

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comment Sought on Broadband)	GN Docket Nos. 09-47, 09-51, 09-137
Measurement and Consumer Transparency)	
of Fixed Residential and Small Business)	
Services in the United States)	
)	
NBP Public Notice #24)	

VERIZON COMMENTS – NBP PUBLIC NOTICE #24

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COMMENTS OF VERIZON – NBP PUBLIC NOTICE #24

Verizon¹ is a strong proponent of informed consumer choice and of providing consumers with the information they need to make those choices. Broadband providers like Verizon that offer high quality services at competitive prices have every reason to give consumers information about those services and prices, thus empowering consumers to make the right purchasing decisions. And, once those consumers become customers, broadband providers continue to have strong business reasons in the competitive marketplace to provide them with the information they need in order to retain those individuals as satisfied customers.

Verizon has also learned from holding periodic focus groups with its customers that they do not necessarily want *more* information but, rather, the *right* information conveyed in a way that is readily processed and understood – that is, information that is simple, clear and to the point. The challenge for broadband providers is to provide customers with sufficient information to enable informed purchase decisions without deluging them with too much information.

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

As further detailed in Verizon's NOI Comments,² Verizon provides a wealth of information about its wireline (i.e., fixed) broadband services to potential and existing customers through a variety of channels, including advertising, point of sale disclosures, its website, and its bills. In its advertisements for wireline broadband services, Verizon discloses rates and other key terms of service, including any activation or early termination fees; any required contract term; and whether additional taxes and fees apply, and information about the service itself, such as the maximum upload and download speeds. Verizon also indicates that actual speeds may vary from the maximum speed based on a variety of factors and provides more detailed information and a tool to measure speed on its website. To the extent that certain advertising channels, such as radio and billboard, inherently limit the amount of information that can be conveyed, Verizon provides substantial disclosures at the point of sale so that customers can make informed purchase decisions. In response to customer feedback, Verizon has recently enhanced its point of sale disclosures by providing new FiOS customers who order service through a call center with an estimate of the first bill that includes pro-rated amounts, one-time and monthly charges, and the amounts of taxes and fees. Similarly, Verizon has recently redesigned its bills to improve their clarity in response to customer feedback.

Through experience, Verizon has learned that in order to continue to improve consumer communications, providers need the flexibility necessary to tailor their communications with consumers in response to customers' evolving informational needs.

² Verizon and Verizon Wireless Comments, *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, at 14-48 (Oct. 13, 2009) ("Verizon NOI Comments") (App. 1).

Thus, the appropriate model for meeting consumers' needs in today's competitive communications marketplace is to couple providers' strong incentives to satisfy consumers with voluntary industry guidelines, rather than prescriptive or heavy-handed laws or regulations that would limit the flexibility of providers to respond to consumers' changing needs. As a supplement to such industry guidelines, there are also existing consumer protection laws such as deceptive trade practices acts, administered by the state Attorneys General and the Federal Trade Commission (FTC) to address inadequate or inaccurate information disclosure.

Such an approach would best address the one issue on which the instant *Notice*³ focuses – i.e., the disclosure of actual speed or throughput and other broadband performance metrics for fixed broadband services. Measuring and disclosing throughput in a manner that is fair to providers and meaningful and comprehensible to consumers is complex. Therefore, any throughput measurements should be developed through a collaborative process led by industry and consumer groups working together and reflecting input from all stakeholders, who can address the myriad issues surrounding the appropriate measurement criteria. The collaborative process could develop industry guidelines and verification mechanisms that would allow broadband consumers to receive meaningful throughput and reliability information. In these Comments, Verizon sets out a preliminary set of measurement principles that will advance those future discussions. Due to the scope of the *Notice*, Verizon's response is limited to its wireline broadband services.

³ *Comment Sought on Broadband Measurement and Consumer Transparency of Fixed Residential and Small Business Services in the United States*, Public Notice, DA 09-2474 (Nov. 24, 2009) (“*Notice*”).

