Shopping for Broadband: Failed Federal Policy Creates Murky Marketplace

For many, selecting and budgeting for Internet service is confusing and frustrating.

Community Networks

By Emma Gautier

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ILSR Institute for Local Self-Reliance

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The Institute for Local Self-Reliance (ILSR) is a national nonprofit research and educational organization founded in 1974. ILSR has a vision of thriving, diverse, equitable communities. To reach this vision, we build local power to fight corporate control. We believe that democracy can only thrive when economic and political power is widely dispersed. Whether it's fighting back against the outsize power of monopolies like Amazon or advocating to keep local renewable energy in the community that produced it, ILSR advocates for solutions that harness the power of citizens and communities. More at **ILSR.org**.

About the Author

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In a large number of communities across the United States, shopping for Internet access is really challenging. It can be hard for someone to identify exactly what it is they will be getting when they order any given service, as well as how much they will pay for it. Significant information gaps, as well as inconsistently presented information, make it difficult for people to navigate the Internet service market.

In recent years, groups like Consumer Reports and New America have **called attention to these problems** and pushed for the explicit disclosure of service details like download speed, upload speed, monthly service cost, and other information that helps potential subscribers compare providers. The broadband market is opaque in many regards, as detailed by the Federal Trade Commission in an October 2021 **report** outlining a series of concerns with the privacy practice disclosures of six undisclosed major Internet service providers (ISPs). The fact is that there's a lot of information large ISPs aren't telling customers, despite half-hearted attempts by the Federal Communications Commission (FCC) to bring transparency to the market. Our analysis finds that while a number of Internet access providers fail altogether to meet transparency requirements, others violate the spirit of transparency—to empower customers with information—by burying important service details in difficult-to-reach locations.

In early November, 2021, Congress passed the Infrastructure Investment and Jobs Act (H.R.3684), a $1.2 trillion infrastructure package which includes additional information disclosure requirements for ISPs. To underscore the value of these requirements and the need for their proper enforcement, the Institute for Local Self-Reliance (ILSR) is publishing a scorecard that highlights just how many ISPs make it difficult for their potential customers to make informed decisions when attempting to sign up for Internet service. The original version of the report assessed the top ten private fixed wireless, private fiber, cable, municipal, and cooperative ISPs based on how clearly they disclose basic service and pricing information.[1] This updated version also includes a second set of fixed wireless providers, which were recommended to us by a wireless ISP advocate after they suggested the original set was not an accurate representation of that industry. Though many of the fixed wireless providers originally studied do seem to claim the greatest number of potential customers, we agree with some reviewers that they are not actually among the fixed wireless ISPs with the most subscribers. The scorecard appears midway through this report and is preceded by some important context.

TABLE 1. COMPARATIVE OVERALL PERFORMANCE BY PROVIDER TYPE

Provider Type	Performance
Municipal	Excellent
Selected Private Fixed Wireless (Second set)	Good
Cooperative	Good
Private Fiber	Fair
Cable	Fair
Private Fixed Wireless (Original set)	Poor

The Internet Transparency Rule, which the FCC originally passed in 2015 as part of the Open Internet Order, set standards for the information ISPs had to publicly disclose. The rule was designed to offer customers the information they need to make informed decisions—a necessary condition for any market to function properly. Though the contents of the Open Internet Order were largely overturned by the Restoring Internet Freedom Order in 2018, the Internet Transparency Rule, for the most part, was left intact. The rule requires providers to disclose information about network infrastructure and practices as well as speeds and pricing, and mandates that this information be published either on a publicly accessible website of the provider's choosing or on the public FCC Internet Transparency Disclosures Portal.

The Transparency Rule, however, is largely unenforced. It is commonly accepted that without effective government regulation or competitive market pressure, ISPs are in a position to abuse their power. The Internet access industry is governed neither by regulation nor market pressure in most communities. Because providers don't have to answer to regulation or worry about their customers switching providers if they offer less than satisfactory service, providers are rarely held accountable for information that is missing or hard to find. Were providers held accountable for making accessible disclosures, customers could less easily be exploited. At the expense of Internet access subscribers, however, the furthest the FCC has gone to reprimand Transparency Rule violators is releasing a series of noncompliance notices.[2]

Even a well-enforced Transparency Rule as it has existed over the past few years could not do much more than mandate that the necessary information be published somewhere online. The rule did not standardize the way that providers make their disclosures, resulting in a swath of fine print statements designed to satisfy disclosure requirements rather than empower customers with the information they need, as the rule was designed to do.

