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August 10, 2015

*Via Electronic Submission*

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Protecting and Promoting an Open Internet, GN Docket No. 14-28*

Dear Ms. Dortch:

On August 6, 2015, Hank Hultquist, Gabrielle Whitehall, and I from AT&T, and Christopher Shenk from Sidley Austin LLP met with Jerusha Burnett, John B. Adams, and Beau Finley of the Consumer and Government Affairs Bureau, Stephanie Weiner of the Office of General Counsel, and Scott Jordan, Chief Technologist, to discuss the Commission's preliminary estimate of the costs and burdens associated with the enhanced transparency requirements adopted in the Commission's *Open Internet* order in the above-referenced docket. During the meeting, we discussed AT&T's comments in this proceeding, and stressed the following points:

1. In the order, the Commission observed that, under the existing transparency rule, broadband providers must provide the requisite disclosures on a publicly available website and relevant information at the point of sale. In a footnote, it stated that providers "must actually disclose" such information "at the point of sale," and that it was "not sufficient . . . simply to provide a link to their disclosures." *Order* at ¶ 171 n.424. However, in its submission seeking OMB approval of the 2010 transparency requirements, the Commission averred that the transparency rule, as clarified by an advisory issued by the FCC's Office of General Counsel and Enforcement Bureau, "require[d] only that providers post disclosures on their websites, and direct consumers to such websites at the point of sale." FCC Supporting Statement OMB 3060-1158 (Sept. 7, 2011). In turn, that advisory made clear that broadband providers could comply with the point of sale requirement by "directing prospective customers at the point of sale . . . to a web address at which the required disclosures are clearly posted." *Advisory Guidance* at 4. The Commission should clarify that it did not intend to change the point of sale requirement. If it did, such a change would impose a new collection requirement and enormous new burdens on the industry that could not be justified under the Paperwork Reduction Act (PRA), and which plainly was not part of the Commission's May 20, 2015 Public Notice. To the extent the Commission intended to change the point of sale requirement, it must publish a second Public Notice seeking comment on those issues.
2. The Commission should clarify that the new collections related to mobile broadband performance do not apply until the planned Measuring Broadband America (MBA)

program for mobile services is in place and available as a safe harbor, to avoid forcing mobile providers to incur substantial costs implementing measures that may become moot or unnecessary. We noted that mobile providers today use different methods to measure performance. Consequently, any performance data they disclose will not provide customers meaningful information that will assist them select and determine how to use broadband services. That is especially the case with respect to the new requirement that providers disclose performance data representative of the geographic area in which a customer purchases service insofar as the Commission has provided no guidance regarding what are relevant geographic areas for this purpose. We observed that, making the new mobile broadband performance requirements effective after the MBA for mobile services is in place, would facilitate consistent and comparable performance data across service providers, and substantially reduce the enormous costs and burdens the enhanced transparency requirements would impose on mobile service providers.

3. The Commission should clarify that broadband providers will have at least a year from OMB approval of any new information collections adopted in the order to implement the many system changes, and new methods and procedures, necessary to comply. We noted that, in the order, the Commission stated that the new or modified information collection requirements requiring OMB approval will become effective “after the Commission publishes a notice in the Federal Register announcing such approval *and the relevant effective date.*” Order at ¶ 585. Thus, the order contemplates that providers will have a reasonable period of time to implement any new information collections approved by OMB.

If you have any questions concerning the foregoing, please contact me at: 202-457-3058.

Sincerely,

/s/ Christopher M. Heimann

Cc: Stephanie Weiner  
Jerusha Burnett  
Scott Jordan  
John B. Adams  
Beau Finley