DISCUSSION

I. Today, Broadband Consumers Are Able To Compare Providers' Services and Resolve Any Disputes With Their Provider.

As Verizon explained more fully in its comments and reply comments to the *Consumer Disclosure NOI*,⁴ in today's competitive environment, broadband providers like Verizon provide extensive information to consumers about the services they offer and work to provide clear and understandable billing information. By informing customers of the attributes of its services and the value they offer, Verizon is better able to attract new customers and retain existing customers. Providing accurate information about its services and then delivering services that live up to those representations is important for Verizon to attract and retain satisfied customers for the long term.

Verizon advertises in all major media, including print, television, radio, online, and billboard. In its advertising, Verizon provides important information about the terms, nature, and quality that pertain to the various broadband services it offers. The information provided by Verizon allows consumers to compare competitive broadband offerings and determine which provider best suits their needs.

Verizon's advertisements for broadband services include clear disclosures of the price of the service and the material terms, such as the requirement for an annual term, any upfront charges, activation fee or early termination fee, and that other charges, taxes, and terms apply. Verizon's print advertisements for broadband service, which have

⁴ *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380 (2009) ("*Consumer Disclosure NOI*"); see also Verizon NOI Comments; Verizon and Verizon Wireless Reply Comments, *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, at 14-48 (Oct. 28, 2009).

fewer space restrictions than other media, explain the eligibility for the offer and that the rate may change once the term agreement (where applicable) or promotional period ends. Because certain advertising media – in particular, radio and billboard – can convey far less information than others, Verizon also provides all the information consumers require for their purchase decision at the point of sale.

In addition to disclosures pertaining to the terms of service, like its cable competitors, Verizon advertises the maximum or “up to” upload and download speeds that a customer can achieve.

Verizon clearly informs consumers that the actual speed may vary based on numerous factors and provides more detailed information on speed through its website⁵ and terms of service. For broadband offered through shared delivery networks – such as cable modems – achieved user speeds vary considerably depending on, among other things, the level of upstream and downstream traffic at a particular point in time. Likewise, achievable DSL speeds are affected by such factors as a customer’s distance from a central office and the quality of the wiring in the customer’s home. Moreover, achievable speeds at any given time and place also are affected by other factors completely unrelated to a provider’s broadband network, such as the network and computer equipment used by the customer, the applications in use, speeds and capacities of other backbone and network providers, server performance for websites the user visits on the Internet, and content delivery network configuration (e.g., the availability of content caching). For instance, if a broadband user attempts to retrieve data from MSNBC’s website, the speed at which the data is delivered to the user may vary based on

⁵ See Verizon FIOS Internet FAQs, <http://www22.verizon.com/Residential/FiOSInternet/FAQ/FAQ.htm>.

the website's available bandwidth as well as whether MSNBC cached the data on multiple servers throughout the country nearer to the user or stored the data exclusively on servers at a single location, among other things.⁶

Furthermore, Verizon often provides its customers with comparisons and examples as a way to illustrate the speed of its services. For example, with respect to Verizon's fiber optic based broadband service, FiOS, Verizon provides comparisons of the relative speed performance of FiOS against cable.⁷ For its digital subscriber line service, marketed under the name High Speed Internet (HSI), Verizon provides comparisons of the relative speed performance of HSI against a dial-up Internet connection.⁸

Verizon also helps customers understand how the speed of a particular Verizon broadband service works in practice. For example, Verizon makes available information on its website and occasionally in its advertisements regarding how long it would typically take to download songs or a movie and upload photos or a video at a particular speed.

⁶ Indeed, the Commission has previously noted some of the complexities associated with measuring and disclosing actual broadband speeds. For example, when it declined to require broadband providers to collect actual broadband speeds that consumers experience in response to the *Broadband Data FNPRM*, the Commission observed that "factors beyond the control of service providers may compromise" their ability to accurately report such information. *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, ¶¶ 22, 36 (2008) ("Broadband Data FNPRM").

⁷ See Verizon, FIOS Internet, FIOS v. Cable, <http://www22.verizon.com/Residential/FiOSInternet/FiOSvsCable/FiOSvsCable.htm>.