The Infrastructure Investment and Jobs Act reintroduced a **consumer broadband label**, which standardizes the accessibility and presentation of important Internet service information including prices, speeds, and fees. The label was first introduced by the FCC in 2015 after New America's Open Technology Institute **proposed the disclosure format**, and was presented as an optional configuration for ISPs to make the disclosures required by the Open Internet Order. More recently, Representative Angie Craig (MN-02) **pushed the FCC to incentivize providers' use of the label** in the Broadband Consumer Transparency Act of 2021, but this bill has not been considered to date.[3] The consumer broadband label mandates that providers use the standardized format to disclose their service information.[4]

Though the inclusion of the broadband consumer label is a huge step forward for transparency, the label will fail to help customers if left unenforced. The Transparency Rule's lack of enforcement up to this point has taught us that regulatory or legislative intent does little to hold ISPs accountable and change the landscape for customers if not accompanied by real consequences for those who violate the rule.

At the very least, the Transparency Rule should protect subscribers from misleading customers through the omission of important information. ISPs, including those who cover the most potential customers nationwide, should not be able to ignore the rule without any consequences. One private wireless service provider, for example, offered at the time of data collection only a series of tier names (Surf Max, Surf Ultra, Surf Plus) along with lists of the online activities appropriate for each tier (email, web-browsing, or video, for example).[5] The download speeds were discreetly linked only in the site footer, and the upload speeds were missing.

Discouraging or punishing ISPs who mislead potential customers should be an elemental characteristic of regulation, but there's actually a lot more the Transparency Rule can do for the Internet service market. It's true that if the rule were enforced, potential customers would be able to more easily obtain the information needed to compare between providers, as well as budget for the monthly cost of broadband service. A less frequently considered implication of a well-enforced Transparency Rule is that it would allow entrepreneurs and communities to make informed decisions about where to make business investments and adjustments. Entrepreneurial activity is a critical piece of cultivating competition and market development, and information gaps are likely to stifle innovation. Finally, a market with good information is a better environment for conducting analysis, which is key in directing policy.

THE SCORECARD

The Broadband Transparency Rule Compliance Scorecard tracks the availability and accessibility of provider disclosures. The providers listed on the scorecard are those who cover the greatest number of potential customers using the following models: private fixed wireless, private fiber, cable, cooperative, and municipal. These providers are scored between zero and two in download speed, upload speed, and monthly service cost, according to the following criteria:

SCORECARD KEY:

0	No information is available either on the provider's website or the FCC Transparency Disclosures Portal
1	Infomation is available but is unclear, incomplete, or difficult to find
2	Information is available and easy to find

TRANSPARENCY RULE COMPLIANCE SCORECARD[6]:

Unless otherwise noted, data was collected online from September to October 2021 and will not reflect changes made after this time.

		Download Speed	Upload Speed	Monthly Service Cost	
Private Wireless Providers	Rise Broadband	2	0	2	
	AT&T	2	2	2	
	King Street Wireless	0	0	0	
	Etheric Networks	2	0	2	
	Nextlink Internet	2	2	2	
	Agile Networks	1	0	0	
	Triad Wireless	1	0	0	
	Wisper ISP	1	0	0	as of 9/21/2021
	UnWired Broadband[7]	1	1	1	
	TWN Communications	2	2	2	

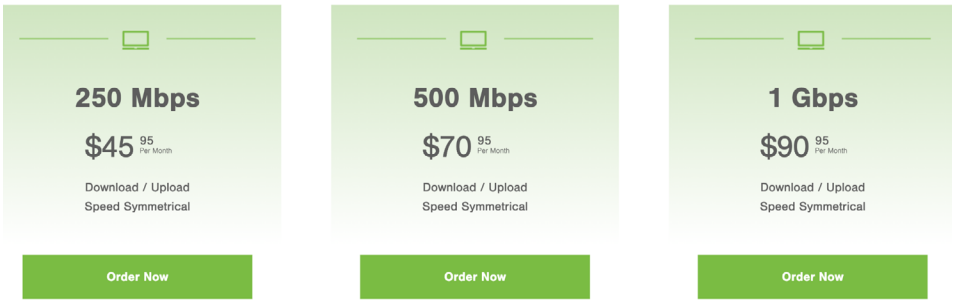
Data for the ten providers below was collected in November 2021.

