The National Advertising Division (NAD) of BBB National Programs provides independent self-regulation and dispute resolution services, guiding the truthfulness of advertising across the U.S. NAD reviews national advertising in all media and its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business.

NAD cases can be initiated through NAD’s independent monitoring of advertising claims or through “challenges” to advertising claims filed by competitors, consumers, or public interest groups. This digest includes excerpts from key telecommunications cases. Each case involves consideration of the claims made in the advertising and labeling and the supporting evidence provided by the advertiser.

Compliance with NAD decisions is voluntary. Nevertheless, NAD enjoys a high rate of compliance. Advertisers that either refuse to participate in the self-regulatory process or do not implement the NAD recommendations are referred to appropriate government agencies such as the Federal Trade Commission (FTC).

**AT&T Services, Inc.**

**AT&T Fiber**
Case #6950 (June 2021) // NARB #289 (TBD)

NAD recommended that AT&T modify the express claim that all cable upload speeds are slow and the implied claim that Comcast’s Internet is unreliable to avoid conveying the messages that users are unable to video chat, upload large files, expand their business or sell their homes.

NAD recommended that AT&T modify its express claim “better Internet” to avoid conveying the unsupported message that cable users experience the issues depicted in the challenged ads.

NAD also recommended that AT&T modify the express claim that it provides a “faster Internet experience” to avoid conveying the unsupported messages that cable users experience the circumstances depicted in the challenged advertising when videoconferencing or that cable speeds will cause the problems depicted in the challenged ads.

The advertiser appealed NAD’s decision to the National Advertising Review Board (NARB). The appeal is pending.

**Charter Communications, Inc.**

**Spectrum Internet Speed**
Case #6948 (May 2021)

NAD recommended that Charter discontinue the implied claims in the “Welcome Back Party” commercial that (i) AT&T Internet is too slow for certain activities, including streaming; and (ii) AT&T does not offer speeds that exceed 200 Mbps. 17 The Ninth Measuring Broadband America Fixed Broadband Report, Federal Communications Commissions (2020). NAD was not persuaded that AT&T’s lack of participation in the collection of data for the Tenth FCC Broadband Report should compel any inference relating to its internet speeds. In reaching this conclusion that a speed superiority claim could not be supported, NAD did not further conclude that the data collected on internet speeds experienced by customers of any particular ISP, including Spectrum, was
not reliable. With respect to the “Great Offers” commercial, NAD recommended that Spectrum discontinue the express unqualified “fastest download speeds” claim and the implied claim that AT&T does not offer speeds of 200 Mbps or greater like Spectrum does. In the alternative, Spectrum may modify the claim to clarify that the claim is based on having the fastest download speeds at the introductory and intermediate levels and the equivalent download speed at the top tier. With this modification effectively implemented, the “Great Offers” commercial would not reasonably convey an implied claim that AT&T does not offer speeds of 200 Mbps or greater like Spectrum does.

Charter agreed to comply with NAD’s recommendations.

Charter Communications, Inc.

Spectrum Mobile
Case #6940 (April 2021)

NAD recommended that Charter discontinued its “fastest overall speeds” nationwide claim because the evidence in support was not a good fit for the claim. In the absence of reliable consumer evidence, NAD evaluated the consumer takeaway from Charter’s “fastest overall speeds” claim and determined that one of the messages reasonably conveyed by the claim is that Spectrum Mobile has a speed advantage compared to competing providers across its entire network nationwide. Charter only sells its Spectrum Mobile service to new and existing customers of Spectrum’s residential internet service (Spectrum Internet), which is available only in certain parts of the country. Charter’s Ookla data shows that Spectrum Mobile’s claimed fastest speed is never available nationwide on its wireless network, but rather only in certain wireless markets or when consumers are connected to Spectrum’s WiFi (at home or via a Spectrum Mobile hotspot). NAD concluded that the advertiser’s evidence – which showed that Spectrum Mobile customers get faster speeds in the much narrower Spectrum service area – is not a good fit for the broad “fastest overall speeds” claim, particularly when viewing Spectrum’s claims in contexts which include “coast to coast” claims and otherwise emphasize that Spectrum Mobile is available nationwide. To the extent that Charter wishes to promote the speed advantage of its Spectrum Mobile service, NAD recommended that the claim communicate to consumers the circumstances under which consumers will experience the claimed speed advantage and avoid conveying a misleading message that consumers will obtain the fastest speeds with respect to nationwide cellular service.

Charter is appealing NAD’s decision to the National Advertising Review Board (NARB).

Verizon Communications, Inc.

Verizon’s “Fastest 5G Network in the World”
Case #6890 (March 2021)

NAD determined that Verizon Communications, Inc. (“Verizon”) provided a reasonable basis for the comparative performance claim that its 5G Ultra Wideband provides the “Fastest 5G in the World.” NAD concluded that Verizon’s evidence was a good fit for the claim, and that the challenged television commercial clearly and conspicuously discloses that Verizon’s 5G Ultra Wideband is “available only in parts of select cities.” The claim at issue was challenged by AT&T Services, Inc.

It was not disputed in this proceeding that Verizon’s 5G Ultra Wideband is, at present, in fact, the world’s fastest or that the challenged commercial adequately limited the “fastest 5G in the world claim” to Verizon’s 5G Ultra Wideband network. In this proceeding, NAD considered whether consumers’ ability to connect to Verizon’s 5G Ultra Wideband 0.5% of the time rendered the comparative speed claim of so little consumer relevance as to warrant precluding Verizon from making the claim.

NAD determined that the data in the record provided a reasonable basis for a truthful, narrowly tailored comparative speed claim. The Opensignal reports of actual Verizon 5G Ultra Wideband
users demonstrated that by October 2020 Verizon customers located in parts of 55 cities with 5G capable devices could, in fact, connect to Verizon’s mmWave service, thereby taking advantage of the “fastest 5G in the world.”

Indeed, Verizon’s 5G Ultra Wideband is available to all Verizon customers with 5G-capable devices when they are in the specific parts of the cities where it has launched. While these Verizon customers may have only accessed its 5G Ultra Wideband network 0.5% of the time, this data is relative and must be considered against the overall 5G usage at the time. During the relevant time period, 5G smartphone users were still spending the vast majority of time connected to older mobile technology and by October 2020, overall, 5G usage (regardless of spectrum) was only at 21.4%.

