

Telecom, Media and Technology Alert

Akin Gump
STRAUSS HAUER & FELD LLP

Federal Communications Commission – Broadband Labeling Requirements

January 31, 2023

Late last year, the Federal Communications Commission (“FCC” or the “Commission”) released a Report and Order (the “Order”) promulgating new disclosure requirements for broadband providers in the form of a label to be visible at the point of sale. This client alert provides a summary of the requirements providers must follow in formulating and displaying their labels. We also include [here](#) a high-level checklist, which provides a guide to the content requirements applicable to providers when creating their labels. Do not hesitate to reach out to us with questions about how the rules apply to your organization.

Introduction

The Infrastructure Investment and Jobs Act directed the FCC to impose a requirement on broadband internet service providers (“providers”) to label their broadband service plan offerings in a way that provides clear information to consumers about their service and pricing. The Commission conducted several public hearings and solicited comment on how consumers shop for and compare broadband plans and how to most effectively label such plans. The FCC’s final rule requires a label akin to the Food and Drug Administration’s (FDA) “nutrition facts” label. Among other things, the label must include information on pricing, service speed and latency, and links to further information on topics like privacy and network management.

Who Must Comply

All providers of mass-market retail broadband internet access service, or any service that the Commission finds to be a functional equivalent thereof, must comply with the labeling requirement. “Mass-market” services are those marketed directly to the public, usually on generally available terms and prices. These are ordinarily services directly marketed to residential users and small businesses. This includes internet service providers (ISPs) participating in the E-Rate and Rural Health Care programs. The Commission specifically excluded enterprise and special access service offerings that are sold to larger entities and negotiated individually, and businesses that purchase broadband for their patrons’ access (e.g., coffee shops).

Contact Information: If you have any questions concerning this alert, please contact:

Jennifer L. Richter
Partner

jrichter@akingump.com
Washington, D.C.
+1 202.887.4524

Gregory W. Coutros
Associate

gcoutros@akingump.com
Washington, D.C.
+1 202.887.4014

Nicole E. McFarland
Associate

nmcfarland@akingump.com
Washington, D.C.
+1 202.887.4508

What Plans Must Be Labeled

Labels must be created for all broadband plans currently being marketed to consumers. Providers need not produce labels for legacy plans that are currently being used but are not available to new customers.

Format of the Consumer Label

Broadband labels must follow a uniform format similar to FDA nutrition labels (see the FCC's model label below). The label must be prominent and readable, though there is no particular font size requirement.

Broadband Facts	
Provider Name	
Service Plan Name and/or Speed Tier	
Fixed or Mobile Broadband Consumer Disclosure	
<hr/>	
Monthly Price	[\$]
This Monthly Price [is/is not] an introductory rate. [if introductory rate is applicable, identify length of introductory period and the rate that will apply after introductory period concludes]	
This Monthly Price [does not] require[s] a [x year/x month] contract. [only required if applicable; if so, provide link to terms of contract]	
<hr/>	
Additional Charges & Terms	
Provider Monthly Fees	[\$]
[Itemize each fee]	
One-time Fees at the Time of Purchase	[\$]
[Itemize each fee]	
Early Termination Fee	[\$]
Government Taxes	Varies by Location
<hr/>	
Discounts & Bundles	
Click Here for available billing discounts and pricing options for broadband service bundled with other services like video, phone, and wireless service, and use of your own equipment like modems and routers. [Any links to such discounts and pricing options on the provider's website must be provided in this section.]	
<hr/>	
Affordable Connectivity Program (ACP)	
The ACP is a government program to help lower the monthly cost of internet service. To learn more about the ACP, including to find out whether you qualify, visit affordableconnectivity.gov .	
Participates in the ACP	[Yes/No]
<hr/>	
Speeds Provided with Plan	
Typical Download Speed	[] Mbps
Typical Upload Speed	[] Mbps
Typical Latency	[] Ms
<hr/>	
Data Included with Monthly Price	[] GB
Charges for Additional Data Usage	[\$/GB]
<hr/>	
Network Management	Read our Policy
Privacy	Read our Policy
<hr/>	
Customer Support	
Contact Us: example.com/support / (555) 555-5555	
<hr/>	
Learn more about the terms used on this label by visiting the Federal Communications Commission's Consumer Resource Center.	
fcc.gov/consumer	
[Unique Plan Identifier Ex. F0005937974123ABC456EMC789]	

