

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

In the Matter of)	
)	
International Comparison and Consumer)	GN Docket No. 09-47
Survey Requirements in the Broadband Data)	
Improvement Act)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Inquiry Concerning the Deployment of)	GN Docket No. 09-137
Advanced Telecommunications Capability to)	
All Americans in a Reasonable and Timely)	
Fashion)	

COMMENTS OF AT&T INC. – NBP PUBLIC NOTICE #24

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INTRODUCTION AND SUMMARY

AT&T applauds the Commission's efforts to ensure consumers have the information they need to make informed choices in the broadband marketplace. As AT&T has emphasized in past filings, for communications markets to function efficiently, consumers must have complete information regarding the providers, platforms, and services available to them. As we explain below, the robust competition for broadband services that exists in the marketplace has driven AT&T and other leading broadband providers to meet the demands of consumers in this respect, by providing consumers with easily understood information regarding their broadband service options. But more work remains to be done, particularly with respect to the disclosures of nontraditional service providers who generally consider themselves outside the Commission's jurisdiction. In order to reduce consumer confusion and ensure that *all* providers are committed to fair and transparent disclosure practices, AT&T urges the Commission to facilitate a voluntary, industry-wide initiative to fashion a set of uniformly applicable disclosure and consumer-protection principles. An industry-driven approach – assisted by input from the Commission and consumers – has the best chance of securing widespread commitment to a comprehensive framework applicable to all providers.

As to the second topic of the Commission's notice – the collection of data measuring the performance of broadband networks – the Commission should take action only after first assessing *why* performance data will aid its regulatory mission, and even then only after convening a panel of technical experts that can educate the Commission regarding how best to collect the data that will serve that mission. Collecting performance data, while potentially worthwhile, is not an end in itself. Rather, the Commission must carefully determine what data to collect, which it can only do after assessing why it needs the information. Moreover, the formulation of meaningful performance metrics – particularly in a dynamic industry that features

multiple competing network architectures – is extremely complex. Indeed, the range of network architectures and transmission technologies in the marketplace makes this area uniquely suitable for the sort of expert analysis and input that the Commission has rightly said will guide its decisionmaking in this arena. Accordingly, the Commission should convene a panel of technical experts – similar to or even as part of the Technical Advisory Process established in conjunction with the Open Internet Notice of Public Rulemaking¹ – to ensure that it is acting on the basis of technically accurate facts. By contrast, hurriedly attempting to construct network performance measurements in the absence of expert input is likely to generate confusion and result in faulty measurements that provide an inadequate basis for agency action.

I. THE COMPETITIVE MARKET FOR FIXED SERVICES HAS CREATED STRONG INCENTIVES TO PROVIDE TRANSPARENCY

The Public Notice seeks comment, first, regarding “the types of information that consumers need” in order to select a broadband service provider and plan.² As a threshold matter, competition has already forced providers to take significant action in this regard. In fact, as a competitive imperative – and even in the absence of agency action – AT&T and other providers have adopted consumer-focused disclosure policies geared at presenting consumers with relevant information in a clear and easily accessible format. But more remains to be done. In particular, a voluntary, industry-wide, cross-platform framework – one that would govern *all* disclosures pertaining to the customer-provider relationship – would promote uniformity and transparency in a manner that best serves the interests of consumers. The Commission should

¹ See Notice of Proposed Rulemaking, *Preserving the Open Internet; Broadband Industry Practices*, GN Dkt. No. 09-191, WC Dkt. No. 07-52, FCC 09-93 (rel. Oct. 22, 2009) (“Open Internet NPRM”).

² Public Notice at 1-2, *Comments Sought on Broadband Measurement and Consumer Transparency of Fixed Residential and Small Business Services in the United States*, NBP Public Notice # 24, GN Dkt. Nos. 09-47 et al., DA 09-2474 (FCC rel. Nov. 24, 2009) (“Public Notice”).

take steps now to facilitate the creation of such a framework by ensuring that all providers – including those that may believe they are outside the Commission’s traditional jurisdiction but that provide complementary or substitutable broadband-related services – take a seat at the table and understand the importance of clear and adequate consumer disclosures.

