

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

In the Matter of)
)
Consumer Information) CG Docket No. 09-158
and Disclosure)
)

COMMENTS



I. Introduction.

The American Cable Association (“ACA”) files these Comments in response to the Consumer and Governmental Affairs Bureau’s “Need for Speed” Public Notice seeking comment on how best to develop useful information concerning broadband speeds for consumers of broadband Internet services.¹

The impressive progress that ACA members have made in delivering broadband Internet services in a wide variety of lower density markets has been fostered by a regulatory environment generally characterized by “light touch” regulation.² To preserve their ability to continue to do so, the Commission must keep foremost in mind that the costs and burdens of regulation can hinder broadband progress, especially for smaller providers. ACA urges the Commission to continue the collaborative approach it has taken to

¹ *Consumer and Governmental Affairs Bureau Seeks Comment on “Need for Speed” Information for Consumers of Broadband Services*, Public Notice, DA 11-661 (rel. Apr. 11, 2011) (“PN”).

² *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, Notice of Proposed Rulemaking, GN Docket No. 09-191, WC Docket No. 07-52, Comments of the American Cable Association, at 1 (filed Jan. 14, 2010) (“ACA Open Internet Comments”). ACA appreciates that the Commission endeavored to preserve this approach to the greatest extent possible in adopting relatively “high-level rules of the road” in its 2010 Open Internet Order. *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC 17905, ¶ 10 (2010) (“Open Internet Order”); *Statement of Chairman Julius Genachowski*, at 18040.

broadband speed and performance testing.³ To the extent the Commission believes that developing standardized broadband speed and performance metrics testing and consumer disclosure formats is appropriate, the Commission should undertake to develop such formats with input from Internet stakeholders, modeled after the USDA's "food pyramid." Obligations on broadband providers, particularly the smallest ones, should not exceed a straightforward requirement that the speed chart be posted on the provider's website.

By taking this measured approach, the Commission can meet its goal to produce a broadband speed guide that reflects the views of a broad spectrum of industry participants, consumer groups, and experts and make available truly useful information to educate consumers about which broadband option available best suits their needs, while minimizing additional burdens on small providers.

II. The Commission should develop its own "need for speed" guide modeled after the USDA's "food pyramid."

The PN seeks comment on the kinds of performance-related information that will be most useful to consumers when they assess which service to purchase, and states that the Commission "expect[s] that the input gathered in response to this *Public Notice* will encourage industry best practices."⁴ Specific comment is sought on whether "there are disclosures from other sectors that could be useful models for educating consumers about broadband performance needs, such as nutritional labeling on food products, fuel efficiency guides for automobiles, or energy efficiency labels for household appliances?"⁵ ACA

³ *PN* at 2-3 & n. 11 (A voluntary group of broadband providers, application developers, equipment manufacturers, and consumer groups have met with the Commission to help guide its broadband speed and performance testing process); see, e.g., *Feb. 16, 2011 Collaborative Meeting Ex Parte* (filed Feb. 23, 2011).

⁴ *Id* at 2.

⁵ *Id*. at 3. See also *In the Matter of Consumer Information and Disclosure, Trust-in-Billing and Billing Format, IP Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380, ¶¶ 4, 47 (2009).

suggests that the USDA's "food pyramid" approach is the preferable model for educating consumers about their broadband performance needs, rather than a "nutrition label" approach. The Commission should develop such a broadband "speed pyramid" with broadband Internet stakeholder input.

Press reports contemporaneous to issuance of the PN indicate that Consumer and Government Bureau Affairs Chief Gurin may agree that this effort is "the Commission's version of the U.S. Agriculture Department's 'food pyramid' for broadband information," as compared to "nutrition labeling" which tells the consumer what is in a particular food item.⁶ He suggested that through the PN, the Commission seeks help developing a guide to help consumers understand what they are shopping for in the marketplace rather than to require broadband providers to disclose actual measured broadband service performance, despite questions in the PN concerning disclosure of the effects of characteristics such as latency, speed, and jitter on particular Internet applications. Whereas network performance disclosure requirements are the focus of the separate, but related, Open Internet transparency rules, the parallel effort in the PN is focused on developing a guide that consumers would find useful in picking a service.⁷ According to Chief Gurin:

The public notice is more like the food pyramid, trying to establish what are the basic things people should be looking for in a service provider, depending on whether it is e-mail [or] gaming.⁸

⁶ Multichannel News, John Eggerton, "FCC Developing 'Speed' Pyramid: Agency Seeks a Consumer-Friendly Guide to Service," Apr. 18, 2011.