Further, NAD concluded that the challenged commercial clearly and conspicuously discloses that Verizon’s 5G Ultra Wideband is “available only in parts of select cities” and is in the process of “rolling out” in cities across the country, thereby allowing viewers to determine the consumer relevance of Verizon’s speed for themselves. Absent clear evidence that a product innovation has no consumer relevance, NAD is extremely reluctant to recommend that an advertiser discontinue its promotion and, on the record in this case, found no compelling reason for doing so.

Finally, NAD acknowledged AT&T’s concern that with Verizon’s launch of its nationwide 5G low band service there exists the potential for consumer confusion between its nationwide 5G and 5G Ultra Wideband services with respect to Verizon’s “fastest 5G in the world,” claim. Thus, NAD advised that, going forward, Verizon carefully craft its comparative 5G performance claims to make clear that “fastest 5G in the world” refers only to its 5G Ultra Wideband.

In its advertiser statement, Verizon stated that it is “pleased that NAD found the claim Verizon 5G Ultra Wideband is the ‘Fastest 5G in the World’ to be truthful and accurate.”

Comcast Cable Communications Management, LLC

Xfinity Mobile Wireless Service
Case #6920 (March 2021)

NAD determined that Comcast Cable Communications (“Comcast”) provided a reasonable basis for a qualified claim that by switching to Xfinity Mobile wireless customers can “save hundreds” and “up to $400 a year” on their wireless bill. NAD recommended, however, that Comcast disclose the basis of the claim to avoid overstating the comparative benefits. In addition, NAD recommended that Comcast modify certain savings claims that failed to adequately disclose the material differences in the plans compared.

NAD also concluded that Comcast’s use of a fully-shaded map of the contiguous United States, in conjunction with its 5G claims, conveys a supported message. However, NAD recommended Comcast modify its marketing email to disclose clearly and conspicuously that 5G is “only available in parts of select cities.”

Further, NAD recommended that Comcast modify its advertising to make clear the basis for its “#1 customer satisfaction” claim (a recent American Customer Satisfaction Index survey report) and avoid conveying that this claim is based on or connected to its 5G offering.

The claims at issue, which appeared in digital, television, radio, and website advertisements were challenged by T-Mobile USA, Inc.

Xfinity Mobile provides its customers with in-home Xfinity WiFi and access to millions of secure Xfinity WiFi hotspots to which customers are automatically connected with no additional data charges. Xfinity Mobile is offered exclusively to Xfinity Internet customers, and Comcast also provides its Xfinity Mobile customers with 5G service included with new data plans at no additional charge or premium.

Regarding Comcast’s savings claims, the evidence showed that 65% of its customers could be saving $400 or more per year if they optimize their service plans using Xfinity Mobile’s “Mix and
Match” customizable data feature – an option that is not available with competitors’ services. While NAD concluded that the advertiser provided a reasonable basis for a qualified claim that by switching to Xfinity Mobile, wireless customers can “save hundreds” and “up to $400 a year” on their wireless bill, it recommended that Comcast clearly and conspicuously disclose, in close proximity to the savings claim, the basis of the savings claim what is being compared.

Further, NAD determined that Comcast’s savings claims fail to adequately disclose the material differences in the plans compared: (1) that there are data usage limits between itself and competing providers, and (2) that the savings are premised on a consumer’s purchase of Xfinity Internet. With regard to data usage, NAD noted that Comcast throttles speeds after its subscribers reach a hard 20 GB cap of data usage (even on its “unlimited” plan). In contrast, T-Mobile deprioritizes rather than throttles users who reach certain data thresholds and other competitors offer higher thresholds before slowing data speeds. Further, although Comcast agreed to modify its claims to disclose the requirement that Xfinity Internet is required to obtain Xfinity, some of the advertisements were not sufficiently clear. Therefore, NAD recommended that Comcast clearly and conspicuously, and in close proximity to the triggering claims, disclose the data usage limitations of its “unlimited” data offering; and modify the content of its disclosures to more clearly state the requirement that Xfinity Mobile is available only to Xfinity internet customers.

Comcast uses a completely shaded blue map of the continental United States to depict its network, with various gradations of blue distinguishing the outline of each state, in conjunction with its 5G claims. NAD considered several executions of this advertising and determined that consumers would be unlikely to take away a misleading message that Xfinity Mobile’s network generally, or its 5G service specifically, is available in 100% of the entire contiguous United States. Rather, NAD concluded that, when viewed in context, these claims reasonably convey the supported message that Xfinity Mobile’s network coverage generally is “nationwide,” that it consists of three components (nationwide 5G, 4G LTE, and WiFi hotspots), and that with this combination, Xfinity Mobile has consumers “covered.” However, NAD determined that a marketing email which states “Switch to Xfinity Mobile and get ready for when 5G comes to your area,” reasonably conveys the message that availability of 5G coverage is relatively imminent, which was not necessarily the case at the time it was sent for all geographic locations. Further, the disclosure and offer of material information via hyperlink on another page, were not sufficient. NAD recommended that it be modified to disclose clearly and conspicuously, and in close proximity to the main claim, that 5G is “only available in parts of select cities.”

Finally, NAD determined that, in the overall context of Comcast’s web page, one of the messages reasonably conveyed by the advertiser’s “#1 in customer satisfaction” claim is that it is based on Xfinity Mobile’s 5G service and performance, a message that is unsupported. NAD noted that the “customer satisfaction” section mentions only 5G but makes no mention of other components of Xfinity Mobile’s network (4G LTE and WiFi), unlike other panels on the site, thereby increasing the likelihood that consumers will tie the “customer satisfaction” claim to the only service mentioned alongside the claim. NAD recommended that Comcast make clear the basis for its “#1 customer satisfaction” claim and avoid conveying that this claim is based on or connected to its 5G offering.

During the pendency of the proceeding, the advertiser voluntarily agreed to modify its “most reliable” network claims to disclose their basis (“Xfinity Mobile utilizes the highest-ranked network from Rootmetrics 1H 2020 US report. WiFi networks not tested. Results may vary. Award is not an endorsement”). Further, at the time the challenge was filed, 5G wireless service was not widely available but, rather, only available in select parts of select cities. Consequently, the advertiser modified its disclosure in the Amy Poehler commercial to disclose the limitations clearly and conspicuously on its 5G availability. NAD did not review these modified claims on the merits.

In its advertiser statement, Comcast stated that it agrees to comply with NAD’s decision and noted that “because the advertised 5G service is now broadly available nationwide, Comcast understands that disclosing the limited availability of 5G service is no longer necessary.”
Comcast Cable Communications, Inc.

