

**Before the
OFFICE OF MANAGEMENT AND BUDGET
Washington, DC 20503**

INFORMATION COLLECTION)	
BEING SUBMITTED FOR REVIEW)	OMB 3060-XXXX
AND APPROVAL TO THE OFFICE)	FR ID 156362
OF MANAGEMENT AND BUDGET)	

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

To the Office of Management and Budget:

I. INTRODUCTION

NTCA–The Rural Broadband Association (NTCA), a trade association representing more than 850 small, locally operated rural broadband service providers, hereby submits comments in the above-captioned proceeding. Pursuant to Section 60504 of the Infrastructure Investment and Jobs Act (IIJA),¹ the Federal Communications Commission (FCC) initiated a proceeding to promulgate rules governing informational labels that are intended to help consumers shop for broadband services.² As an active participant in the underlying proceeding, NTCA worked closely with its members and other stakeholders to develop its understanding of how companies will implement the new rules, and through filed comments and *ex parte* meetings shared those

¹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (IIJA).

² *Empowering Broadband Consumers Through Transparency: Notice of Proposed Rulemaking*, Federal Communication Commission Docket No. 22-2 (2022).

perspectives borne of on-the-ground experience with the FCC.³ Pursuant to the Paperwork Reduction Act (PRA) of 1995, the FCC is now required to seek comment on the proposed collection of information contemplated by the new rules.⁴ NTCA welcomes the opportunity to submit these comments as the Office of Management and Budget (OMB) considers the FCC’s information collection estimates.

II. DISCUSSION

The FCC seeks comment on how it can “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁵ NTCA appreciates the FCC inquiry as mandated by the PRA. However, NTCA submits that the OMB’s ability to undertake a full and complete inquiry is compromised because certain of the underlying assumptions in the current burden estimates conflict with both prior FCC statements as well as generally accepted economic principles. Specifically, the FCC proposes that the Total Annual Capital, Operation, and Maintenance Costs for all respondents will be \$0.00 (zero dollars).⁶ Yet, these projected zero-dollar capital, operational, and maintenance cost estimates cannot be reconciled with FCC estimates that Total Annual “In House” Costs for compliance (industry wide) will exceed \$60,000,000 (sixty-million dollars); the “zero-dollar” estimate does not account for principles of real economic costs. Moreover, *arguendo* economic costs (including implicit and opportunity

³ See, *i.e.*, *Joint Comments of NTCA and WISPA–Broadband Without Boundaries (WISPA)*, CG Docket No. 22-2 (Mar. 9, 2022); *Joint Reply Comments of NTCA and WISPA* (Mar. 24, 2022); *Joint Comments of NTCA and WISPA on the Further Notice of Proposed Rulemaking* (Feb. 16, 2023); *Joint Reply Comments of NTCA and WISPA on the Further Notice of Proposed Rulemaking* (Mar. 16, 2023).

⁴ *Empowering Broadband Consumers Through Transparency: Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 22-2, FCC 22-86 (rel. Nov. 17, 2022) (“*Broadband Labels Order*”).

⁵ 88 Fed. Reg. 47878.

⁶ *Empowering Broadband Consumers Through Transparency: Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 22-2, FCC 22-86, OMB Control No. 3060-XXXX (Jul. 2023) (OMB Justification).

costs) can be ignored, the zero-dollar estimate does not reflect explicit outlays or payments that are likely to be incurred by small businesses such as NTCA members. These unique needs of small providers were envisioned and articulated clearly by the FCC in the underlying administrative Order, which based an extended six-month implementation period for small providers on the reasoning that those firms would need to retain outside assistance to facilitate compliance with the new rules.⁷ These burdens fall squarely within the mandate that requires the OMB to minimize information collection burdens for businesses with fewer than 25 employees. The ability of the OMB to meet that mandate, however, is frustrated by the lack of an accurate baseline from which the actual burden can be ascertained and potential relief can be considered.

The broadband label requirements include the creation of a label (similar in form to a food nutrition label) that must meet specific formatting and content requirements. The FCC's initial PRA Worksheet listed no fewer than 11 information points that each label must minimally include.⁸ In addition to production costs, entities subject to the rules must also:

1. Display labels on their websites and at alternate sales channels such as retail locations, and read labels over the phone during relevant telephone sales interactions.
2. Produce labels that are accessible for people with disabilities and non-English speakers.
3. Provide labels via a customer's online account portal.

⁷ Broadband Labels Order at para. 118.

⁸ The PRA Worksheet enumerates the following information that must be included on the label: Monthly price information (including introductory rate and contract plan information); any additional provider discretionary monthly charges (e.g., equipment rentals) and one-time fees (e.g., activation fees); Government taxes will apply; links to any available billing discounts and pricing options for bundled services; Information about the Affordable Connectivity Program (ACP) and whether the provider participates in the ACP; performance information (specifically download and upload speeds and latency measurements); the amount of data included with the monthly price and the charges for additional data that exceeds that allowance; links to the provider's network management policies (e.g., blocking, throttling, and paid prioritization) and privacy policies; customer support contact information; a link to the FCC's website containing a glossary of terms used on the label and other related information; and a Unique Plan Identifier. *See*, Supporting Statement OMB 3060-XXXX Broadband Consumer Labels 3 13 23, at 4 (PRA Worksheet).

4. Maintain an archive of labels for no less than two years from the time the referenced service is no longer available to new customers.
5. Provide the labels in machine readable format.