Selected Private Wireless Providers	Nextlink	2	2	2	
	VTX Communications	2	2	2	
	Watch Communications	2	0	1	
	AeronetPR	2	2	2	
	Wisper ISP	2	0	0	as of 11/21/2021
	Midcontinent Communications	2	2	2	
	Broadlinc	2	2	2	
	Surf Air Wireless	2	2	2	
	RiverStreet Networks	2	2	2	
	Mark Twain Communications	2	2	2	

*After the report's original publication, a Wireless ISP (WISP) advocate suggested our fixed wireless sample was non-representative and asked us to reconduct our analysis with the following group of ISPs that have been more aggressive in pursuing federal funding and spectrum opportunities. These WISPs greatly outperformed our original sample, which was selected based on those claiming the largest population coverage.

Private Fiber Providers	AT&T Fiber	2	1	2
	Verizon Fios	2	1	2
	EarthLink Fiber	2	0	0
	CenturyLink Fiber Gigabit	2	2	2
	Frontier Communications	2	0	1
	Windstream	2	0	2
	Google Fiber	2	2	2
	Metronet	2	2	2
	C Spire Fiber	2	1	2
	Cincinatti Bell	2	2	1
Cable Providers	XFINITY from Comcast	2	0	1
	Spectrum	2	0	2
	Cox Communications	2	2	1
	Optimum by Altice	2	1	1
	WOW!	2	2	2
	Mediacom Cable	2	2	1
	Suddenlink Communications	2	1	1
	Sparklight (formerly Cable One)	2	2	2
	RCN	2	0	1
	Wave Broadband	2	2	1
Cooperative	CarolinaConnect Cooperative Inc.	2	0	2
	Peoples Communication, Inc.	1	1	1
	Horry Telephone Cooperative, Inc	2	2	2
	Guadalupe Valley Telephone Cooperative, Inc.	2	2	2
	OzarksGo	2	2	2
	Consolidated Cooperative	1	1	0
	Nex-Tech, Inc.	2	2	2
	West Kentucky Rural Telephone Coop Corp Inc	2	2	2
	Douglas Services Inc, dba Douglas Fast Net	2	2	2
	South Central Telephone Coop	2	2	2
Municipal Providers	EPB Fiber Optics	2	2	2
	Lafayette City Parish Consolidated Government	2	2	2
	Clarksville CDE Lightband	2	2	2
	City of Longmont	2	2	2
	Jackson Energy Authority	2	2	2
	Bristol Tennessee Essential Services	2	2	2
	Greenlight	2	2	2
	Cedar Falls Utilities	2	2	2
	Spanish Fork Community Network	2	2	2
	Dalton Utilities	2	2	2

Below are two examples that illustrate disclosures of varying quality. The following set of offerings from municipal provider Clarksville CDE Lightband is an example of good information in all three categories.[6]



The offerings below from private fixed wireless provider Triad Wireless are an example of missing information in upload speed and monthly service cost, as well as incomplete information on what we assume is download speed (contained in yellow box).[7]

The scorecard offers a series of insights. The most prominent of these is that municipal providers offer available and accessible information in the three categories analyzed. On the other hand, our original set of private fixed wireless providers had the most missing information, with only three out of ten offering clear information in all three categories. Cable providers in aggregate had the poorest quality of information, with only two distinct providers offering clear information.

The second set of fixed wireless providers performed much better than the first, with only two providers offering less than excellent information in all categories. This set of wireless ISPs had less poor quality information and slightly more missing information than our set of cooperatively-run networks.

Cooperative providers offer about the same amount of poor quality information as private fiber providers, but have less missing information. Additionally, for cooperatives, poor quality or missing information is concentrated to a much smaller number of providers. This might say more about those particular ISPs than about cooperative Internet service providers as a group, but it does mean that the communities covered by the providers with poor information in all categories really struggle to get the information they need to make choices. Though there is a substantial amount of clear information among the private fiber providers in aggregate, there are only three distinct providers that offer available and accessible information in all categories. This, combined with the fact that municipal networks performed the best overall, suggests that smaller, local networks are held accountable to a greater degree than their larger counterparts, with more incentives to disclose information more comprehensively and more accessibly. Our findings in this area add evidence to the claim that government policy should encourage locally-accountable networks.