**Xfinity Mobile 5G Wireless Service**

Case #6833 (March 2021)

NAD determined that certain website disclosures used in connection with claims for Comcast Cable Communication, Inc.’s (“Comcast’s”) Xfinity 5G wireless service clearly and conspicuously disclosed the limited availability of the 5G service at the time. However, NAD recommended that the advertiser modify a challenged Amy Poehler commercial, as well as two other related 5G claims, with more conspicuous disclosures. The claims at issue were challenged by AT&T Services, Inc. In October 2020, during the pendency of the challenge, Comcast (the network that carries Xfinity wireless service) added 5G service on low band spectrum available in 1,800 cities serving 200 million people. NAD recognized that Comcast now has nationwide 5G service on low band. However, at the time the challenge was filed, 5G wireless service was not widely available but, rather, only available in select parts of select cities.

Prior NAD cases have established that claims about services or products that are “more unavailable than available” must clearly and conspicuously disclose that fact to consumers at the time the claim is made. The claims in this case found to have sufficient disclosures include:

- “The best connection at any moment,” both a 5G and 4G graphic with the Wi-Fi symbol, and the accompanying disclaimer right below the main claim stating, “Experience unmatched speed on 5G in select locations.” (Xfinity coverage website)

- “Nationwide coverage … You’re covered nationwide with 5G in select locations, 4G LTE, and millions of secure Xfinity Wi-Fi hotspots – all in one powerful network. 5G available only in parts of select cities.” (Xfinity coverage website)

- “A powerful network – now with 5G” with the disclaimer “5G available only in parts of select cities.” (Xfinity mobile webpage)

- NAD determined that the challenged Amy Poehler commercial reasonably conveyed a 5G availability message that required a clear and conspicuous disclosure regarding the relevant limitations of its 5G service. The commercial included a small disclosure that 5G was “only available in parts of select cities,” which is an accurate and clear representation of Xfinity’s limitations. NAD noted that the disclosure appears in the frame where Ms. Poehler states, “Everybody gets 5G,” and is therefore in sufficient proximity to the main claim. NAD determined, however, that the disclosure was not conspicuous because the gray font was small and placed against a background with almost no contrast. As a result, NAD recommended that the advertiser modify the commercial by more conspicuously display the disclosure “5G capable device required. 5G available only in parts of select cities.” (Xfinity coverage website) - which contains a link to its coverage website - claims that “5G is here,” with no limitations or disclosures. The same website also claimed “A powerful network – now with 5G.” Website claims, even when accompanied by a link to another page with the appropriate disclosure, must stand alone as truthful and accurate. Therefore, NAD recommended that the advertiser include a clear and conspicuous disclosure regarding the geographic limitations of Xfinity 5G service.

In its advertiser statement, Comcast stated that it agrees to comply with NAD’s decision and noted that it had “previously and voluntarily modified its advertising to more prominently disclose the limitations of its 5G availability.” The advertiser further stated that “because the advertised 5G services is now broadly available nationwide, Comcast understands that disclosing the limited availability of 5G service is no longer necessary.”
DISH Network, LLC

Hopper 3 DVR
Case #6915 (December 2020)

DISH Network, LLC (“DISH”) committed to voluntarily modify its advertising to state the Hopper (or Hoppers) for which its performance claims are substantiated. AT&T Services Inc. (“AT&T”) challenged DISH’s Internet and television advertising for its Hopper 3 DVR product. Specifically, AT&T contended that the challenged television commercials conveyed the message that “all Hoppers offer the same recording and storage capabilities” because the television advertisements state, “With DISH, you get the Hopper, TV’s most powerful DVR,” and tout either the recording or storage capabilities of the Hopper 3. However, DISH offers several Hoppers, not just the Hopper 3. In response, DISH committed to voluntarily modify its advertising to specify the Hopper (or Hoppers) with the touted performance capabilities. The voluntarily modified claims will be treated, for compliance purposes, as though NAD had recommended the modifications and DISH had agreed to comply.

DISH failed to support express and implied claims that its Hopper 3 is “TV’s most powerful DVR,” “records … 2 times more than our competition” (or “more shows”) and has “twice the storage space … as any of our competitors” (or superior storage space). In the Girls’ Night In television commercial, challenged by AT&T Services, Inc., DISH claimed that the DVR is TV’s most powerful because it can record 16 shows at once. The DISH Hopper 3 web page made a similar but more specific claim that the ability to record 16 shows at once is “2 times more than our competition.” It was uncontested that DISH’s Hopper 3 records up to 16 shows at once, and holds up to 2,000 hours of SD programming or 500 hours of HD programming. NAD rejected DISH’s contention that the advertising at issue was received exclusively by older, rural consumers who lack access to high speed Internet. Thus, a consumer viewing the advertisements would not reasonably believe the claims excluded a comparison to streaming services such as AT&T TV and their cloud DVRs. Cloud DVRs, which are offered by streaming services, can record an unlimited amount of shows at once. The Hopper 3 DVR therefore does not possess superior recording and storage capabilities to cloud DVRs. Also, Cox’s DVR service surpasses DISH’s Hopper on the claimed performance benefits: number of shows recorded simultaneously and hours of video stored. Accordingly, NAD recommended that the claims be discontinued or modified to limit the comparisons to better fit the support provided.

DISH agreed to comply with NAD’s recommendations.

Boost Mobile

4G LTE Data Plans (“Go Unlimited”)
Case #6882 (March 2021) // NARB #285 (May 2021)

