

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
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| Consumer and Governmental Affairs Bureau |) | |
| Seeks Comment on “Need for Speed” |) | CG Docket No. 09-158 |
| Information for Consumers of Broadband Services |) | |
| |) | |
| Consumer Information and Disclosure |) | |
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REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its reply to the various comments submitted in response to the *Public Notice* (the “*Notice*”)² in the above-captioned proceeding. For the reasons set forth in greater detail below, MetroPCS supports those commenters who oppose any mandatory, one-size-fits-all rules for the disclosure of broadband service performance information by telecommunications providers. In support, the following is respectfully shown:

I. INTRODUCTION

The comments filed by telecommunications carriers in response to the *Notice* are united in their opposition to the imposition of mandatory, inflexible disclosure requirements pertaining to the speed of broadband service and other performance measures. In the past, MetroPCS

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *Consumer and Governmental Affairs Bureau Seeks Comment on “need for Speed” Information for Consumers of Broadband Services; Consumer Information and Disclosure*; PUBLIC NOTICE, in CG Docket No. 09-158 (rel. April 11, 2010) (the “*Notice*”).

repeatedly has expressed its concern over one-size-fits-all approaches to regulatory mandates.³ MetroPCS files this reply to join the industry chorus opposing the rigid disclosure requirements proposed in the *Notice*. Specifically, MetroPCS joins other commenters in urging the Commission not to needlessly mandate wireless broadband speed and performance disclosures, but rather to support voluntary industry practices that already make information available to consumers that will allow them to determine what level of service is needed for desired applications and content. As other participants have commented, any attempt to impose a uniform speed test methodology is particularly unsuited to the wireless broadband market. Actual speeds experienced by consumers will depend on a number of variables which providers cannot accurately assess in making a determination, such as distance to cell site, number of users, the rf and interference environment, and the variable mix of uses between voice and data services. To require each variable to be communicated to the customer in a standardized fashion will confuse anyone without a sophisticated telecommunications engineering background. Indeed, because wireless networks are shared networks, one critical factor which can change on a minute-by-minute basis – the number of users – makes any disclosure particularly difficult. Furthermore, it is unclear how real world speeds can be measured and reported in any fashion that will be meaningful to consumers. Finally, any generalized disclosure will be outdated as soon as it is created, as wireless technologies are changing at a more rapid pace than ever before. The likely outcome is that carriers, in order to protect themselves, report a broad range of best

³ See, e.g., Comments of MetroPCS in GN Docket No. 09-191 filed October 12, 2010 (opposing one-size-fits-all net neutrality requirements for big and small carriers alike despite material differences in their relative spectrum resources); Comments of MetroPCS Communications, Inc. in CG Docket No. 10-207 filed January 10, 2011 (opposing one-size-fits-all bill shock rules for both prepaid and post-paid service providers); Comments of MetroPCS Communications, Inc. in WT Docket No. 10-112 filed August 6, 2010 (opposing one-size-fits-all renewal standard for licenses issued with dramatically different geographic sizes and build out standards).

case and worst case speeds (e.g. speeds can be between 0-19.2 kbps) that will give customers little assistance in predicting actual real world speeds.

Ironically, the Commission's primary impetus for action here is a report that actually shows that broadband consumers are actually happy with their service. In the experience of MetroPCS, customer satisfaction is less about the raw speed of service than whether the service meets the customer's requirements taking into consideration a variety of factors (e.g. cost, equipment and service options, quality of service, etc.). Singling out one service element for mandatory disclosures represents an unnecessary level of government micro management. This is particularly the case since, as the commenters point out, wireless customers are largely satisfied with their service speeds. In the *Notice*, the Commission contends that consumers "lack information about their connection's performance and its ability to support different services and activities," citing its findings that 80 percent of consumers "do not know what they have purchased."⁴ However, the Commission's assertion does not properly reflect the situation. But, many commenters point out that, contrary to the Commission's analysis, the underlying report that seems to be spurring the agency to act, shows that broadband customers are happy with the level of service they currently receive.⁵ As NCTA notes, while the report does acknowledge a lack of knowledge among consumers about their exact speeds, it more importantly explains that an even greater proportion – 91 percent – are satisfied with their connection speeds.⁶ Thus, the report's numbers likely do not mean that the system is broken, but rather that it is functioning

⁴ *Notice* at 2.

⁵ See, e.g., Comments of AT&T Inc., in CG Docket No. 09-158, 2 (filed May 26, 2011) ("AT&T Comments"); Comments of Time Warner Cable Inc., in CG Docket No. 09-158, 7 (filed May 26, 2011) ("Time Warner Cable Comments"); Comments of the National Cable & Telecommunications Association, in CG Docket No. 09-158, 4 (filed May 26, 2011) ("NCTA Comments").

