



*A service of the advertising industry and Council of Better Business Bureaus*



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# Telecommunications Digest

**About the National Advertising Division:** About the National Advertising Division: NAD is an investigative unit of the advertising industry's system of self-regulation. It is administered by the Council of Better Business Bureaus.

NAD seeks to ensure that claims made in national advertising are truthful, accurate and not misleading. NAD requires that objective product performance claims made in advertising be supported by competent and reliable evidence.

NAD cases can be initiated through staff monitoring of advertising claims or through "challenges" to advertising claims filed by competitors, consumers, or public interest groups.

NAD attorneys are experts in advertising claim substantiation and decisions are based on precedent. More than 90 percent of the advertisers who come before NAD comply with NAD's recommendations.

To encourage participation, NAD seeks to provide a user-friendly service. NAD's case manager works closely with parties to facilitate scheduling and the NAD assistant director, communications, provides one-on-one assistance with navigating the NAD process.

NAD's time to decision varies with the complexity of the case and needs of the parties. NAD recognizes that parties may occasionally seek deadline extensions; NAD works to ensure that reasonable extensions are granted after consultation with both parties.

Following are excerpts from telecommunications cases decided by NAD. Each case involves consideration of the claims made in the advertising and labeling and the supporting evidence provided by the advertiser.

**Comcast Cable Communications, LLC**  
**XFINITY Television Service**

*Case #6170 (3.3.18)*

Comcast Cable Communications, LLC improperly implied in a television commercial that customers of its competitor DIRECTV would be subjected to unavoidable, substantial, and undisclosed built-in price increase. AT&T Services, provider of DIRECTV CHOICE programming, challenged a television commercial in which Comcast implied that DIRECTV CHOICE customers will be “caught off guard” by undisclosed, built-in price increases. The promotional price for its DIRECTV CHOICE programming package of 185+ channels is \$60 per month for the first year and then \$115 per month for the second year. Both prices are clearly and conspicuously disclosed. Customer that sign up for the promotional package are then offered the opportunity to sign up for optional add-on features. The customer is alerted to the fact that, in order to avoid to being charged the full retail price for the channels, they must cancel before the expiration of the free trials. Consumers are under no obligation whatsoever to enroll in either of the add-on free-trial offers or to continue with either offer after the end of the free-trial period. NAD concluded that the challenged commercial communicated the unsupported message that the \$60 price will automatically increase after three months, as well as the message that the price increases are automatic or hidden. Nothing precludes Comcast from advertising the full cost of an AT&T promotional “deal” over the course of a two year contract, as long as the basis for the final total arrived at is communicated in a truthful and accurate manner and does not reasonably convey an unsupported message that the prices of the offers presented to customers by AT&T as “hidden,” “undisclosed,” or “unavoidable.”

Comcast agreed to comply with NAD’s recommendations.

**Sprint Corporation**  
**Sprint Unlimited**

*Case #6159 (2.26.18)*

NAD recommended that Sprint discontinue a television commercial that implied that Sprint Unlimited offered a better overall “unlimited” experience and performance than Verizon’s Unlimited Service. Verizon Communications, Inc. challenged advertising claims made by Sprint in its television and online advertising. NAD concluded that the visuals and dialogue of the commercial implied that Sprint Unlimited provides a superior overall experience than that of Verizon Unlimited—specifically that Verizon Unlimited is exceedingly slow, oppressive and restrictive. Sprint was unable to support the implied message that: Sprint Unlimited offers a better overall “unlimited” experience and performance than Verizon’s Unlimited Service; Sprint Unlimited provides faster speeds than Verizon’s unlimited service; Verizon shortchanges its customers by enticing consumers to sign up for its unlimited service and then providing them with lower network speeds; and Verizon’s network does not have the capacity to support high-quality unlimited service and to meet future demands. NAD also recommended that the advertiser discontinue its claim that “Sprint’s Network is built for unlimited...with

more spectrum for the future” in the comparative context presented. However, nothing precluded the advertiser from making the same claim in a monadic context.

NAD recommended that Sprint discontinue claims that Verizon's download speeds have slowed down due to the introduction of Verizon's Unlimited plans. Ookla's Speedtest data, provided as support for Sprint's claim, is collected from Ookla's mobile Speedtest application, an application that consumers can download to their smartphones and use to measure their devices' current upload and download speeds. NAD concluded that Sprint's Ookla data for the relevant time period cited in the commercial was insufficiently reliable to provide a reasonable basis for its claim that Verizon's download speeds have slowed down since the introduction of its Unlimited plans. Both RootMetrics and Nielsen reflected a decline in download speeds in a specified number of individual markets at certain specific times and keeping in mind the national context of the challenged commercial. However, the number of markets relied upon were far less than the number of top metropolitan markets covered by Verizon. Also, Verizon's analysis of Nielsen data (based on average weekly download throughput) demonstrates that after the relevant time period, its speeds actually began to increase for those 125 markets where the majority of Verizon's customers are located. With respect to the RootMetrics data, NAD could not ignore that the Yahoo.com financial news article submitted by Sprint states that a July 26, 2017 RootMetrics study noted that Verizon placed first for voice, text and data performance and over the first half of 2017 and found no notable slowdown in major markets for Verizon. Consequently, NAD recommended that this claim be discontinued. NAD further recommended that, in the future, the advertiser discontinue the use of visuals and/or language that can reasonably be construed as conveying the overly broad message that Verizon Unlimited is exceedingly slow, oppressive and restrictive.

As for the “twice the price” claim, it is undisputed that the cost of Verizon's Unlimited four-line plan is double that of Sprint Unlimited's four-line plan. However, it is equally undisputed that this is the only circumstance under which Verizon's service costs “twice as much” as Sprint's. The commercial clearly and conspicuously qualified the “twice the price” message to make clear that it referred to the parties' respective four-line unlimited plans. However, NAD concluded that the disclosures, in the context in which they appear in two of the commercials at issue, were inadequate to properly limit Sprint's “twice the price” claims to a comparison of Sprint's and Verizon's unlimited four-line plans recommended they be discontinued.

Lastly, NAD recommended that Sprint's claim that consumers are “wasting their money” with Verizon be discontinued. The statement crossed the line into false denigration, reasonably conveying the unsupported message that the services provided by Verizon (unlimited or otherwise) are of little or no value.

Sprint agreed to comply with NAD's recommendations.

**DIRECTV, LLC**  
**DIRECTV Satellite Television Service**  
Case #6157 (2.7.18)

Charter Communications, Inc. (Charter), a competing cable television provider, challenged DIRECTV's print and Internet advertising for its satellite service.

There were five challenged advertisements at issue. One advertisement included the headline, "Let us help you clear up a few myths about DIRECTV." Below the headline were four boxes, each containing a "myth." The "myth" in the second blue box was, "My signal will go out." The word "Wrong" appeared below the "myth" in orange bold text. The advertisement also stated that "DIRECTV has **99% worry-free signal reliability** so that you can access the best entertainment" (emphasis in original).

DIRECTV submitted a consumer survey in support of its argument that consumers did not take away the message that its service never goes out. However, the survey did not test the respondents' takeaways from the commercial, but their recall and memory of the advertisement. Also, by restricting participants to a single answer or, alternatively, not following up with a question about other messages conveyed by the advertisement, the survey failed to determine how many participants, if any, took away more than one message from the highlighted section of the advertisement. NAD determined that one message reasonably conveyed was that DIRECTV's signal will never go out. NAD noted that other challenged advertisements conveyed a similar and unsupported message. NAD recommended that DIRECTV discontinue the express claims that "Will my signal ever go out? No!", "My signal will go out. Wrong," and that it is a "myth" that DIRECTV's signal will go out.

NAD determined that DIRECTV was unable to support the claim that its service provides "worry-free" reliability. DIRECTV argued its signal reliability, over 99%, is a worry-free level of service, but provided no evidence that its level of reliability represented a worry-free level of service or that its service met consumer expectations for a worry-free level of service. Charter surveyed 813 satellite television customers (401 DIRECTV customers and 412 Dish Network customers), and found that 19% of DIRECTV's customers said that the aspect of their TV service that they liked the least was lost service. The survey provided evidence that, for those consumers, DIRECTV's television service may not be "worry-free." Thus, NAD recommended that DIRECTV discontinue its claim that it provides "worry-free" reliability. NAD noted that nothing precludes DIRECTV from making a "99% signal reliability" claim.

DIRECTV appealed NAD's recommendations that DIRECTV discontinue the nearly identical claim of "99% worry-free signal reliability" and certain statements accompanying the "99% worry-free signal reliability" claim, which were "Will my signal ever go out? No!", "My signal will ever go out. Wrong," and it is a "myth" that DIRECTV's signal will go out.

**Charter Communications, Inc.**  
**Satellite Television Service**  
Case #6147 (1.12.18)

Charter supported the implied claim that DirecTV experiences occasional outages due to rain and other inclement weather. The commercial at issue features a discussion

about the impending weekend between four commuters riding a train home as it is raining outside. One commuter, a representation of Death, stated “kids are going bananas, satellite dish went out in the rain.” DirecTV argued that Charter’s commercial falsely disparaged its television service as highly unreliable in rainy weather and conveyed the unsupported message that DIRECTV loses a signal every time it rains. Charter provided a survey of DIRECTV and Dish Network customers that asked them about their satellite television service and their experience with rain and weather related outages. Approximately 20% of respondents answered that “weather outages/unreliable/loss of signal” were the thing they liked least about their service. The survey made clear that weather-related outages are relevant to consumers.

While weather-related outages occur with satellite television, Charter was unable to support the voiceover and text appearing at the end of the commercial, “TV that cuts out in the rain is evil. Spectrum is reliable. Satellite TV Bad. Spectrum Good.” The line conveyed a broader, unsupported message that satellite television service is highly unreliable in inclement weather and/or does not work in the rain. Forty-two percent of respondents who acknowledged experiencing some lost service due to rain responded that it occurred “frequently” or “almost always.” Such responses are unlikely if service interruptions during rain occur “almost never.” However, it was not clear that the answers provide much information on the pervasiveness of the problem. NAD determined that the question responses do not support the premise that satellite television service is “highly unreliable,” or that it generally does not work in inclement weather. Moreover, while respondents likely can recall whether or not they had experienced some instance of weather related outage over the prior year, they are unlikely to be able to recall each instance of rain and specifically recall during how many of those instances they experienced an outage.

Lastly, NAD recommended that Charter permanently discontinue the original version of the commercial, which includes the word “again” when describing the service outage at the center of the advertisement, conveying the unsupported message that outages are a frequent and regular occurrence and that satellite television is “highly unreliable.”

Charter appealed NAD’s decision.

The NARB (#232 – 6.7.18) recommended that Charter discontinue the challenged video or modify it so that it (a) does not refer to satellite TV going out “again” and (b) does not contrast satellite TV as unreliable<sup>8</sup> and Spectrum as reliable.

The advertiser agreed to comply with NARB’s determination.

**Charter Communications, Inc.  
Spectrum**

*Cases #6133 and 6134 (11.7.17)*

NAD recommended that Charter Communications, Inc. discontinue the claims that Charter has a “superior, fiber rich network” and “the most advanced, fiber rich digital network in the nation.” AT&T Services, Inc. challenged a radio advertisement by Charter that targeted new customers it had gained when it merged with Time Warner Cable

and Bright House Network, which allegedly misrepresented the relative quality of Charter's "fiber rich" network. Charter argued that the advertising did not made comparative claims about its network, but also that such comparative claims would be supported. NAD found that consumers could understand the claims "superior, fiber rich network" and "most advanced fiber rich network in the nation" to mean that Charter's network infrastructure contains newer and/or provably better technology than competing networks. This message was bolstered by the claims being paired with express references to the "fiber rich" nature of the Spectrum network. While use of the term "fiber rich" as a monadic description of a network that incorporates fiber optics is not necessarily problematic, the term reasonably conveys a comparative message about the quality of the "fiber" and technological innovation within each network's physical infrastructure when tied to claims about the relative superiority or advancement of a provider's "network." Charter did not provide evidence that its network outperformed its competitors along metrics not measured by the 2016 FCC report and did not provide evidence that its network infrastructure is superior or more advanced than its competitors' networks.