Accessibility

Labels must be made accessible for people with disabilities at all points of sale. Providers must comply with the requirements of the Americans with Disabilities Act and the Department of Justice’s [accompanying guidance](#), including giving primary consideration to an individual’s choice of alternate format (e.g., audio recordings, braille materials, large print, etc.). The FCC recommends that labels utilize the regularly updated guidance in the Web Accessibility Initiative’s [Web Content Accessibility Guidelines](#) and the American Printing House for the Blind’s [Design Guidelines](#).

Language

Labels must be available in English as well as any other language the provider uses to market its services in the United States. For instance, if a provider includes Spanish marketing materials on its website, it must provide a Spanish label.

Machine Readable Format

In addition to the labels themselves, providers will be required to include on their website the content of each label in a “machine-readable” format, defined as a format that can be easily processed by a computer absent human intervention without the loss of any semantic meaning. The information should be compiled in spreadsheet format at a dedicated URL that includes the data for all of a provider’s labels, and plans should be differentiated using their unique identifier (see section V.i., *infra*). Providers must publicize their URL in the transparency disclosures already required by section 8.1(a) of the Commission’s rules. Further FCC guidance on complying with this requirement is forthcoming.

Content of the Consumer Label

Content requirements are the same for both fixed and mobile broadband providers.

Provider Name

Labels should begin by listing the provider’s name.

Service Plan Name

The plan name must also be placed at the top of the label. Providers are free to name their plans as they choose—plans may be named for their speed tier (e.g., “300 Mbps Plan”), but do not have to be.

Pricing

Labels must display the base monthly price for the broadband offering, without including taxes, fees or product bundles.

Introductory Rates: If the rate is introductory, the label must prominently indicate (1) the rate’s time-limited nature, including either the length of the introductory period or its end date, and (2) the rate that will apply after the introductory period is over. Further details may be provided via a link on the label.

Contracts: Providers offering a discount for contract plans must include the length of the term on the label, as well as any applicable early termination fees.

Additional Monthly Charges and One-Time Fees: Labels must include an “Additional Charges & Terms” section, under which all additional monthly charges and one-time fees should be listed. Charges and fees listed in this section should be named simply and accurately.

- Monthly fees include all discretionary charges not mandated by a government, including fees to recoup for costs related to government programs (e.g., Universal Service Fund contributions) and fees for equipment rental.
- One-time fees include deposits, installation fees and equipment purchase charges.
- Any applicable early termination fees should be listed in this section, along with a link to a full explanation of what triggers the fee.
- This section must include a statement that taxes will apply and may vary by location.

Discounts: The base rate should be the retail monthly broadband price and not include any discounts for things such as paperless billing, autopay or bundling. Providers are free to include a link on the label to further information about available discounts, and to include this information in other marketing materials.

Affordable Connectivity Program (ACP): Labels must indicate whether the provider participates in the ACP and include the following statement: “The Affordable Connectivity Program (ACP) is a government program to help lower the monthly cost of internet service. To learn more about the ACP, including to find out whether you qualify, visit www.affordableconnectivity.gov.” The link must be active.

Performance Information

Labels must include typical upload and download speeds and latency. Those providers participating in the FCC’s Measuring Broadband America (MBA) program may disclose their speed and latency results from the program. Fixed broadband providers that do not participate in the MBA may use the MBA methodology to measure speed and latency, or may use data from internal testing, consumer speed tests or other reliable sources. Mobile broadband providers may use their own or third-party testing or, if they don’t have access to network performance data, they may use a Typical Speed Range representing the range of speeds and latency that most of their consumers can expect, for each technology and service tier offered. At this time, providers must display latency by speed tier based on MBA methodology or other relevant tests, though further comments are being solicited on that structure (see section XI, *infra*).