Overall, ISPs offer the best information regarding download speeds and the worst information regarding upload speeds. Notably, though no cable provider fails completely to make available its monthly service cost, for a majority of cable providers this information is unclear or difficult to find. This is the result of a trend that appears particular to the cable industry; in many cases, cable providers advertise promotional offers, confining the longer term pricing to fine print that is designed to be overlooked. Even prior to the Transparency Rule, an ILSR staffer had an entertaining discussion with a national cable company salesperson going back and forth trying (but failing) to tease out the non-promotional price for a new account.

A MULTIDIMENSIONAL TRANSPARENCY ISSUE

The amount of missing information among 50 of the top Internet providers' basic service elements is a striking reminder that the Transparency Rule isn't being enforced, but missing information isn't the only problem. There are a number of providers which technically disclose their service information, but do so in a way that is difficult to find or understand. This is to say that even if transparency disclosure requirements as they have existed were enforced, accessibility would still be an issue. Customers would still struggle to find the information needed to make decisions, which is exactly the situation the rule was designed to ameliorate. The scorecard was formulated to capture the difference between providers that fail altogether to provide information and those that provide poor quality information, because enforcement of both the availability and accessibility of information is essential to solving these important problems.

Though not a topic of our own research, privacy policies are another example of an area where ISPs are required to make disclosures but often mislead customers by offering up poor quality information. The aforementioned FTC report examining six major ISPs found that the "ISP industry's privacy practices [...] raised concerns in opacity," among other areas.[8]

The FTC report shows that some ISPs tell customers that their data will not be sold, but proceed to "use, transfer, or monetize" customer data, disclosing these practices only in fine print statements.[9] Some ISPs also "purport to offer consumers some choices with respect to the use of their data," but in practice, "problematic interfaces can result in consumer confusion as to how to exercise these choices, potentially leading to low opt-out rates."[10] The report also identifies "lack of meaningful access" as a problem, explaining that "Although many of the ISPs in [the] study purported to offer consumers access to their information, the information was often either indecipherable or nonsensical without context, potentially leading to low access requests."[11]

These areas of concern are reminiscent of our concerns when we scored speed and pricing information for the 50 providers. The privacy practices outlined in the FTC report—along with many of the speed and pricing disclosures scored in this report—are deceptive, and it is affirming to have them formally recognized as such by the FTC. Recognition and concern, however, have yet to translate into any arrangement that holds ISPs accountable for misleading potential customers. The FCC alleges in a summary document of the Transparency Rule that it is "concerned about providers that make false, misleading, or deceptive statements,"[12] but in practice, a lack of disclosure standardization has left room for ISPs to mislead potential customers with complex fine print statements and a lack of meaningful access to important information.

We believe that the simplest policy solutions are often the most effective. While broadband service information can be complex and dynamic, and the consumer broadband label will not necessarily lead to perfect information within the Internet service market, it is a very simple policy tool. In the past, the Transparency Rule has let providers decide how to disclose information, and many have failed to do that in a way that is accessible. The broadband label, on the other hand, doesn't leave much room for fine print or deceptive practices. Either a provider complies with the label format and discloses information in a way that is easy for potential customers to access and understand, or it fails to comply and this failure is concrete and visible. As was mentioned above, however, the label will only serve customers to the extent it is enforced. Providers will only be held accountable for disclosing information in this format if they face real consequences for failing to do so.

POLICY TAKEAWAYS

- Enforce the newly created consumer broadband label.
- Increase the number of municipal, cooperatively-owned, and private owned but locally-owned networks that have incentives more aligned with local residents and businesses.
- Collect the newly standardized pricing information into a publicly accessible database for researchers and policymakers.

AREAS FOR CONTINUED RESEARCH

An initial draft of the scorecard contained categories beyond download speed, upload speed, and monthly service cost, but this final version was streamlined after we encountered a challenge that we invite others to tackle.

In an earlier iteration of this project, we scored providers on the information they disclosed with regards to data caps and fees.

We found, however, that it was difficult to reliably differentiate between a provider that does not disclose its fees and data caps, and a provider that does not have them at all. In other words, we did not want to penalize a given provider for not disclosing information about its data caps or fees if that provider had nothing to disclose in those areas. (A marketing tip for ISPs without data caps: you should brag about it.) Nailing down the difference between nontransparent providers and those offering a service free of data caps and fees would have meant conducting further research into each provider to identify any service offerings information not listed online.