⁸ See Verizon High Speed Internet (HSI) Fact Sheet, <http://newscenter.verizon.com/fact-sheets/verizon-high-speed-internet.html>.

To show how Verizon's broadband services stack up against the competition, Verizon includes current results of third-party studies of Verizon's broadband service in its advertisements. For instance, Verizon has cited a July 2008 study from PC Magazine in which FiOS Internet service ranked first for two years in a row.⁹

Although Verizon provides a variety of sales channels through which customers can obtain information about, and order its products and services (customer contact centers, online websites, retail stores, door to door contacts, mall kiosks, telemarketers, and other local agents), the vast majority of customers of wireline services call Verizon's consumer call centers to purchase new services. When a prospective broadband customer calls Verizon, the representative will explain the speed options available to the customer. Verizon attempts to eliminate any confusion about the speed customers will actually receive as compared to the "up to" speed. For example, for Verizon's HSI service, the representative will read a script similar to the following:

Your Verizon High Speed Internet order will be provisioned for our up to 1.5M/384k product. This means that your maximum connection speed to our network will be up to 1.5Mbps. Throughput speed (the speed you experience when you download or upload files) will be lower than connection speed. The actual speed of your service will depend on a number of factors like the condition of your phone line and the wiring inside your location, Internet or network congestion, and the speed of websites you connect to on the Internet, among others. Actual connection and throughput speeds and uninterrupted use of the service are not guaranteed.

For Verizon's FiOS Internet service, the representative will read a script similar to the following:

The service you've selected provides data transfer speeds of up to [XX] Megabits per second downstream and [XX] Mbps upstream. These speeds are between your home and our central office. The actual speeds you

⁹ See App. 1, Ex. 12.

experience could vary based on your computer's configuration, the sites you're visiting on the Internet and the speed of website services you visit, among other factors.

When FiOS Internet is installed, the technician will optimize the customer's PC to take full advantage of the service. In addition, the technician will test the speed of the customer's FiOS broadband service to ensure that it is 90% or greater of the customer's selected tier and inform the customer about the speed of the customer's service. The technician also shows the customer how to test the speed of the customer's service via Verizon's website tool. Speed-testing tools are also provided by third-party websites, such as speedtest.org.

Once the customer's selection of service(s) is done, the representative must read a statement recapping the offer and its key terms of service. In particular, the representative will highlight promotional terms, the contract duration and any early termination fee and whether the customer has the right to cancel service before such fee would apply.¹⁰ Once the recap is complete, Verizon provides its new FiOS broadband customers with a First Bill Estimate, which approximates his or her first bill. The customer is orally informed of pro-rated amounts, one-time and monthly charges, and the amounts of taxes and fees. This allows customers to have a better grasp of their monthly costs before proceeding with the order.

Typically by the next business day, a confirmation letter will be emailed or mailed to the customer. The confirmation letter identifies the promotion the customer ordered and sets out the First Bill Estimate that was recited over the phone, with a written

¹⁰ The other methods by which broadband customers typically order service – in person or online – provide similar robust disclosures. *See* Verizon NOI Comments at 14-48.

estimate of the charges the customer will see on his or her first bill. If the customer feels that the written estimate is not consistent with what they were quoted by the representative, the customer can contact Verizon to request clarification or, at his or her option, can cancel the installation at no charge. The confirmation letter further explains the cancellation policy for the selected offer after installation, including (if applicable) any minimum term commitments and early termination policies that apply to the customer's service selection. The confirmation letter provides a link to the complete terms of service for each of the Verizon products the customer ordered.

Verizon began orally providing the First Bill Estimate in its call centers and sending this confirmation letter to new FiOS customers in June 2009 in response to customer feedback. As a result of this effort, Verizon has experienced a significant reduction in customer calls with questions about the first bill. The percentage of customers that called to inquire about their bills within the first 31-45 days of service (i.e., the time period when the first bill is most likely to arrive) fell by over 50% the month after the First Bill Estimate was put into place. Verizon is gradually expanding the First Bill Estimate to all customer channels selling broadband services.

