

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 – MOBILE BROADBAND MEASUREMENT**

The Wireless Communications Association International, Inc. (“WCAI”), the trade association of the wireless broadband industry, submits these comments in response to the Commission’s June 1, 2010 *Public Notice* soliciting comment “on whether and how” to pursue a program for measuring and publishing data on the actual performance of mobile broadband service offerings.<sup>1</sup>

As WCAI addressed in detail in its comments in response to the Commission’s 2009 *Notice of Inquiry* regarding consumer information issues,<sup>2</sup> WCAI shares the Commission’s desire to assure that each consumer has access to the information he or she reasonably needs to select the most appropriate broadband service provider and service plan.<sup>3</sup> However, consistent with WCAI’s view that government intervention in the competitive wireless marketplace should only occur as a matter of last resort, we continue to recommend that the Commission establish a broad-based working group with representatives of all relevant stakeholders to examine the extensive amount of information available to consumers today, to reach consensus on what

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<sup>1</sup> Comment Sought On Measurement Of Mobile Broadband Network Performance And Coverage, *Public Notice*, DA 10-988, at 1-2 (rel. June 1, 2010) [“*Wireless Performance PN*”].

<sup>2</sup> Consumer Information and Disclosure, *Notice of Inquiry*, 24 FCC Rcd 11380 (2009) [“*Consumer Information NOI*”].

<sup>3</sup> See Comments of the Wireless Communications Ass’n Int’l, CG Docket No. 09-158, at 1 (filed Oct. 13, 2009) [“WCAI Consumer Information Comments”].

additional information consumers might need, to determine whether such information can be collected and then packaged in a manner that it is meaningful to consumers, and to explore formats for making any required information available in a way that avoids consumer confusion without oversimplification.

The task the Commission has undertaken in the *Wireless Performance PN* is both complex<sup>4</sup> and fraught with the potential for unintended consequences that may actually harm consumers. We agree with the Commission that “[i]f designed correctly, disclosure policies are among the least intrusive regulatory measures at the Commission’s disposal.”<sup>5</sup> However, the converse can also be 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>6</sup> are among the most intrusive regulatory measures the Commission can impose. Particularly because, as discussed below, the vagaries inherent in wireless network performance make

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<sup>4</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.” *Consumer Information NOI* 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 National Broadband Plan, “[c]onsumers’ preferences differ depending on how they use their broadband connections and how much they are willing to pay for such use. Some value download speeds more than any other attribute, some value mobility and new converts from dial-up may still even value the simple “always on” connection.” Federal Communications Commission Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, 40-41 (2010) (“National Broadband Plan”) See also Comment Sought On Defining ‘Broadband’ NBP Public Notice #1, *Public Notice*, 24 FCC Rcd 10897, 10898, at 2 (2009) [“*Broadband Definition PN*”] (“there are network characteristics – such as latency, reliability, and mobility – that are relevant for certain applications but not others.”).

<sup>5</sup> *Consumer Information NOI*, 24 FCC Rcd at 11382 (emphasis added) (footnote omitted).

<sup>6</sup> As WCAI discussed in detail in its response to the *Consumer Information NOI* and addresses again 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. See WCAI Consumer Information Comments at 6.

simplified consumer-friendly disclosures difficult, any attempt to mandate disclosure of performance metrics to consumers runs a substantial risk of doing far more harm than good.

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, the United States Government Accountability Office ("GAO") has found recently 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>7</sup> This conclusion is hardly surprising – at least with respect to wireless broadband services, the market is highly competitive,<sup>8</sup> 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 to fully satisfy consumers with their relationship with their service provider. 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.

The simply, unavoidable fact is that there will always be situations in which mobile broadband service will be sporadically unavailable, or will be slower or have greater latency and jitter, than the service provider would like to provide. No doubt, these variations in service quality can at times 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

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<sup>7</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>8</sup> The Commission's National Broadband Plan concluded that "approximately 77% of the U.S. population lived in an area served by three or more 3G service providers, 12% lived in an area served by two . . . ." National Broadband Plan at 39.

guarantees. Yet, Americans appear to recognize that these issues are largely unavoidable and, despite them, the Commission has found that only 5% of those with mobile phones are “not at all” satisfied with their internet access speeds.<sup>9</sup>

Admittedly, the presently available information is not perfect, and service providers are constantly re-evaluating their marketing materials, billing formats, customer support materials, websites and other customer interfaces to assure consumer satisfaction. However, the fact that so much information is already available suggests the Commission’s focus here should be on whether consumers truly need additional information, whether it is possible for service providers to collect and disclose that additional information in a manner that will be meaningful to consumers, and whether the costs that would be imposed on service providers to do so outweigh any value to consumers.<sup>10</sup> There are difficult questions, and if past is prologue, some will be filing proposals in response to the *Wireless Performance PN* that, 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>11</sup>

For example, some are continuing to support a proposal by New America Foundation (“NAF”) that would require broadband service providers, including wireless service providers, to

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<sup>9</sup> See J. Horrigan and E. Satterwhite, “Americans’ perspectives on online connection speeds for home and mobile devices”, at 4 (rel. June 1, 2010).

