and marketing materials as per our recommendation, might address this concern.

³ *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 444, paras. 228-29, 445, para. 231 (2017) (*Restoring Internet Freedom Order*); *see also* amended transparency rule at 47 CFR § 8.1(a) ("Any person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.").

⁴ The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (*Infrastructure Act*).

⁵ *Id.* *See also Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, GN Docket No. 14-28, Public Notice, 31 FCC Rcd 3358 (CGB/WCB/WTB 2016) (2016 Public Notice).

- Small service providers may have more limitations than larger providers.

NOW, THEREFORE, THE CAC RECOMMENDS:

1. The Commission should define Point of Sale as the shopping period beginning at the time the consumer seeks to determine the best broadband product for their needs and including the point at which the consumer makes the purchase. The Point of Sale occurs online and through alternate sales channels (e.g., company retail location, reseller location, or over the phone). The label shall be available at each Point of Sale.
2. The required disclosure of the label is satisfied on a provider's website and at the alternate sales channel.
 - a. On the provider's website, disclosure at the Point of Sale shall, at a minimum, be a conspicuous link or icon in close proximity to the advertised service plan that connects the consumer to the relevant label. Depending on the capabilities of the provider, additional ways of displaying the label on the provider website may include:
 - i. A conspicuous, tabular, visual representation of the label placed in close proximity to the advertised service plans (accessed without requiring further website navigation);
 - ii. A web link embedded in the package description or in an icon placed in close proximity to the package description;
 - iii. A web link with a descriptive title placed in close proximity to the package description in a comparable font size; or
 - iv. Any other manner that is consistent with the above and that clearly directs consumers to the relevant label.
 - b. For alternate sales channels, the Point of Sale disclosure shall be provided through an alternative means, and may include:
 - i. Directing the consumer to the specific web page on which the label appears, for example, by giving the customer a card with the printed URL or a QR code;
 - ii. Orally providing information from the label to the consumer over the phone;
 - iii. Providing a physical copy of the disclosure; or
 - iv. By providing a link to the proper downloadable materials (electronically or in-person), if accessible by the consumer.
3. The required disclosure must be effectively communicated in a manner that complies with applicable accessibility requirements, including Web Content Accessibility Guidelines, 2.1, Level AA, when conveyed electronically.

4. The Commission should consider allowing smaller providers additional time to comply with the requirements.

Introductory Rates

WHEREAS:

- Introductory rates can influence a consumer’s decision to purchase broadband service and the ultimate monthly rate (*i.e.*, “month-to-month” rate) once the introductory rate expires also has an impact on the purchasing decision.
- The month-to-month (non-introductory) rate (sometimes known as the rack rate) is the rate the customer will pay for stand-alone broadband service at the expiration of any introductory rate (more commonly referred to as a promotional rate or discounted rate).
- The “month-to-month” rate should always be displayed conspicuously.
- Providers should also have flexibility on how to include information on the label sufficient to inform consumers whether an introductory rate is available.

NOW, THEREFORE, THE CAC RECOMMENDS:

5. That the Commission require that the month-to-month rate for stand-alone broadband service be displayed on the Consumer Broadband Label. If applicable, available promotional or discounted rates and their duration shall be provided via a link or noted on the label, so long as the month-to-month rate is listed conspicuously as the price of the service.

Adopted: April 26, 2022 (one Member abstaining, Next Century Cities)

Respectfully submitted:

Steve Pociask, Chair
Debbie Berlyn, Vice Chair
FCC Consumer Advisory Committee