

**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)	

REPLY COMMENTS OF AT&T INC.

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I. INTRODUCTION AND SUMMARY

AT&T Inc., on behalf of its affiliated companies (collectively, AT&T), respectfully submits the following reply comments in response to the Consumer and Governmental Affairs Bureau's *Notice*¹ regarding the provision of broadband performance information to consumers. We do so in order to address comments from New America Foundation and Level 3, in which they propose that the Commission require Internet service providers (ISPs) to disclose complex technical information about the performance of their broadband services. In particular, New America Foundation (NAF) wants the Commission to mandate the disclosure of "Minimum Speed at the Border Router," "Minimum Reliability/Uptime," and "Maximum Round-trip Latency (Delay) to Border Router," among other information.² For its part, Level 3 asks the Commission to require ISPs to notify consumers about the terms of the ISPs' peering and transit arrangements with other networks, as well as various information about the actual performance of those peering and transit links.³ For the reasons discussed below, neither proposal should be adopted.

The record before the Commission confirms that: (i) consumers already receive substantial information enabling them to choose the broadband service plan best suited to the online activities they wish to pursue; and (ii) consumers are overwhelmingly satisfied with the performance of the broadband services they have chosen. Against this backdrop, there is simply no basis for the Commission to impose any new network performance-related disclosure

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 NAF comments at 6.

³ Level 3 comments at 4-5.

obligations on ISPs. Accordingly, the Commission should reject the proposals from NAF and Level 3.

II. DISCUSSION

As AT&T and others pointed out in their comments, consumers already have access to a substantial amount of information about the broadband performance needs of various Internet applications and content – both from ISPs and the providers of those applications.⁴ In fact, AT&T and other ISPs provide consumers with specific information about which types of broadband service offerings are best suited to support different types of Internet activities.⁵ And the Commission’s *own research* shows that consumers are overwhelmingly satisfied with their broadband Internet access services. According to that research:

- 91% of consumers are very or somewhat satisfied with the **speed** of their service;
- 92% of consumers are very or somewhat satisfied with the **reliability** of their service; and
- 93% of consumers describe their level of **overall satisfaction** as very or somewhat satisfied.⁶

Despite this extraordinarily high level of consumer satisfaction, NAF claims that the Commission’s “finding” that actual broadband download speeds lag advertised speeds by as much as 50% demonstrates that consumers do not have accurate information about the capabilities of the broadband Internet services available to them.⁷ This “information gap,” in

⁴ See AT&T comments at 3-5.

⁵ AT&T comments at 4.

⁶ *Broadband satisfaction: What consumers report about their broadband Internet provider*, FCC Working Paper, at 3 (Dec. 2010). Specifically, the survey results are as follows. Reliability Satisfaction: 59% - very, 33% - somewhat, 4% - not too, and 3% - not at all; Speed Satisfaction: 50% -very, 41% - somewhat, 6% - not too, 3% - not at all; Overall Satisfaction: 51% - very, 42% - somewhat, 6% - not too, 2% - not at all. *Id.*

⁷ NAF comments at 4.

NAF's view, is evidence that the Commission needs to adopt new disclosure rules for broadband providers.⁸ To remedy this supposed gap, NAF proposes a variety of technical performance metrics (*e.g.*, “Minimum Speed at the Border Router,” “Minimum Reliability/Uptime,” and “Maximum Round-trip Latency (Delay) to Border Router”), among other things, that should be included in a new Commission disclosure requirement – even as it admits that “some consumers may not understand every metric.”⁹

But contrary to NAF's assertion, the Commission made no such “finding” about actual broadband speeds. Rather, the Commission stated that based on its review of data from Akamai and comScore (which also relied on Akamai's network), actual download speeds “appear” to lag advertised speeds by roughly 50%.¹⁰ The Commission was careful to point out, however, that this data measured speeds from the user's device to an Akamai server and, thus, it “fails to control for potential speed and performance degradation along many parts of the network,” including those between the Akamai server and the ISP's network and within the user's home network.¹¹ The Commission also noted that data from another vendor has shown that home wireless network routers caused “an average 30% degradation in speeds.”¹² In light of these shortcomings in the relevant Akamai and comScore data and the performance degradation caused by wireless routers, the Commission stated that it was seeking “better” data, which it expected to get from the Third Party Measurement Initiative (also known as the SamKnows

⁸ NAF comments at 4-5.

⁹ NAF comments at 6.

¹⁰ Broadband Performance, FCC Omnibus Broadband Initiative Technical Paper No. 4, at 12 (Aug. 12, 2010) (OBI Broadband Performance Technical Paper).