Prospective and existing broadband customers may also be interested in Verizon's privacy policy. Verizon publishes on its website a single, easy-to-read privacy policy that applies across all Verizon businesses, products and services.¹¹ In its policy, Verizon makes clear that Verizon does not sell, license, or share information that individually identifies customers with third parties for their own marketing purposes, and Verizon provides customers with online tools that allow consumers to control Verizon's use of

¹¹ See <http://www22.verizon.com/about/privacy/policy/>.

their information. Furthermore, Verizon provides consumers with access to online safety tools and tips they can use to better protect their own information and computers from third-party attacks.¹²

Finally, existing broadband customers have access to pertinent information relating to their accounts. Verizon endeavors to ensure its bills are clear and understandable so that customers do not need to place a call to customer service for an explanation. (Nonetheless, Verizon provides a toll free number, physical address and its website on its bills for customers with questions.) A customer's first bill includes a fulfillment message that recites what offer the customer ordered and what is included in that offer. The bill also indicates the date when the customer's promotion ends. As the customer's promotional period ends, the bill will include a statement that the promotion is ending this month. Verizon recently added this feature after analyzing customer inquiries. This allows customers to contact customer service (either by phone or online) prior to the end of the promotion to change service options, rather than incur a more expensive bill. The second page of the bill provides information about bill cycle dates, the address for mailing a payment, making a payment by check, electronic funds transfer, credit reporting, and change of address.

Verizon encourages all of its consumers to enroll in its online tool for managing accounts, known as "My Verizon." With this online tool, customers can view six months of detailed bills, pay bills, and order or change services.

Broadband customers have numerous avenues to resolve any complaints they may have. For example, customers may call their provider to complain. Verizon has made

¹² See <http://www22.verizon.com/about/privacy/personalinformation/>.

concerted efforts to address and resolve quickly any customer complaints that do occur. To measure whether it is successful in resolving service calls to its customer service centers, Verizon collects First Call Resolution data. These data reflect all calls made to customer service, regardless of whether the customer called to complain, inquire about services, or order new services, and whether the same customer called back within 30 days of the initial call for any reason. Verizon's recent data show that over 70% of calls to customer service are resolved without a follow-up call by the customer.

To the extent broadband customers cannot resolve an issue directly with their provider, they may elect to pursue a complaint in other available venues. For example, a broadband customer may notify the Attorney General in his or her state and request that the state Attorney General investigate the customer's complaint. A customer may also seek resolution by notifying the local Better Business Bureau. Finally, a consumer may file a claim against a provider in court, which could range from a small claim on behalf of a single customer to a putative class action on behalf of millions of customers. In short, consumers have various options available to them if they are not satisfied with broadband providers' response to their complaints..

In sum, prospective and existing broadband customers receive substantial information about the terms and features of Verizon's broadband services and have ample opportunity to resolve any issues. The competitive market dictates that other broadband providers make similar disclosures to consumers about their services and be responsive to their concerns. And existing speed-test tools and enforcement mechanisms provide Verizon and other providers with strong incentives to deliver a service that is consistent with what is advertised.

II. The Commission Should Permit the Industry and Consumer Groups, Working Together, To Devise Appropriate Measures of Broadband Speeds and Availability.

As customer needs evolve, the appropriate model to further improve customer communication is for relevant stakeholders to work together to develop a set of consumer disclosure guidelines similar to the CTIA Code of Consumer Conduct developed by the wireless industry. That same group could also take on the highly technical task of developing a set of industry guidelines for measuring and disclosing broadband speeds and availability.