⁶ NCTA Comments at 4.

very well. Consumers may not have the precise numbers to detail their experiences, but they are nonetheless happy. As Time Warner Cable aptly describes, the report’s “results more likely indicate that consumers generally are indifferent to such technical details of their service as the precise upload and download speeds—provided, of course, that they are able to engage satisfactorily in online activities as they expect.”⁷

MetroPCS therefore argues that the Commission here is asking for more confusing, unnecessary information to be provided to consumers than they actually want or need. Furthermore, despite the Commission’s findings, by and large service providers do offer some form of performance information to their customers and potential customers. So, since the existing disclosure seems to be working, instead of requiring new, complicated disclosures from service providers, the Commission should support the continued distribution of information already being provided and help providers educate the public on the availability of this information.

II. MANDATORY DISCLOSURE RULES WILL LEAD TO CONSUMER CONFUSION; VOLUNTARY INDUSTRY STANDARDS WILL BE BETTER TAILORED TO THE NATURE OF INDIVIDUAL NETWORKS

MetroPCS shares the concerns of many commenters regarding the technical difficulties associated with accurately providing the scope of information discussed in the *Notice*, especially for wireless broadband services. Even if accurate robust disclosures were possible, the information would be confusing and ultimately unhelpful to consumers trying to compare service offerings. As CTIA points out, and as even the Commission’s own report acknowledges, wireless broadband speeds are affected by “signal strength and interference level, which vary with the user’s location relative to the site and are affected by factors such as distance, terrain,

⁷ Time Warner Cable Comments at 7.

foliage, buildings, walls, and speed,” as well as the number of users sharing the bandwidth in that area.⁸ Additionally, not only is capacity being shared by a number of users, but also by a number of services. Even the type of device each particular customer is using to connect to the network will create varied experiences, depending on everything from the type of operating system to the antenna installed in the device. And, because these circumstances will vary greatly from cell site to cell site, providers could find themselves having to provide a flood of data sets and variable explanations. This would likely lead either to confusion or frustration. The simple truth is that a snapshot of speeds at one, or at most a few, cell sites at an arbitrary point in time cannot accurately represent the entire network and could actually mislead customers. Surely no one believes that this would help consumers better understand their options.

Furthermore, as Verizon comments, wireless broadband service providers are in the midst of a significant shift in technology, as many are switching from 3G networks to 4G technologies, and newer and more efficient handsets are being made available every week.⁹ Consequently, “[a]ny Commission-imposed performance testing or disclosure obligations on broadband providers would not be able to keep pace with these changes and could result in meaningless or incomparable performance disclosures that could ultimately confuse customers.”¹⁰

⁸ Comments of CTIA—The Wireless Association, in CG Docket No. 09-158, 7 (filed May 26, 2011) (“CTIA Comments”) (quoting *Inquiry Concerning the Deployment of Advanced Telecommunications Capability for All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunication Act of 1996, as Amended by the Broadband Data Improvement Act*, in GN Docket no. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, FCC 11-78, 16-17 (rel. May 20, 2011)).

⁹ Comments of Verizon and Verizon Wireless, in CG Docket No. 09-158, 2 (filed May 26, 2011) (“Verizon Comments”).

¹⁰ *Id.*

The Commission does have a legitimate interest in knowing whether consumers receive meaningful service descriptions and other information that they can actually use. Fortunately, and as explained by other commenters in this proceeding, broadband service providers already are equipping customers, both current and potential, with this information. AT&T notes that it already provides “substantial information” about applications that function optimally over its different plans, and it does so “without the type of technical jargon referenced in the Public Notice (latency, jitter, and peak hour performance) that would likely confuse and frustrate the average broadband consumer).”¹¹ Time Warner Cable also makes available information regarding how its services work with various applications, “ranging from e-mailing to online banking to watching videos.”¹² Since the market already is providing consumers with the kind of useful information consumers need, then there is no need for a Commission mandate. Rather, the Commission would best serve American consumers by working with industry participants to continue their already-successful efforts, allowing for a flexible system that can respond to the ever-changing technologies of broadband services.

Accordingly, MetroPCS supports Verizon’s recommendation that, if the Commission feels the need to act, the agency should actively support the widespread adoption of an industry-created set of “best practices” for the disclosure of broadband offerings’ performance metrics.¹³ Due to the varying nature of wireless broadband networks, a voluntary set of “best practices” would allow service providers to tailor their disclosures to their particular networks and enable them to convey the most meaningful information to consumers.

¹¹ AT&T Comments at 2.

¹² Time Warner Cable Comments at 3.

¹³ Verizon Comments at 3.

One size does not fit all in the wireless broadband market, and if the Commission attempts to lump providers' data together in an oversimplified fashion, they will do little but saturate consumers with incomprehensible and meaningless drivel.

III. CONCLUSION

For the foregoing reasons, MetroPCS urges the Commission not to unnecessarily mandate one-size-fits-all wireless broadband service speed and performance disclosures by providers, but rather to support voluntary efforts by these service providers in supplying consumers with information that can be easily understood and effectively used to make informed decisions when choosing a service offering.

Respectfully submitted,

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