⁷ *Id.*

⁸ *Id.* The article notes that Gurin also discussed how nutrition labels work in conjunction with the USDA's food pyramid by telling people, "Here is what's in this food," so that a broadband speed label would disclose: "This is what you are getting from this provider." See also FCC, Walter Johnston & James Miller, Office of Engineering and Technology, Blog, *Need for Speed, Part II* April 13, 2011), available at <http://www.fcc.gov/blog/need-speed-part-ii> (last viewed May 25, 2011) (Recognizing that it is "no simple task to determine how "fast" your Internet connection is; just developing a measurement methodology that accurately captures and represents performance is a serious technical challenge," and describing the separate-but-related

The nutritional guideline known as the “food pyramid” was adopted by the United States Department of Agriculture (“USDA”) in 1992 to replace an earlier classification.⁹ Generally speaking, the food pyramid divides foods into groups (originally seven, then four, now five – grains, vegetables, fruits, milk, meat & beans), describes the types of foods within each group, and provides guidance on recommended daily intake of each group. Standardized “nutrition facts labels” serve a different purpose. They are mandated for most food products under the provision of the 1990 Nutrition Labeling and Education Act, per recommendations of the U.S. Food and Drug Administration.¹⁰ Nutrition labels provide product-specific information (serving sizes, calories, nutrients).¹¹ Ideally, a consumer would consult the food pyramid to design an overall nutritional plan and evaluate individual food choices based on how well they fit within her nutritional plan according to the nutrition facts label information displayed on each item.

Consistent with the food pyramid approach, the PN includes an example of the kind of “need for speed” information presentation that could be developed.¹² The example (i) outlines the broadband speed levels generally required to run applications based on

Commission effort to develop, in conjunction with its outside consultant, SamKnows, a standardized set of metrics to measure broadband performance delivered to the subscriber’s home). See also PN at 7 (“A variety of factors will influence a broadband consumer’s experience. Some of those factors are in the consumer’s control, some are in the service provider’s control, and some are outside the control of both.”).

⁹ See Wikipedia, Food guide pyramid, available at http://en.wikipedia.org/wiki/Food_guide_pyramid (last viewed May 25, 2011).

¹⁰ See Wikipedia, Nutrition facts label, available at http://en.wikipedia.org/wiki/Nutrition_facts_label (last viewed May 25, 2011).

¹¹ Nutrition labels also serve a secondary function of providing “Daily Values” of each food group or nutrient based on 2000 and 2500 calorie diets, levels set by the FDA. See <http://www.fda.gov/food/labelingnutrition/consumerinformation/ucm078889.htm> (last viewed May 25, 2011).

¹² PN, Appendix, “Example of ‘Need for Speed’ Information Presentation”; see also FCC, OBI Technical Paper No. 4, Exh. 9 (2010), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2010/db0813/DOC-300902A1.pdf (last viewed May 25, 2011).

whether the application requires “real-time,” “near-real-time,” or “non-real-time” delivery, based on data from a wide range of governmental and private sources; (ii) provides information about the types of applications requiring each type of delivery; and (iii) provides recommended broadband speeds necessary to utilize such applications and services.

ACA strongly urges the Commission to adopt the “food pyramid” approach rather than “nutrition label” approach. The Open Internet Order transparency requirements will require broadband Internet access service providers (“BIASPs”) to provide the equivalent of a broadband “nutrition label,” so that the appropriate complement to what BIASPs will be required to provide would be information from either a government source or an independent third party regarding what consumers need.¹³ Good public policy dictates separating the disclosure of expected and actual broadband speeds from advising consumers on what broadband speeds they will need to utilize a range of Internet applications and services.

Accordingly, ACA submits the preferable approach, as exemplified by the USDA’s “food pyramid,” is for the Commission itself to develop a standardized chart with input from broadband Internet stakeholders, and undertake the responsibility of updating the information on a periodic basis. Should the Commission find it expeditious, a federal advisory committee or less formal advisory group could be assembled to assist in the development of such a broadband “speed pyramid” or speed guide.