¹¹ OBI Broadband Performance Technical Paper at 14.

¹² OBI Broadband Performance Technical Paper at 29, note 38.

project).¹³ Accordingly, the supposed Commission “finding” about actual broadband speeds cited by NAF provides no basis for the adoption of the new disclosure requirements NAF seeks.

Moreover, the technical performance data proposed by NAF are far too complex to be of any practical use to consumers. The average consumer will not be familiar with (nor desire to spend time ascertaining) the meaning of technical terms like “Minimum Speed at the Border Router” or “Maximum round-trip Latency (Delay) to Border Router.”¹⁴ To the contrary, in AT&T’s experience consumers are most interested in understanding which broadband services are suitable for the types of applications and content they use most frequently, which is precisely the type of information that AT&T provides to them using simple, easy-to-understand text and graphics.¹⁵ And as the Commission’s own data show, consumers are overwhelmingly satisfied with the speed, reliability and overall experience of the broadband Internet access services available to them today. Thus, NAF’s proposal is both unhelpful and unnecessary.

Level 3’s proposal fares even worse. Level 3 asserts that consumers could make “truly informed decisions” about which broadband Internet access services to purchase if only they had information about the commercial terms of the peering and transit arrangements that their ISPs have with all other Internet networks, as well as the performance of those individual peering and transit connections, including the locations where there may be congestion on those connections, as measured by “interconnection capacity that is either at or above 80% utilization at peak.”¹⁶ While such information would obviously enhance Level 3’s bargaining position when it

¹³ OBI Broadband Performance Technical Paper at 29, note 36. See AT&T Comments, WC Docket No. 11-10, at 33, 40 (March 30, 2011) (discussing SamKnows project).

¹⁴ As the Commission’s own research shows, 81 percent of respondents “did not know their home connection speed.” See John Horrigan and Ellen Satterwhite, *Americans’ Perspectives on Online Connection Speeds for Home and Mobile Devices*, at 1 (FCC 2010).

¹⁵ AT&T comments at 4.

¹⁶ Level 3 comments at 4-5.

negotiates peering and transit arrangements with ISPs, such information would hold little, if any, practical value for the average consumer. Indeed, the Commission’s own research shows that the average consumer does not need to learn the intricacies of Internet peering and transit arrangements (which are just one of many *inputs* that factor into a consumer’s overall Internet experience) in order to be highly satisfied with the choices they are making from among the different broadband Internet access services available to them.¹⁷ Instead, consumers can benefit most from information presented in a clear, consumer-friendly manner that explains which broadband services are most appropriate for the types of activities in which they are most interested. As explained above and our opening comments, AT&T and other ISPs already provide this information to consumers, who are overwhelmingly satisfied with the broadband Internet services.

Finally, the proposals offered by NAF and Level 3 are both impossible to square with Chairman Genachowski’s pledge that “all Commission Bureaus and Offices [will] perform their responsibilities consistent with the principles in the three new executive documents” issued by President Obama,¹⁸ which direct government agencies to use the “least burdensome tools for achieving regulatory ends,” to “tailor [their] regulations to impose the least burden on society,” and to “identify and assess available alternatives to direct regulation.”¹⁹ Given that consumers (i) are receiving substantial performance-related information today, and (ii) are highly satisfied

¹⁷ See supra notes 6, 14.

¹⁸ *Genachowski Endorses Obama Stance on Regulation*, Communications Daily (Feb. 7, 2011) (quoting email from Chairman Genachowski to Commission staff).

¹⁹ See *Improving Regulation and Regulatory Review*, Executive Order 13563, § 1 (Jan. 18, 2011); *Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation*, President Barack Obama, at 1 (Jan. 18, 2011). As the Chairman explained, although the President’s directives do not apply directly to independent agencies like the Commission, those directives “are consistent with the values and philosophy we apply here at the FCC.” *Genachowski Endorses Obama Stance on Regulation*, Communications Daily (Feb. 7, 2011) (quoting email from Chairman Genachowski to Commission staff).

with their broadband Internet services, there is no need for a regulatory response here. Indeed, the “available alternatives to direct regulation” – *i.e.*, the information that ISPs and others *already* provide to consumers – is far more useful and far less burdensome than what NAF and Level 3 have proposed. Thus, consistent with these Presidential directives to reduce regulatory burdens, the Commission should not adopt new regulatory requirements to solve a problem that simply does not exist.

III. CONCLUSION

For all of the foregoing reasons, the Commission should reject the broadband performance reporting proposals from NAF and Level 3.

Respectfully Submitted,

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