

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

In the Matters of	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
International Comparison and	)	GN Docket No. 09-47
Survey Requirements in the	)	
Broadband Data Improvement Act	)	
	)	
Inquiry Concerning the Deployment of Advanced	)	GN Docket No. 09-137
Telecommunications Capability to All Americans	)	
in a Reasonable and Timely Fashion, and Possible	)	
Steps to Accelerate Such Deployment Pursuant to	)	
Section 706 of the Telecommunications Act of	)	
1996, as Amended by the Broadband Data	)	
Improvement Act	)	

**COMMENTS OF TIME WARNER CABLE INC. – NBP PUBLIC NOTICE #24**

Time Warner Cable Inc. (“TWC”) hereby submits its comments in response to the Commission’s Public Notice in the above-captioned proceedings.<sup>1</sup> The Public Notice overlaps with and supplements a prior Notice of Inquiry that more broadly addressed issues relating to the disclosure of service information to consumers.<sup>2</sup> TWC supports the Commission’s goal of ensuring that consumers are equipped to make informed decisions, and it has provided the Commission with substantial information concerning its own practices in this regard. Below, TWC provides additional input on such issues in response to the Public Notice.

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<sup>1</sup> Public Notice, *Comment Sought on Broadband Measurement and Consumer Transparency of Fixed Residential and Small Business Services in the United States (NBP Public Notice #24)*, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Nov. 24, 2009) (“Public Notice”).

<sup>2</sup> See *id.* at 1; see also *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380 (2009) (“*Consumer Information and Disclosure NOI*”).

## BACKGROUND

TWC, the nation's second-largest cable operator, serves approximately 14.7 million customers in 28 different states over its technologically advanced broadband networks passing nearly 27 million homes. In addition to offering basic and digital cable services, TWC is a leading provider of broadband Internet access and facilities-based interconnected VoIP services to customers across its footprint. TWC has long been an innovator in the broadband arena, establishing a remarkably successful track record in the provision of broadband-based services to residential and enterprise customers for over a decade.<sup>3</sup>

## DISCUSSION

The Public Notice seeks comment on three general issues relating to the provision of information to consumers concerning broadband services. TWC discusses each in turn.

### 1. Consumer Transparency Regarding Fixed Services

The Public Notice first asks how the disclosure framework it described in its *Consumer Information and Disclosure NOI* should apply to the development of the national broadband plan, including how the Commission should ensure that consumers have increased transparency.<sup>4</sup> In response to the *Consumer Information and Disclosure NOI*, TWC provided extensive comment regarding its disclosure practices in connection with all of its services—the fixed residential broadband services at issue in the Public Notice, as well as its video, voice, and other high-speed data offerings more generally.<sup>5</sup> TWC incorporates those comments by reference in these proceedings.

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<sup>3</sup> Comments of Time Warner Cable Inc., GN Docket No. 09-51, at 3-4 (filed June 8, 2009).

<sup>4</sup> Public Notice at 1.

<sup>5</sup> See Comments of Time Warner Cable Inc., CG Docket No. 09-158 *et al.*, at 5-13 (filed Oct. 13, 2009) (“TWC Consumer Disclosure Comments”); see also Reply Comments of

As described in its prior comments, TWC uses a variety of channels to ensure that customers are educated about their service options, providing information at every stage of the relationship from the selection of plans and features to customer care and billing to termination. TWC also explained that service providers facing competitive pressures have strong incentives to provide useful information to consumers. Because those incentives do not invariably translate into the effective dissemination of information, however, TWC suggested that service providers would benefit from the development of best practices highlighting approaches that have been successful and those that have been less so. Such a flexible approach would better serve consumers than the imposition of one-size-fits-all solutions that would be of little use in a rapidly changing marketplace.<sup>6</sup>

TWC's earlier comments are equally applicable here. For all of the reasons TWC has described, incorporating a best-practices approach in the national broadband plan would allow the Commission to address any concerns it may have about transparency while preserving flexibility for broadband service providers to innovate and compete, consistent with the goals set forth by Congress. Rigid disclosure mandates, by contrast, tend to produce unhelpful boilerplate, as seen in the tariff model that prevailed for many years. As TWC has explained, there is ample precedent for public-private collaboration, including the voluntary code devised by the Commission and the industry to address problems associated with cramming, and the CTIA Consumer Code to which wireless carriers voluntarily adhere to facilitate their provision of information to customers (and which the Commission has relied on in certain regulatory

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Time Warner Cable Inc., CG Docket No. 09-158 *et al.* (filed Oct. 28, 2009) ("TWC Consumer Disclosure Reply Comments").

<sup>6</sup> Although other parties in that proceeding criticized some of the disclosure practices of broadband providers, TWC explained that such attacks are misplaced. TWC Consumer Disclosure Reply Comments at 4-7.

contexts, such as in processing wireless carriers' eligible telecommunications carrier ("ETC") applications).<sup>7</sup> Indeed, the Commission has separately sought comment on the creation of a "broadband clearinghouse" to serve as a repository of broadband-related best practices, and it has recognized the value of such a resource.<sup>8</sup> Such an approach would ensure the steady evolution of disclosure practices in the broadband context in a manner that meets the needs of all stakeholders. It would also allow the Commission to avoid the thorny legal questions that would arise if the Commission were to recommend new regulatory mandates, which might otherwise interfere with or delay the implementation of the national broadband plan.