A. Competition has Driven Providers to Respond to Consumer Demands for Transparency and Information

Consumer choice is perhaps the defining feature of today’s robustly competitive marketplace for fixed broadband services. Consumers are generally able to pick from a range of providers, platforms, and plans, each with its own characteristics, speed, and price.³ The result is a highly competitive marketplace in which broadband providers compete aggressively to win and retain customers. That competition manifests itself along multiple dimensions, as providers work hard to differentiate themselves through network enhancements, price reductions, and coverage.⁴ For example, AT&T is currently in the process of deploying its U-verse fiber-to-the-node network initiative and expects to reach 30 million living units by the end of 2011.⁵ For its part, Verizon is working to expand the coverage of FiOS and expects to serve 17 million

³ See Gerald R. Faulhaber, *A National Broadband Plan for Our Future: A Customer-Centric Fabric*, 3 Int’l J. Comm. 742, 747-50 (2009) (“Faulhaber”) (noting that as of 2008, 92% of American households had access to cable broadband and 71% had access to DSL); see also Robert C. Atkinson & Ivy E. Schultz, Columbia Institute for Tele-Information, *Broadband in America: Where It Is and Where It Is Going* (Nov. 11, 2009) (“CITI Report”).

⁴ See, e.g., Faulhaber at 747-50. This competitive behavior is driven not only by competition within the wireline market, but also by wireless service providers who are increasingly offering high-speed options to consumers. In 2007, for example, 68% of new broadband subscribers were mobile users. See *An Examination of Competition in the Wireless Industry: Hearing Before the Subcomm. on Comm., Tech. and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong. (May 7, 2009) (Written Statement of George S. Ford at 4), available at http://energycommerce.house.gov/Press_III/20090507/testimony_ford.pdf.

⁵ See CITI Report at 7-8.

locations by 2010.⁶ And cable providers are in the midst of upgrading their systems to DOCSIS 3.0.⁷

Among the many service improvements that result from these massive network investments is the proliferation of service tiers, which permit consumers to purchase the broadband speed they want at the price they can afford.⁸ AT&T's U-verse high-speed Internet service, for example, comes in multiple flavors with current offerings that include download speeds of up to 1.5 Mbps, 3 Mbps, 6 Mbps, 12 Mbps, 18 Mbps, and 24 Mbps at rates ranging from \$25 to \$75 per month.⁹ Verizon's FiOS service likewise offers a range of speeds at a range of prices,¹⁰ as do the leading cable modem service providers.¹¹

At the same time providers have developed a wide range of service offerings, competition has created a market imperative to provide key information regarding those service offerings, in readily understandable terms. AT&T's own internal research shows that consumers demand clear, concise, easy-to-understand information so they can make educated purchasing decisions. And competition among providers ensures that this demand is satisfied.

⁶ *See id.*

⁷ *See id.*

⁸ *See* U.S. Dep't of Agriculture, Economic Research Service, *Rural Broadband at a Glance: 2009 Edition*, Economic Information Bulletin No. 47 (Feb. 2009), available at <http://www.ers.usda.gov/Publications/EIB47/EIB47.pdf> ("Broadband providers now offer tiers of service speeds so that users can match their needs and affordability . . .").

⁹ *See* AT&T, *U-verse High Speed Internet*, <http://www.att.com/u-verse/explore/internet-landing.jsp>. AT&T's portfolio of broadband products and price points is subject to change as we continuously review those offerings in order to provide a range of services designed to meet our customers' needs and usage patterns.

¹⁰ *See e.g.*, Verizon, *Verizon FiOS Internet, Plans*, <http://www22.verizon.com/residential/fiosinternet/Plans/Plans.htm>.

¹¹ *See e.g.*, Comcast, *Faster Internet*, <http://www.comcast.com/localization/localize.csp?referer=/shop/buyflow2/lite.csp?SourcePage=Internet>; Cox Communications, *Essential Internet*, <http://ww2.cox.com/residential/northernvirginia/internet/essential-internet.cox>.

For example, as AT&T has explained in detail elsewhere,¹² AT&T has adopted disclosure practices that unquestionably put the consumer first. AT&T provides clear, readily understandable information concerning rates, speed tiers, contract conditions, and service limitations through a number of mediums, including AT&T websites, advertising, service bills, and over-the-phone representatives.¹³ AT&T has also adopted measures designed specifically to serve the needs of the disabled and has recently published a new privacy policy in an easy-to-understand format that clearly explains to consumers precisely how AT&T uses and shares any personal information AT&T collects incidental to the provision of service.¹⁴ AT&T takes a similar customer-first approach to billing, featuring prominently at the beginning of each bill a summary of key information, including all charges that contribute to the customer's monthly total.

