

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**COMMENTS OF  
THE WIRELESS COMMUNICATIONS ASSOCIATION  
INTERNATIONAL, INC.**

The Wireless Communications Association International, Inc. (“WCAI”), the trade association of the wireless broadband industry, submits these comments in response to the Commission’s *Notice of Inquiry* on consumer information.<sup>1</sup>

WCAI fully concurs with the Commission’s desire to assure that each consumer has access to the information he or she reasonably needs to select the most appropriate communications service provider and service plan. To that end, we recommend that the Commission establish a broad-based advisory committee with representatives of all relevant stakeholders to examine what information is available to consumers today, to reach consensus on what additional information consumers might need, to determine whether such information can be packaged in a manner that it is meaningful to consumers, to explore formats for making the information available in a way that avoids consumer confusion without oversimplification, and to design a pragmatic solution that could then be opened for additional review and comment.

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<sup>1</sup> Consumer Information and Disclosure, *Notice of Inquiry*, FCC 09-68 (rel. Aug. 28, 2009) [“*Consumer Information NOI*”].

The task the Commission has undertaken in the *Consumer Information NOI* is both complex<sup>2</sup> and fraught with the potential for unintended consequences that may actually harm consumers. We agree that “[i]f designed correctly, disclosure policies are among the least intrusive regulatory measures at the Commission’s disposal.”<sup>3</sup> The converse, however, is also true – disclosure requirements that impose additional costs on service providers to generate and distribute information that is of little value to consumers (or even worse, information that distorts consumer decision-making or service provider investment)<sup>4</sup> are among the most intrusive regulatory measures the Commission can impose. Thus, we are pleased that the Commission itself has acknowledged the “importance of identifying disclosure policies that have a high ratio of consumer benefit to industry cost.”<sup>5</sup>

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<sup>2</sup> The Commission is correct in observing that “[c]onsumers need different kinds of information at different stages of choosing and using telecommunications services, particularly in light of the increasing complexity and number of available choices.” *Id.* at ¶ 23. In addition, different consumers will require different information, depending upon their objectives in securing a communications service. For example, as noted in the Commission’s recent *Public Notice* soliciting additional input on the definition of “broadband,” “there are network characteristics – such as latency, reliability, and mobility – that are relevant for certain applications but not others.” “Comment Sought on Defining ‘Broadband,’” *Public Notice*, DA 09-1842, at 2 (rel. Aug. 20, 2009) [“*Broadband Definition PN*”].

<sup>3</sup> *Consumer Information NOI* at ¶ 5 (emphasis added) (footnote omitted).

<sup>4</sup> As discussed below, a disclosure requirement can distort consumer decision-making if it suggests that a factor is relevant to a given consumer’s choice when it is not, if it fails to alert consumers to meaningless distinctions in a given metric, or if it omits information that many consumers will find more relevant than that disclosed.

Moreover, as Sprint Nextel Corporation has previously addressed in detail in connection with the effort to define “broadband,” any definition that focuses on a few factors, rather than the full panoply of elements important to consumers, can also distort investment by service providers. *See* Comments of Sprint Nextel Corp., GN Docket No. 09-47, at 5-9 (filed Aug. 31, 2009). Similarly, if the Commission in this proceeding requires consumer disclosure that has an unduly narrow focus (say, just on speed, for example), service provider investment may be diverted arbitrarily to improving speed and away from other network improvements that might benefit consumers more (such as improved coverage).

<sup>5</sup> *Consumer Information NOI* at ¶ 5. *See also* Comments of Clearwire Corp., GN Docket Nos. 09-47, 09-51 and 09-137, at 5 (filed Aug. 31, 2009) (“[A] collection of overly complicated metrics that consumers will rarely rely on for their service decisions is of limited value, may raise prices, otherwise confuse, and worst of all, be used to mislead consumers.”).

