

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Consumer and Governmental Affairs Bureau)	
Seeks Comment on “Need for Speed”)	DA 11-661
Information for Consumers of Broadband Services)	

COMMENTS OF AT&T INC.

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May 26, 2011

I. INTRODUCTION AND SUMMARY

AT&T Inc., on behalf of its affiliated companies (collectively, AT&T), respectfully submits the following comments in response to the Consumer and Governmental Affairs Bureau's *Notice* seeking comment on the recommended levels of broadband network performance needed to support various Internet applications.¹ The *Notice* posits that consumers may find information about such performance requirements (e.g., "latency, jitter, and peak hour performance") useful in choosing their Internet service.² It then seeks comment on "the most effective way to ensure that broadband providers inform consumers about broadband performance needs."³

AT&T has long supported the Commission's goal of ensuring that consumers have sufficient information to make informed choices among the many competing broadband Internet access services available to them in the market today. Like many other Internet access service providers, AT&T *already* provides consumers with substantial information about the basic types of applications that will work optimally over the different broadband service plans we offer. We

¹*Consumer and Governmental Affairs Bureau Seeks Comment on "Need for Speed" Information for Consumers of Broadband Service*, CG Docket No. 09-158, Public Notice, DA 11-661 (released April 11, 2011) (*Notice*). See also *FCC Bureau Seeks Comment on "Need for Speed" Information for Consumers of Broadband Services*, FCC Press Release (April 11, 2011) (*Need for Speed Press Release*).

² *Notice* at 3.

³ *Id.* Although the *Notice* is not entirely clear on this point, AT&T understands the *Notice* to be seeking comment on how broadband network performance needs for Internet applications should be conveyed to consumers (*i.e.*, the recommended levels of network performance that such applications need to function optimally). To the extent the *Notice* is also seeking comment on whether the Commission should mandate that broadband providers report the *actual performance* of their networks (*e.g.*, actual speeds, latency, jitter, packet loss), the Commission recently sought comment on that very same issue in the Form 477 data collection proceeding. See *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Notice of Proposed Rulemaking, FCC 11-14 (released Feb. 8, 2011). AT&T and other commenters raised a host of practical and legal concerns regarding the reporting of such actual performance metrics and we would respectfully refer the Bureau to our submissions in that proceeding, which we incorporate here by reference. See AT&T Comments, WC Docket No. 11-10 (March 30, 2011); AT&T Reply Comments, WC Docket No. 11-10 (April 14, 2011).

provide this information using simple, consumer-friendly language and graphics – without the type of technical jargon referenced in the *Notice* (latency, jitter, and peak hour performance) that would likely confuse and frustrate the average broadband consumer. Thus, contrary to the underlying premise of the *Notice*, consumers presently have access to information that enables them to make educated choices among broadband services and there is no basis for the Commission to impose any new customer education requirements on broadband Internet access service providers. Indeed, the Commission’s own data show that consumers are, in fact, quite happy with the broadband choices they are making today: 91 percent of home broadband users are either “very satisfied” (50 percent) or “somewhat satisfied” (41 percent) with the speed of their broadband service.⁴

Nonetheless, to the extent the Commission concludes that consumers need more information about the broadband network performance requirements of various Internet applications, it should focus its attention on the information made available by the providers of those applications. While a broadband Internet access provider may have general knowledge about the basic network performance needs for a class of Internet application (e.g., streaming video), only the providers of individual Internet applications (e.g., Netflix or Hulu) will know what the actual performance requirements are for their own applications. Thus, rather than developing new rules or guidelines to “ensure that broadband providers inform consumers” about the performance requirements of Internet applications, the Commission should review the information that application providers disclose to consumers regarding such performance requirements to assess whether it is sufficient to address the informational needs identified by the Commission.

⁴ John Horrigan and Ellen Satterwhite, *Americans’ Perspectives on Online Connection Speeds for Home and Mobile Devices*, at 1 (FCC 2010) (FCC Consumer Broadband Survey).

II. DISCUSSION

A. Consumers Already Have Access to Substantial Information About the Broadband Performance Requirements of Internet Applications.

The Bureau observes that “consumers may have very different needs for broadband service depending on what they use it for.”⁵ “Someone who uses the Web primarily for email, for example, may be well served by a smaller and less expensive service than an avid video viewer would need.”⁶ The problem, according to the *Notice*, is that consumers lack sufficient information about the different broadband performance requirements (*e.g.*, the levels of speed, latency, and jitter) needed to enjoy the various different types of Internet applications available in the market today. This lack of information allegedly “hampers consumers’ ability to compare services offered by and among broadband providers” and to select the service most appropriate for their needs.⁷ To remedy this purported problem, the *Notice* proposes that broadband providers be required “to inform consumers about broadband performance needs.”⁸

Contrary to the assumptions in the *Notice*, however, consumers already have access to significant information about the performance needs of various Internet applications. Most major broadband providers explain to consumers – using simple, consumer-friendly language

⁵ *Need for Speed Press Release* at 1.

