

ALERT

FCC Proposes Broadband “Nutrition” Label Requirement

February 4, 2022

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On January 27, 2022, the Federal Communication Commission (FCC or Commission) moved to implement a provision of the bipartisan Infrastructure Investment and Jobs Act by adopting a Notice of Proposed Rulemaking (NPRM) that proposes to require that broadband internet access service providers display, at the point of sale, labels intended to disclose certain information about prices, introductory rates, data allowances, broadband speeds, and management practices, among other things.

The NPRM responds to a Congressional directive that the Commission “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.” That 2016 Public Notice had proposed forms for labels that could be used as a safe harbor to comply with broadband transparency requirements, which were broadly styled to resemble the U.S. Food and Drug Administration’s (FDA’s) nutrition labels used on food packaging. That safe harbor was eliminated as unnecessary in 2017 when the Commission made a number of other changes to broadband reporting obligations; the Infrastructure Act seeks to revive direct to consumer labeling and do so in a way that is mandatory, rather than as a safe harbor.

The NPRM proposes to adopt the 2016 labels, but seeks comment (1) on whether the Infrastructure Act requires or permits the Commission to depart from the labels described in the *2016 Public Notice*, and (2)

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asks whether broadband service offerings and consumers’ use of broadband services have changed sufficiently since the Commission approved labels in 2016 to necessitate modifications to the labels’ content and format, or whether there are any other reasons to change the content or format of the labels. In particular, the NPRM identifies a number of specific topics for potential inclusion in the labels, including information about:

1. introductory rates,
2. service levels and bundles,
3. additional content such as limitations on the use of multiple devices,
4. the Affordable Connectivity Program, and
5. direct notification of term changes.

The NPRM also seeks comment on (3) where the labels should be displayed to best inform consumers; (4) enforcement issues related to the label requirement, including how the Commission should ensure the accuracy of label content; and (5) implementation issues, including the time by which broadband providers should be required to display the labels. Finally, the NPRM also proposes (6) to ensure that any required labels are accessible to persons with disabilities, and that any labels advance equity in the provision of and access to digital communications services and products for all people of the United States.

The item is set for publication in the Federal Register on February 7, 2022, meaning that the deadline for comments is March 9, 2022, and the deadline for reply comments is March 24, 2022.