

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)	
)	
Protecting and Promoting the Open Internet)	GN Docket No. 14-28
)	
Guidance on Open Internet Transparency Rule Requirements)	
)	
Applications for Review of CTIA and Competitive Carriers Association)	

COMMENTS OF NIELSEN

Nielsen Holdings plc (“Nielsen”) supports the Commission’s goal of ensuring that consumers have access to accurate and complete information about mobile broadband providers’ service offerings and performance. On June 20, 2016, CTIA and CCA filed Applications for Review of the recent staff guidance regarding the specific performance disclosures of mobile broadband providers.¹ CTIA and CCA raised several concerns regarding the guidance, including the lack of opportunity for public comment before the guidance was released and the selection of the Measuring Broadband America (“MBA”) program as the sole “safe harbor,” with the use of its data considered an adequate disclosure under the transparency rules.² As the Commission

¹ Application for Review of Competitive Carriers Association, GN Docket No. 14-28 (filed June 20, 2016) (“CCA Application”); Application for Review of CTIA, GN Docket No. 14-28 (filed June 20, 2016) (“CTIA Application”). Both Applications for Review seek Commission review of the Public Notice issued by the Chief Technologist, the Office of General Counsel, and the Enforcement Bureau providing “guidance regarding acceptable methodologies for disclosure of network performance to satisfy the enhanced transparency requirements.” *Guidance on Open Internet Transparency Rule Requirements*, Public Notice, DA 16-569, GN Docket No. 14-28 (Chief Tech., Off. of Gen. Couns., Enf’t Bur., rel. May 19, 2016) (“2016 Guidance PN”).

² See CCA Application at 8-9, 14-16; CTIA Application at 7-9, 12-15.

reviews the Applications for Review, Nielsen urges the Commission to consider permitting the use of data from an exceptionally well-qualified measurement firm such as Nielsen also to be considered a “safe harbor.” Doing so would improve the quality of mobile broadband providers’ disclosures and, therefore, better satisfy the Commission’s ultimate goal of providing consumers with valuable and relevant information about broadband performance. At a minimum, the Commission should seek comment on designating additional safe harbors and the benefits to consumers that doing so would produce.

I. NIELSEN PROVIDES ACCURATE AND ROBUST DATA ON MOBILE BROADBAND PERFORMANCE

As the Commission explained, transparency ensures that “consumers are fully informed about the Internet access they are purchasing and . . . edge providers have the information they need to understand whether their services will work as advertised.”³ Nielsen wholeheartedly agrees that when consumers have access to quality information, they are positioned to make better choices for themselves and, ultimately, drive innovation and competition in the marketplace as providers compete for the business of well-informed purchasers.

Nielsen knows performance data. In addition to its better known programs, such as those in the television and radio fields, Nielsen is also a market leader in measuring mobile network performance. For over 15 years, Nielsen (and its predecessor) has been measuring mobile network performance through rigorous drive tests, engineered to assess network performance scientifically and with an eye toward the consumer experience. The drive test program tests multiple data file sizes to mirror different kinds of consumer activities, and also tests voice and

³ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 30 FCC Rcd. 5601, 5609 ¶ 24 (2015) (“*2015 Open Internet Order*”), *aff’d sub nom. U.S. Telecom Ass’n, et al. v. FCC*, No. 15-1036, 2016 WL 3251234 (D.C. Cir. June 14, 2016).

VoLTE performance. More recently, Nielsen has been complementing its drive tests with data from consumer devices as they are actually used. The devices of more than 50,000 consumer volunteers (or “panelists”) passively report network performance based on whatever the consumer is doing, wherever the consumer is. Rather than running a predefined test, the devices report performance whether the panelist is downloading email, streaming video, or using social media or a navigation app. As part of this solution, Nielsen is introducing a third testing modality in beta, which generates standardized tests from panelists’ devices, allowing for additional insights to be delivered.