AT&T also challenged a television commercial that it contended falsely disparaged its DIRECTV satellite television service. Based on the advertiser's affirmation that the commercial, which appeared three times in one market and on one television station, had been discontinued three weeks prior to start of the challenge, NAD administratively closed its inquiry into the commercial.

Charter will comply with NAD's recommendations.

### **AT&T Services, Inc.**

#### **AT&T Fiber**

*Case #6122 (10.12.17)*

NAD recommended that AT&T Services, Inc. modify its advertising so that in markets where AT&T Fiber is not widely available it make clear that AT&T Fiber is more unavailable than available. Charter Communications, Inc. challenged AT&T's television commercials, online video advertisements, online banner advertisements, and outdoor advertisements advertising the availability of AT&T Fiber Internet services. The limited availability of a service is a material fact which must be clearly and conspicuously disclosed. In fact, NAD has recommended when an advertised service is "less available than available," this limited availability must be part of the main claim itself.

Charter introduced a consumer perception survey designed to test the effectiveness of AT&T's disclosure in the commercial by comparing consumer response to the actual commercial to other versions of the commercial with more prominent disclosures including one with an audio disclosure. The survey concluded that consumers generally take away a message about the availability of an advertised service. While the advertising included language like "Coming Soon" or "Introducing," one reasonable consumer takeaway from this qualifying language was that the service was available or will be available to all or most consumers in that geographic area.

NAD recommended that AT&T modify its advertising so that in markets where AT&T Fiber is not widely available it make clear that AT&T Fiber is more unavailable than available. NAD further recommended that when AT&T advertises AT&T Fiber, the recommended qualifying language about the availability of its service should be made as part of the main claim (e.g., disclosed with prominence and clarity close to the main claim) and disclosed visually if the claim is made visually, and orally if the claim is made orally.

NAD determined that the AT&T Fiber map, in the context in which it appears on the AT&T website, did not reasonably communicate the message that AT&T Fiber was generally available in an area designated on the map, but that the map was a tool for consumers to learn whether AT&T Fiber is available in their area. The coverage map is exclusively on AT&T's website and is interactive, allowing consumers to zoom in and learn whether AT&T Fiber is available to them.

As to the claim that AT&T has the "largest fiber optic network," NAD noted that the parties did not dispute that AT&T has more fiber in its network than its competitors. The parties disagreed about whether consumers viewing the challenged claim, "Largest Fiber Network" might reasonably take away a message that AT&T provides fiber-to-the-home to more households than any other provider. AT&T makes its "largest fiber optic network" claims in the context of advertising its AT&T Fiber product while AT&T Fiber is not the largest fiber-to-the-home network. NAD determined that when this claim is made in advertising AT&T's newly introduced fiber-to-the-home service, consumers could reasonably take away the unsupported message that AT&T Fiber is the largest fiber-to-the-home network. As a result, NAD recommended either discontinuing the claim or making clear that it refers to fiber across AT&T's network, not to its fiber-to-the-home network.

NAD determined that "Internet 1000," the name that AT&T Fiber has given its 1 GB internet service which offers consumers download speeds of up to 940 Mbps, was not "expressly false" as the connection can technically handle data at 1000 Mbps, although it cannot provide data download speeds at 1000 Mbps because the lines need a small amount of capacity to transmit other network data. There was no evidence that there is a consumer meaningful difference between download speeds of 1000 Mbps and 940 Mbps. Also, AT&T disclosed that maximum download speeds are 940 Mbps. NAD also reviewed the marketplace context for internet service providers offering 1 GB service and noted that other internet service providers offering 1 GB of service have the same limitations on download speeds and also name their service 1 GB service or 1000 Mbps. The marketplace context further underscores that consumers are unlikely to be misled about the actual speed and speed limitations of speed tiers offering 1000 Mbps.

AT&T appealed NAD's determination that AT&T must separately disclose limited availability even when the advertising clearly states "Coming Soon."

NARB (#227 – 4.3.18) recommended that, if AT&T advertises that AT&T Fiber is "Coming Soon" to a market where it is currently unavailable, the advertisement include a clear and conspicuous disclosure that (a) is in close proximity to the main "Coming Soon" claim and (b) informs consumers of AT&T Fiber's limited availability when AT&T Fiber is

launched in the market. However, this disclosure would not be required if AT&T Fiber will be widely available in the market within a short time period.

The advertiser agreed to comply with the NARB's decision.

**T-Mobile USA, INC.**  
**T-Mobile Wireless Services**  
*Case #6117 (9.18.17)*

T-Mobile USA, Inc. was unable to support the claim that it had the fastest 4G LTE network. Verizon Communications, Inc. challenged television, print, and Internet advertisements disseminated by T-Mobile. Specifically, T-Mobile claimed that its LTE network is newer and faster than Verizon's. T-Mobile relies upon crowd-sourced data from Ookla and confirmed by Open Signal to support the claim. Crowd sourced speed test data is collected from users who download the Ookla or Open Signal speed test app to their phones. NAD found that crowd-sourced data did not provide a reasonable basis for T-Mobile's claim, especially considering that the speed tests may have oversampled deprioritized Verizon customers and T-Mobile's data may have misrepresented the comparative 4G LTE speeds most Verizon customers actually experience.

NAD also recommended that T-Mobile discontinue claims that its 4G LTE network is "newer" and Verizon's 4G LTE network is "older." The commercial claimed that Verizon's LTE network is "older," "slower," and "they limit you," and impliedly (if not expressly) conveys the message that Verizon's LTE network is inferior to T-Mobile's. Although Verizon began building its network several years before T-Mobile, both Verizon and T-Mobile continually invest in their network. Thus, NAD concluded that T-Mobile could not claim that its network is "newer" based on when the building of each comparative network began.

Lastly, NAD concluded that T-Mobile provided a reasonable basis for its claim that it covers 99.7% as many people as Verizon, but recommended that T-Mobile modify its claim to make clear that it is based on coverage population and avoid conveying the message that it is based on geographic coverage. T-Mobile provided evidence that it calculates its own coverage using industry standard methods, using a population weighted centroid method which calculates the number of people covered ("covered POPs") by census block. Also, T-Mobile relied on Verizon's own coverage claims when it compares its coverage to Verizon. When calculating a competitor's coverage, an advertiser can use publicly available information regarding a competitor's coverage when that is the only information readily available and is the same information that consumers have when looking for provider coverage. NAD determined that it was appropriate to use the competitor's coverage representation as a basis for comparison. Verizon's evidence was not more persuasive than T-Mobile's.

T-Mobile agreed to comply with NAD's recommendations.



**Verizon Communications, Inc.**

**Google Pixel Phone**

*Case #6086 (5.31.17)*

NAD recommended that Verizon modify or discontinue its claim that the Google Pixel smartphone was “exclusively at Verizon.” T-Mobile challenged Verizon’s television commercial for its Google Pixel smartphone that claimed that Verizon is the only retailer where consumers can purchase a Google Pixel phone and has the only network that will support the phone. It was undisputed that Verizon was the exclusive partner of Google in the sale and distribution of Google’s Pixel phone. However, the claim implied that the Pixel was not available for purchase anywhere else. NAD recommended that Verizon avoid implying that it was the exclusive seller of the phones.

Verizon failed to support the television commercial claim that Verizon was “...the only next gen network that lets you get the most out of [the Pixel].” T-Mobile argued that this claim reasonably conveyed the unsupported messages that the Pixel will only work on the Verizon network or that the Pixel’s functionality works better on the Verizon network. NAD determined that evidence as to Verizon’s ranking with respect to 4G LTE network reliability, speed, data performance, etc. or industry-accepted technical limits and calculations for downloading or streaming did not demonstrate how Verizon’s 4G LTE Advanced actually performs in real-world use of the Google Pixel and its advanced data-intensive features either in comparison to its prior 4G LTE network or that of a competitor such as T-Mobile. NAD recommended that this claim be discontinued. However, nothing precluded Verizon from promoting the deployment of its “next gen LTE Advanced network” in 450 cities coast to coast, and its performance capabilities with respect to Pixel’s Daydream Virtual Reality and other features.

NAD also recommended that Verizon discontinue its claim, “Verizon LTE Advanced delivers 50% faster peak speeds in 450 cities coast to coast.” Verizon argued that the claim was monadic. However, Verizon’s evidence did not support the claim that its LTE Advanced reached the advertised peak speeds. Also, there was no comparative testing in the record offered in support of the Verizon’s claim as it might apply to other competing wireless carriers such as AT&T or Sprint.

Verizon agreed to comply with NAD’s recommendations.

**Comcast Cable Communications, LLC**

**XFINITY Television Service**

*Case #6067 (3.17.17)*

NAD recommended Comcast discontinue television commercials for its Xfinity television service and that, in future advertising, Comcast avoid any language or imagery of an absolute nature or the implication that service interruption in severe weather is typical or a certainty and will last for entire programs or an evening’s worth of television viewing. DIRECTV asserted that Comcast grossly exaggerated the degree to which

DIRECTV's satellite signal was interrupted during bad weather and impugning the reliability of DIRECTV. In a previous case between the parties, NAD concluded that it is permissible to make claims regarding possible interruptions of DIRECTV satellite service in inclement weather and/or subscribers' concerns regarding weather-related interruptions due to storms, snow, etc. and that cable television is not as vulnerable to such elements are permissible, but that it is not permissible to make claims reasonably conveying the message that DIRECTV television service does not work at all (and/or that such is an inevitability) in the rain, snow or during other inclement weather or precipitation.

One message reasonably conveyed by the commercial was that the service outage to be experienced under inclement weather conditions will be sufficiently significant such that one's television experience will be ruined by loss of signal or service interruption. Also, the phrases "no shows tonight" and "kiss your shows goodbye," were express claims that literally tell the consumer that in bad weather they will not get satellite television service. The commercial states that "if" or "when" there is rain, storms, hail or high winds, it is a certainty that consumers will experience "no shows tonight" and can "kiss [their] shows goodbye"—claims that NAD has previously found to be unsupported and which is not mitigated by the fleeting word "might" in the lyrics. While the commercial did not explicitly mention the length of the signal outage or service interruption to be anticipated in bad weather, NAD determined that the message conveyed by the lyrics along with the visuals, is that the outage is significant enough that, at least for the majority of a desired program—if not the entire evening's viewing—the signal will be lost or interrupted for a significant period of time.

Comcast agreed to comply with NAD's recommendations.

### **Frontier Communications, Inc.**

#### **Internet Service**

*Case #6036 (12.14.16)*

Frontier permanently discontinued certain advertising claims for its Internet service, which it delivers via DSL copper-wire technology or through FiOS Internet networks purchased from Verizon, made on its website and in print advertising challenged by Charter Communications, Inc. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

NAD recommended that Frontier Communications, Inc. discontinue its claims that consumers with Frontier High Speed Internet will "never worry about your Internet connection" and do "practically anything you and your family needs." Frontier DSL plans come in a variety of tiers, some of which cannot handle streaming movies. Because some DSL speed tiers did not provide sufficient connection speeds to allow streaming videos or streaming multiple movies at one time, they might not provide the worry-free, family friendly Internet service advertised.

NAD also recommended that Frontier Communications discontinue its claims that Frontier FiOS always downloads faster, streams easier, is more reliable or otherwise delivers end-user performance that is superior to cable, and refrain from making comparative performance claims about the superiority of FiOS to cable due to its network architecture. While NAD recognized that FiOS technology could provide fast and reliable Internet service, to the extent that Frontier seeks to claim that its FiOS internet service is superior to cable, those claims need support that Frontier FiOS end-users experience superior performance as compared to end-users of cable, including Charter cable. Frontier did not provide any evidence that Frontier FiOS provided faster speeds, better service or more consistent service than cable. Rather, a FCC Report found that six cable internet service providers delivered a higher overall percentage of their advertised download speeds than Frontier FiOS.

Lastly, NAD recommended that Frontier modify its advertising to clearly and conspicuously disclose that Frontier DSL Internet service starts at \$19.99/month and make clear that Frontier FiOS service is not available at the advertised price.

Frontier agreed to comply with NAD's recommendations.