## **2. Measurement of Fixed Services**

The Commission also asks how fixed broadband services should be measured.<sup>9</sup> A key metric in this regard is throughput speed. Although the Public Notice alludes to the possibility of measuring "actual" upload and download speeds,<sup>10</sup> TWC and others have explained in this proceeding and elsewhere that it is difficult to convey meaningful information about "actual" speeds because of the number of variables involved, many of which are beyond the service provider's control.<sup>11</sup> Indeed, because throughput speeds are likely to vary from website to

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<sup>7</sup> TWC Consumer Disclosure Comments at 17.

<sup>8</sup> See Public Notice, *Comment Sought on Broadband Clearinghouse (NBP Public Notice #10)*, GN Docket Nos. 09-47, 09-51, 09-137, at 1 (rel. Oct. 2, 2009) ("A broadband clearinghouse could reduce information barriers for municipalities, agencies, businesses, and non-profits that want insights into more effectively utilizing broadband infrastructure, or into broadband deployment or adoption projects. Such a clearinghouse could also provide information and a forum for scholars and policymakers to gather and contribute data.").

<sup>9</sup> Public Notice at 2.

<sup>10</sup> *Id.*

<sup>11</sup> TWC Consumer Disclosure Reply Comments at 3-4; Reply Comments of Time Warner Cable Inc., GN Docket No. 09-51, at 5 (filed July 21, 2009) (citing Comments of Time Warner Cable Inc., GN Docket No. 09-40, at 8-9 (filed Apr. 13, 2009)).

website and from hour to hour, predictions of “actual” performance run the risk of misleading consumers. TWC and other broadband providers publicize maximum speeds because that is the clearest available benchmark for consumers to assess broadband performance capabilities, allowing them to make apples-to-apples assessments regarding each provider’s relative performance. Indeed, when TWC designs and builds broadband facilities, the key metric it employs is maximum throughput during periods of peak performance.

While maximum speeds have been the most meaningful metric to date, TWC continues to explore other ways of measuring performance in the interest of conveying additional information to its subscribers.<sup>12</sup> For example, most of TWC’s divisions currently offer customers the Ookla speed-test tool, which, while not optimal, can provide customers with some indication of their network performance today.<sup>13</sup> TWC also is investigating other methodologies in its ongoing efforts to facilitate the provision of useful information to its customers. While some new approaches may hold promise, TWC submits that it would be premature for the Commission to mandate any particular form of performance measurement.

The Public Notice also asks about which parts of the network should be measured, and in particular, what starting and ending points are the most useful for this purpose.<sup>14</sup> From the perspective of providing the most accurate and reliable information to consumers, it is clear that one of the two end points should be the modem at the end user’s premises (item 5 on the diagram in the Public Notice). The modem is the point on the network about which consumers care the most, as it has the most direct relevance to the quality of the end user’s online experience. In addition, because the presence of a modem is a universal requirement for broadband access, it

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<sup>12</sup> TWC Consumer Disclosure Reply Comments at 4.

<sup>13</sup> See <http://www.ookla.com/about.php>.

<sup>14</sup> Public Notice at 2.

could serve as a point of reference for all settings, including multi-unit buildings (discussed below). Defining the customer's side of the network at another point further from the customer premises would convey misleading and irrelevant information. Indeed, that some segment of the broadband network may theoretically support very high throughput speeds (for example, fiber transport to a node or to the curb) has no practical significance to an end user if the speeds experienced at the customer premises are materially different.

The selection of the other (*i.e.*, network-side) end point is slightly less straightforward, but TWC believes that the Internet gateway (item 2 on the Public Notice's diagram) provides the most reasonable option. The Public Notice defines that point as the closest peering point between the broadband access provider and the public Internet.<sup>15</sup> A service provider should possess or be able to obtain the requisite information about the technical capabilities of the network between that point and the customer, whether through its ownership of the relevant facilities or through the contractual arrangement by which it obtains access to them.

### **3. Transparency Regarding Multi-Unit Buildings**

Finally, the Public Notice seeks specific comment on how to increase transparency for consumers in multi-unit buildings.<sup>16</sup> TWC does not believe there is any reason why different practices concerning transparency and performance measurement should or must apply in the multi-unit setting. The best-practices approach discussed above with respect to transparency should apply equally to all customers, regardless of where they live; pursuant to that solution, voluntary best practices would evolve in connection with consumers in multi-unit residence buildings just as they would evolve in other residential settings. And, with respect to performance metrics, the use of the modem and the Internet gateway as the two end points for

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<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 3.

the relevant portion of the network to be measured could apply in all contexts—indeed, that universal application is part of the appeal of that option.

### **CONCLUSION**

TWC commends the Commission for its continued attention to ensuring that all consumers have adequate information to make informed decisions. As documented in the Commission’s separate proceeding concerning truth-in-billing and related issues, TWC and other broadband providers already provide a substantial amount of relevant information to customers. The Commission should recognize the prevalence of these practices in the national broadband plan and recommend a framework that facilitates information-sharing while preserving innovation and experimentation.

Respectfully submitted,

**TIME WARNER CABLE INC.**

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