In the underlying Order, the FCC recognized that certain of these tasks “may require more time for providers that are less likely to have in-house attorneys and compliance departments to assist in preparing their broadband labels, and thus will need to engage outside legal resources to implement several proposed requirements.”⁹ This language mirrors the joint comments filed by NTCA and WISPA in the underlying proceeding: “Unlike large companies, the vast majority of the Joint Commenters’ members do not have in-house attorneys and compliance departments to assist in preparing their broadband labels and will need to engage outside legal resources to implement several proposed requirements.”¹⁰ The FCC accordingly explained in the PRA Worksheet, “Thus, the Commission concluded that additional time was warranted for these providers that are less likely to have in-house attorneys and compliance departments to assist with their broadband labels and will need to engage outside legal resources to implement several proposed requirements.”¹¹ However, even as the FCC predicts that small companies will “need to engage outside legal resources,” the estimate submitted for OMB review in the instant proceeding predicts annual capital, operations, and maintenance costs for *all companies* at \$0.00. These inherently contradictory conclusions must be resolved before a proper OMB analysis of the burdens can be concluded.

⁹ See, *Empowering Broadband Consumers Through Transparency, Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 22-2, FCC 22-86, at para. 118 (Nov. 17, 2022).

¹⁰ Joint Comments of NTCA and WISPA at 22 (Mar. 9, 2022).

¹¹ See, PRA Worksheet, at 8, 9.

The FCC’s decision in the underlying Order to provide a longer implementation period for small companies was grounded in its understanding that small companies “will need to engage outside legal resources to implement several proposed requirements.”¹² The reasoning in the current PRA estimate is less assuring, as the FCC now concludes that the additional time for implementation *itself* will result in small broadband providers “generally . . . rely[ing] on in-house staff and that any costs associated with obtaining necessary outside staff will not be substantially different from the estimates of in-house costs.”¹³ In the first instance, NTCA submits that the additional six months for implementation, which NTCA appreciates, will not *per ipsum* result in the ability of small companies to rely on in-house resources for these processes. The median employee count at NTCA operating companies is 19.5 employees; the mode is five (5) employees.¹⁴ NTCA members in all likelihood, as predicted by NTCA and WISPA in their joint comments¹⁵ and as confirmed in subsequent discussions with NTCA members and third-party consultants, will incur so-called “out of pocket” expenses to implement the labels.¹⁶

However, even if these burdens were fulfilled using existing employees, the direction of in-house staff to these tasks does not result in a zero-cost exercise. The PRA estimate seems to assume incorrectly that capital, operational, and maintenance costs occur only if explicit disbursements for them are recorded, but that those same functions if handled “in house” would

¹² *Empowering Broadband Consumers Through Transparency, Report and Order and Further Notice of Proposed Rulemaking*, CG Docket No. 22-2, FCC 22-86, at para. 118 (Nov. 17, 2022).

¹³ OMB Justification at 14.

¹⁴ These data are drawn from survey responses of 79% of NTCA’s approximately 850 member companies.

¹⁵ *Empowering Broadband Consumers Through Transparency: Broadband Consumer Labels*, Federal Communications Docket No. 22-2. OMB 3060-XXXX, FR ID 126104 (Apr. 10, 2023).

¹⁶ The OMB Justification contemplates external costs, but includes them in in-house cost estimates (“We make clear that the in-house cost estimates identified below include those external costs.”). OMB Justification at 14.

not implicate costs. This approach is inconsistent with the principle that *all* categories of expense will impose real economic, implicit, and opportunity costs on carriers. Accordingly, the basis for an OMB analysis of burden costs is incomplete.

Leading economists have long agreed that “opportunity costs ought to be used in as an input in economic decisions.”¹⁷

The alternative or opportunity cost doctrine has provided modern economic investigations with an invaluable tool of analysis. This doctrine advances the conceptualization of cost beyond its superficial identification with explicit outlays or payments. Cost is viewed as reflecting the value of *opportunities foregone*. The cost of obtaining anything is the value placed on whatever must be sacrificed in order to obtain it. Implicit in this formulation is the rejection of the idea that cost must in some way be associated with disutility. As long as time spent on a particular activity precludes the simultaneous pursuit of another activity, an opportunity cost is incurred.¹⁸

Firms (and particularly small firms such as NTCA members) directing limited in-house employees to attend to labels will necessarily draw them away from other tasks, thereby implicating real economic costs. For small organizations such as those contemplated by the instant OMB proceeding, those costs will accrue to either the actual FTE costs devoted to label compliance or opportunity costs of diverting those employees from other tasks, or both. The proportional impact of absorbing so-called “in-house” costs will be distinctly noticeable among small firms that have limited internal resources and which, as the FCC noted in the underlying Order, will likely need to obtain outside assistance. Accordingly, the ability of the OMB to assess minimization of burdens is hampered if the initial estimate of those burdens is incomplete.

¹⁷ Friedman, Laurence A., and Neuman, Bruce R., “The Effects of Opportunity Costs on Project Investment Decisions: A Replication and Extension,” 18 *Journal of Accounting Research* 407 (1980).

¹⁸ Levine, Aaron, “Opportunity Cost as Treated in Talmudic Literature,” 15 *Tradition* 153 (1975) (emphasis in original).

Accordingly, NTCA requests the development of a more accurate baseline from which OMB consideration can be initiated.

III. CONCLUSION

The estimate of zero capital, operation, and maintenance costs for small companies is inconsistent with findings in the underlying Order that small firms will likely need to outsource label compliance functions. Outsourcing functions will incur explicit costs. Moreover, even if small businesses were able to manage certain tasks in-house, real economic costs, opportunity costs, and implicit costs warrant consideration as the OMB considers the minimization of costs for businesses with fewer than 25 employees.

Respectfully submitted,

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