**Charter Communications, Inc.**  
**Spectrum™ Television Service**  
*Case # 6030 (9.12.16)*

NAD recommended that Charter discontinue television commercials that misrepresented the content available through DIRECTV. The commercial portrayed satellite television consumers frustrated with the number and type of channels included with their particular service package. DIRECTV argued that the commercials misrepresented the availability of channels on its television service. All of DIRECTV's television packages, including its entry-level Select package, feature well over 100 channels. NAD determined that the commercials, including the claim, "Don't pay more for what you love to watch," conveyed an unsupported comparative message that consumers would have to pay more money for fewer channels, or for packages that included specific channels with DIRECTV than with Spectrum. NAD found that the advertisement understated the amount of content available on DIRECTV's least expensive package and that, at the time of the challenge, the pricing was comparable for the two services. Nothing precluded Charter from informing consumers that the entry level DIRECTV package did not include some very popular channels, particularly ESPN and FoxSports1.

NAD determined that the claim that a DIRECTV customer's "bill has doubled" because her prior bill had been "just a promotional price" conveys a supported message about DIRECTV's promotional pricing. NAD noted that DIRECTV's promotional pricing is often structured such that, after the first year of service, a DIRECTV customer's bill may "double" because the heavily discounted price is only available for the first year of a two-year contract. Charter is entitled to point out this aspect of its competitor's promotional pricing structure and criticize it as something that consumers may not like, provided that it does so in a manner that does not mislead consumers.

NAD determined that Charter supported the claim that consumers would understand the claim that "Satellite and telephone companies complicate deals with contracts" to mean that DIRECTV's promotional "deal" involved a "contractual" obligation on the part of the customer but not the type of "deal" offered by Charter.

NAD determined that a depiction of DIRECTV's customer service in the "On Hold" commercial constituted puffery and did not require substantiation. No consumer would reasonably believe that DIRECTV simply places customers who ask about their bill on "fake hold" while they chuckle and play instruments on a space station. The humor of the advertisement did not amount to an objective or substantive claim, but merely expressed an opinion that DIRECTV's promotional pricing structure was an unattractive option for consumers.

NAD recommended that the "Transfer" commercial be discontinued. It featured a conversation which substantively comments on DIRECTV's customer service, conveying the message to consumers that DIRECTV's merger with AT&T has had a deleterious effect on the company's ability to provide customer service. There was no evidence that DIRECTV's customer service has changed or been impacted by the merger.

Charter agreed to comply with NAD's recommendations.

**DISH Network LLC**  
**Advertising by DISH Network**

*Case #6002 (9.15.16)*

In reliance on DISH Network LLC's representation that two of the challenged claims made in its advertisements for its television service were permanently discontinued, the National Advertising Division did not review the claims on their merits. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

NAD determined that DISH Network LLC established a reasonable basis for its advertising of local channel fees that some pay-TV customers pay fees to watch local channels. In reaching this conclusion, NAD noted that the advertising did not either expressly or impliedly draw a comparison to DIRECTV. Of the eleven largest pay-TV providers, only DISH and DIRECTV do not charge a fee for subscribers to receive the locally broadcast channels. NAD rejected DIRECTV's argument that viewers would associate the remote control depicted in the commercial with DIRECTV, and thereby interpret the advertisement to mean that DIRECTV charges its customers a local channels fee. Nor was NAD convinced that the Installer commercial, which does not name DIRECTV, should be considered in the context of discontinued commercials in the DISH television campaign that do mention DIRECTV.

DISH agreed to comply with NAD's recommendations.

**Comcast Cable Communications, LLC**

**XFINITY**

*Case #5996 (9.1.16)*

Comcast was unable to support claims that competitor DIRECTV was built on “tech that’s old.” DIRECTV, LLC challenged claims made by Comcast in two commercials, “Get Faster” and “Reruns,” that allegedly portrayed DIRECTV as out-of-date and Comcast as offering superior features. One reasonable interpretation of the “Get Faster” commercial was that DIRECTV uses old or outdated technology compared to Comcast and, because of that, cannot offer voice search capability. Because Comcast argued that the “Get Faster” commercial did not convey the message at issue, it did not offer any substantiation for it. NAD recommended that the claims be discontinued. Comcast was free, however, to promote the meaningful consumer benefits of the X1 Voice Remote so long as the claims are truthful and not misleading.

Similarly, Comcast was unable to support the implied message in its television commercial that Comcast subscriber would have access to four times more unique TV show and movie titles on demand than a DIRECTV subscriber, and that such access was available on the set top box. NAD thus recommended the commercial be discontinued. Comcast may advertise in a future claim the comparable number of unique titles so long as any such claim is truthful and not misleading.

Lastly, NAD determined that the claim that DIRECTV subscribers were “watching reruns tonight” was puffery and need not be substantiated.

Comcast agreed to comply with NAD’s recommendations.

**Comcast Communications, Inc.**

**Xfinity Internet, Television & Telephone Services**

*Case #5974 (7.19.16)*

Comcast was unable to support its unqualified claims that “XFINITY delivers the fastest Internet in America . . . Based on 2015 Speedtest.net testing.” Verizon Communications, Inc. challenged Comcast’s advertising for its Xfinity Internet, television, and telephone services. Testing submitted by Comcast showed that XFINITY was “fastest” for only a minority of its customers. The “fastest Internet” claim communicated that it offered the fastest download and upload speed, but the testing was only of download speeds. Nothing precluded Comcast from accurately communicating what the results of Ookla’s award (and the underlying testing) actually show that more XFINITY customers are receiving its fastest Internet download speeds than customers of other ISPs.

NAD recommended that Comcast discontinue claims that it offered the fastest Wi-Fi. The claim “fastest in-home WiFi” reasonably conveyed that Comcast offered the fastest available wireless access to the Internet. WiFi and Internet are distinct and independent, where WiFi (which is hosted by a router) acts as the bridge between the Internet and wireless devices. The top Internet speeds being delivered by XFINITY were

not representative of the typical consumer experience or sufficiently available. Even if Comcast's testing established that its router outperforms Verizon's, it was insufficient support to establish that once the router is connected to its WiFi network, XFINITY offered a faster connection to the Internet than FiOS.

NAD also recommended that Comcast discontinue claims that XFINITY delivers in-home WiFi speed of 725 Mbps, while FiOS only delivers a speed of 610 Mbps, which were based on the outdated 2014 testing.

NAD further determined that Comcast provided a reasonable basis for a claim that XFINITY provides faster in-home WiFi than FiOS based on router speed testing, but was instructed by NAD to modify future claims to make clear that only users of 5GHz (or dual) band devices will experience the superior performance claimed.

Lastly, Comcast's direct mail advertisement, which claimed that "Verizon is eliminating its traditional home phone service in certain markets" and that "Verizon is discontinuing its copper wire-based home phone service," was potentially confusing to consumers. Comcast maintained that this advertisement was literally truthful because Verizon is eliminating its traditional copper-wire based home service. NAD recommended that it be discontinued or modified to accurately communicate that Verizon is changing the way it is delivering, rather than eliminating, phone service to consumers.

Comcast appealed NAD's decision to the NARB.

NARB #214 (12.7.16) Decision is as follows:

The panel recommends that Comcast discontinue the challenged "America's fastest internet" claims. This decision does not preclude Comcast from accurately advertising the results of Ookla crowdsourced data as long as Comcast (a) clearly communicates what the data represents, (b) avoids any statement or implication that the data demonstrates that XFINITY provides faster internet speeds than competing ISPs, and (c) appropriately distinguishes between download and upload speed.

The panel further recommends that Comcast discontinue the challenged "fastest in home WiFi" claims. This decision does not preclude Comcast from accurately advertising the results of any tests comparing performance of ISP wireless routers as long as Comcast (a) clearly communicates that router performance is being compared and (b) avoids any statement or implication (through use of the term "WiFi" or otherwise) that faster router speed by itself will result in faster wireless access to the internet.

The advertiser agreed to comply with the NARB's decision.

**Sprint Corporation**  
**Advertising by Sprint Corporation**  
Case #5958 (5.20.16)

T-Mobile USA, Inc., a competing wireless service provider, took issue with Sprint's "50% off most T-Mobile rate plans" claim. Sprint permanently discontinued its "cut your bill in

half” claims. The voluntarily discontinued claims were treated as though NAD recommended their discontinuance and the advertiser agreed to comply.

NAD determined that Sprint provided a reasonable basis for its “50% off most T-Mobile rate plans” claim, but recommended that it modify its claim to clearly and conspicuously state the basis of its comparison, namely the T-Mobile’s Simple Choice rate plan 2GB, 6GB and 10GB. NAD further recommended that Sprint clearly and conspicuously disclose a \$36 line activation fee in close proximity to its 50% off rate plan claim.

NAD further determined that for consumers who are looking for a less expensive rate plan with the core features common to Sprint, T-Mobile and other carriers, specifically talk text and a specified amount of high-speed data, the savings Sprint offers are a valuable benefit that Sprint should be able to advertise to consumers and that the 50% off claim (as modified). However, NAD recommended that Sprint clearly and conspicuously disclose the material differences in its plans versus those offered by T-Mobile (including unlimited music and video streaming, roll-over of unused high speed data, international data and texting service, and tethering benefits) in close proximity to the 50% off claim.

Sprint agreed to comply with NAD’s recommendations.

**Comcast Cable Communications, LLC**  
**Xfinity Cable Television Service**  
*Case #5926 (2.5.16)*

Comcast supported advertising claims that conveyed the message that DIRECTV’s satellite television service may be susceptible to service interruptions during some types of severe weather (i.e., rain fade), as well as the message that cable television service does not have the same type of vulnerability. Similar claims on Comcast’s website were likewise supported. Both parties acknowledged the existence of “rain fade”—the absorption and scattering of radio frequency by precipitation in the atmosphere. Comcast provided a reasonable basis for both the claim that severe precipitation can interrupt satellite television service, generally, and that its own cable television service does not have the same type of vulnerability to interruption from precipitation. Comcast’s expert explained that precipitation can weaken the signal such that service can be disrupted, and that wired signal strength is not affected by precipitation in the same way because the amount of water in the atmosphere has no bearing on signals traveling through cables.

NAD found that Comcast’s implied message that DIRECTV’s satellite television service does not function during any precipitation event was not supported and should be discontinued. While the parties disagreed regarding the degree to which “rain fade” affected satellite television service, Comcast did not provide evidence that “rain fade” occurred to such a degree that DirecTV customers lose their signal “every time it rains” or in all precipitation events.

Comcast's claim that it offered the "most live sports" was not supported and should be discontinued or modified to truthfully and accurately tout the breadth of its sports programming available across different platforms. Comcast provided a list of all of the television channels and streaming content sources that offer live sporting events on Xfinity, as well as a list for each of its major competitors, that showed Comcast as offering channels and outlets that show more live sporting events than its competitors. NAD determined that a reasonable consumer could interpret the claim "most live sports" as conveying the message that Comcast provides access to the highest number of independent sporting events compared to its competitors. However, based on the confidentially submitted evidence, NAD could not determine to what extent Comcast counted the same live sporting event separately for each different media platform it appeared on. Also, some of the channels and outlets included in the advertiser's confidentially submitted channel carriage overview appear to not be part of Xfinity's "HD Preferred XF Triple Play" package—the service to which the claim is tied.

NAD also determined that the claim that Comcast provided "better service" amounted to puffery and did not require support. Whether the term "better" conveys a performance superiority message depends on the attribute it is modifying and the context in which it appears. NAD determined that the use of the term "better" was vague and general, such that it would not be construed by consumers to be speaking about a specific objective measurement by which its television service is superior to the challenger's. NAD noted that the claim "better" was not connected to any particular measurable attribute or objectively provable aspect of its service. Rather it stated that its service was "better" generally.

NAD further determined that the claim "best-in-class support" was an unsupported objective performance claim and recommended that it be discontinued. The claim reasonably conveyed the message that Comcast's customer support services were rated or measured as superior to its competitors' customer support services. The phrase "best-in-class" connotes a comparative, measured "win" over an advertiser's competition with respect to a particular attribute and is not likely to be construed as a vague puffery message. Comcast did not provide evidence that its customer support services were measurably superior to its competitors along any metric.

NAD also determined that Comcast could properly describe its policy regarding its customer service visit time windows as a "guarantee," but recommended that Comcast disclose the material terms of the guarantee in direct proximity to the claim, and not via hyperlink.

Lastly, NAD determined that Comcast's "save energy" claim was supported, but recommended that Comcast avoid the potential for consumer confusion by making it clear that the claim refers to the savings that consumers can achieve by virtue of the programmable thermostat that is provided as part of the Xfinity home service.