⁶ *Need for Speed Press Release* at 1.

⁷ *Notice* at 2.

⁸ *Notice* at 3. In these comments, AT&T focuses primarily on fixed broadband services, which are typically offered with multiple speed tier options and thus implicate the consumer education issues raised in the *Notice* (*i.e.*, ensuring that consumers are empowered to make informed choices among the different service tiers available to them). By contrast, mobile broadband services are usually configured to provide the user with the highest speed available from the network at any given point in time, subject to the capability of the user’s handset, the user’s location in the cell site coverage area, environmental factors (*e.g.*, topography, weather), available network capacity, and other factors. As with our fixed broadband offerings, *see infra*, AT&T provides consumers with significant information about the mobile broadband services we offer. *See, e.g.*, AT&T website, AT&T Answer Center, A Guide to AT&T 4G, at <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&solutionId=KB115951>; AT&T website, AT&T Data Plans, at <http://www.att.com/shop/wireless/plans/data-plans.jsp>.

and/or graphics – which of the broadband services they offer are best-suited for particular types of applications.⁹ AT&T, for example, provides consumers with a chart on our website (“Plan Comparison For the Optimal Experience”), which lists our broadband services by speed tier¹⁰ and includes a large green “check mark” next to the different types of applications for which the consumer is likely to have an optimal experience using a given broadband service.¹¹ On the same webpage, AT&T also provides an interactive, visual demonstration of the time it would take a consumer to download and begin using various applications with each of the broadband services we offer.¹²

Broadband Internet access providers are not alone in supplying this type of performance-related information to consumers. Providers of many popular Internet applications tell consumers the performance specifications required for an optimal user experience with their applications. Netflix, for example, tells consumers that its streaming video service (known as

⁹ See AT&T website, “Plan Comparison For the Optimal Experience” at http://www.att.com/u-verse/explore/internet-landing.jsp?fbid=K7fDm2S_wAG. See also Time Warner website, “Speed Levels,” (narrative description and comparison chart showing optimal uses for various broadband Internet access service plans), at <http://www.timewarnercable.com/SoCal/learn/hso/roadrunner/speedpricing.html>; Verizon website, “How fast do you want to go?,” (describing optimal uses for various broadband Internet access service plans), at <http://www22.verizon.com/Residential/FIOSInternet/Plans/Plans.htm>; Comcast website, “Products,” (describing optimal uses for various broadband Internet access plans), at <https://www.comcast.com/shop/buyflow2/products.csp?SourcePage=Internet&&Inflow=1>.

¹⁰ Unlike many other wired broadband providers that offer only “up to” speeds, AT&T provides service in discrete, non-overlapping tiers. See Letter from James W. Cicconi, AT&T, to Chairman Kevin Martin, FCC, WC Docket No.07-52 (Sept. 11, 2008).

¹¹ AT&T website, “Plan Comparison for the Optimal Experience,” http://www.att.com/u-verse/explore/internet-landing.jsp?fbid=K7fDm2S_wAG. The categories of applications shown in the chart are: Emailing, Downloading Music, Social Networking, Sharing Photos, Internet Gaming, Online Conferencing, Watching TV / Video Clips, Emailing / Uploading Files, Downloading Movies, Streaming Video, and Video Conferencing.

¹² AT&T website, “Compare Downstream Speeds, Match your favorite activities to the speed you need” http://www.att.com/u-verse/explore/internet-landing.jsp?fbid=K7fDm2S_wAG. The interactive demonstration includes a simulated YouTube video, MP3 music file, and other popular Internet applications.

“Watch Instantly”) “works with all different levels of broadband, however, we recommend a minimum speed of 500kpbs [sic] (0.5MB).”¹³ Hulu similarly tells consumers that “Our videos stream at 480Kbps to 1000Kbps, and we recommend a downstream bandwidth of over 1000Kbps (or 1.0Mb/s) for a smooth playback experience.”¹⁴ For its part, Skype tells consumers that its HD video calling application requires “a fast internet connection of 512 kbit/s or more.”¹⁵

The *Notice*, however, fails to acknowledge that any of this information is available to consumers. Indeed, despite asserting that a “lack of such information hampers consumers’ ability to compare” broadband services, the *Notice* cites no evidence that *actual consumers* believe they have insufficient information about the performance requirements of any Internet applications. In particular, the *Notice* does not refer to any consumer complaints, consumer surveys, studies of consumer behavior, or any other consumer-focused factual support for the proposition that consumers are being “hampered” by a lack of information about the performance needs of Internet applications.