Moreover, the Commission’s inquiry must be informed by the wide availability to consumers of relevant information even without government mandates. With respect to broadband services, just last week the United States Government Accountability Office (“GAO”) concluded that “[c]onsumers can generally access performance measures of availability, price, advertised speed, and actual delivered speed from broadband providers and third parties to compare services and assist in their decision-making process.”<sup>6</sup> This conclusion is hardly surprising – at least with respect to wireless broadband services, the market is highly competitive, and operators have every incentive to educate consumers as to the benefits of their offerings, to assure that they deliver the service consumers expect, and that consumers are fully satisfied with their relationship with their service provider. As the *Consumer Information NOI* itself notes, “[m]ore consumers than ever are subscribing to fixed voice, wireless voice and data, broadband Internet access service, and subscription video services, and usage and average expenditures are also on the rise.”<sup>7</sup> In this environment, consumers have access to many sources of information for examining their options and choosing from among the myriad of competing service providers, even though the Commission has elected not to regulate consumer disclosures with a heavy hand.

Is the presently available information perfect? Of course not – and service providers are constantly re-evaluating their marketing materials, billing formats, customer support materials, websites and other customer interfaces to assure consumer satisfaction.<sup>8</sup> The fact that so much information is already available suggests the Commission’s focus here should be on whether there is truly a need to require service providers to collect and disclose additional information, and whether

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<sup>6</sup> US Government Accountability Office, “Current Broadband Measures Have Limitations, and New Measures Are Promising but Need Improvement,” at 3 (rel. Oct. 9, 2009) [“GAO Report”].

<sup>7</sup> *Consumer Information NOI* at ¶ 3 n.5.

<sup>8</sup> Although we do not address the Commission’s inquiry as to whether its existing “truth-in-billing” rules should be extended to broadband service providers, we do agree with the Commission that certain of those requirements are inapplicable to broadband service providers. See *Consumer Information NOI* at ¶ 19. Thus, the rules will have to be revised to provide appropriate exemptions for broadband service providers.

the costs that will be imposed on service providers to collect and distribute that information outweighs its value to consumers.<sup>9</sup>

No doubt some will be submitting comments in this proceeding advocating that the Commission impose a wide range of disclosure mandates on the service providers. If past is prologue, many of these proposals, while well-intended, will effectively be asking wireless broadband service providers to do the impossible given the technical and practical limitations of wireless services.<sup>10</sup>

For example, New America Foundation (“NAF”) has already proposed in this proceeding that the Commission require broadband service providers to disclose the minimum speed and latency consumers will receive, and to provide refunds or service credits when the minimums are not met.<sup>11</sup> Whatever merit such a proposal might have if applied to wireline broadband offerings (an issue on which WCAI expresses no view), it fails to take account of the technical realities of wireless services and, as a result, will be of little value to consumers.

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<sup>9</sup> WCAI is hardly alone in questioning the need for additional government mandates in this area. The GAO found, for example, opposition to additional regulation among state regulators and public/private partnerships. See *GAO Report* at 30-31.

It should be noted that WCAI is far from convinced that the Commission’s Title I ancillary jurisdiction authorizes it to regulate consumer disclosures by broadband service providers, and looks forward to reviewing the comments by others in response to Paragraph 64 of the *Consumer Information NOI* as to the Commission’s jurisdiction. One benefit of employing a broad-based advisory committee here is that it may preempt possible jurisdictional challenges. In addition, one must ask whether, regardless of the Commission’s jurisdiction, broadband consumer protection is best left in the hands of the Federal Trade Commission (“FTC”), which already “has brought a variety of cases against Internet service providers that have engaged in allegedly deceptive marketing and billing practices.” *GAO Report* at 14-15 (footnote omitted). Again, the advisory committee will be able to provide the Commission with valuable insight into the potential benefits and drawbacks of relying on the FTC to protect consumers in securing broadband services.

<sup>10</sup> The recent effort by GAO to identify measures of broadband performance highlights many of the mandates that have been proposed in the past and that are likely to be advanced in this proceeding, along with the pros and cons for each identified by participants in the GAO effort. See *GAO Report* at 25-30.