Comcast agreed to comply with NAD's recommendations.



**Charter Communications, Inc.**  
**Advertising by Charter Communications, Inc.**  
*Case # 5922 (2.1.16)*

Charter did not provide a reasonable basis for its television advertising claims that one out of four satellite customers have reception outages when it barely rains or drizzles. In support of the claims, Charter relied on the results of surveys of DIRECTV's customer satisfaction and personal experiences with their service. The "one in four" claim was objectively verifiable and needed to be substantiated with objective testing that goes beyond simply asking satellite customers about their experience with satellite television. Substantiation must be a good fit for the claims that are made. Even if consumers reasonably understood the challenged "one out of four" language as a subjective claim regarding DIRECTV subscribers' experiences with their service during drizzle, the survey results failed to support the claim. Many of the verbatim responses that were coded by the advertiser to be included in the final tally for the "one out of four" claim do not actually state that a service outage occurred during "drizzle." In fact, many responses only generally stated that there was a loss of reception, without mentioning the weather at all.

NAD determined that the evidence did not provide a reasonable basis for Charter's claim that "One out of four satellite customers claim they have reception outages in bad weather" and recommended that it be discontinued. The survey submitted by Charter did not reliably support this claim. Notably, many of the verbatim responses that were coded to be included in the final tally for the "one out of four" claims did not actually state that a service outage occurred during "bad weather" (or any similar storm condition). Many responses only generally stated that there was a loss of reception, without mentioning the weather at all. These answers are not reliable support for Charter's specific advertising claims that such disruptions occurred during the conditions of "bad weather" at a rate of 25%.

NAD determined that Charter did not provide a reasonable basis for the implied message that it is an ordinary consumer experience for DIRECTV's signal to be interrupted, and for the television to freeze or pixelate when it is "barely raining." Charter did not submit evidence regarding the frequency of rain fade experienced by DIRECTV customers during light rain conditions, evidence that NAD determined is necessary to support the claim. Online consumer complaints about signal loss when it was barely raining or not raining at all was anecdotal and could not be considered reliable evidence on the actual frequency of such occurrences. NAD also determined that the an expert report explaining the physics of how satellite signals like DIRECTV's are susceptible to rain fade even when it is barely raining in the customer's location, or not raining at all, did not support Charter's message that service outages during light rain are a common occurrence for DIRECTV customers.

NAD determined that Charter provided a reasonable basis for its "weatherproof" service claim. In the context of the commercial, consumers were likely to understand

the reference to “weatherproof” as a more limited statement that Charter's service is resistant to rain fade. There was sufficient evidence that rain fade is a unique issue for satellite television service that cable does not experience.

NAD also determined that Charter failed to provide a reasonable basis for the disparaging message conveyed that DIRECTV is highly unreliable in rainy weather because its signal is subject to rain fade. Charter's “Barely Raining” commercial concludes with a voiceover stating, “It's time to move on from satellite. Get reliable, weatherproof TV with crystal clear picture and sound.” Charter's contention that a 1% signal outage “translates to 14 minutes of lost service every day, and over an hour and a half of lost service every week” was insufficient to provide a reasonable basis for Charter's claim that DIRECTV's television service is highly unreliable in rainy weather.

Charter accepted NAD's recommendations with respect to the three challenged commercials and appreciated NAD's recognition that rain fade is a unique issue for satellite television service that cable television does not experience.

### **DIRECTV, INC.**

#### **4K, Wireless, Price, Free Upgrade**

*Case #5906 (11.30.15)*

NAD determined that DIRECTV's advertisements conveyed the unsupported implied messages that most or all of its programming was available in 4K. Charter Communications, Inc. took issue with DIRECTV's television advertising campaign featuring swimsuit model Hannah Davis and a “talking” horse that made a series of allegedly false and misleading claims about DIRECTV's services and pricing. While DIRECTV can tout that it is one of only a few television service providers to offer any programming in 4K, it offers only a relatively small number of movies in 4K and not general programming. Consumers could reasonably take away the message that DIRECTV offers more 4K programming than was actually available. NAD recommended that DIRECTV modify the claim to clearly address the developing nature of this technology and narrow the claim to indicate that, currently, only a small amount of programming is available in 4K.

NAD directed DIRECTV to discontinue or modify advertising claims concerning its wireless satellite offerings to specify that the references were to cable wires and cable boxes. Reasonable consumers were not likely to construe the claim that “DIRECTV is wireless” to mean that all wires, including power cords, were unnecessary or that the signal was somehow beamed from a satellite antenna directly to their television. However, NAD was not persuaded that the advertisements merely referred to the ability of the consumer to eliminate coaxial cable wires and set-top boxes. The box provided by DIRECTV and its accompanying wires are only removed from view if it is mounted behind a wall-mounted television. However discreet it may be, the box would not be out of sight in all situations. NAD recommended that DIRECTV specify the actual device that is wireless, not that DIRECTV itself is wireless, clarify that the references are to cable wires and cable boxes, and explain that the box could be easily hidden behind the TV itself.

NAD also recommended that DIRECTV modify its television commercials to clearly convey the services available at the price advertised. DIRECTV's commercial displayed a monthly price of \$19.99 seconds after the advertised services—4K and wireless—were featured. A consumer could reasonably take away the message that 4K programming and the wireless service feature were included in the \$19.99 price. A DIRECTV subscriber would not be able to obtain either the 4K programming or wireless service for that price. NAD recommended that DIRECTV modify future similar pricing claims to make clear that the price being offered was for base programming rather than for the advertised features or services.

NAD further recommended that DIRECTV discontinue a claim that a DIRECTV subscriber can get a “FREE Genie HD DVR Upgrade.” Although there were no upfront costs for most customers, there was a separate monthly charge of \$6.50 for each Genie Mini and a \$15/month monthly leasing fee to use the equipment. The term “free” must be reserved for items and services that are actually obtainable at no cost to consumers. DIRECTV's offer of a free Genie HD DVR upgrade was not free based on NAD precedent and FTC guidance. NAD did not agree that the lack of upfront cost rendered the claim true.

DIRECTV appealed the decision to the NARB.

The NARB (# 211 - -6.23.16) recommended that that DIRECTV modify its 4K claims to clearly and conspicuously disclose that limited programming is available in 4K. The panel also recommends that DIRECTV modify its wireless claims to clearly and conspicuously a) specify the actual device that is wireless and avoid any statement or implication that DIRECTV is wireless; (b) clarify which wires and boxes are eliminated with a wireless set-up; (c) explain that the Wireless Genie Mini can be easily hidden behind the TV; and (d) explain that the wireless capabilities apply only to secondary TV locations.

The panel further recommended that DIRECTV modify its advertising to clearly and conspicuously disclose that (a) the \$19.99/month charge is a minimum programming charge (e.g., “Programming starts as low as \$19.99/month”), and also (b) there are additional monthly costs for required equipment and fees. Other material terms relating to this price, such as its availability only for the first 12 months of the required 24 month agreement, should also be clearly and conspicuously disclosed.

Finally, the panel recommended that DIRECTV discontinue the challenged free upgrade claim.

The advertiser agreed to comply with the NARB's decision.

**T-Mobile USA, Inc.**  
**T-Mobile Wireless Services**  
Case #5899 (10.28.15)

NAD recommended that T-Mobile USA, Inc. discontinue express claims related to its “Ditch and Switch” campaign. T-Mobile's promotion allegedly falsely promised that if

consumers switched from challenger AT&T Services, Inc. to T-Mobile, T-Mobile will “pay off” “every last cent” of their device balance. To receive compensation/reimbursement in the form of a trade-in credit and a Visa prepaid card, customers must trade in their existing phone towards the purchase of a new one. The consumer receives the value of the trade in phone in the form of a bill credit on her new T-Mobile account, thus she essentially receives her new phone at a discount. Consumers were given a Visa Prepaid card in an amount equal to the difference between what was owed to the former carrier on the device and the bill credit received for the trade in phone. Although it was technically true that a consumer received value equivalent to the amount of the outstanding balance owed to the previous carrier, it was literally false for T-Mobile to claim that it will “pay off your phone,” that it will pay “every last cent,” and that it will “cover every penny of your old device payment plans.” A reasonable consumer would believe that T-Mobile was advertising a reimbursement plan in which the customer receive the full amount owed to the previous carrier such that the consumer was able to satisfy their financial obligation through that cash amount. Consumers must always incur out of pocket costs to pay off the outstanding balance owed to their previous carriers despite T-Mobile’s express claims otherwise.

NAD recommended that T-Mobile USA, Inc. discontinue claims that it will reimburse consumers “up to \$650 per phone.” T-Mobile submitted a declaration explaining that there was no limit on the total amount of reimbursement that a switching customer can receive pursuant to this offer and that the \$650 figure advertised was simply a consumer relevant amount to indicate the generosity of the offer. Reasonable consumers are likely to understand the “up to \$650” claim as communicating a cap on the reimbursement amount available under T-Mobile’s “Ditch and Switch” program. Even if this \$650 amount was inserted simply to provide specificity as to how generous the offer is, the terms of the offer must be truthfully and accurately disclosed. T-Mobile may convey that there was no limit on the total amount of reimbursement available to consumers.

NAD further determined that reasonable consumers were not likely to construe “switch without a hitch” to mean that they could switch to T-Mobile without incurring further liability to their current carriers. Advertisers are responsible for all reasonable interpretations of its claims, not unreasonable ones. Given current industry practices regarding the process of switching wireless carriers, and the fact that consumers are familiar with contractual obligations under retail installment agreements, consumers are likely to understand that they retain the obligation to satisfy their financial obligations to their previous carrier.

T-Mobile will appeal NAD’s decision to the National Advertising Review Board.

The NARB (#210 -5.24.16) recommended that the challenged “pay off” claims be discontinued or modified to (a) clearly and conspicuously disclose in the body of the advertisement, contiguous to the “pay off” claim, that the “pay off” will be made by giving the consumer a trade-in credit and prepaid card; (b) include clear and conspicuous disclosure that explains the trade-in credit may only be used to pay the consumer’s obligations to T-Mobile and (c) include clear and conspicuous disclosure as

to the time period in which the consumer will receive the trade-in credit and prepaid card.

The panel also recommended that the challenged "Up to \$650" claims be discontinued or modified so that any limits as to what T-Mobile will reimburse to consumers are truthfully and accurately disclosed.

The advertiser agreed to comply with the NARB's decision.

**Sprint Corporation**  
**Advertising by Sprint Corporation**  
*Case #5887 (9.25.15)*

NAD determined that Sprint's "Get a FREE Samsung Galaxy S6" claim was inaccurate and should be discontinued. Sprint argued that the advertising reasonably conveyed the message that Sprint offered a free Samsung Galaxy S6 for consumers who signed up for its Unlimited Plus Plan. Competitor T-Mobile USA, Inc. argued that the advertising conveyed that Unlimited Plus Plan subscribers would receive free ownership of a Galaxy S6 in accordance with a typical phone purchase plan. Survey responses to a test advertisement demonstrated that there was a confusion rate of well more than 20 percent as compared to the control advertisement. NAD determined that the challenged advertising reasonably conveyed the message that consumers who sign up for Sprint's Unlimited Plus Plan receive a Samsung Galaxy S6 for free—i.e., they sign up for the Unlimited Plus Plan will own the phone free and clear at the end of the two-year plan period—a claim which was not accurate.

NAD also determined that the claim "First FREE phone lease in the wireless industry" made by Sprint Corporation was supported. An offer of "free" goods or services is based upon a regular price for the merchandise or service which must be purchased by consumers in order to avail themselves of that which is represented to be free. A purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service. On the \$80 Unlimited Plus Plan, consumers are charged an additional \$20 for the use of the Galaxy S6 and then credited \$20. The additional \$20 charged to consumers on the Unlimited Plus Plan as compared to the Unlimited Plan did not constitute a "mark-up" whereby Sprint recovered the cost of the free lease by marking up the price of its plan to recover the cost of the phone lease.

Lastly, NAD did not review the price comparison chart on its merits in reliance on Sprint Corporation's representation that it permanently discontinued use of the chart. The voluntarily discontinued comparison chart will be treated, for compliance purposes, as though NAD recommended its discontinuance and the advertiser agreed to comply.

Sprint agreed to comply with NAD's recommendations.