In fact, in the only relevant consumer survey mentioned in the *Notice*, this Commission found that 91 percent of residential broadband users were either “very satisfied” (50 percent) or “somewhat satisfied” (41 percent) with the speed of their broadband services.¹⁶ Consumers reported this remarkably high level of satisfaction even though 81 percent of respondents “did

¹³ <http://www.netflix.com/HowItWorks>.

¹⁴ <http://www.hulu.com/support/article/166380>.

¹⁵ <http://www.skype.com/intl/en/features/allfeatures/video-call/>. Aside from broadband speed, AT&T was unable to find any other performance metrics that these application providers identified as being relevant for consumers to enjoy an optimal experience with their applications.

¹⁶ *Notice* at 3, note 6 (citing FCC Consumer Broadband Survey). Of the remaining 9 percent, 6 percent of respondents were “not too satisfied” and only 3 percent were “not at all satisfied” with their broadband speed. FCC Consumer Broadband Survey at 8.

not know their home connection speed.”¹⁷ Thus, contrary to the basic premise underlying the *Notice* (*i.e.*, consumers are being hampered by a lack of information), the Commission’s own data demonstrate the exact opposite: consumers do *not* need to spend time learning about various performance metrics for broadband services in order to be satisfied with their broadband experience. In short, there is simply no “problem” here for the Commission to solve, and it would be arbitrary and capricious for the Commission to adopt rules requiring broadband providers to comply with the consumer education requirements contemplated in the *Notice*.¹⁸

B. To the Extent the Commission Determines that Consumers Need More Information about the Broadband Performance Requirements of Internet Applications, It Should Review the Information Disclosed by the Providers of Those Applications.

As noted above, consumers receive substantial information about the broadband performance requirements of Internet applications and they are quite satisfied with the performance of their broadband services. Nonetheless, if the Commission concludes that consumers need even more information about the performance requirements of particular applications (e.g., latency, jitter, packet loss), the Commission should not look to broadband Internet service providers to supply such information.

The entity that best knows the performance requirements for a particular Internet application is not, as the *Notice* appears to assume,¹⁹ the broadband Internet service provider.

¹⁷ FCC Consumer Broadband Survey at 1.

¹⁸ Under the Administrative Procedure Act, “[p]rofessing that an order ameliorates a real industry problem but then citing no evidence demonstrating that there is in fact an industry problem is not reasoned decisionmaking.” *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 843 (D.C. Cir. 2006). *See also ALLTEL Corp. v. FCC*, 838 F.2d 551, 561 (D.C. Cir. 1988) (“A regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.”) (citations omitted). Aside from these APA concerns, the *Notice* also fails to identify any source of Commission jurisdictional authority pursuant to which the agency could require broadband providers to implement the consumer education obligations discussed in the *Notice*.

¹⁹ *Notice* at 3.

Indeed, broadband providers are typically unaware of the specific applications that a given consumer chooses to use over his or her broadband connection, let alone the specific performance requirements for those individual applications. Instead, the entity in the best position to know, and explain to consumers, the performance needs of a given application is the provider of that application, *i.e.*, the entity that created the application and markets it to the public. Indeed, who would know better than Netflix what the broadband performance needs are for streaming a Netflix movie over the Internet? And who would know better than Skype what the broadband performance needs are for making a Skype video call over the Internet?²⁰

Thus, in the event the Commission concludes that additional information about the performance requirements of Internet applications should be provided to consumers, the Commission should review the information made available by the providers of those Internet applications to assess whether it is sufficient to address the informational needs the Commission identifies.

²⁰ Many application providers have developed applications that can adapt to varying network conditions while still maintaining a high-quality user experience. Netflix, for example, recently notified its Canadian customers that streaming video with Netflix will now “use 2/3 less data on average, with minimal impact to video quality.” *Netflix Lowers Data Usage By 2/3 For Members in Canada*, The Netflix Blog, (March 28, 2011), at <http://blog.netflix.com/2011/03/netflix-lowers-data-usage-by-23-for.html>. Netflix explained that it was motivated to make its video streaming service more bandwidth-efficient in response to the usage-sensitive pricing plans of Canadian ISPs, which tend to have lower usage allowances than ISPs in other countries. *Id.* Netflix further vowed that it “will continue to test and innovate to improve the Netflix experience without high data use.” *Id.* This is a significant development, considering that Netflix’s streaming video application, by itself, accounts for 29.7% of all peak period downstream Internet traffic on fixed networks in North America. *See* Global Internet Phenomena Report, at 1, Sandvine (Spring 2011), at http://www.sandvine.com/news/global_broadband_trends.asp. The Commission’s broadband policies should encourage this type of efficiency-oriented innovation by application providers, which has the potential to benefit not only those providers but also network operators and consumers as well.

III. CONCLUSION

For all of the foregoing reasons, the Commission should not mandate that broadband Internet access providers develop consumer education programs about the broadband performance needs of Internet applications.

Respectfully Submitted,

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