<sup>11</sup> See Comments of the Open Technology Initiative of the New America Foundation, CG Docket No. 09-158 (filed Sept. 24, 2009).

As the Commission's record in GN Docket No. 09-51 clearly reflects, the speed, latency and jitter a wireless subscriber experiences will vary from location to location, and from moment to moment, depending on a wide range of variables, including atmospheric conditions, obstructions due to terrain, foliage or man-made structures, location relative to cell edge, traffic loading, and diurnal patterns.<sup>12</sup> Wireless service providers annually spend billions of dollars to improve network performance with respect to these factors, and to provide the best performance on a more ubiquitous basis. However, the predicate of NAF's proposal – that it is possible to identify a uniform speed/latency/jitter rating that a given service provider can guarantee ubiquitously across its entire network – is unattainable in the wireless context as a matter of physics. There will always be situations in which service will be unavailable, or will be slower or have greater latency and jitter, than is generally the case. Admittedly, these variations in service quality can be frustrating to consumers, but they are inherent to the nature of wireless, and are why mobile service providers have not adopted business models based on service guarantees.

NAF's failure to account for this variability in wireless is a fundamental flaw in its proposal. Were the NAF proposal adopted verbatim, mobile service providers presumably would have no choice but to "guarantee" a 0 mbps speed, since that they cannot guarantee that service is available at all times at all locations. This would tell consumers nothing they do not already know, as consumers are well aware that no matter how good their wireless service provider, there will be times when service is unavailable or is not of usual quality. And, ironically, adoption of NAF's mandate would focus consumer disclosures in a way that would likely keep consumers from receiving information

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<sup>12</sup> See, e.g., A National Broadband Plan For Our Future, *Notice of Inquiry*, DA 09-2187, at ¶¶ 17-26 (rel. Oct. 8, 2009); *Broadband Definition PN* at 2-3.

about network performance that would be far more valuable to them, such as information that reflects the type of network performance they are likely to get much of the time.<sup>13</sup>

The NAF proposal also illustrates how an ill-conceived disclosure requirement can inadvertently distort consumer decision-making. A disclosure requirement will distort consumer decision-making if it suggests that a given factor is relevant to a given consumer's choice when it is not, if it fails to alert consumers to meaningless distinctions in a given metric, or if it omits information that many consumers will find more relevant than that disclosed. And when it comes to broadband services, consumers are not focused on obscure technical metrics – they want to know that a given service offering will allow them to use their favorite applications.<sup>14</sup> Yet, NAF would have the service provider make available to consumers a variation on the “Schumer Box” with a line item identifying the minimum round-trip latency measured as “X ms”. But most consumers lack any appreciation for what a given latency rate expressed as “X ms” means to them. Is 50 ms a good rating, or a bad one? Most consumers have no idea.

The lack of relevance to various applications of the proposed NAF latency measurement compounds the potential for consumer confusion. While latency will certainly be important to consumers looking to use broadband for interactive applications like VoIP and gaming, it is far less

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<sup>13</sup> Although there is no question that speed is an element that consumers consider in selecting their broadband service provider, the GAO has found evidence that differences between advertised speeds and actually speeds is of little concern to consumers and has not been the subject of a material number of consumer complaints. *See GAO Report at 26-27.*

<sup>14</sup> For example, as WCAI discussed at length in its comments in the National Broadband Plan proceeding, while speed was once a critical element in a consumer's selection of a broadband provider, with the emergence of mobility speed is no longer the primary differentiator among broadband services. *See Comments of Wireless Communications Ass'n Int'l, GN Docket No. 09-51, at 18-19 (filed June 8, 2009)* (“Consumers do not purchase ‘speed’; they purchase broadband solutions that meet their needs, which vary considerably based on the relevant product and geographic markets. Depending on the market, characteristics such as mobility, cost, reliability, coverage, energy consumption, or security can be far more important than the throughput of a particular broadband network or service.”). That is hardly surprising, and indeed mirrors dramatic changes in the personal computer market. While personal computers were once marketed primarily based on the clock speed of the processor, that factor has become almost irrelevant as consumers have embraced mobility and moved from desktop computing to laptops and netbooks. Now, consumers so highly value mobility that they gladly sacrifice clock speed for the size and weight advantages of much smaller systems.

