

February 15, 2023

SUBMITTED ELECTRONICALLY VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

**Re: Empowering Broadband Consumers Through Transparency, CG Docket No. 22-2
Clarification of Broadband Labeling Requirement for E-rate and Rural Health
Care Program Services**

Dear Ms. Dortch:

The undersigned parties (the Coalition of Concerned Competitors) are writing in support of the request for clarification of the *Broadband Label Order*¹ submitted by a group of service providers regarding the applicability of the labeling requirement to services provided in the E-rate and Rural Health Care universal service programs.² Specifically, we ask the Commission to clarify that the broadband labeling requirement applies only to broadband Internet access services offered in the E-rate and Rural Health Care programs, and not to non-mass market enterprise services that are customized or individually negotiated.

In the *Broadband Label Order*, the Commission states that the requirement to provide broadband labels applies only to broadband Internet access services as directed by Congress in the Infrastructure Investment and Jobs Act.³ The statute uses the definition of “broadband Internet access service” from section 8.1(b) of the Commission’s rules, which is “a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints.”⁴ Therefore, the label requirement applies only to broadband services provided on a mass market basis.

¹ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (Nov. 17, 2022) (*Broadband Label Order*).

² Joint Petition for Clarification or Reconsideration filed by Cincinnati Bell Telephone Company LLC d/b/a altafiber Network Solutions, Crown Castle, Metro Fibernet, LLC, and Uniti Fiber LLC, CG Docket No. 22-2 (Jan. 17, 2023).

³ *Broadband Label Order*, FCC 22-86, ¶16 (citing The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021)).

⁴ *Id.*; 47 C.F.R. § 8.1(b).

The Commission then found that “enterprise service offerings or special access services are not ‘mass-market retail services,’ and therefore, not covered by our label requirement.”⁵ Because these services typically are offered “through customized or individually negotiated arrangements,” they are not mass market retail services and the Commission found that they are not subject to the broadband label requirements.⁶

The Commission next declined to interpret the definition of broadband Internet access service in section 8.1(b) to exclude all services provided in the E-rate and Rural Health Care programs.⁷ As such, service providers that offer broadband Internet access service as defined in that rule section, i.e., mass market retail broadband services, must provide broadband labels. Providers that offer E-rate and Rural Health Care services through customized or individually negotiated arrangements, therefore, would not be offering mass market retail services and would not be required to provide labels.

In a footnote to this discussion, however, the Commission states, “We require E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC competitive bidding processes, whether or not such provider defines their offered service as an ‘enterprise’ service.”⁸ The Commission should clarify that it did not intend with this footnote language to create a labeling requirement for non-mass market services offered in the E-rate and Rural Health Care programs.

In fact, the Commission repeats similar language elsewhere in the order, stating, “[W]e require E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC Program competitive bidding process.”⁹ However, the Commission makes clear in this portion of the order that non-mass market E-rate and Rural Health Care services are exempt from the requirement, stating, “Whether the service actually falls under the standards for enterprise services and special access services addressed in paragraph 17 above, and not the service provider’s name for the service, will determine whether the labeling exemption for enterprise services and special access services applies.”¹⁰

⁵ *Broadband Label Order*, FCC 22-86, ¶17.

⁶ *Id.*

⁷ *Id.* ¶18.

⁸ *Id.* ¶18 n.36.

⁹ *Id.* ¶96.

¹⁰ *Id.* ¶96 n.215.

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We believe that the overbroad language in footnote 36 was meant to address the same point raised in footnote 215 – whether a service is a mass market retail service or an enterprise service is determined by the manner in which the service is offered, and not by the service provider’s name for the service. We ask the Commission to clarify that this is the case, and that the broadband label requirement does not apply to any enterprise service offered on a customized or individually negotiated basis in the E-rate and Rural Health Care programs.

Respectfully submitted,

CHARGER Access, LLC

Corcom Communications, Inc.

FirstLight Fiber, Inc.

INCOMPAS

MetTel

Missouri Network Alliance dba Bluebird Network, LLC

Sonic Telecom

Unite Private Networks, LLC

WANRack, LLC

Zayo Group, LLC