NAD determined that Boost Mobile supported the “Talk & Text” portion of the claim “Unlimited Data, Talk & Text” for its 4G LTE data plans. The advertising industry watchdog recommended, however, that Boost discontinue the claims “Unlimited SD Streaming,” “Unlimited HD Streaming,” and “Unlimited Data,” because these were not substantiated and could not be cured by a disclosure. Boost will appeal NAD’s recommendation regarding its “Unlimited Data” claim. AT&T Services, Inc. challenged Boost’s “unlimited” claims on the basis that the 4G LTE data plans are throttled to 2G speeds after the consumer hits the monthly data cap. NAD considered whether consumers are reasonably informed of the limitations of the offer. NAD did not agree with AT&T’s argument that Boost’s “unlimited” claims convey the implied message that Boost customers will be able to use their phone as they wish without material limitation. In addition, NAD found the “Talk & Text” portion of the claim “Unlimited Data, Talk & Text” was substantiated. However, NAD did have several concerns with Boost’s “unlimited” claims as they relate to the use of activities beyond talk and text and the disclosure used to qualify them (“you will be reduced to 2G data speeds for the remainder of the month”). Based on the case record, NAD concluded that at 2G speeds, consumers
will be unable to stream video, surf the web, or do any other activity that requires substantial data usage at speeds that meet consumers’ expectations for an unlimited plan. As noted in the decision, “At 2G speeds, many of today’s most commonly used applications such as social-media, email with attachments, web browsing on pages with embedded pictures, videos and ads and music may not work at all or will have such significant delays as to be functionally unavailable because the delays will likely cause the applications to time out.” The only activities that would still function acceptably are those that use minimal amounts of data, such as email without attachments, or those that use no data, such as talk and text. Consequently, NAD found that any disclosure that informs consumers that the service would not meet their expectations for an unlimited plan after they reach the data cap would contradict the “unlimited” claims. Because an advertiser cannot use a disclosure to contradict the message reasonably conveyed by the underlying claim, no disclosure can save these claims.

NAD recommended that the claims “Unlimited SD Streaming,” “Unlimited HD Streaming,” and “Unlimited Data” be discontinued because they were not substantiated and could not be cured by a disclosure. NAD noted that the claim “Go Unlimited” should be modified to make clear that consumers can talk and text after reaching the data cap. However, NAD found that the “Talk & Text” portion of the claim “Unlimited Data, Talk & Text” was substantiated because consumers would be able to talk and text after reaching the data cap.

In its advertiser’s statement, Boost Mobile stated that it agrees to comply with NAD’s recommendations regarding “Unlimited SD Streaming” and “Unlimited HD Streaming,” but that it will appeal NAD’s determination that Boost’s “Unlimited Data” claim is not substantiated. Such appeals are made to the National Advertising Review Board, the appellate-level truth-in-advertising body of BBB National Programs.

NARB — (#285— 05.13.2021) — A panel of the National Advertising Review Board (NARB), the appellate advertising law body of BBB National Programs, recommended that the advertiser discontinue its “Unlimited Data” claim.

Verizon Communications, Inc.

Verizon’s “Fastest 5G Network in the World”
Case #6890 (May 2021)

NAD determined that Verizon provided a reasonable basis for the comparative performance claim that its 5G Ultra Wideband provides the “Fastest 5G in the World.” NAD concluded that Verizon’s evidence was a good fit for the claim, and that the challenged television commercial clearly and conspicuously discloses that Verizon’s 5G Ultra Wideband is “available only in parts of select cities.” NAD determined that the data in the record -- Opensignal reports of actual Verizon 5G Ultra Wideband users -- provided a reasonable basis for a truthful, narrowly tailored comparative speed claim. NAD acknowledged AT&T’s concern that with Verizon’s launch of its nationwide 5G low band service there exists the potential for consumer confusion between its nationwide 5G and 5G Ultra Wideband services with respect to Verizon’s “fastest 5G in the world,” claim. Thus, NAD advised that, going forward, Verizon carefully craft its comparative 5G performance claims to make clear that “fastest 5G in the world” refers only to its 5G Ultra Wideband.

The advertiser agreed to comply with NAD’s recommendation.
T-Mobile USA, Inc.

5G Mobile Phone Service
Case #6928 (February 2021)

T-Mobile USA, Inc. did not convey a present-tense message that the aspirational future benefits from T-Mobile’s merger with Sprint are presently available to consumers. AT&T Services, Inc. challenged claims made by T-Mobile about its post-merger with Sprint 5G service in online and television advertising. NAD reiterated its finding in a previous challenge related to the same claims (T-Mobile Post-Merger 5G Service #6422) that the television commercial did not reasonably convey a present-tense message. Rather, it conveyed a message about the aspirational future benefits that will result from the T-Mobile Sprint merger, including a potential superior pricing benefit.

T-Mobile USA, Inc. failed to support the claim that, as a result of the merger of T-Mobile and Sprint, consumers will get the “best 5G network,” the “most reliable 5G network,” and the “best prices” for 5G service. AT&T Services, Inc. challenged claims made by T-Mobile about its post-merger with Sprint 5G service in online and television advertising. While some statements about the future lack certainty and cannot be objectively proven, aspirational claims that convey objective messages about benefits consumers should reasonably expect require a reasonable basis. An advertiser should support any messages reasonably conveyed about both the expected benefits and when those benefits will be available. Here, consumers could reasonably interpret the T-Mobile’s claims to mean that due to the merger, T-Mobile is imminently poised to become the “Best Network,” or will soon provide, “the most reliable 5G network.” Also, consumers could reasonably interpret T-Mobile’s “best price” claim to mean that T-Mobile will guarantee that its prices will be lower than its competition in both the near and remote future. Without the requisite support for such claims, NAD recommended that the challenged advertising be modified to avoid conveying such messages. However, nothing prevents T-Mobile from formulating a more remote aspirational message as to its hopes and ambitions in these regards given the merger between T-Mobile and Sprint or from making truthful and non-misleading claims about its current pricing and commitment to maintaining low prices.

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

Verizon Wireless

Verizon 5G Wireless Service
NAD Fast-Track SWIFT Case #6910 (December 2020)

T-Mobile brought a challenge to a video coverage map representing Verizon Wireless’ buildout of 5G coverage across the United States. NAD determined that the advertiser provided a reasonable basis to support the express coverage messages in the challenged video. The coverage map was appropriate for the NAD Fast-Track SWIFT process because the challenged video contained multiple express statements – visually, in voiceover, on-screen text, and disclosures – regarding Verizon’s wireless service coverage. Determining whether the express coverage messages were supported was a single issue that would not require review of complex evidence or legal argument. NAD determined that reasonable consumers would view the video in context, which explains Verizon’s 5G incremental buildout, layered on its existing, prior generation network. Verizon’s video with rising red blocks, voiceover, and on-screen text explaining how Verizon layered its 5G Nationwide and 5G Ultra Wideband onto its existing network serves the function of a legend and expressly explains the differences in coverage of Verizon’s existing and 5G Nationwide networks. In its advertiser statement, Verizon stated that it “is pleased NAD found that the message in the videos was supported.”
AT&T Services, Inc.