A government developed broadband “speed pyramid” or speed guide designed to assist consumers in making informed broadband purchase decisions would be the most efficient and cost-effective means of educating consumers about broadband service options and the speeds that may be required to utilize a wide range of Internet applications and

¹³ See *Open Internet Order*, ¶¶ 53-62, Appendix A.

services. As ACA has noted elsewhere, the vast majority of broadband providers are small companies, including nearly 900 ACA members, and the Commission has a longstanding policy of minimizing the administrative burdens and costs of compliance on smaller entities.¹⁴ It would be well beyond the means of smaller providers to either develop such charts on their own, or keep them updated once developed. For example, under “real-time” delivery requiring actual download speeds of 0.3-0.5 mbps, the sample chart lists as under the content header “basic interaction” applications such as “Aleks (Online interactive education), Pogo online games.” It would impose an unreasonable burden on smaller providers to require them to continuously monitor and list developing Internet applications such as these for consumer broadband speed disclosures, as would having to address consumer complaints regarding such disclosures.

Accordingly, ACA recommends that rather than utilizing either voluntary or mandatory methods or formats for consumer broadband speed disclosures, the Commission, working collaboratively with a diverse range of interested parties, groups and experts, should devise a broadband “speed pyramid” to aid in consumer choice of broadband service providers and service plans. The broadband “speed pyramid” could, like the example appended to the PN, provide basic information about the range of speeds needed by consumers to utilize various different types of common Internet services and applications.

III. Obligations on broadband providers should be minimal, particularly the smallest ones, and should not extend beyond a requirement to post such a Commission-developed speed chart on the provider’s website.

To minimize economic and administrative burdens on broadband providers, particularly the smallest ones, ACA recommends that the broadband “speed pyramid,” once

¹⁴ *ACA Open Internet Comments* at 16.

developed by the Commission, be made available to broadband providers, and their obligations not exceed the straightforward requirement to display the chart on their websites. Posting the broadband “speed pyramid” on a company’s webpage will make the information available to every Internet user and potential broadband service purchaser. As ACA explained with respect to the proposed Open Internet network management practice disclosure requirement:

Broadband providers, large and small, commonly use webpages to inform customers and potential customers on a wide range of similar matters. ACA members report using their websites to communicate pricing and service offerings, acceptable use policies, terms and conditions of service, and copyright infringement notice procedures and policies. Adding a description of network management practices to the information on a broadband provider’s website would enable any user to review and evaluate that company’s practices, all at a minimal additional cost to all stakeholders. Moreover, this approach will avoid imposing on broadband providers the burdens and costs of an entirely new set of compliance and reporting obligations.¹⁵

The same considerations apply with equal force to any requirements concerning dissemination of a consumer broadband speed guide: allowing a broadband provider to post the guide on its webpage should suffice to achieve the Commission’s goal in helping consumers understand what level of broadband service will best meet their needs while minimizing additional economic burdens on providers. Of course, with a standardized broadband “speed pyramid,” other groups could also participate in the disseminating of this information, including the public (i.e. the Federal Communications Commission), private (i.e. application and content providers), and non-profit sectors (i.e. consumers groups).

Again, the task of keeping the chart updated should remain the responsibility of the Commission working with Internet stakeholders and any advisory group formed to help with

¹⁵ *Id.*

this matter. This would relieve individual providers of the burden of continuously monitoring the development of new Internet applications and calculating for themselves what upload and download speeds would be required for each new application, over and above their general monitoring of industry trends to determine network upgrade cycles.

The Commission itself has recognized the value of limiting the burden on small broadband providers concerning Open Internet disclosures, declaring in its Final Regulatory Flexibility Analysis that it had adequately minimized the significant economic impact of the rules on small companies:

[T]he disclosure requirement in today's Order does not require additional forms of disclosure, other than, at a minimum, requiring broadband providers to prominently display or provide links to disclosures on a publicly available, easily accessible website that is available to current and prospective end users and edge providers as well as to the Commission, and disclosing relevant information at the point of sale.¹⁶

The same values of minimizing significant economic impacts on smaller broadband Internet service providers should guide the Commission's efforts in developing and disseminating a consumer-buying guide for broadband services.

IV. Conclusion.

ACA urges the Commission to continue its collaborative approach and develop a standardized "need for speed" and consumer information guide with input from Internet stakeholders. The collaboratively developed "need for speed" consumer notice should be modeled on the USDA's "food pyramid" rather than nutrition labels. The Commission can preserve provider flexibility and minimize economic burdens by limiting the obligation of small providers to making a consensus "need for speed" guide available to consumers by posting the chart on their websites. By taking this measured and balanced approach, the

¹⁶ *Open Internet Order*, Appendix D, ¶ 14.

Commission can ensure that the broadband speed guide will reflect the views of a broad spectrum of Internet stakeholders and provide truly useful information to educate consumers about which broadband option available best suits their needs, while minimizing additional burdens on small providers.

Respectfully submitted,

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