Data Included with Monthly Price

Overage fees for data use in excess of plan limits should be listed in this section, and must note the increment of data and the specific charge. Any other consequences, like loss of service for the remainder of the billing cycle or a reduction in service or speed, must also be included. Further information can be included via a link in the label to the provider’s website.

Network Management Practices

Labels must include a link to providers’ network management practices. (Note that in order to comply with existing transparency rule requirements, providers must either

include information about blocking, throttling and paid prioritization on their websites or report the information to the FCC.)

Privacy Policy

The label must include a link to the provider's privacy policy.

Glossary:

The label must include a link to the FCC's website where a glossary of terms used on the label will be housed. The link is forthcoming.

Unique Identifier

Each plan must be given a unique identifier to be included on the label. The identifier should begin with either an "F" for fixed plans or an "M" for mobile plans, followed by the provider's FCC Registration Number, and then a string of 15 alphanumeric characters identifying the specific plan, as chosen by the provider. The identifier should appear on the label without spaces, e.g., "F0009876543123ABC456DEF789." Identifiers must be unique to each plan and cannot be reused after a plan is discontinued.

Label Display Location

Labels must be displayed at the point of sale. Point of sale is defined in terms of both time and location. The relevant time is the moment a consumer begins researching the broadband plans available to them at their location (i.e., after the consumer shares their address with the provider). The relevant location is the provider's website, retail store or any other channel used to sell the service, including over the phone. Labels must be provided without requiring consumers to log in or create an account.

On webpages, the full label itself must be displayed in close proximity to the advertisement or listing of the associated plan. In other sales channels, such as in-store or over the phone, providers must either ensure that consumers will be able to access the relevant labels online or provide a hard copy. The FCC suggested that stores might hand consumers a card with a link or QR code to a webpage where the labels are available, so long as they ensure that the consumer has internet at home to access the link or is able to use in-store internet to do so. The information contained in the label can be communicated orally over the phone. Notably, providers are directed to document each time they direct a consumer at a non-internet sales channel to a label, and retain that documentation for two years.

For E-Rate and Rural Health Care program participants, the point of sale is when the provider submits its bid; therefore, labels must be included in materials supplementing a bid. If service is provided without the submission of a bid, the provider must include the label in the first invoice.

Following the purchase of a broadband plan, the relevant label must be easily accessible in the consumer's online account.

Archiving

As plans are discontinued, providers must archive labels that are no longer in use, as well as data supporting their content and the information at any included links, for a

minimum of two years. If the FCC or an existing customer of the plan requests access to the archived label, it must be provided within 30 days.

Timeframe for Compliance

With two exceptions noted below, providers with more than 100,000 subscriber lines must comply with the above requirements within six months of publication in the Federal Register that the Office of Management and Budget (OMB) has completed its review of these rules. Providers with 100,000 or fewer subscriber lines must be in compliance one year after OMB approval.

The following two requirements will go into effect for all providers one year after OMB approval: (1) accessibility of the label in online consumer accounts and (2) the availability of label data in a machine-readable format.

Label Requirements and the FCC's Transparency Rules

The FCC's already-existing transparency rules under section 8.1(a) and these new broadband labeling requirements constitute independent obligations. Accordingly, providers must be aware that compliance with one does not inherently satisfy the obligations of the other.

Enforcement Issues and Consumer Complaints

The Order does not adopt any new enforcement rules. In addition, the Commission rejected an "education" period during which time enforcement action related to the broadband label would be put on hold. Accordingly, enforcement of the broadband label requirements will begin once the new rules become effective.

Further Notice of Proposed Rulemaking

While the Order establishes sweeping rules to implement the broadband label requirements, the Commission did withhold establishing rules on a number of issues and the instead issued a Further Notice of Proposed Rulemaking to gather more information related to the specific topics discussed below. Comments were due January 17 and Reply Comments are due February 14.

Specifically, the Commission is seeking further comment on requirements related to accessibility and language, the level of detail to require regarding pricing and discounts, the appropriate metric to measure speed latency and whether to add disclosures of reliability and cybersecurity information. Additionally, the Commission is seeking comment on whether to require the inclusion of information about network management and privacy on the label, as opposed to just linking to providers' policies, as well as several formatting, display and archiving issues.

akingump.com