**T-Mobile USA, Inc.**  
**More Data Capacity**  
*Case #5849 (5.29.15)*

NAD determined that T-Mobile supported its claim that it had “More Data Capacity Per Customer.” Cellco Partnership d/b/a Verizon Wireless challenged television, print, in-store, Internet banner, and website advertisements disseminated by T-Mobile that allegedly mislead consumers about several comparative attributes of Verizon and T-Mobile’s network capabilities, arguing that T-Mobile’s claims that it has more data capacity than Verizon, is “designed data strong” and its use of a data coverage map regarding T-Mobile’s 4G LTE coverage are misleading to consumers. The advertising did not reasonably convey a misleading message about total data capacity in the context in which it was conveyed and when used with disclosure that the claim is based on having more per customer capacity. However, NAD determined that the claims should be modified to make clear that it is users on its LTE network who will experience the superior performance claimed.

NAD also determined that T-Mobile supported the claim that its network is “Designed Data Strong” based on upgrades to its network to support faster, more consistent data speeds including adding capacity by the purchase of mid-band spectrum, installing denser cell sites, and reinforcing its network with fiber optic backhaul. However, the claim, together with the images and comparative claims, conveyed a message that T-Mobile customers will experience better data performance on T-Mobile’s network because of its network design and capacity advantage. NAD recommended that T-Mobile expressly qualify the “Designed Data Strong” claim as limited to performance on T-Mobile’s LTE network.

NAD further recommended that T-Mobile discontinue its use of a three-dimensional map featuring both coverage and data usage. T-Mobile’s website and commercials featured a map which begins as a two-dimensional map which then rotates to a three-dimensional map that purports to show data usage on T-Mobile, with three-dimensional bars at different levels and different colors representing data usage on T-Mobile’s network or T-Mobile’s partner networks. The three-dimensional view of the map focused the viewer on areas of the country where T-Mobile has more coverage and obscures areas where they don’t have coverage at all. A reasonable consumer takeaway was the unsupported message that T-Mobile had broader coverage than it does when viewing the map from a two-dimensional perspective.

T-Mobile agreed to comply with NAD’s recommendations.

**Comcast Communications, Inc.**  
**XFINITY Internet Services**  
*Case # 5842 (5.6.15)*

NAD recommended that Comcast discontinue the unqualified claim that CenturyLink, Inc. doesn’t deliver the speeds it advertises. The television commercial conveyed the

unsupported message that CenturyLink failed to deliver its advertised Internet speeds as frequently as the evidence in the record would suggest (i.e., that CenturyLink delivers 88 percent of its advertised sustained downloading speeds). NAD noted that the 10 percent difference between Comcast's and CenturyLink's sustained download speeds as found by an FCC Measuring Broadband Report was significant, and that Comcast was free to make an appropriately qualified claim of superior speed performance based upon the FCC Report. The disclosure—"Based on 2014 FCC Measuring Broadband America Report"—was not necessary to qualify a claim related to the FCC Report. However, Comcast should clearly identify the basis for the challenged performance claims, i.e. the FCC Measuring Broadband Report, to avoid consumer confusion.

NAD determined that Comcast provided a reasonable basis for its claim that "Xfinity gives you the fastest, most reliable Internet." NAD also determined that Comcast's claim that it offered "the best in entertainment" claim was puffery.

Lastly, NAD determined that the advertising for Comcast's "\$99 a month" price for the package of Xfinity services was sufficiently identified as an introductory offer. However, NAD recommended that Comcast clearly and conspicuously disclose the material term relating to this introductory offer—i.e., a two-year contract.

Comcast agreed to take NAD's recommendations into account in its future advertising.

### **SquareTrade, Inc.**

#### **SquareTrade Protection Plans**

*Case # 5824 (3.31.15)*

Best Buy Stores, L.P., which offers Geek Squad-branded service and technical support plans, challenged SquareTrade's comparative pricing claims for its protection plans for consumer electronics and home appliances. During the course of the inquiry, SquareTrade modified or permanently discontinued many of the challenged claims. NAD determined that the savings claims as modified are supported. However, NAD advised that the advertiser must monitor its advertising to ensure that its savings claims remain accurate and if they are not, to modify them as expeditiously as possible. NAD recommended SquareTrade place disclosures relating to the savings claims closer to the savings claims they are qualifying. As to the savings claims for smartphones and iPhones, NAD recommended that SquareTrade modify the disclosure to make clear that the advertised savings extend to older-model smartphones and iPhones.

With respect to a comparison chart used by SquareTrade, Inc., NAD determined that the listed "deductible per claim" was accurate but recommended the following modifications: 1) for "Covers new or insured smartphones, wherever purchased," the advertiser should modify the disclosure to make clear exactly what models are covered under the SquareTrade protection plan and ensure that "NO" references to AT&T, Verizon and Sprint are accurate; and 2) as to "Overnight shipping of replacement," NAD recommended that the claim be modified to indicate that a replacement is shipped upon approval of the claim. NAD further recommended that the claim "Same day service at your local shop reimbursed" be discontinued.

As to SquareTrade, Inc.'s Tech Support webpage claims, NAD appreciated SquareTrade's discontinuance of comparisons to competitor Best Buy on its "Tech Support" webpage. The webpage made clear that "Risk-free help for only \$25 per issue" was only available to SquareTrade Protection Plan customers. Consequently, NAD determined that the claim was not misleading and no further qualification was necessary.

NAD also determined that the claim "zero-hassle," was not misleading. As to the claim "Top-rated and trusted by those who matter most," NAD recommended that the claim be modified to more accurately reflect SquareTrade's high customer ratings by Amazon, Apple App Store, and Google. NAD further recommended that SquareTrade discontinue a reference to the BBB in connection with any "rating" claims. SquareTrade may tout that it is a "BBB Accredited Business" and display the BBB Accredited Business seal as long as it is current and there is a hyperlink to its BBB Business Review.

Lastly, NAD also recommended that the advertiser remove the logos and other references to news organizations, including the accompanying statements, which reasonably imply specific news organizations' endorsement of SquareTrade's services.

## **DIRECTV, LLC**

### **DIRECTV Picture, Sound, Signal Reliability and Customer Service Advertising**

*Case # 5820 (3.25.15)*

NAD determined that DIRECTV's commercials featuring actor Rob Lowe and various alter-egos were misleading. A reasonable takeaway from the "Creepy Rob Lowe" commercial is that DIRECTV has better signal reliability than cable, but DIRECTV did not provide any evidence to support that claim. The "Painfully Awkward Rob Lowe Commercial" reasonably conveyed the message that DirecTV had shorter customer service wait times than cable, but DIRECTV provided no support related to comparative customer wait times. The "Far Less Attractive Rob Lowe" commercial made an implied claim that DIRECTV has better picture and sound quality than cable, but DIRECTV also failed to present evidence to support this claim.

NAD determined that DIRECTV's "Scrawny Arms Rob Lowe" commercial claim that DIRECTV was the "undisputed leader in sports" when combined with claims related to specific attributes about DIRECTV's sports programming was not puffery but, rather, implied the unsupported claim that DIRECTV's sports programming was superior to cable's sports programming.

NAD found that "Don't be like this me. Get rid of cable and upgrade to DIRECTV," in the context in which it was communicated, reinforced the comparative messages reasonably conveyed in the commercials. NAD recommended that the claim be discontinued when used in the context of comparing attributes of DIRECTV to attributes of cable.

NAD determined that DIRECTV substantiated its 99% signal reliability claim. NAD also determined that DIRECTV also supported its "up to 1080p" picture quality claims, but



NAD recommended that DIRECTV modify the claim to clearly and conspicuously disclose the limited programming on which resolutions of 1080p is currently available.

NAD further recommended that DIRECTV discontinue its “rated #1 claim” or modify it to disclose that no other cable provider was ranked higher than DIRECTV and that the rating was based customer ratings of their own service provider. Similarly, NAD recommended DIRECTV modify the claim “DirecTV has been ranked higher than cable for over ten years” to expressly disclose that the claim was based on the ACSI rating by customers of their satisfaction with their own providers.

Lastly, NAD recommended that DIRECTV either discontinue the price claim featured in the “Scrawny Arms Rob Lowe” commercial or modify it to reflect the price of a package that included the sports programming featured in the commercial. NAD found that consumers could reasonably believe that the price promoted at the end included the sports package that was the entire focus of the advertisement. Because the introductory pricing displayed at the end of the commercial does not include any sports programming, NAD found the commercial to be misleading.

DIRECTV appealed NAD's decision to the NARB except with regard to DIRECTV's signal reliability claim.

The NARB (#201 --- 5.24.16) recommended that DirecTV discontinue comparative statements in the challenged commercials that reasonably imply DirecTV is superior to cable with respect to signal reliability, service wait times, picture/sound quality, and sports programming. The panel also recommended that DirecTV discontinue the “Get rid of cable and upgrade to DirecTV” tagline when an unsupported comparative superiority message over cable is reasonably conveyed.

The panel recommended that the challenged “up to 1080p” claim be modified to include a clear and conspicuous disclosure as to the limited programming for which 1080p resolution is available. The panel recommends that the price for a DirecTV subscription in the challenged “Scrawny Arms Rob Lowe” commercial include a clear and conspicuous disclosure, in proximity to the price display, that professional and collegiate sports subscriptions are not included in the displayed price.

Lastly, the panel recommended that DirecTV more prominently disclose the source for its “#1 in customer satisfaction over all cable TV providers” claim.

**Sprint Corporation**  
**Sprint Wireless Services**  
*Case # 5812 (2.18.15)*

NAD determined that Sprint failed to support its overly broad claims that its network was “new,” “all new,” “brand new,” “built from the ground up,” and “America’s Newest Network.” NAD noted, however, that nothing precluded Sprint from accurately promoting the many substantial technological improvements that have been made to its network.

NAD recommended that Sprint's improved performance claims should be modified to clearly disclose that the basis of comparison is to Sprint's own prior network. T-Mobile argued that Sprint's advertising claims of "faster data speeds," "better call quality," and "fewer dropped calls" conveyed the message that its network was faster and better than its competitors. NAD determined that the tiny bottom-of-the-page disclosure stating "compared to prior Sprint network" in Sprint's print advertisements did not adequately qualify its improved performance claims. With respect to its flash advertisements claiming that Sprint has "faster data speeds" and "fewer dropped calls," without any qualification, NAD recommended that Sprint discontinue its use of a hyperlink to convey the essential information that the basis of comparison is to Sprint's own prior network.

NAD further recommended that Sprint discontinue the claim that it is "the most improved U.S. company in customer satisfaction, across all 43 industries, over the last six years." The claim, although literally true, conveyed an inaccurate message about Sprint's current consumer satisfaction ratings or its trend over the past six years. Sprint selectively referenced data from 2008 and ignored more recent data that actually showed an annual decline in customer satisfaction since 2011.

Sprint agreed to comply with NAD's recommendations.

**Comcast Cable Communications, LLC**  
**Xfinity Extreme 505 High-Speed Internet Service**

*Case # 5802 (1.16.15)*

NAD recommended that Comcast must disclose that its Xfinity Extreme 505 High-Speed Internet Service is "more unavailable than available" in markets where the service is not available to a majority of households. Comcast's "Extreme 505" Internet service purportedly delivers speeds up to 505 Mbps. Competitor AT&T Services, Inc. argued that Comcast's advertisements falsely implied that its 505 Mbps service is generally available in the area in which it is advertised. For example, a TV commercial airing in Atlanta, Chicago, and Miami/Fort Lauderdale states that Comcast's "Extreme 505" service is "the fastest internet available" in those markets.

Comcast agreed to comply with NAD's recommendations.

**Verizon Communications, Inc.**  
**Verizon FiOS Quantum Television Service**

*Case # 5796 (12.29.14)*

NAD concluded that consumers were unlikely to take away a comparative superiority message that Verizon Communications, Inc. offered features that competitive DVR service providers or stand-alone DVR providers could not provide. CSC Holdings, LLC (Cablevision) argued that Verizon's commercials made false and misleading comparisons between Verizon's FiOS Quantum TV and Cablevision's Optimum TV, and failed to make clear that the touted benefits are true—if at all—for only the highest tier of FiOS Quantum TV. The commercials at issue did not expressly compare Verizon's service to any cable television provider by name or otherwise. Nowhere in the

commercials is the word “cable” mentioned or any other television provider's DVR service referenced. The commercials simply conveyed the message that Verizon is offering another option for those consumers unhappy with the performance of their DVR provider or service. Verizon also provided a reasonable basis for its claims that FiOS Quantum TV subscribers can record up to 12 shows at once, can watch TV “on the go”; can store up to 200 hours of HD programming, and watch recorded programming in other rooms.