AT&T Blog Post Advertising
Case #6423 (November 2020)

AT&T Services, Inc. (AT&T) provided a reasonable basis for two challenged blog posts that touted improvements to its service, according to NAD. Comcast Cable Communications, LLC challenged two posts on AT&T’s website’s blog that, it argued, claimed AT&T provided the best Wi-Fi experience. NAD reviewed each claim in the context it was presented to determine whether it conveyed a comparative superiority message or a self-referential message touting the improvements AT&T had rolled out for its customers. AT&T provided, confidentially, a declaration reporting a study on AT&T’s BGW210 Wi-Fi Gateway and its Wi-Fi extenders. NAD found the study to be reliable evidence that the added features reasonably improved AT&T customers’ “Wi-Fi experience” and “in home connections,” compared to AT&T’s service prior to implementing these features. Also, the launch of its app reasonably improved its customers’ “home internet experience” compared to the same service without the addition of an associated app. Thus, AT&T provided a reasonable basis for the two challenged blog posts.

Charter Communications, Inc.

Spectrum 400 Mbps Internet & Television Services
Case #6405 (September 2020)

NAD recommended that Charter Communications, Inc. (Charter) disclose the basis for its claim “Experience the power of lightning-fast 400 Mbps Internet speeds; 8x faster than AT&T‡.” AT&T Services, Inc. challenged claims made by Charter in a mailer for its Spectrum Internet and television services. The disclosure on the challenged mailer appears on a subsequent page in small print, in a block of text with several other disclosures and is therefore not easy to notice, read, and understand. Further, the other claims use the same ‡ symbol to direct consumers to a disclosure, so even a consumer reviewing the disclosure might not notice, read and understand the limitation on the “8x faster” claim. All disclosures must be displayed in a manner that is readily noticeable, readable and/or audible, and understandable to the audience to whom it is directed. When assessing the adequacy of a disclosure in print advertising, the standard is the same but the sufficiency of the disclosure is considered in the context of how a consumer would view a print advertisement. A speed comparison “must not imply that a competitor does not have a more similar service available.” As for Charter’s argument that it was comparing two broadly available speed tiers, the challenged claim was not limited to a comparison of two broadly available speed tiers. It states that it was a comparison to AT&T. Although AT&T argued that the claim cannot be saved with a disclosure because it is a line claim and a disclosure would contradict the main claim, line claims can be limited effectively using disclosures. “Prior NAD cases evaluating comparative claims have advised advertisers to limit superiority claims to the products compared and avoid conveying a superiority message across a product or service line.” Thus, NAD recommended that Charter Communications, Inc. disclose the basis of comparison of its “8x faster” claim as part of the main claim, or in close proximity to the main claim so that it is clear and conspicuous and easy for consumers to notice, read, and understand, and further, avoid conveying a misleading message about AT&T’s Internet speed tier offerings. To the extent that the advertiser makes the claim “Spectrum beats the competition” in future advertising, NAD recommended that Charter avoid conveying a misleading message about AT&T’s Internet speed tier offerings.

NAD recommended that Charter modify the claim “Spectrum beats the competition” in a mailer to avoid conveying a misleading message about AT&T’s Internet speed tier offerings. The claim at issue was followed by three bullet points that define the basis for the claim. Two bullet points are discontinued claims and the other is the 8x faster claim, for which NAD recommended modifications. To the extent that the advertiser makes the claim “Spectrum beats the competition” in future advertising, NAD recommended that, consistent with the recommendations in this decision, Charter avoid conveying a misleading message about AT&T’s Internet speed tier offerings.
NAD recommended that Charter modify the claim “AT&T/DirecTV simply can’t keep up” in a mailer to avoid conveying a misleading message about AT&T’s Internet speed tier offerings. The claim at issue is followed by the sentence, “Get the best value on 400 Mbps Internet and TV services from $39.99/mo each for 2 years when bundled.” Charter contended that the message conveyed is puffery or, in the alternative, is solely about the price offered or the value of the touted bundle. An advertiser is responsible for all reasonable interpretations of its claims, not simply the messages it intended to convey. The phrase “can’t keep up” refers to the ability to “keep up” the pace and, as a result, consumers would reasonably take away a message about speed from this claim. Additionally, the following claim touts Spectrum’s speed and adds to a misleading message that the “can’t keep up” claim refers to speed. In the context presented by this mailer, at least one message reasonably conveyed is that AT&T cannot match Spectrum’s touted 400 Mbps speed. Charter agreed to comply with NAD’s recommendations.

AT&T Services, Inc.

**AT&T's Wireless Network (“Best Network”)**  
Case #6401 (August 2020) // NARB #277 (January 2021)

NAD declined to reopen a previous review of the reliability of AT&T Services, Inc.’s (AT&T’s) “best network” claim, but recommended that AT&T clearly and conspicuously disclose its material connection to the testing company on which the claim was based. AT&T’s claims that it has America’s “best network” are based on the 2018 and 2019 results of OneScore. OneScore is a ranking system of wireless networks created by Global Wireless Services (GWS). GWS also conducts the drive testing and consumer surveys used to generate OneScore results. Last year, NAD addressed AT&T's “best network” claims in a challenge filed by T-Mobile, finding that GWS's testing “provided a reasonable basis for AT&T’s qualified ‘best network’ claim.” NAD did not find that any “extraordinary circumstances” existed to warrant a second review in this case of the reliability of the substantiation at issue in the 2019 AT&T “Best Network” case. In the current challenge, Verizon argued that AT&T and GWS have an exclusive and confidential relationship and that a lack of transparency from AT&T and GWS regarding the OneScore test's methodology also made AT&T’s claims suspect. However, NAD concluded that the relationship between AT&T and GWS was not an extraordinary circumstance that required a second review. Because consumers need sufficient information about the relationship between AT&T and GWS to assess the credibility and the weight of the OneScore Ranking, NAD recommended AT&T disclose that relationship.

NAD recommended that AT&T discontinue the claim that it is “building 5G on America’s Best Network.” Verizon Wireless, Inc. argued that this claim was misleading because Global Wireless Services’ test did not test 5G networks and only tested and ranked the 4G LTE networks of Verizon, AT&T, Sprint, and T-Mobile. NAD concluded that consumers could reasonably take away the unsupported message that AT&T has been judged to have both the best 5G and 4G LTE networks. Although there is some shared infrastructure between 4G and 5G networks, its claim that it is building 5G “on” its existing 4G network, in the sense of “building on top of” or “building off of,” the evidence in the record on 5G technology makes clear that although the quality of a 4G network impacts the quality of a 5G network, much of the network infrastructure for 5G is new. As a result, consumers can reasonably take away the unsupported message that AT&T’s 5G performance will be superior to its competitors as a natural extension of its present 4G superiority (as ranked by GWS).

