



August 10, 2016

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Ex Parte Presentation, Matters Related to Measuring Broadband America Program and Performance Measurement, GN Docket No. 12-264; Nineteenth Annual Report on the State of Mobile Wireless Competition, WT Docket No. 16-137; Protecting and Promoting the Open Internet, GN Docket No. 14-28**

CTIA and Competitive Carriers Association ("CCA" and collectively, the "Associations") write to reiterate our members' continuing concerns with the Mobile Measuring Broadband America ("MMBA") program. Over the course of this program, the Associations and their members have raised questions regarding the quality of the data that the MMBA program is purporting to capture as well as the transparency necessary to administer an effective program. Specifically, the Associations underscore four issues for further evaluation:

- First, there is continued concern regarding the breadth (specifically, fewer recorded tests in comparison to other sources) and quality of the data collected and, correspondingly, its accuracy and reliability.
- Second, the Commission's mobile speed testing efforts duplicate far more robust efforts well underway by third parties, each of which gather detailed speed testing data that is more expansive and thorough than the MMBA's results.
- Third, the Commission has yet to provide the carrier community with information on the collection and filtering methods used to prepare speed test data.
- Finally, the Commission has not established a review process, prior to the anticipated release of the MMBA Report, with sufficient time for the carrier community to evaluate the data contained therein to ensure the results accurately reflect network performance.

The Commission has a responsibility to the public to ensure the completeness and accuracy of the MMBA Report. The Associations and their members, particularly wireless service provider members, stand ready to work with the Commission to resolve these concerns. In the meantime, however, CTIA and CCA respectfully request that the Commission not release the anticipated 2016 MMBA Report until it addresses the issues identified above and in more detail below and makes any necessary corrections.

**The Associations and their Members Remain Concerned About the Quality and Quantity of the MMBA Data.** As the Associations detailed in their recently filed Applications for Review of the Commission's *Open Internet* transparency guidance,<sup>1</sup> the data collected through the MMBA program produces an inaccurate picture of wireless network performance —particularly for those providers with a large base of non-Android customers and non-exempt, non-nationwide carriers. For example, the Commission has decided to include only tests from Android devices in the upcoming MMBA Report; thus, the Report is expected to exclude data collected from all iPhones, which represent nearly 43 percent of the smartphone market in the U.S.<sup>2</sup> Because type of device is a relevant variable affecting network performance, an MMBA Report that restricts test results to Android devices will be an incomplete, imprecise, and inaccurate representation of network performance that consumers experience. In addition, the FCC has asserted that it will not include manual test data in the upcoming MMBA report. If the Commission elects to use data from the FCC speed test app, it should use all valid tests regardless of whether the tests are scheduled or manual. The Commission has not yet explained the exclusion of manual test data. We request that all data should be included in the MMBA report, unless the FCC can explain why certain data should be omitted.

Moreover, significant questions remain regarding the filtering methods applied as part of the MMBA program. Filtering that counts some test results and discards others could exacerbate the problems with the MMBA results. For example, the Associations understand that MMBA results will exclude data that is missing location information,<sup>3</sup> and it is unclear how the program intends to address factors beyond the control of the operator that could affect mobile Internet performance, including the variety of handsets with different capabilities available in the market.

Further, the FCC speed test app's decreasing user base has resulted in an insufficient amount of speed test data, likely increasing the need to aggregate at a yet unknown geographic level in order to be statistically valid. In fact, the MMBA program may lack data in many regions outside of major urban areas.<sup>4</sup>

The Commission must address these concerns to comply with its obligations under the Data Quality Act ("DQA"). Enacted in 2000, the DQA directs the Office of Management and

---

<sup>1</sup> See Application for Review of CTIA, GN Docket No. 14-28 (filed June 20, 2016); see also Application for Review of Competitive Carriers Association, GN Docket No. 14-28 (filed June 20, 2016).

<sup>2</sup> See Comments of CTIA, WT Docket No. 16-137, at 41 (filed May 31, 2016) (showing that Apple handsets represented 42.9 percent of total U.S. smartphone subscribers 13 years of age and older during the average three-month period ending in December 2015).

<sup>3</sup> See Comments of AT&T, WT Docket No. 16-137, at 23-27 (filed May 31, 2016).

<sup>4</sup> See Reply Comments of Competitive Carriers Association, WT Docket No. 16-137, at 14 (filed June 15, 2016). In addition to the serious flaws with the MMBA program data, there are several non-exempt, non-nationwide carriers that must comply with the enhanced transparency requirements but cannot rely on the MMBA program as a safe harbor. In fact, even the nationwide carriers may not be able to rely on the MMBA program as a safe harbor as a result of the lack of reliable and/or accurate nationwide data.

Budget (“OMB”) to issue guidelines requiring that federal agencies, including the FCC, maximize the “quality, objectivity, utility, and integrity of information (including statistical information)” that they disseminate.<sup>5</sup> In 2002, the Commission adopted agency-specific guidelines implementing the DQA that apply to “Commission-initiated or sponsored distribution of information intended for the public.”<sup>6</sup> The Commission’s guidelines declare that all “data shall be generated ... using sound statistical and research methods,”<sup>7</sup> and that “the Commission will consider the uses of the information not only from the perspective of the Commission but also from the perspective of the public.”<sup>8</sup> Moreover, OMB has made it clear that agencies must apply “stricter quality standards to the dissemination of information that is considered ‘influential.’”<sup>9</sup> The MMBA program is undoubtedly “influential” under the Commission’s *Open Internet* transparency guidance as it is intended to have “a clear and substantial impact on important public policies or important private sector decisions.”<sup>10</sup>

In short, the Commission’s approach will result in flawed reporting and may exclude many wireless carriers from the safe harbor protections in the recent *Open Internet Transparency* Public Notice.<sup>11</sup> The Commission should reevaluate its approach before it relies upon or publicly discloses any such data.