NAD determined that Verizon Wireless' commercial implying its FiOS Quantum TV service provided unlimited recording was literally false because its HD recording capacity was limited to 200 hours and recommended that it be discontinued.

Verizon agreed to comply with NAD's recommendations.

### **AT&T Services, Inc.**

#### **U-verse**

*Case # 5781 (11.3.14)*

NAD determined that AT&T's advertising for the speed of its U-verse Internet service was lacking necessary disclosures to avoid consumer confusion. With respect to AT&T's advertising of its “45 Mbps” speed, NAD recommended that where the advertised tier of service is available to less than 50% of the consumers in a given geographical area where the advertising appears, AT&T should modify its advertising to clearly and conspicuously disclose such limitations through the use of explicit qualifying language—e.g., “up to 45 Mbps may not be available in your area.” In addition, NAD determined that AT&T should clearly and conspicuously disclose—when claiming to offer speeds of “up to” 18 Mbps, 24 Mbps or 45 Mbps—that consumers may not be able to reach the maximum advertised speeds if two or more HD streams are being watched in the household.

NAD determined that AT&T supported its reliability claim. In the context of AT&T's advertising, NAD determined that the reliability claim would be reasonably understood as one of dependability, or the extent to which an Internet service can be trusted to both establish and maintain an Internet connection. There was no dispute between the parties that AT&T U-verse allowed consumers to dependably establish and maintain an Internet connection.

NAD recommended that AT&T either discontinue its “Tough Times” and “Babysitter” commercials or modify them such that they no longer convey the unsupported message that AT&T's Internet service U-Verse had vastly improved the quality and speed of Internet service. In light of the explicit references to U-verse used in the commercial, NAD determined that consumers could reasonably understand these commercials as comparing life “before U-verse” became available and life with U-verse. However, the improvement in Internet capability came about due to technological advances by many, if not all, competing Internet service providers.

NAD also recommended that AT&T Services, Inc. either discontinue its “Fastest Internet for the price” claim or modify it to ensure that consumers understand that the claim is

based on a comparison of pricing for 3.0 Mbps service. The challenged advertisements did not sufficiently make clear that AT&T's "Fastest Internet for the Price" comparison was based on its 3 Mbps tier of service, costing \$14.95 per month. A lengthy disclosure describing numerous other restrictions was not sufficiently clear and conspicuous.

AT&T agreed to comply with all of NAD's recommendations.

**Verizon Wireless, Inc.**  
**Wireless Services and 4GLTE Network**  
*Case # 5778 (10.28.14)*

NAD recommended that Verizon Wireless' comparative coverage maps for its wireless services in print, digital, and television advertising were misleading and should be discontinued. Verizon Wireless' advertising included maps depicting each carrier's LTE coverage area, but not the entirety of each carrier's coverage. NAD determined that the overall message conveyed was not adequately limited to a comparison to 4G LTE coverage. However, in the 4G LTE context presented on Verizon's website and print advertisements, the areas of these maps depicted in white were unlikely to convey the message that Verizon's competitors offered no coverage of any kind in these areas of the country.

NAD determined that Verizon provided a reasonable basis for its representation of its competitors' 4G LTE on its coverage map based on third-party coverage data consisting of the most up-to-date 4G LTE coverage information.

NAD recommended that Verizon Wireless discontinue the advertising claim "Added 2X Bandwidth in Cities Coast to Coast" for its 4G LTE wireless service. For "coast to coast" service, a wireless network can claim to be nationwide or coast to coast if the provider offers service in diverse regions of the country and the network covers at least 200 million people. Consumers expect "coast to coast" or "nationwide" claims to mean that the network type of wireless service in question is broadly available to a substantial majority of the United States population. In this case, the doubled-bandwidth was true only as to certain cities. In addition, the overall message conveyed by the "2X" portion of the commercial was not adequately limited to the 4G LTE coverage.

Verizon Wireless agreed to comply with NAD's recommendations.

**Verizon Communications, Inc.**  
**FiOS® Internet and Television Service**  
*Case # 5766 (9.22.14)*

NAD determined that Verizon supported certain claims regarding the performance of its Internet and television services being attributable to its fiber optic network. Comcast Cable Communications alleged that Verizon's advertising campaign for its FiOS Internet and television service misled consumers about Comcast's Internet service. Comcast's network is a hybrid network of fiber and coaxial cable, while Verizon's network is 100% fiber optic. NAD has reviewed several disputes related to the comparative benefits and attributes of a 100% fiber-optic network versus cable. NAD determined that

Verizon's claims, "get the difference 100% fiber optics makes," and claims implying that fiber-optics were the reason for FiOS' network performance were substantiated. NAD further determined that certain claims were monadic claims about Verizon's performance and were not likely to be interpreted by consumers as comparing Verizon's performance to that of Comcast. However, NAD recommended that Verizon discontinue unsupported claims which implied that FiOS 100% fiber-optic network will deliver a smoother connection with fewer glitches and less lag time when video-chatting and gaming than cable.

NAD also recommended that Verizon modify claims that its FiOS Internet and television service were "Rated #1." At issue was whether the claim "Rated #1 for speed, reliability and customer satisfaction" conveyed an unsupported superiority message that the referenced rating is based upon a head-to-head comparison of performance provided by competing providers. NAD recommended that the claim "FiOS TV is rated #1 in customer satisfaction, value and reliability" be modified to make clear that the entire claim was based on a customer satisfaction survey and avoid conveying the unsupported implied message that the value and reliability ratings were based on objective performance measures.

Verizon agreed to comply with NAD's recommendations.

**CenturyLink, Inc.**  
**CenturyLink Internet Service**  
*Case # 5763 (9.18.14)*

NAD recommended that CenturyLink modify its advertising of its Internet service to avoid misleading consumers regarding the relative speed of its services compared to those of its competitors. Comcast Cable Communications challenged CenturyLink's advertising of the speed of its Internet service, especially when compared to basic cable. Specifically, Comcast argued that the speed claims were inherently misleading because CenturyLink compared its fastest tiers of service with Comcast's slowest tier of service without clearly disclosing the basis of the comparison. Where the advertised tier of service is available to less than 50% of the consumers in a given geographical area where the advertising appears, CenturyLink must clearly and conspicuously disclose such limitation. NAD further recommended that in CenturyLink's television commercials, the qualifying disclosure should be made part of the "6x faster" or "up to 40 [20] Mbps" claim itself visually if the claim appears in a visual, or orally if the main claim is made orally.

While CenturyLink respectfully disagreed with certain of the NAD's recommendations, it stated that it would take those recommendations into account in future advertising.

**Verizon Communications, Inc.**  
**FiOS® Internet Service**  
*Case # 5750 (8.7.14)*

CSC Holdings, LLC (Cablevision) challenged express and implied claims by Verizon that Cablevision's Internet service was slow and did not play online video, videochat, or

upload data without interruption, while FiOS was superior to Cablevision and was “the fastest Internet service provider in the nation.” Verizon represented that it had permanently discontinued one of the challenged television commercials and any express or implied claims that FiOS was superior to Cablevision for video gaming or videochatting. NAD determined that Verizon provided a reasonable basis for its “See the Difference” commercial (comparing FiOS to cable Internet service) and its claims that its FiOS 500/100 Mbps was superior to Cablevision for uploading data, and that subscribers can download a HD video four times faster than cable. NAD recommended that the claims be modified to clearly and conspicuously disclose that several speed tiers are available and that it was comparing the fastest tiers of FiOS and Cablevision service. NAD further recommended that Verizon convey its price claim and superior speed claim separately to avoid conveying an inaccurate message that the superior speed claim is based on the Internet speed offered as part of advertised packages. Finally, NAD recommended that Verizon modify its “Rated #1 for Speed, Reliability and Customer Satisfaction” claim to clarify that the claim is based on a customer satisfaction survey of consumers’ rating of their own Internet service provider’s performance.

Verizon stated that, while it believes its disclosures in the “See the Difference” video commercial and print advertisements were appropriately worded, placed, and consistent with well accepted advertising industry standards, Verizon will take NAD’s recommendations into consideration in future advertising.

**Comcast Cable Communications, LLC**  
**AT&T’s U-Verse Wireless Receiver**  
*Case # 5730 (6.18.14)*

NAD found that Comcast’s “humorous vignette” in its television commercial did not falsely disparage the performance capability of AT&T’s wireless receiver product. AT&T argued that the commercial’s express claims “Don’t get U-ped [rhymes with ‘duped’] by U-Verse” and “Get the most entertainment on any device anywhere from Xfinity from Comcast,” as well as the implied claims that AT&T hired improperly trained and incompetent employees and was duping its customers about the benefits of its wireless receiver, were false and misleading. NAD determined that the humorous vignette in the challenged commercial did not falsely disparage the performance capability of the challenger’s wireless receiver product. However, NAD determined that the phrase “Don’t be U-ped by U-Verse” was falsely disparaging of the U-Verse wireless receiver and should be discontinued. Lastly, NAD found that the phrase “get the most entertainment on any device anywhere with Xfinity from Comcast” conveyed an accurate message regarding the breadth of the advertiser’s library of content on a variety of viewing devices including the product featured in the challenged commercial, televisions.

Comcast agreed to comply with NAD’s recommendations.

**T-Mobile USA, Inc.**  
**T-Mobile's JUMP upgrade program**  
*Case # 5687 (2.20.14)*

Sprint Corporation challenged T-Mobile's television and radio commercials for its JUMP upgrade program, as well as the JUMP program website. Sprint argued that the commercials implied that the JUMP program allowed consumers to receive an upgraded phone, up to twice per year, at the same discounted price as a new T-Mobile customer even if a phone is damaged, lost, or stolen, that the JUMP program costs only \$10 per month, and that no additional fees applied even if a phone is damaged, lost, or stolen. Sprint conducted a consumer perception survey to assess the takeaway of the JUMP webpage and challenged commercials.

NAD determined that Sprint's consumer perception survey was of limited value based on the construction of the questions and introduction of facts not conveyed in the commercials. NAD determined that the commercials merely introduced consumers to the JUMP program, and did not state or imply any message relating to the cost of JUMP or any terms and conditions of the program. Because the commercials did not make any pricing claims, T-Mobile was not obliged to affirmatively disclose the deductibles that may apply in certain situations. NAD noted that the level of nuance that would be required to communicate T-Mobile's deductible policy is not suited for these commercials. However, NAD determined that a reasonable consumer viewing the webpage could conclude that he would not have to pay for a replacement even if the original phone was lost or damaged. Because significant deductibles could apply in the case of a lost or damaged phone, NAD recommended that T-Mobile revise its website by either discontinuing its references to broken, lost, or damaged phones, or modify the claim to disclose the existence and amounts of the deductibles that apply.

T-Mobile appreciated NAD's recognition that its commercials accurately introduced customers to the innovative, industry leading program, and agreed to comply with NAD's recommendation.

**Sprint Corporation**  
**Unlimited My Way Plan**  
*Case # 5686 (2.20.14)*

NAD recommended that Sprint discontinue online and print advertising for its Unlimited My Way Monthly Service Plan. T-Mobile USA, Inc. alleged that Sprint's advertising comparing the annual cost of Sprint's unlimited talk, text and data plan to T-Mobile's unlimited plan was deceptive because T-Mobile's "Simple Choice" plan was available at a lower price without a device cost or a 2-year service contract, material differences which Sprint failed to disclose.

NAD recommended that Sprint clearly and conspicuously disclose the material differences between Sprint and T-Mobile related to required device costs, 2-year contract requirements, tethering, and insurance benefits. Sprint must also discontinue its price comparison using Sprint's "most popular free smartphone" or modify its advertising to clearly and conspicuously identify the object of the comparison (iPhone 4) in

immediate proximity to the savings claim. However, Sprint's claim, "A Better Plan, A Better Promise," if properly qualified, with the required disclosures, is not likely to mislead consumers. Sprint supported the comparative pricing claim with clear and conspicuous disclosures of specific device costs and differences in material terms.