NAD found AT&T’s use of the claim, “just OK is not OK,” in the contexts presented was not falsely disparaging. Verizon argued that a series of commercials using the line “just OK is not OK,” or some variation of that, conveyed a message that AT&T’s 4G and 5G wireless networks have been judged superior to other wireless networks and that other networks are “just ok” in comparison. The commercials depict humorous scenarios that demonstrate when “just OK” is underwhelming or insufficient but avoid any reference to competitors or wireless services failing. While humor and hyperbole can be effective for advertisers, they do not relieve an advertiser of its obligation to support messages that their advertisements might reasonably convey—especially when the advertising disparages a competitor’s product.” Exaggerated images and humor can be used to
highlight a truthful message, but should not falsely disparage competitors. In this context, the commercials refer to and draw attention to the claim that AT&T has the “Best Network” according to the GWS ranking, a claim NAD found to be supported. As a result, NAD concluded that the claim, “just OK is not OK” in the contexts presented was not falsely disparaging.

NARB — (#277 — 01.28.2021) — A panel of the National Advertising Review Board (NARB), the appellate advertising law body of BBB National Programs, recommended that:

1. AT&T clearly and conspicuously disclose its material connection to GWS when making a “Best Network” claim based on GWS testing;
2. AT&T discontinue the claim that AT&T is “Building 5G on America’s Best Network,” or state in the body of the claim that the “Best Network” referred to is AT&T’s 4G network.

The advertiser agreed to comply.

T-Mobile USA, Inc.

T-Mobile’s 5G Network (Bill Nye)
Case #6396 (August 2020) // NARB #276 (August 2020)

T-Mobile USA, Inc. (T-Mobile) supported express claims that 5G wireless service is faster than a competitors’ 4G service and its own 4G service, according to NAD. Verizon Communications, Inc. (Verizon) challenged video advertisements touting T-Mobile’s wireless speed. In support, T-Mobile supplied Ookla data, dated April 2020, showing that T-Mobile’s 5G service is faster than T-Mobile’s 4G service and competitors’ 4G service, providing a reasonable basis for the claim. Verizon submitted testing by RootMetrics that found that T-Mobile’s 4G was faster than T-Mobile’s 5G service. NAD concluded that the RootMetrics testing submitted by Verizon was not stronger, more persuasive evidence reaching a different result, and thus the claim was substantiated.

NAD recommended that T-Mobile discontinue claims that 5G is currently more reliable than 4G, including claims that imply that its 5G is currently more reliable than competitors’ 4G. Verizon Communications, Inc. (Verizon) challenged video advertisements that claimed “With 5G, high amounts of data can be transmitted more efficiently than 4G LTE. That means stronger network reliability, faster downloads, and support for more connected devices than ever before. Greater reliability. Enhanced capacity. Faster speeds.” There was no evidence comparing 5G to 4G on metrics like reliability. Thus, NAD recommended that T-Mobile modify its claims to more clearly state the metrics like speed for which 5G is superior to 4G.

T-Mobile substantiated the claim that its 5G service currently provides better coverage than its competitors’ 5G service, according to NAD. OpenSignal reported that devices using T-Mobile’s 5G service spent the highest percentage of time on 5G as opposed to 4G with T-Mobile’s 5G service delivering 5G service 53% of the time. RootMetrics reported that “T-Mobile offered more 5G than any other carrier in four of the five cities we tested, and the carrier’s 5G coverage was generally widespread in all five cities.” NAD concluded that this evidence provided a reasonable basis for the claim, and thus that the claim that T-Mobile’s 5G service currently provides better coverage than its competitors’ 5G service was substantiated.

NAD recommended that T-Mobile discontinue claims that implied that its 5G service was generally available in locations that have traditionally been challenging for cellular service. Verizon Communications, In. argued that T-Mobile video advertising conveyed that T-Mobile’s 5G network can penetrate walls of buildings and is generally available in high-rise buildings, restaurants, parks, aquariums, movie theaters, homes, and subterranean basements. There was no evidence in the record regarding T-Mobile’s ability to provide service in the physical locations shown in the advertising, such as basements and elevators, where cellular customers are accustomed to potentially experiencing a coverage gap. It is undisputed in the record that T-Mobile’s low band signal can penetrate walls, but there is no evidence of the extent to which it does so, or whether it delivers coverage in locations that have traditionally challenged cellular service. At a minimum, T-Mobile must disclose, clearly and conspicuously, the typical performance of T-Mobile’s 5G.
Video advertisements for T-Mobile’s 5G service did not imply that it provided the same level of coverage in both urban and rural areas as the advertisement referenced. Claims of coverage in cities and towns were tied to T-Mobile’s coverage map. NAD recommended that T-Mobile modify coverage maps so that consumers can notice, read, and understand the maps and accompanying legend. Each map has a legend that shows which color on the map means 5G service, and which color means 4G service. In the online advertisement, the 4G is T-Mobile magenta and the 5G is a flashing glitter that alternates between several colors including pink, white, and magenta. In the video advertisement, the 4G is T-Mobile magenta, and the 5G is puffy pink. Consumers do not have much time to read the map or legend, and the graphics are distracting during the brief period when even part of the map is visible. NAD concluded that if consumers were given time to read the legend to the map, and examine the map itself, they would not take away a message of universal 5G coverage because each map (eventually) shows that T-Mobile’s 5G is available in only part of its coverage area, when read in conjunction with the legend.

T-Mobile failed to support claims that “Other carriers have 5G signals that drop if you move two feet” and that competitors’ coverage is the size of a bench, according to NAD. T-Mobile’s own disclosure stated, “A slight exaggeration, other 5G signals can cover whole blocks!” This disclosure contradicted the main claim and thus could not cure the misleading message. NAD further recommended that T-Mobile discontinue the challenged videos comparing the coverage and performance of Verizon’s 5G to T-Mobile’s 5G in Hard Rock Stadium in Miami shortly before the Superbowl and the related implied claim that T-Mobile’s current 5G network consistently provides no signal loss, decrease in signal strength, or reversion to 4G LTE service.