AT&T has also taken steps to ensure that prospective customers understand their contract terms. AT&T trains its sales representatives on all necessary customer disclosures – including cancellation policies and potential charges – and requires representatives to summarize for customers the service charges they can expect to incur. Additionally, customers have access to online billing support, online pop-ups (which supply useful information as customers view their bills), and service guides, all of which are designed to help customers better understand their service.¹⁵

¹² See Comments of AT&T Inc. at 13-25, *Consumer Information and Disclosure*, GN Dkt. No. 09-158, CC Dkt. No. 98-170, WC Dkt. No. 04-36 (FCC filed Oct. 13, 2009) (“AT&T NBP Comments”).

¹³ See *id.*

¹⁴ See AT&T, *AT&T Privacy Policy*, <http://www.att.com/gen/privacy-policy?pid=2506>.

¹⁵ See, e.g., AT&T, *Answer Center: Bill & Payments*, <http://www.wireless.att.com/answer-center/main.jsp>.

Likewise, existing customers have access to helpful tools that allow them to compare plans to other service options and to structure their service to fit their individual needs.¹⁶ For instance, AT&T offers a “self-help” tool, which provides customers of AT&T’s U-verse and DSL service with step-by-step wizards and an online forum with information on how to solve problems such as setting up a home network.¹⁷ Customers also have access to an online chat service and phone and email assistance.

Finally, AT&T clearly explains to both potential and existing customers the limitations of its service. AT&T’s Terms of Service, for example, inform customers about the maximum *and* minimum speeds provided by AT&T for each tier of broadband service,¹⁸ and AT&T’s website informs customers about the various factors that can affect actual download and upload speeds.¹⁹

In all of these ways, AT&T strives to differentiate itself by providing new and existing customers with the information they need to understand their terms of service and to enable them to compare AT&T’s services to those of other providers. In AT&T’s view, today’s highly competitive marketplace demands nothing less.

B. The Communications Industry is Best Positioned to Address Disclosure Issues and Should be Encouraged to Develop Industry-Wide Disclosure Principles

AT&T is not alone in making consumer disclosure and transparency a priority. In fact, Commission data reveal that providers have made significant strides toward improving transparency. The number of complaints the Commission receives related to billing, rates,

¹⁶ See, e.g., AT&T, *Compare DSL Plans – AT&T High Speed Internet Direct*, <http://www.att.com/gen/general?pid=11575>.

¹⁷ See, e.g., AT&T, *AT&T U-verse Support*, <https://www.att.com/esupport/main.jsp>.

¹⁸ See AT&T High Speed Internet Terms of Service / att.net Terms of Use, <http://info.yahoo.com/legal/us/att/terms/all/>.

¹⁹ AT&T, *Help and Support*, <http://helpme.att.net/dsl/speedtest>.

marketing, and contract issues is statistically insignificant compared to the total number of complaints, and there has been a significant decrease in the complaint rate over the last five years.²⁰

At the same time, not all providers have embraced AT&T's commitment to transparency, and AT&T believes there is more to be done. AT&T thus supports the Commission's efforts to increase transparency and, in this respect, has previously outlined a proposal for committing all providers to a uniform set of disclosure and empowerment principles.²¹ This proposal would allow providers, with input from consumer groups and the Commission, to develop a voluntary, industry-wide framework to govern the customer-provider relationship. If successful, the approach would provide consumers with consistent information as they make comparisons among providers and platforms and would ensure that they are able to compare apples to apples, to the greatest extent possible, when making purchasing and/or usage decisions.

Importantly, the disclosure principles developed through this process should cover *all* communications providers and each phase of the customer-provider relationship, including the purchasing decision and decision to terminate service. The Public Notice appears to suggest that the disclosure and transparency issues that arise in the context of fixed residential and small business broadband services are distinct from those that arise elsewhere. The Public Notice points to no evidence to support that view, and in AT&T's experience it is not the case. In addition, a siloed approach – to the extent it results in disclosure obligations on certain residential and small-business services that do not apply to other services – could create

²⁰ See Reply Comments of AT&T Inc. at 7, *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, GN Dkt. No. 09-158, CC Dkt. No. 98-170, WC Dkt. No. 04-36 (FCC filed Oct. 28, 2009) (explaining how the Commission's own data supports the conclusion that there has been a substantial decrease in complaints).

²¹ See AT&T NBP Comments at 33-39.

confusion among consumers while limiting the efficiencies of providers of converged services that are attempting to create uniform principles of disclosures that apply across-the-board.