***The FCC Speed Test App is Duplicative of Existing Third-Party Applications.*** The paucity of data produced by the MMBA program and the troubling process used to analyze and report accurate and reliable data calls into question the utility of the entire MMBA program. Even after months of operation, the FCC’s app is only marginally used by the public and, as a result, collects only a very small number of tests per month. In comparison, the data collected by Ookla’s speed test app—just one example of an alternative commercial speed test app that is used by consumers—can range from roughly *ten to approximately seventy-five times* more completed tests in a given month than the FCC speed test app. Likewise, OpenSignal gathers data from millions of iPhones and Android devices, and other speed testing tools are available to consumers from RootMetrics, Google, M-Lab, and CalSPEED. Similarly, carriers themselves have access to third-party data sets that are far more robust than those offered through the

---

<sup>5</sup> Treasury and General Government Appropriations Act for Fiscal Year 2001, § 515(a), Pub. L. No. 106-554, 114 Stat. 2763 (2000).

<sup>6</sup> *Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Pursuant to Section 515 of Public Law No. 105-554; CORRECTED, Information Quality Guidelines*, 17 FCC Rcd 19890, App. A, § 11(5) (2002) (“*FCC Guidelines*”).

<sup>7</sup> *Id.* App. A, § 11(11).

<sup>8</sup> *Id.* App. A, § 11(15).

<sup>9</sup> *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8452, 8455 (Feb. 22, 2002).

<sup>10</sup> *FCC Guidelines* App. A, § 11(6).

<sup>11</sup> See Application for Review of CTIA, GN Docket No. 14-28 (filed June 20, 2016); see also Application for Review of Competitive Carriers Association, GN Docket No. 14-28 (filed June 20, 2016).

MMBA program, including data from Mosaik, RootMetrics, Nielsen, and P3. Quite simply, the Commission's entry into a field with many well-established competitors has resulted in very low utilization, statistically insignificant data collections, and potentially misleading speed test reporting.<sup>12</sup>

**Lack of Transparency Prevents Carriers from Verifying the MMBA Data.** Commission Staff have publicly stated that the goals of the MMBA program are transparency and inclusion of the carrier community—goals that the carrier community strongly supports. These goals, however, are not being met, as seen in several recent examples. First, despite repeated attempts, the FCC has declined to fully disclose the data filters used by its vendor, SamKnows, leaving the carrier community unable to verify the accuracy of the MMBA Report. Second, it does not appear the Commission took meaningful steps to involve non-nationwide carriers in program development. This is clearly reflected in the exclusionary nature of the end product, which would have been greatly improved had the Commission sought input from a robust sample of the wireless carrier community. Third, at one point carriers were denied access to the carrier-specific raw data collected. SamKnows offered carrier participants access to speed test results, for a fee, via an annual contract with the company.<sup>13</sup> The raw data originally sought by carrier participants became available again only after carriers suggested filing monthly Freedom of Information Act ("FOIA") requests to gain access to the carrier-specific raw data results. And finally, it appears that the Commission is moving away from Staff's earlier proposal to create three different industry working groups to make the MMBA process more collaborative and transparent.<sup>14</sup> Without access to data or a full understanding of the data filters used by SamKnows, the carrier community cannot verify the raw data.

Finally, Commission Staff proposed providing participants access to the results of the MMBA Report only three days in advance of its public release. This timeline leaves very little time to replicate and verify the results of the MMBA Report. Therefore, the carrier community is left unable to verify the results and inform the FCC of any errors prior to the Report's release. We respectfully request at least three weeks to review the draft report before any release.

---

<sup>12</sup> In fact, the competitive benchmarking industry has expressed significant reservations over the FCC Staff's recently issued public notice declaring that the FCC's MMBA program is a "safe harbor" for reporting network performance. See, e.g., Letter from Bryan Darr, President and CEO Mosaik, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28 (dated July 15, 2016); Comments of RootMetrics, GN Docket No. 14-28 (filed June 27, 2016); Comments of Nielsen, GN Docket No. 14-28 (filed July 5, 2016). In addition, it has long been the policy of the federal government to rely on the private sector for needed commercial services whenever they are available. See Office of Management and Budget, Circular A-76, Performance of Commercial Activities (May 29, 2003), <http://bit.ly/29UNmO3>.

<sup>13</sup> Comments of AT&T, WT Docket No. 16-137 at 24 (filed May 31, 2016).

<sup>14</sup> See Letter from James Miller, Senior Attorney Advisor, OET, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-264 (dated Aug. 18, 2015) (reporting on a meeting with mobile carriers during which Commission Staff announced "working group plans on carrier naming, technical privacy analysis [], statistics and data processing").

\* \* \* \* \*

CTIA, CCA, and their members are committed to working with the Commission to address the serious concerns underlying the MMBA program and strongly suggest that the FCC commit to remedying the inadequacies in data collection and filtering; further explain its duplication of existing third-party efforts; give carriers access to the data and filters used by the Commission in order to verify the results or identify inaccuracies; and provide the carriers a reasonable amount of time (*i.e.*, three weeks) to evaluate any draft report prior to its public release. In the meantime, we respectfully request that the FCC delay release of the anticipated 2016 MMBA Report until these matters are addressed appropriately.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

/s/ Krista Witanowski

Krista Witanowski  
AVP, Regulatory Affairs  
CTIA  
1400 16<sup>th</sup> Street, NW  
Suite 600  
Washington, DC 20036

/s/ Elizabeth Barket

Elizabeth Barket  
Law & Regulatory Counsel  
COMPETITIVE CARRIERS ASSOCIATION  
805 15<sup>th</sup> Street NW, Suite 401  
Washington, DC 20005