NAD recommended that T-Mobile discontinue a claim that its 5G service was more reliable than competitors’ 5G based on a lack of reliable evidence. T-Mobile submitted confidential drive testing regarding the various carriers’ 5G performance. As T-Mobile’s advertising highlights, however, Verizon’s 5G is deployed on spectrum with limited geographic reach. Testing Verizon’s 5G in a moving vehicle measures its 5G network’s reach (or coverage) and does not evaluate its reliability. In the “Bill Nye Explains 5G” advertisement, Bill Nye says “no signal reaches farther or is more reliable than 600 MHz,” with the disclosure “No signal is more reliable (travelling far and deep) than 600 MHz.” The disclosure addresses coverage, not reliability. Because Bill Nye discusses both the far-reaching nature of 600 MHz and reliability, consumers will reasonably take away the message that 600 MHz service reaches farther and is more reliable in completing a task, notwithstanding the disclosure.

Verizon Communications, Inc. (Verizon) challenged advertising that compared T-Mobile’s 5G to its competitors’, highlighting T-Mobile’s coverage and reliability. NAD noted that the various carriers’ 5G offerings are materially different. Also, T-Mobile’s and Verizon’s 5G differ: one has superior availability while the other has superior speeds. As carriers roll out their 5G technology, at least in the period of transition, their 5G networks are not “apples to apples” comparisons because the capabilities of competing networks are so varied. An advertiser may choose the object of its comparison as long as information material to the comparison is clearly communicated in the advertising. There was no evidence that consumers understand the differences in performance metrics between carriers’ 5G services. As with all “apples to oranges” comparisons, disclosure of material differences is required. NAD determined that, without a disclosure, the challenged advertising reasonably conveyed the message that T-Mobile’s 5G network will provide a better customer experience to T-Mobile customers than its competitors’ 5G networks. NAD recommended that, when T-Mobile makes a comparative claim about its 5G coverage, it disclose, clearly and conspicuously, any material differences between its network and competing 5G networks.

T-Mobile appealed NAD’s decision.

NARB — (#276 — August 2020) A panel of the National Advertising Review Board (NARB), the appellate advertising law body of BBB National Programs, recommended that T-Mobile:

- Discontinue claims that imply 5G is currently more reliable than 4G, including claims that imply that its 5G is currently more reliable than competitors’ 4G, and its claims that no 5G network is more reliable than T-Mobile’s 5G network;
• Discontinue claims that imply that its 5G service is generally available in locations that have traditionally been challenging for cellular service, or disclose, clearly and conspicuously, the typical performance of T-Mobile’s 5G network in those locations; and

• Discontinue claims and an accompanying demonstration that imply that other carriers’ 5G coverage is so limited in any area as to cover only the space taken up by a single bench.

The panel also found that T-Mobile’s superior coverage claims did not imply overall network superiority, rejecting NAD’s conclusion that such claims required the disclosure of material differences.

The advertising at issue had been challenged by Verizon Communications Inc. (Verizon). The challenged claims were contained principally in a four-minute video, “Bill Nye Explains 5G,” available on a T-Mobile website.

The disputed advertising relates to T-Mobile’s claimed advantage for its 5G network based on low-band wavelength technology compared to Verizon’s high-band 5G Ultra Wideband network. At the time of the challenge, T-Mobile’s 5G network was based primarily on low-band spectrum, which has advantages in terms of facilitating broader network coverage, but at the sacrifice of other characteristics such as network speed. Verizon, by contrast, originally based its 5G network on mmWave spectrum, giving its 5G Ultra Wideband network the capacity to offer faster speeds while sacrificing coverage.

The NARB panel determined that T-Mobile’s express reliability assertions would be understood as comparing its 5G network to 4G networks, and that this message cannot be supported based on coverage, as T-Mobile’s 5G network does not equal or surpass its own 4G coverage or that of competitors. Further, the panel concluded that, in context, the claim that T-Mobile’s low-band 5G signal is more reliable than competing 5G signals should be evaluated with at least some insight concerning network performance beyond coverage. Because T-Mobile offered no such support for its 5G network reliability claims, parity or otherwise, the panel recommended that T-Mobile’s 5G reliability claims be discontinued.

Further, the panel recommended that T-Mobile discontinue claims that imply its 5G service is generally available in locations that have traditionally been challenging for cellular service, or disclose, clearly and conspicuously, the typical performance of T-Mobile’s 5G network in those areas. The panel noted that T-Mobile did not present any evidence to show the degree to which its 5G network can be accessed in cellars, parking garages, elevators, or similar locations.

The panel also addressed T-Mobile’s claims that 5G signals from competing carriers have extremely limited coverage. In the Bill Nye video, Mr. Nye’s statement that “Other carriers have 5G signals that drop if you move two feet” is accompanied by a visual showing coverage limited to the area taken up by a typical bus bench. The panel concluded that this bus-stop sequence communicates a misleading message about the limited scope of Verizon’s 5G Ultra Wideband service.

Finally, the panel determined that T-Mobile’s superior 5G coverage claims do not imply overall network superiority. Therefore, in a departure from NAD’s recommendation, the panel concluded that material differences between T-Mobile’s network and competing networks (e.g., speed) need not be disclosed with the superior coverage claims.

T-Mobile stated that it will comply with the panel’s decision and that it “appreciates that the panel agreed that T-Mobile can continue to advertise its superior 5G coverage without qualification.”

Verizon Communications, Inc. (Verizon) was unable to support claims that it offers the “Fastest Available” Internet speeds, according to NAD. Competitor Charter Communications, Inc. (Charter) challenged Verizon’s claims that its Fios service, and the fiber technology that Fios uses, were superior overall as well as with regard to specific metrics, such as speed and number of devices.
supported. The issue was whether Verizon’s fastest tier, offering download speeds of up to 940 Mbps and upload speeds of up to 880 Mbps is the fastest internet available given that competitors such as Charter also offer download speeds of up to 940 Mbps, but pair them with upload speeds of, for example, 35 Mbps. The National Advertising Review Board has held that claims that an Internet service provider offers the fastest Internet, without clearly communicating what ‘fastest’ means, can be subject to a number of reasonable interpretations by consumers. Verizon’s evidence showed that upload speeds are useful for some specific use cases, such as backing up a large number of files to the cloud, but Charter’s evidence showed that many other common uses, such as streaming, do not necessarily require the high upload speeds offered by Verizon. Despite the importance of upload speeds, the evidence makes clear that download speeds remain a key feature in the performance of a network. As a result, having faster upload speeds does not make a network “per se” faster because the claim that Fios is “the fastest internet available” may be reasonably understood by consumers as a claim that Verizon offers the fastest download speeds. Thus, NAD recommended Verizon discontinue the claim or modify it to clearly convey that it offers the fastest combined speeds (upload plus download). In doing so, it should take care to avoid conveying the message that it offers the fastest download speeds.