In prior comments, AT&T outlined ten core principles that it believes could form the basis of an industry-wide, cross-platform approach,²² and it is ready to join in any collaborative effort consistent with these principles that the Commission elects to facilitate. These principles cover disclosure of key information relating to, among other things, rates, terms and conditions, limitations and quality of service, advertising, billing, privacy, accountability, and customer complaints. The principles advocated by AT&T are flexible enough to apply across different platforms, but specific enough to provide concrete guidance. And providers who agree to the framework will be subject to some form of enforcement mechanism to instill confidence in the approach.²³

As AT&T has previously emphasized,²⁴ a voluntary, industry-driven set of principles is preferable to a Commission-imposed solution for a number of reasons. Perhaps the greatest source of consumer confusion arises from the fact that functionally similar services receive different regulatory treatment. But with a uniform set of core consumer principles applicable across competing service providers, consumers will benefit from a more standardized set of information and protections, regardless of the ultimate regulatory classification of the services they choose to purchase.

²² *See id.* at 37-39. Those principles are: (1) Upfront Disclosure of Key and Pertinent Information Related to Rates, Terms & Conditions Including Cancellation Policy, Service Availability Policy, Privacy Policy, Limitations of Service; (2) Clear and Accurate Marketing & Advertising; (3) Clear & Understandable Bills; (4) Ready Access to Customer Service and Prompt Handling of Customer Complaints; (5) Privacy Protection; (6) Disability Accessibility; (7) Protection of Customer Choice to Change Service Provider/Service Plan; (8) Child Protection; (9) Quality of Service; and (10) Accountability/Enforcement.

²³ *See id.* at 3.

²⁴ *See id.* at 39-44.

AT&T's proposed approach will also avoid the inherent legal risks of a regulatory mandate. Questions are bound to arise concerning the Commission's regulatory authority and many providers are already subject to state and FTC oversight, creating the possibility of overlapping and conflicting requirements. Further, any rules dictating the content and presentation of providers' advertisements and bills would likely be subject to challenge under the First Amendment.

Finally, in AT&T's view consumers do not want *more* information. Rather, they want *important* information, presented in a simple, clear format. The challenge here is accordingly one of prioritizing information, not simply presenting more of it, and disclosing it in a format and through mediums that consumers find accessible. It would be exceedingly difficult for the Commission to design regulations that account for the nuance required to accomplish these goals. Indeed, any regulatory solution would have to use general, flexible language in order to apply across the industry, as it is simply not practical for the Commission to create specific rules to govern the content of each provider's advertisements, bills, terms and conditions, and policies. The better approach is to allow the industry to create a set of flexible principles, within which each provider can decide for itself the best ways to present pertinent information. And by allowing industry stakeholders to assist in creating the applicable framework, the Commission would create a sense of ownership in the finished product that would ultimately enhance the likelihood of voluntary compliance.

II. THE COMMISSION SHOULD CONVENE A PANEL OF EXPERTS TO ASSIST THE COMMISSION IN DETERMINING HOW BEST TO MEASURE NETWORK PERFORMANCE

The Public Notice also asks commenters to address “how Fixed Services could be better measured in the future.”²⁵ Measuring network performance is an important and worthwhile endeavor. But it is also a complicated one, and the Public Notice suggests that the Commission is not yet fully informed about the subject. This is not to say that the Commission cannot obtain accurate measurements of network performance, but it must take the time to educate itself. It cannot obtain a complete understanding of this subject through a short comment cycle and a Public Notice that is focused primarily on another subject.

As a threshold matter, before the Commission undertakes *how* to obtain measurements of network performance, it must first determine *why* it seeks to do so. The Public Notice is not specific in this regard. Network performance measurements may be relevant to numerous topics and policies that may be of interest to the Commission, from monitoring downstream and upstream speeds in the last mile to gauging performance in the backbone to throughput as a whole. Before the Commission answers the specific questions posed in the Public Notice – before it can determine, for example, “what *exact* starting and ending points are most useful and actionable for consumers, regulators and providers”²⁶ – it must first delineate its regulatory objectives.

Once the Commission determines *why* network performance measurements will aid it in fulfilling its mission, the Commission can then move to assessing *what* data will help it to achieve its purpose. This task follows from the first. The Public Notice asks “[w]hat

²⁵ Public Notice at 2.