A. Measuring Broadband Speeds Is a Complex Exercise And Is Best Addressed Through An Industry Collaborative Process.

Given the many factors that can affect the performance of a subscriber's service, described *supra* at 5-6, and the various technologies used to provide broadband, determining how to measure and disclose "actual" speed (and what to disclose) is a highly complex exercise, requiring substantial industry collaboration and expertise to ensure that the measurement criteria are both fair to all broadband providers and meaningful to consumers who wish to compare providers' services. In light of the fact that consumer groups have recently expressed interest in the disclosure of these measurements, an industry-consumer group collaborative process should begin that involves all relevant broadband providers and key stakeholders to identify what metrics are meaningful to consumers and to identify fair (i.e., technology and competitively neutral), comparable, and understandable ways to measure and present such information. The collaborative group should endeavor to develop metrics and disclosure guidelines that would be widely adopted by broadband providers.

To avoid any issues pertaining to the Commission's jurisdiction over broadband services, the Commission should play a consultative role and aid in facilitating industry collaboration.¹³ The collaborative group must first define the policy objectives and then turn to the complex task of formulating the industry guidelines. This process would need to address, among other things, the various issues described in more detail in Section II.B, below, and ensure that broadband providers do not incur undue costs to provide unnecessary information. Once the industry guidelines are finalized, broadband providers will have every incentive to adopt them. Given the highly competitive marketplace for communications services, consumers will conclude that only broadband providers with inferior broadband services would fail to disclose the information required by the industry guidelines like its competitors do.

Furthermore, accountability and verification should be addressed in the industry guidelines. For instance, to help ensure the accuracy of any provider speed disclosures, the collaborative group could consider designating an impartial third-party to monitor compliance with the guidelines based on certain criteria. Alternatively, elements of the actual speed tests themselves could be run or conducted by a neutral third-party on behalf of industry. In either case, the industry guidelines could dictate that the third-party publish its findings or otherwise make them available to the public. These findings may be reviewed by the FTC and/or the states, which have authority over unfair or deceptive trade practices, such as false or misleading advertising. Thus, the collaborative group has

¹³ A similar public-private collaborative approach has proven successful in the online privacy context. The Online Privacy Alliance, which is a coalition of numerous companies involved in e-commerce and trade associations, has worked with the FTC to develop a set of privacy principles and complete annual surveys of compliance with those principles.

a range of approaches that it could adopt that would require no additional enforcement mechanisms by the Commission.

B. Verizon Preliminarily Recommends That Any Collaborative Process Follow Certain Principles When Defining Measurement Criteria.

As Verizon has been contemplating appropriate speed and reliability measurements for broadband services, Verizon has formed *preliminary* views on certain measurement issues. Verizon is providing those preliminary views here in order to advance the industry's discussion. Of course, Verizon may ultimately reach different conclusions on the issues discussed below after gaining additional information through its collaboration with others.

First, consumer disclosures should include a measure of throughput (or speed). Whether such measures should include aspects of the public Internet (#1 in the *Notice's* diagram) or parts of the in-home network (#6 in the *Notice's* diagram) is something that should be discussed by the collaborative. Verizon's initial view is that throughput and availability measures should be based on the portion of the broadband network between the subscriber's home modem or router (#5 in the *Notice's* diagram) and an equitable point at the edge of the provider's broadband network (#2 in the *Notice's* diagram) – i.e., the portion of the broadband network most directly under the provider's control. Nevertheless, because performance on other network segments involved in the end-to-end communication may be relevant to consumers, a collaborative process would allow parties to air various views and discuss the pros and cons of each approach to arrive at a consensus.

Second, providers should disclose throughput information for their broadband network based on both upload and download throughput, broken down separately by

service tier. This would permit consumers with different usage patterns to determine which provider and which tier best suit their particular needs. Some consumers download large files (e.g., movies, software) on a regular basis, while others tend to more often upload files (e.g., photos). Thus, both the upload and download throughput are meaningful to customers.