While it is challenging information to collect, a dataset detailing the extent to which different types of providers disclose data caps and fees would offer a more holistic rendering of Transparency Rule compliance across the Internet service market. Supplementing our dataset with information about fees is particularly important because the category "monthly service cost" will frequently fail to represent the true sum of what a customer pays. A **recent survey** published by New America's Open Technology Institute identifies fees as an important component of the total price of Internet access, citing fees for installation, equipment, early termination, or data overages (one reason it's helpful to know if a provider caps data usage) which increase prices by no meager amount.[13] When these fees are combined with complex pricing structures—like the promotional pricing model that seems elemental to national cable ISPs—the result is a set of offerings that is even more challenging to navigate and plan for. Understanding the extent to which the cost of Internet access is inflated by fees and post-promotional charges, along with whether providers disclose them, will allow us to better illustrate the Internet transparency landscape.

We also encourage further research to determine whether there is as much variation among other types of providers as we saw among fixed wireless providers. While we did expect to see variability between wireless ISPs in particular, we are curious to understand whether this variability in transparency exists in other industries. This could help us understand exactly why it is that some providers fail to offer available and accessible information to potential customers.

We invite further research to investigate these additional dimensions and pursue yet other categories of information as to further qualify the Internet transparency problem and the way it varies by type of provider. That said, the consumer broadband label requires providers to disclose the fees associated with their services, as well as both pre- and post- promotional prices. The label should make it easy to identify and penalize providers that fail to meet Transparency Rule requirements and in doing so would introduce a more overt form of accountability than what currently exists.

IN CLOSING

The Transparency Rule Scorecard is an affirmation of what many customers, entrepreneurs, researchers, and policymakers already know to be true—that it's hard to find information about Internet service. The scorecard is a reflection of the broadband customer experience nationwide and the frustrations wrapped up in that. It is also an acknowledgement of the transparency problem's various dimensions, and a gesture to a simple policy solution recently passed by Congress that, if enforced, has the potential to make selecting Internet service much easier.

ENDNOTES

1 The largest private fiber, cable, and original private fixed wireless provider lists were generated by Broadband Now and are based on estimated population covered. Broadband Now offered no lists for municipal nor cooperative networks. Our list of largest cooperative networks was drawn from Form 477 and ILSR data. Our list of largest municipal networks is based on our knowledge of the space. Providers that offered no residential service were removed. Everywhere Wireless was removed from the list of private fixed wireless providers because of its unique Wi-Fi infrastructure installed only in apartment buildings. Altice was removed from the private fiber list because it uses only a fiber backbone to deliver service rather than complete fiber-to-the-home infrastructure. Open access networks were removed from the list of municipal providers due to varying marketing approaches by the various ISPs. For top ten lists where providers were removed, the next largest provider was considered. The decision to use the largest ISPs was made to avoid any appearance of favoritism in which ISPs were included.

2 JSI Telecommunications Consulting (2018). *FCC Begins Enforcement of Updated Network Transparency Rules.* **https://jsitel.com/fcc-begins-enforcement-of-updated-network-transparency-rules/**.

3 Schwantes, Jonathan (2021). The Rise, Fall, & Return of the Consumer Broadband Label. *Consumer Reports.* **https://digital-lab.consumerreports.org/2021/07/26/the-rise-fall-return-of-the-consumer-broadband-label/**.

4 Infrastructure Investment and Jobs Act (H.R.3684), 117th Congress (2021-2022).

5 Wisper ISP.

6 Residential Internet offerings for Clarksville CDE Lightband. **https://cdelightband.com/residential/internet/**. Accessed 10/5/2021.

7 Residential Internet offerings for Triad Wireless. **https://www.triadwireless.net/residential-internet/**. Accessed 10/5/2021. Triad responded to the original report by noting that it is a small company that has made remarkable investments and seen rapid growth in recent years that left it unable to prioritize a website that clearly identifies what speed tiers are available, in part due to the many different technologies used.

8 Federal Trade Commission (2021). *A Look At What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers.* **https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf** .

9 Ibid.

10 Ibid.

11 Ibid.

12 Federal Communications Commission. *Consumer Guide: Open Internet Transparency Rule.* **https://www.fcc.gov/file/15379/download#:~:text=The%20FCC's%20Open%20Internet%20Transparency,choices%20about%20speed%20and%20price** . Accessed 11/7/2021.

13 Chao, Becky; Park, Claire (2020). *The Cost of Connectivity.* New America's Open Technology Institute. **https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Cost_of_Connectivity_2020__XatkXnf.pdf** .