²⁶ *Id.*

performance characteristics should be tracked across . . . starting and ending points?”²⁷ The answer is: it depends. It depends on what the Commission is trying to measure and why it is trying to measure it. If the Commission is focused, for example, on gauging the reliability and throughput of ISPs’ access to an Internet backbone, factors affecting last-mile transmission speed may be less relevant. If, by comparison, the Commission is seeking to measure transmission rates across various backbones, then data concerning congestion, distance traveled, server capacity, and the type of data being transferred may take priority. Each of these attributes would be measured in a different way – indeed, in multiple different ways. Without knowing why the Commission is collecting data and what data is relevant to that goal, commenters cannot recommend a strategy for the Commission to employ.

Finally, after determining *why* the Commission seeks to measure data and *what* data will be relevant to that goal, the Commission can turn to the subject of the Public Notice: *how* can broadband services provided to residential and small business customers best be measured.²⁸ This question, however, is extremely complex and cannot be properly addressed in a circumscribed comment cycle. AT&T and other commenters have explained in great detail the many factors that can affect the performance of a broadband network, which often vary depending on the broadband platform at issue and/or are beyond the control of the service provider.²⁹ These complicated factors, which are sometimes interdependent, should be addressed

²⁷ *Id.*

²⁸ *See id.*

²⁹ *See, e.g.,* Comments of AT&T Inc. at 4-5, *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Voice over Internet Protocol (VoIP) Subscribership*, WC Dkt. No. 07-38 (FCC filed Aug. 1, 2008) (the “speed a customer experiences at any time is a function of myriad factors, many of which are beyond the broadband service provider’s control and mask the true capabilities of the service, including the quality of the wiring at the consumer’s premises, the computer and networking

in any measurement regime. Thus, the proper treatment of this issue requires the Commission to solicit the input of industry experts who can provide the “sound engineering” background that Chairman Genachowski has rightly identified as critical in this context.³⁰

Indeed, the diagram contained in the Public Notice itself underscores this fact and demonstrates the importance of obtaining expert assistance before articulating appropriate performance measurements.³¹ The diagram – which depicts a series of IP clouds connecting an end user’s last mile access connection to the “public Internet” – presents an oversimplified and at least arguably incorrect picture of the architecture of the Internet. Internet traffic originated on AT&T’s U-verse network, for example, rides a high-speed access connection from the customer premises to a node, at which point it is placed on a succession of shared, point-to-point transmission facilities before reaching AT&T’s Internet backbone and being transferred to another network through a peering or transiting arrangement. Cable networks, by contrast, typically rely on shared facilities throughout their distribution plant. These two different architectures alone present numerous difficult questions regarding how best to measure network performance, and neither of them is accurately depicted in the Public Notice. Nor, for that matter, does the Public Notice depict the backbone component of a broadband network despite the immense volumes of Internet traffic that flow over such backbones, which may be highly relevant when measuring certain aspects of network performance.

equipment used by the consumer, the software and applications currently being run by the consumer, general Internet congestion and the responsiveness of the particular servers and networks the customer seeks to access, as well as many technology-specific factors, including how many other subscribers are using the same shared facilities (*e.g.*, cable modem), the consumer’s distance from the provider’s facilities (*e.g.*, DSL), atmospheric conditions (*e.g.*, satellite) and the capabilities of subscriber purchased devices (*e.g.*, wireless devices)”.

³⁰ See Open Internet NPRM at 92 (Statement of Chairman Julius Genachowski).

³¹ See Public Notice at 4.

The complexities inherent in seeking to measure network performance render it imperative that the Commission obtain input from a qualified panel of experts. In this respect, the Commission recently established a Technical Advisory Process to ensure that its Open Internet rulemaking is undertaken with “a thorough understanding of current technology and future technological trends.”³² The Technical Advisory Process will be “inclusive, open, and transparent,” and will seek to obtain “the best technical advice and information from a broad range of engineers.”³³ The network-measurement questions asked in this Public Notice warrant a similarly “open” and “transparent” process and a similarly “thorough” understanding of the highly technical details of broadband network performance. Whether the Commission assigns this task to the same Technical Advisory Process it recently established or instead initiates a new one dedicated to this particular task, it is imperative that the Commission educate itself by convening a panel of experts who can provide insight into how broadband networks are structured and how they can best be measured. The Commission simply cannot, consistent with principles of reasoned decisionmaking, take regulatory action in this critically important and highly complex arena, based on an incomplete and in at least some respects inaccurate understanding of the network architectures various providers use to provide broadband service to their customers.

³² Open Internet NPRM at 61, ¶ 177.

³³ *Id.*

CONCLUSION

The Commission should facilitate the development of industry-driven, consensus principles to promote transparency and disclosure, and it should convene a panel of technical experts to assist in the development of metrics to gauge broadband network performance.

Respectfully submitted,

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