Third, throughput measurements should take into account the range of issues that affect consumers' typical experience online. For example, uploading and downloading of certain file sizes are more common, and the throughput data should reflect that, for example, by including tests conducted using representative Internet file transfer sizes. Similarly, tests should take into account the fact that typical usage varies by the time of day/day of week. Throughput measurements disclosed to consumers should account for peak usage periods because this data would best reflect the typical customer experience on the provider's broadband network. Testing should also take into account differences in network architecture in different neighborhoods. For example, even within a single provider's broadband network, differences in network architecture (e.g., engineering guidelines and technology that evolve over time) may create different end-user experiences. And the geographic proximity of an end user to the network-side test point can affect some throughput measures as a result of simple physics. A collaborative effort is the best way to reach a consensus on the range of information that should be reflected in the measuring process (e.g., file size, day of week, time of day, what constitutes representative sampling of various local network topologies and geographic locations), and then to detail the actual testing processes themselves (e.g., what exact file sizes,

frequency of testing, number and dispersion of connections required to provide representative or random sample).

Fourth, throughput metrics should be obtained from an appropriately defined sample, rather than all end user connections. Universal testing is not necessary to obtain statistically valid results and would likely be more costly for providers than testing a sample. That said, the collaborative is the best context in which to explore this issue and resolve issues relating to sample selection.

Fifth, providers should not disclose simple, single-figure measurements of average speed as a basis for comparing actual throughput to the advertised speed tier. Just as consumers use the Internet differently, providers offer broadband services with different features. For example, some broadband providers offer customers “speed burst” functionality, which allows customers to exceed their service tier for downloads of certain sizes when capacity is available.¹⁴ By contrast, other providers’ broadband offerings do not offer “speed burst” functionality; instead, they may be designed so that throughput close to the service tier is consistently achieved by customers. Thus, measures other than the averages or means, such as medians or modes (figures also derived from multiple test results), may better reflect the typical customer experience and be more relevant to consumers than mean throughput. In addition to a single-figure measure such as median or mode, other information relating to network throughput

¹⁴ The offering of “speed burst” functionality by some providers exacerbates the complexity of measuring throughput for consumers to compare to the “up to” tier. The “up to” tier is defined by some providers as the maximum throughput that a customer can achieve, while other providers allow that throughput to be exceeded via “speed burst.” A consistent definition of the “up to” tier should be determined by the industry so that providers would not have the incentive to artificially lower their “up to” tier or over-provision services behind the scenes in order make their measured throughput performance look better by comparison.

performance is likely to be important to consumers. Information showing variability of performance, for example, would add context to published single-figure measures and assist customers in assessing the consistency of the service. These issues are likely to require extensive analysis by the collaborative group to ensure that the results of the measurement tests fairly portray all broadband providers in a manner that is technology and competitively neutral, while being relevant for and understandable by consumers.

Sixth, broadband providers must be careful not to overload consumers with unnecessary information pertaining to network performance. Technical parameters such as latency, packet loss, and jitter may be relevant to some consumers, while for others, a more basic throughput measurement may adequately account for these more technical metrics. A more robust discussion between consumer groups and other broadband providers is needed to determine whether such technical parameters should be separately disclosed. Accordingly, whether, and if so, how, to measure such technical parameters and disclose that information to consumers in a way that is meaningful and not confusing should be addressed by the collaborative group.

Seventh, broadband providers should provide a measurement of network availability. Availability should be defined as the percentage of time broadband service is working. Broadband providers could calculate this value using the same testing for throughput and determining the percentage of tests that complete successfully or use some other dedicated test for availability (e.g., ping-testing of routers or modems). Again, working in the context of the collaborative, broadband providers and consumer groups can discuss methods of measuring availability and build industry consensus for a

mechanism that is cost-effective to implement, comparable across providers, and meaningful to consumers.

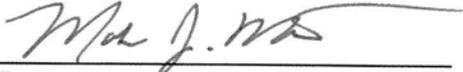
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CONCLUSION

In sum, the appropriate model for meeting broadband consumers' needs in today's competitive communications marketplace is to rely upon broadband providers' strong incentives to satisfy consumers, supplemented by industry guidelines that should be developed through a collaborative process with input from all stakeholders, rather than prescriptive or heavy-handed laws or regulations that would limit the flexibility of providers to respond to consumers' evolving needs.

Respectfully submitted,

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