NAD also recommended that Sprint discontinue its "guaranteed unlimited for life" claim or modify the claim to clearly and conspicuously disclose the material terms of the guarantee including that the price of the plan is not guaranteed and that Sprint reserves the right to limit download speeds. Sprint's claims "guaranteed unlimited for life and only from Sprint," if properly qualified with the required disclosures, was supported.

Sprint agreed to comply with NAD's recommendations.

**Charter Communications, Inc.**  
**Advertising by Charter Communications**  
Case # 5659 (12.10.13)

AT&T Services, Inc. challenged Charter's broadcast and radio advertisements, as well as direct mail advertising, for its bundled business Internet, phone, and television services. NAD determined that Charter provided a reasonable basis for its Internet speed superiority and benefits claims as compared to AT&T DSL. However, NAD recommended that Charter clearly and conspicuously identify AT&T DSL when making such claims. To the extent Charter advertises in areas where AT&T's U-Verse Internet service is available and AT&T is the main telecommunications company, NAD recommended that Charter avoid general references to "AT&T" or "the phone company" when referring to Internet service. NAD noted that Charter was free to promote the fact that it offers more and different business phone features than AT&T for all of its phone service packages but recommended that Charter discontinue falsely disparaging claims such as "your business can't stay ahead of the competition," "AT&T can't keep up with your business. It's time to move on," and "5 reasons your business is better off without AT&T," and similar claims.

NAD also recommended that the claim "15X Faster than DSL" be further delineated from the "30 Mbps for \$55" claim to avoid conveying the unsupported message that AT&T DSL offers speeds of only 2 Mbps and to make clearer that AT&T DSL offers speeds of up to 6 Mbps in a manner consumers will readily understand. NAD further concluded that the "15X faster than DSL claim" was truthful so long as the advertisement airs in markets where speeds of 100 Mbps are offered. Lastly, NAD recommended that the unsupported claims "More business owners are switching to Charter Business" and "Save over \$50 every month on average" and "9 out of 10 customers recommend Charter Business" be discontinued.

Charter agreed to comply with NAD's recommendations.



**Comcast Communications, Inc.**  
**Xfinity Internet Service**  
Case # 5642 (10.11.13)

AT&T Services, Inc. challenged Comcast's television advertising that contained the following claims: "AT&T is talking a lot about its so-called "Advanced Digital Network," but when they upgrade you to U-verse, you end up with the same old DSL speed" and "Don't fall for U-Verse. Xfinity is four times faster, period." Comcast argued that NAD did not have jurisdiction over the challenged claims because the challenged television commercial ran for only a limited number of weeks and, for reasons independent of the challenge, was discontinued before the challenge was filed. NAD determined that it retained jurisdiction over this challenge because Comcast failed to provide written assurance that it had permanently discontinued the challenged advertising claims. NAD determined that Comcast's discontinuance of the challenged commercial was necessary and appropriate. NAD further recommended that Comcast discontinue the specific unqualified claim, "AT&T is talking a lot about its so-called 'Advanced Digital Network' but when they upgrade you to U-Verse, you end up with the same old DSL speed," and avoid using the claim that "Xfinity is four times faster" in a manner that is broader than the facts warrant.

Comcast agreed to comply with NAD's recommendations.

**Qualcomm, Inc.**  
**Snapdragon Processors**  
Case # 5633 (9.20.13)

NAD found that it was appropriate for Qualcomm, Inc. to disclose itself as a sponsor of an article when its advertisements ran with the articles, but it was unnecessary to continue to identify itself as the sponsor after the sponsorship period ended and its advertisements ceased. Qualcomm entered into a sponsorship agreement with Mashable.com to run a series of articles called "What's Inside?," which consisted of articles that explored the technology that powers many electronic devices. The series carried the tag "Sponsored Content" for the period of Qualcomm's sponsorship, but when the sponsorship period ended, the articles remained on Mashable.com without any indication that they were sponsored. The sponsorship in question was more like an advertisement that ran with the article for a period of time, rather than content written with a commercial purpose for the advertiser.

NAD determined that the "What's Inside?" series was properly labeled as sponsored content during the period of time that it was sponsored, and that it was not necessary to continue to identify the advertiser as the sponsor after the sponsorship period ended because the advertiser was not involved in the creation, planning or posting of the content and the articles existed independently before the series began. Because the content was independently created before the sponsorship began and controlled by the publisher, Qualcomm did not need to identify itself as the sponsor once its advertising ended.

**T-Mobile USA, INC.**  
**T-Mobile Wireless Services**  
Case # 5630 (9.11.13)

AT&T challenged claims that T-Mobile had “50% more bandwidth than AT&T,” was “less likely to slow down,” has “50% more bandwidth for significantly less congestion than AT&T, and claims that AT&T was the “same old network that can get congested,” can be “slow.” Although T-Mobile’s HSPA+ network was less likely to slow down due to congestion than AT&T’s HSPA+ network, based on its comparison of peak period and non-peak period download speeds, the advertising was not limited to the performance of each company’s HSPA+ network. Rather, the advertising claimed that T-Mobile’s entire network was less likely to slow down than AT&T’s entire network. NAD recommended that T-Mobile discontinue its unqualified “more bandwidth” and “less congestion” claims or expressly modify the claims to make clear the circumstances under which users will experience the superior performance claimed.

NAD also recommended that T-Mobile discontinue the claims “Most Advanced Technology” and “Faster 4G Speeds,” or modify the claims to state the object of comparison. T-Mobile argued that its claim “most advanced technology” was not a comparative claim, but rather a statement that T-Mobile was rolling out the most advanced technology available. NAD was concerned that this claim could also be interpreted as a claim that T-Mobile has the most advanced technology among its competitors. NAD determined that a comparative claim like “most advanced technology” should disclose the point of comparison clearly and conspicuously and in close proximity to the main claim. T-Mobile also contended that its “faster 4G speed” claim compared its 4G speeds to its prior 4G speeds. It was not clear, however, that the “Faster 4G Speed” claim was limited to a claim that T-Mobile is faster than it was before. NAD has noted that terms like “better” or “faster” are expressly comparative and that the object of a comparison in an advertisement should always be clearly and conspicuously disclosed.

NAD further determined that the claim “T-Mobile has you covered like nobody else” was not an express superiority claim. AT&T challenged T-Mobile’s claim “Our superfast 4G network reaches more than 220 million Americans coast to coast” and its 4G coverage map using large pink dots to signify areas of T-Mobile 4G coverage. NAD noted that T-Mobile’s 4-G network meets the standard for making a coast to coast or nationwide service claims as it reaches over 220 million POPs and is available in the Western, Midwestern and Eastern United States. NAD was concerned, however, with T-Mobile’s coverage map and determined that T-Mobile’s coast to coast coverage claims were substantiated but recommended that T-Mobile discontinue using the map in conjunction with 4G coverage claims.

NAD also recommended that T-Mobile discontinue its overly broad “Call Quality” claim or modify it to better conform to the Nielsen test results on which it was based, which NAD concluded would support a claim for better “audio or voice quality.” Because T-Mobile relies upon Nielsen “Audio Quality” test results for its “Call Quality claims, NAD recommended that T-Mobile discontinue its use of the unqualified claim “call quality” to characterize these results. NAD advised T-Mobile that it could modify its claim to

better conform to the results of the Nielsen test results by using the terms "speech call quality," "audio quality," "voice quality," "call clarity" or other language that better communicates the nature of the Nielsen test results on which its claim is based.

T-Mobile agreed to comply with NAD's recommendations.

### **Comcast Cable Communications, LLC**

#### **Comcast Internet Speed**

Case # 5624 (8.30.13)

CenturyLink, Inc. challenged Comcast's broadcast advertising of its Xfinity high-speed Internet services promoted alongside its Starter XF Triple Play Services. CenturyLink asserted that the challenged advertisements claim that Comcast Xfinity Internet service has faster download speeds than those of CenturyLink's High Speed Internet service. Although acknowledging that Xfinity is faster overall than the challenger's service, the challenger contended that the Starter XF Triple Play package's Internet download top speed was not faster than that of CenturyLink's top stand-alone download speed.

Although Comcast provided a reasonable basis for its overall speed claims, NAD recommended that the advertiser more narrowly tailor the challenged television commercials offering the \$99 Triple play package and in which Comcast generally claims to have the fastest overall speeds, to further delineate or separate its claims regarding its offering and its broader speed claim. NAD further recommended Comcast employ language for its \$99 Triple Play package noting that this offer is "introductory" or that the consumer can "now get started" with this special offer. NAD further concluded that the challenged radio commercial will not reasonably be understood by consumers to be a direct comparison to CenturyLink.

Comcast agreed to comply with NAD's recommendations.

### **Pong Research Corporation**

#### **Pong Cell Phone Cases**

Case #5523 (11.25.12)

NAD recommended that Pong discontinue use of the unqualified advertising claim that "PONG is proven to reduce SAR [Specific Absorption Rate] up to 95% below FCC limits." Further, NAD recommended that in future advertising involving specific amounts of the reduction in SAR, the advertiser clearly indicate that its testing was conducted on the amount of radiation absorbed by the head (as opposed to the body). NAD noted that nothing in this decision would preclude the advertiser from touting product-specific claims that state the maximum amount of reduction in SAR achieved for each model of cell phone in laboratory testing (i.e., "up to \_\_% below FCC limits" or "up \_\_% below international safety limits"), or from generally touting the typical product performance that can reasonably be achieved in a real-world setting (i.e., "PONG cases' proven ability to reduce the amount of SAR while increasing or maintaining signal strength means that most consumers will experience a greater than 95% below the FCC limit reduction in SAR during typical usage"). In addition, NAD determined that the advertiser provided a reasonable basis for the claim that "PONG's micro-thin antennae

module redirects cell phone radiation away from your head.”

NAD determined that the advertiser established a reasonable basis for the contention that PONG cases may enhance the signal strength of certain phones. However, NAD recommended that the advertiser modify its unqualified claim to state that “PONG may even enhance some phone’s signal strength,” and only use the claim “PONG may even enhance your phone’s signal strength,” in connection with advertising for those specific models of PONG case for which testing demonstrated an increase in signal strength on certain bands of frequency. NAD also determined that the advertiser established a reasonable basis for product-specific claims regarding the percentage amount by which PONG cases can increase signal strength (e.g., “scientifically engineered case improves signal strength by up to 30%”).

NAD also concluded that the advertiser provided a reasonable basis for the claim that PONG is currently “the ONLY solution proven” by FCC certified laboratories to reduce SAR while maintaining TRP. However, NAD cautioned the advertiser to continue monitoring the performance capabilities of competitor’s products to ensure that its exclusivity claim remains adequately substantiated during the time period that the claim is being made.

NAD further recommended that the advertiser discontinue its unsupported “complete protection” claims “PONG protects you, your cell phone and your signal,” “Protect your head and body from unnecessary radiation exposure,” and “. . . to protect users from cell phone radiation” (within the claim “PONG is the ONLY solution proven by Federal Communications Commission (FCC) certified laboratories to protect users from cell phone radiation while not compromising performance”), or modify them to more accurately reflect the actual benefits of the product, such as a reduction in the amount of RF energy (radiation) exposure.

NAD determined that the claim “The sleek and elegant design provides you with the only cool protective case for both your phone and you” is puffery rather than a comparative claim requiring substantiation.

The advertiser agreed to comply with NAD’s recommendations.

**Frontier Communications Corp.**  
**FrontierFast High-Speed Internet Service**  
Case #5503 (8.28.12)

NAD recommended that Frontier Communications discontinue performance claims which conveyed the unsupported message that its “dedicated connection” was superior to cable’s “shared” Internet connection because it provided faster or more reliable service, such as “And unlike a cable connection that’s shared by multiple homes, your Frontier connection is yours alone”; “FrontierFast High-Speed Internet is . . . A dedicated connection that won’t bog down during peak hours. There’s no neighborhood sharing”; “Enjoy a dedicated connection that is consistently fast. No neighborhood sharing like cable.”

NAD further recommended that Frontier discontinue the claims “Dedicated connection you can keep private. Tighter security for you or the family” because Frontier failed to establish that Frontier’s “tighter security” distinction was meaningful to consumers.