<sup>10</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. 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 working group WCAI recommends 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>11</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.

disclose in a simplistic “Schumer Box” format the minimum speed and latency consumers will receive, and to provide refunds or service credits when the minimums are not met.<sup>12</sup> This support comes notwithstanding the record evidence that such an approach ignores the technical realities of wireless services and, as a result, will be of little value to consumers.

As the Commission’s record here and 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. Performance at any given time and place will be dependent on a wide range of variables, including atmospheric conditions, diurnal patterns, obstructions due to terrain, foliage or man-made structures, whether the mobile device is outdoors or indoors (and if the latter, the number and type of walls blocking the signal), location relative to cell edge, traffic loading, mobile device performance characteristics, and the performance of network elements outside the control of the service provider.<sup>13</sup> Indeed, as we have recently learned with the iPhone 4 launch, even the placement of the subscriber’s hand on the mobile device can have a significant impact. Wireless service providers annually spend billions of dollars to improve network performance, 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. While NAF and others now concede that there are difficulties associated with attempts to provide a simple

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<sup>12</sup> See, e.g. Letter from Matthew F. Wood, Associate Director, Media Access Project, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 09-158, Attachment at 1-2 (filed Feb. 4, 2010); Comments of the Open Technology Initiative of the New America Foundation, CG Docket No. 09-158 (filed Sept. 24, 2009).

<sup>13</sup> See, e.g., *Consumer Information NOI*, 24 FCC Rcd at 11387-90; *Broadband Definition PN*, 24 FCC Rcd at 10898-99.

characterization of mobile service quality, they have yet to offer any solutions that directly address the variability inherent in wireless services.<sup>14</sup>

We have previously demonstrated in this proceeding that a “Schumer Box” solution such as proposed by NAF is fraught with potential to do more harm than good.<sup>15</sup> No doubt, simplistic “Schumer Box” disclosures can be very helpful to consumers where they can be crafted to provide consumers with a useful point of comparison between like products that perform consistently across a given make or model. However, where the product (here mobile broadband service) is highly variable over the time and location domains, the “Schumer Box” approach is likely to distort the market in a manner that does the consumer more harm than good.

For example, we have previously noted that were the NAF proposal adopted verbatim, mobile service providers presumably would have no choice but to “guarantee” a 0 megabit per second speed, since they cannot guarantee that service is available at all times at all locations.<sup>16</sup> 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. Yet, NAF and those supporting its proposal have not identified a solution. Indeed, even were the Commission to eliminate the “guarantee” element of the NAF proposal, it is still faced with how one discloses a speed parameter when so many factors, many of which are completely out of control of the service provider, affect the speed realized by the subscriber at any given time and place.

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<sup>14</sup> See Reply Comments of Consumer Federation of America, *et al.*, CG Docket No. 09-158, at 13-14 (Oct. 28, 2009).

<sup>15</sup> See WCAI Consumer Information Comments at 5-8.

<sup>16</sup> See *id.* at 5-6.

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. WCAI has noted that 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>17</sup> We have noted, for example, that making available to consumers a “Schumer Box” with a line item identifying the minimum round-trip latency measured as “X ms” provides most consumers with meaningful data because 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 what latency is, much less how it applies to their particular needs.<sup>18</sup> A simplified “Schumer Box” disclosure of latency does nothing to assist the consumer in understanding whether the latency metric is even germane to his or her particular decision.

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<sup>17</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 the 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, netbooks and tablets. Now, consumers so highly value mobility that they gladly sacrifice clock speed for the size and weight advantages of much smaller systems.

<sup>18</sup> As we have noted, the lack of relevance to various applications of a 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 relevant to consumers looking to use broadband for emails or downloading files. *See* WCAI Consumer Information Comments at 6-7.

Again, WCAI's point is not that consumers today have perfect information, but that there is a very real risk that in striving to provide consumers with additional information, particularly in a simplified format, the Commission will inadvertently do far more harm than good. The issues presented by the *Wireless Performance PN* 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 working group that would include all stakeholders (service providers representing the full range of broadband technologies, federal and state consumer protection agencies, consumer groups, etc.). The group, 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. The open dialog a working group encourages 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 a working group, 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. Convening the broad-based working group recommended by WCAI is a pragmatic approach to assuring that consumers have the information they truly need to make meaningful decisions, without imposing unnecessary burdens on communications service providers that ultimately will harm consumers.

Respectfully submitted,

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