Nielsen measures multiple facets of mobile network performance for its provider-clients. Using the multiple testing modalities, Nielsen collects and analyzes information that provides a complete picture of a mobile broadband provider’s network performance. That picture includes download and upload throughput (or speed), latency, and packet loss (as well as dozens of other metrics). Nielsen can separate and analyze these data by geographic area, by service type (e.g., HSPA, UMTS, GSM, Carrier Aggregation), and by period of peak usage, depending on the needs of the provider-clients.⁴

Accurate, reliable data have many uses to mobile broadband providers. The data inform providers’ capital planning by allowing them to identify areas where usage is consistently consuming a large amount of the available network capacity. Similarly, the data may identify where changes in network configuration—such as the use of new spectrum, new sites (towers or small cells) or other network settings—could improve mobile network performance. The data also furnish mobile broadband providers with critical information about their customers’ usage,

⁴ More information about Nielsen’s mobile network testing programs can be found attached to a contemporaneous *ex parte* filing. See Letter from Julie A. Veach, Counsel to Nielsen, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28 (filed July 5, 2016), Attach.

allowing them to craft service offerings and data plans that meet consumer needs. Information on performance during peak usage periods, for example, is a key component of understanding mobile network performance, because by definition it reflects the experience that a significant number of consumers are having precisely at the time when they rely on their mobile devices. But it is also a challenging concept to pin down for measurement. It can vary not only by time zone, but also by geography (e.g., downtown vs. residential), by day of the week (e.g., Saturday near the retail shopping centers vs. Monday), when there are special events (e.g., sporting event, political convention), and by the customer base of each mobile operator. Nielsen's data allow for tailored analyses for different purposes. These same data that Nielsen already collects and analyzes so that providers are aware of their own network performance can and should also be used as the basis for network performance disclosures.

II. PROVIDERS SHOULD HAVE INCENTIVES TO DISCLOSE QUALITY INFORMATION ABOUT NETWORK PERFORMANCE

The Applications for Review make clear that mobile broadband providers take their performance disclosure obligations very seriously. CTIA represents that its members “are committed to delivering an open Internet and ensuring transparency,” and CCA likewise states that its members “invest a great deal of time and capital into ensuring compliance with the Commission’s transparency disclosure requirements.”⁵ Given concerns about potential enforcement in this high-profile and critical context, the associations have also noted that providers may feel compelled to report their data using the safe harbor announced in the *2016 Guidance PN*.⁶ Yet at the same time, parties in the proceeding have expressed a variety of

⁵ CTIA Application at 2; CCA Application at 3.

⁶ See CCA Application at 9; CTIA Application at 7-9.

concerns about the Measuring Broadband America methodologies in the mobile context, and whether the established safe harbor will inadvertently result in consumers not having the best available information.⁷

Nielsen urges the Commission to consider designating additional, highly-qualified data measurement programs as safe harbors for purposes of compliance with the Open Internet transparency rules. Under such an approach, mobile broadband providers that use Nielsen data (or data from other operators the Commission designates as safe harbors) to make their required performance disclosures would have their disclosures be considered “a sufficient representation” of their performance.⁸ Nothing in the 2010 or 2015 Open Internet Orders suggests that a limited or static approach to safe harbors is required. Many providers already use the services of Nielsen as an unbiased and independent source. Given the robustness of available data from professional third-parties and the questions raised in the record regarding the Measuring Broadband America program data, it seems a disservice to consumers to encourage providers to report based on an untested and questioned solution when other solutions are not only available but already in use. After appropriate vetting, the Commission should designate additional qualified providers such as Nielsen as safe harbors.

III. AT A MINIMUM, THE COMMISSION SHOULD SEEK PUBLIC COMMENT

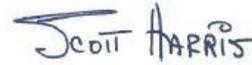
The *2016 Guidance PN* was released by the Commission staff without any opportunity for public comment. If the Commission does nothing else at this point regarding the concerns

⁷ See CCA Application at 14-16; CTIA Application at 12-13; Comments of Rootmetrics at 2-9, GN Docket No. 14-28 (filed June 27, 2016).

⁸ *2016 Guidance PN* at 7.

raised in the record, Nielsen encourages the Commission to seek public comment on designating additional qualified third parties as safe harbors.

Respectfully submitted,

A handwritten signature in blue ink that reads "Scott Harris". The signature is written in a cursive style with a horizontal line above the name.

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