relevant to consumers looking to use broadband for emails or downloading files. Yet the NAF proposal does nothing to assist the consumer in understanding whether the latency metric is even germane to his or her particular decision. Moreover, even for those consumers that will use latency-sensitive applications, small differences in latency rates are of no moment to most users. Does a consumer know whether he or she will even notice the difference between one service with a 25 ms latency rating and another with a 50 ms latency rating? What about one service with a 50 ms latency rating and another with a 100 ms latency rating? Again, the consumer's interest is in knowing whether the service is likely to meet his or her needs, not in knowing a metric that conveys no information useful to the consumer. In short, even if it is possible to meet the challenge of developing useful and simplistic measures of latency (or speed, or jitter), there is still the challenge of educating the consumer as to how to apply those measurements to his or her own comparative evaluations.

Again, WCAI's point is not that consumers have perfect information, but that there is a very real risk that in striving to provide consumers with perfect information, the Commission will inadvertently do far more harm than good. The issues presented by the *Consumer Information NOI* are complex, from both a technical and a consumer protection perspective. There has already been much said about these issues, with far more heat than light. If the Commission is to achieve its objectives in this proceeding, WCAI recommends that the Commission establish a broad-based advisory committee that would include all stakeholders (service providers representing the full range of broadband technologies, federal and state consumer protection agencies, consumer groups, etc.). The committee, which would operate with guidance from the Commission's staff, would be tasked to study rapidly the issues raised by the *Consumer Information NOI*, to reach consensus on what information that is currently not readily available to consumers is essential to evaluating service offerings, to determine whether such information can be packaged in a manner that it is meaningful to

consumers, to explore formats for making the information available in a way that avoids consumer confusion without oversimplification, and to design a practical solution that could then be opened for additional review and comment via a notice of proposed rulemaking. This approach will encourage an open, cooperative dialog and promote a free flow of information among the participants – something that is not likely to happen otherwise.

Furthermore, given the complexity of the issues, an advisory committee that gives a voice to all interested parties will promote exactly the sort of comprehensive review and analysis required here. An open dialog will promote identification of the information consumers truly want, as well as the technical and practical limitations that must be overcome to provide such information. Moreover, reliance on dialogue will provide a forum for all possible alternatives to be accommodated, and thus will keep the Commission pointed squarely towards balanced, consumer friendly, technology-neutral solutions, as opposed to arbitrary and potentially counterproductive across-the-board requirements. Should the Commission form such an advisory committee, WCAI would be more than willing to participate and otherwise work with other stakeholders as necessary to achieve a result that serves the public interest.

Although WCAI believes that vigorous competition is the best medicine for maximizing the quality of information provided to users of broadband services, it is appropriate for the Commission and all interested stakeholders to work cooperatively towards a solution that addresses the issue with a minimum of regulatory intervention. Just last week, Chairman Genachowski spoke to the mobile industry of “the power of pragmatism.”<sup>15</sup> Convening the broad-based advisory committee recommended by WCAI is a pragmatic approach to assuring that consumers have the information

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<sup>15</sup> Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, “America’s Mobile Broadband Future”, International CTIA WIRELESS I.T. & Entertainment, at 9 (Oct 7, 2009).

they truly need to make meaningful decisions, without imposing unnecessary burdens on communications service providers that ultimately will harm consumers.

Respectfully submitted,

WIRELESS COMMUNICATIONS ASSOCIATION  
INTERNATIONAL, INC.

By: /s/ Fred Campbell  
Fred Campbell  
President & CEO

1333 H Street, NW, Suite 700 West  
Washington, DC 20005  
202.452.7823

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