Finally, with regard to the “speed-dating” radio advertisement, NAD determined that consumers were unlikely to take away the unsupported message that Frontier was a locally-based business, whereas Suddenlink provided West Virginia consumers with a “long-distance” relationship.

Frontier requested review by the National Advertising Review Board of the NAD’s recommendation that Frontier discontinue specific (1) dedicated connection claims, (2) cable service neighborhood sharing claims, and (3) security and privacy claims.

**Verizon Communications, Inc.**

**Verizon’s Internet Services**

*Case #5499 (8.10.12)*

NAD determined that a telecommunications firm provided a reasonable basis for its “America’s fastest, most consistent, and most reliable Internet” claim, which was not rebutted by the challenger’s evidence. However, NAD recommended that the advertisements be modified to avoid conveying the falsely disparaging, unsupported message that cable is significantly slower than the advertiser’s FiOS service.

With respect to the shared connection claims, NAD determined that the claim that FiOS “is not shared with the neighborhood” could be confusing to consumers (who may reasonably interpret “neighborhood” to include 32 homes) and recommended that the claim be discontinued. NAD also recommended that the advertising be modified to avoid conveying the unsupported message that cable is slow because of the nature of its shared connection.

With respect to the shared connection claims as to DSL, NAD determined that the network architecture could be accurately described as a “dedicated line from our central office to your home” but recommended that the unqualified “dedicated connection” claim be discontinued.

Lastly, NAD recommended that the “consistently fast” claims as to Verizon DSL be discontinued or modified to reflect that speeds are “fast.”

The advertiser stated that it would take NAD’s recommendations into consideration in future advertising.

**T-Mobile USA, Inc.**

**America’s Largest 4G Network**

*Case #5488 (7.12.12)*

In reliance on T-Mobile’s that it had permanently discontinued its “America’s Largest 4G Network” advertising claim, an action the National Advertising Division deemed

necessary and proper, NAD determined that no further action was necessary and administratively closed the matter.

**Comcast Communications, Inc.**

**XFINITY Internet Services**

Case #5463 (5.17.12)

The National Advertising Division recommended that an Internet service provider discontinue its unqualified “fastest Internet service provider in the nation” claims. However, NAD noted that the advertiser could, instead, communicate that it is one of the fastest ISPs in the nation according to PC Magazine or the fastest Internet option for most consumers in its footprint where FiOS is not available. NAD recommended that in print and Internet advertising, the advertiser clearly and conspicuously disclose the reference to the PC Magazine testing in immediate proximity to the triggering claims and, in its commercials, include the reference to PC Magazine in a voiceover instead of a super.

NAD also recommended that the advertiser discontinue the claim “FiOS Does Not Live up to Expectations...With Speeds of Up to 105 Mbps, XFINITY was rated as the fastest Internet provider in the nation by PC Magazine.”

The advertiser stated that it would take NAD’s recommendations into account in formulating its future advertising.

**COMCAST CABLE COMMUNICATIONS, LLC**

**Xfinity®**

Case #5420 (1.23.12)

NAD appreciated the Comcast’s discontinuance of its Tired Wires advertising campaign as well as the Tired Wires creature as a personification of the AT&T U-Verse network, an action NAD deemed necessary and proper. Further, NAD recommended that Comcast discontinue its references to AT&T’s U-Verse network as a “bunch of old phone wires” including claims that, “You don’t want a bunch of old phone wires running this beauty ...” and “You think these old phone wires were made for squeezing out HD movies?” In addition, NAD recommended that the advertiser modify the tagline, “U-Verse’s old phone wires can’t handle what Xfinity can,” so that U-Verse is not described as a bunch of “old phone wires.”

NAD also appreciated the advertiser’s voluntary discontinuance of the “advanced fiber optic network” claim to describe its hybrid network, an action NAD deemed both necessary and appropriate. In addition, NAD recommended that Comcast permanently discontinue the use of the “advanced fiber optic network” claim in future consumer-directed advertisements in order to avoid the potential for consumer confusion.

In order to convey an accurate message regarding AT&T’s U-Verse Internet speed

degradation, NAD recommended that claims that AT&T U-Verse subscribers will experience Internet speed degradation be expressly limited to the top two speed tiers offered by AT&T U-Verse and to the high bandwidth circumstances that cause such degradation. In addition, NAD recommended that in order to avoid the potential for consumer confusion in the future, visuals used to convey the message that AT&T's Internet service may slow down when high demands are placed on the network should accurately reflect the fact that AT&T's U-Verse Internet service may slow down and refrain from conveying the inaccurate message that the Internet service would come to a complete stop or freeze.

NAD further determined that the advertiser's evidence was insufficient to support the broad implied claims that U-Verse Internet was slow, and always slower than Comcast. In addition, NAD determined that the advertiser's disclosures were not sufficient to avoid conveying the unsupported implied messages that U-Verse Internet is slow, and always slower than Comcast. For these reasons, NAD recommended that the advertiser make the basis for the Internet speed comparisons clear in the main claims, rather than disclosing them in fine print.

NAD further recommended that the advertiser modify the challenged "Slowskys" commercial so that it would either focus on the faster Internet speeds offered by Comcast, or, the promotional price for Comcast's 1.5 DSL service, which was provisioned at the same speed as U-Verse's 1.5 DSL service.

NAD concluded that the advertiser's evidence provided a reasonable basis in support of its superior HD picture quality claims, which the challenger was not able to overcome with better, more reliable evidence demonstrating a different result. NAD noted, however, that the advertiser's 2011 Magid Study did not test Video on Demand (VOD) content. Therefore, NAD recommended that the advertiser's superior HD picture quality claims be limited to linear programming. In addition, NAD recommended that the advertiser refer to the 2011 Magid Study, rather than the 2008 Magid Study, when making superior HD picture quality claims in future advertisements.

Finally, NAD determined that the advertiser's claims that AT&T U-Verse provided poor HD picture quality were unsupported by the evidence in the record. Therefore, NAD recommended that the advertiser discontinue the use of such claims.

The advertiser stated that it would take into account NAD's concerns in future advertising.

**Cablevision Systems Corporation**  
**Ultimate Triple Play with Optimum Online Boost**  
*Case #5412 (01.06.12)*

NAD recommended that Cablevision modify challenged advertisements to make the basis of comparison for a "3X Faster" claim clear to consumers by adding it to the main claim rather than disclosing the basis of comparison in a fine print disclosure. In addition, NAD recommended that the advertiser clearly limit all future "3X Faster"

claims to download speeds.

Finally, NAD appreciated the advertiser's written assurance that "new" claims would be permanently discontinued by November of 2011, an action NAD deemed both necessary and appropriate.

The advertiser agreed to comply with NAD's recommendations.

**Verizon Wireless, Inc.**  
**Verizon 4G LTE Smartphones**  
*Case #5411 (1.05.12)*

To avoid conveying the unsupported message that Verizon 4G LTE smartphones perform all functions twice as fast as any AT&T smartphone, NAD recommended that the advertiser modify the challenged advertisements to make the basis of comparison for the "twice as fast" claim (i.e., a comparison of the network speed of the Verizon 4G LTE network and the AT&T HSPA+ network) clear to consumers by adding it to the main claim, rather than disclosing the basis of comparison in a fine print disclosure.

The advertiser stated that it would take NAD's decision into account in future advertising.

**Verizon Communications, Inc.**  
**Verizon FiOS HDTV**  
*Case #5392 (11.3.11)*

NAD concluded that Verizon's ChangeWave consumer rating survey evidence was insufficiently reliable to support its "Rated #1 in HD Picture Quality" advertising claims. Consequently, NAD recommended that these claims be discontinued.

The advertiser agreed to comply with NAD's recommendations.

**Comcast Communications**  
**Xfinity**  
*Case #5372 (8.16.11)*

NAD determined that Comcast's advertising of its Xfinity service as providing "Best Picture Quality" was a claim of comparative superiority that was not supported by the evidence in the record and therefore recommended that the claim be discontinued.

NAD also found that the advertiser provided a reasonable basis for making a comparative "call clarity" claim on the basis of comparative testing using mean opinion (MOS) scores, but because the testing did not compare Comcast with Verizon FiOS, NAD recommended that the advertiser's #1 or "best" call clarity claim be discontinued or appropriately limited to the services tested.

NAD further determined that the advertiser did not support its "fastest Internet" claim



(including in the qualified form “fastest Internet to more homes than anyone”), and therefore NAD recommended that the claim be discontinued. Finally, NAD noted its appreciation for the advertiser’s voluntary discontinuance of the television commercial claiming that Verizon does not offer 24/7 live customer service but recommended the advertiser discontinue the claim that appeared on its website and in other advertising.

Comcast agreed to comply with NAD’s recommendations.

**Comcast Corporation**  
**Comcast Enterprise Services**  
*Case # 5351 (7.12.11)*

NAD determined that a telecommunications provider’s description of its network (in advertising directed to the business community regarding its enterprise business services) as a “fiber optic network” was both truthful and accurate.

**DIRECTV, Inc.**  
**DIRECTV**  
*Case # 5208 (8.25.10)*

NAD determined that the advertiser’s “over 130 HD Channels” claims we supported. NAD further determined that consumers were likely to take away the message that “On Demand” programming would be available when the consumer wanted to view it and that the advertiser had provided a reasonable basis for such a message. NAD recommended that it modify its “best picture quality” claims and more narrowly tailor them by either specifying the number of movies and/or programs provided in 1080p or otherwise indicate that not all movies are available in 1080p. NAD recommended that the advertiser discontinue its claim that it offers, “movies in 1080p HD, the same stunning quality as Blu-Ray.” NAD further recommended that the advertiser discontinue its claims of “99.9% signal reliability” and that it is a “myth” that its service suffers from weather outages.

NAD recommended the advertiser limit the claim that it has “Over 130 HD channels – with the capacity for over 200 channels coming soon,” to having “the capacity to offer even *more*” channels to avoid the implication that delivery of these additional channels is imminent. With respect to advertiser’s claim that it has the “most HD channels.” NAD noted that as limited in the challenged commercials (to “full time” HD channels as compared to DISH Network and Comcast), this claim is properly substantiated.

**ECHOSTAR COMMUNICATIONS CORPORATION**  
**DISH Network Satellite Television Service**  
*Case # 5193 (6.29.10)*

NAD noted that the challenged advertisements focus on the television-viewing experience of the DISH consumer, touting features such as the number of national HD channels available, the quality of the HD picture, DVR upgrades and DVRs with multi-

room view.

NAD questioned the value or relevance of the claim “99.9% signal reliability” to consumer if it means that, although the signal is available (emitted from the satellite 99.9% of the time, the consumer still may not be able to watch television 99.9% of the time. Therefore, NAD recommended that the advertiser discontinue its use of the claim “99.9% signal reliability.”

**Verizon Communications, Inc.**

**Verizon FiOS**

*Case # 5179 (5.24.10)*

NAD determined that Verizon’s claims that its FiOS network is comprised of “100%” “pure” and/or “undiluted” fiber optics are truthful, accurate, and not misleading. NAD also determined that the advertiser had supported its claims that Verizon FiOS uses “fiber optics instead of copper wiring to connect a customer to the Verizon network,” and that FiOS offers “100% fiber optic picture and sound.”

**Cox Communications, Inc.**

**Fiber Optic Telecommunications**

*Case # 5168 (4.27.10)*

NAD recommended that the advertiser discontinue claims that describe its telecommunications network as a “fiber optic network” because they convey the message that Cox’s network is the functional or technical equivalent of a telecommunications network in which fiber extends to the home, a message the evidence in the record did not adequately support. NAD further determined that that the advertiser provided a reasonable basis for its consumer testimonials regarding channel availability but recommended that the advertiser discontinue the use of the challenged consumer testimonials disparaging Verizon FiOS customer service and billing practices.

The advertiser agreed to comply with NAD’s recommendations.

**Time Warner Cable, Inc.**

**Fiber Optic Telecommunications**

*Case #5166 (4.23.10)*

NAD recommended that the advertiser discontinue claims that describe its telecommunications network as a “fiber optic network” or “advanced fiber optic network” because they reasonably convey the message that Time Warner Cable’s network is the functional or technical equivalent of a telecommunications network in which fiber extends to the home, a message that the evidence in the record did not support.

The advertiser appealed NAD’s decision to the NARB and it affirmed NAD’s decision in its entirety.

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