NAD recommended that Verizon discontinue express and implied claims that it has the “fastest internet” for its Fios service, or modify them, to disclose, clearly and conspicuously, the source of the substantiation and, if it bases the claims on the PC Mag testing evaluated here, disclose that it is a speed comparison aggregating service tiers. The unqualified superiority claims at issue did not limit the message conveyed to offering fastest speeds available, but rather conveyed a message that Fios delivers superior speeds. NAD determined that consumers are likely to take away the message that they can expect to experience superior speed from Verizon. Because Verizon relied upon the PC Mag speed ratings of ISPs, NAD recommended that Verizon clearly and conspicuously inform consumers that its substantiation was “a speed comparison aggregating service tiers.”

Verizon failed to substantiate claims that its Fios Internet service provides superior streaming or buffering, according to NAD. Charter challenged claims about Fios’ superior streaming performance and buffering that appeared on the Verizon Fios Page. Verizon presented no evidence regarding streaming or buffering. Accordingly, NAD found that the claims that Fios provides superior streaming or buffering were not substantiated and recommended those claims be discontinued.

NAD recommended that Verizon discontinue the unqualified claim that Fios Internet service provides superior reliability. Charter challenged the claim, “See the difference for yourself on the 100% fiber-optic network, Fios. Don’t settle for anything less than a 100% fiber-optic network. It’s the most reliable for all your devices, no matter how many you have in your home.” Regarding Internet service, reliability can mean the uptime of the service or the percentage of the time that a wired broadband provider delivers the advertised speed, as measured by the 80/80 metric, as measured by the FCC, also known as consistency of speed. Verizon submitted no evidence regarding the uptime of Fios or any other Internet service. However, Verizon contended that the FCC’s Measuring Broadband America program reports substantiate the claim because it delivered among the lowest packet loss and latency in the 2017 and 2018 reports. But the challenged advertising does not limit Verizon’s reliability claim to its ability to deliver data without packet loss or long latency. Further, Verizon submitted no evidence that the difference in latency between Verizon and its closest competitor, Optimum, as recorded in the 2018 report, was consumer meaningful. Additionally, the metrics that Verizon looks to now as substantiation for its claims are not the same metrics that it has submitted to NAD in the past—and that NAD has accepted, namely consistency of speed.

NAD recommended that Verizon modify claims that its Fios Internet service supported more devices to explain which consumers would see a consumer relevant benefit. There was no evidence that Verizon’s superior upload speeds deliver a consumer meaningful benefit to the typical business. Thus, NAD recommended that, when directed to business consumers, Verizon modify the claim that “With fiber you can connect more devices at once” to explain which consumers would see a consumer relevant benefit. As to the claim that Fios is “the most reliable for all your devices, no matter how many you have in your home,” NAD noted that it was not clear how many households would receive a benefit. Consumers may take away the message that, even if they have only a few devices, Fios will be more reliable than its competitors. However, for many consumers,
there was no evidence that any common use would require Verizon’s upload speeds. Because the
evidence in the record did not show that Verizon’s superior upload speeds deliver a consumer
meaningful benefit to the typical household, NAD recommended that Verizon modify it to explain
which consumers would see a consumer relevant benefit.

NAD recommended that Verizon discontinue claims that fiber provides superior streaming or
buffering, and provides superior reliability. Charter challenged Verizon’s claim that “Fiber is better.
. . . Business fiber internet is resilient, even during bad weather. You can rely on 99.9% network
reliability and fast speeds to help your business get work done quickly.” In order to substantiate
a superiority claim, the advertiser should submit evidence showing that consumers experience
a consumer relevant difference. NAD considered, but was not persuaded by, Verizon’s argument
that its “fiber makes you faster” claim solely conveys the message that fiber technology permits
faster speeds. One reasonable takeaway—if not the literal meaning—is that all fiber ISPs are faster
than other ISPs. The record did not show that all fiber ISPs are faster than ISPs that do not use
fiber for the last mile. Notably, the MBA reports showed that Frontier Fiber was noticeably slower
than most of the competition. Also, NAD also recommended that Verizon discontinue the claim
that Fios provides superior reliability. Although Verizon argued that it is common knowledge that
fiber is not subject to electromagnetic interference, citing two articles, neither discussed whether
this difference translates into consumer relevant differences in weather-related disruptions. Finally,
NAD recommended that Verizon discontinue claims that fiber technology delivers faster overall
speeds than other access technologies and that Verizon discontinue the unqualified claims that
Fios provides superior performance and that fiber technology provides superior performance.

Verizon appealed NAD’s decision.

NARB — (#275 — November 2020) A panel of the National Advertising Review Board (NARB) of
BBB National Programs has recommended that Verizon:

• Qualify its “fastest internet available” claim by disclosing clearly and conspicuously the source
  of the data supporting the claim;
• Discontinue claims that Fios provides superior streaming or buffering and that fiber is more
  weather resilient;
• Modify claims that Fios supports more devices to explain which consumers would see a
  consumer relevant benefit; and
• Discontinue unqualified claims (i) of superior reliability, (ii) that Fios provides superior
  performance, (iii) that fiber technology provides superior performance; and (iv) that fiber is
  better.

The advertising at issue, as well as other claims, had been challenged by Charter before BBB
National Programs’ National Advertising Division (NAD). Following NAD’s decision (Case No.
6395), Verizon appealed, and Charter cross-appealed, certain NAD findings and recommendations.

The panel determined that Verizon’s “fastest internet available” claim is true and that Verizon’s
evidence in support of the claim, PC Magazine data, is sufficiently robust to constitute a reasonable
basis for the claim. However, the panel recommended that Verizon clearly and conspicuously
disclose that PC Magazine is the source of the data supporting the claim, or disclose another
source it may opt to rely on in the future to support the claim. The panel noted, however, that this
source-of-data disclosure need not be incorporated in the body of the “fastest internet available”
claim and that Verizon need not specify in its disclosure that the PC Magazine data aggregates
speed tiers.

The panel found that the claims that Fios provides superior streaming or buffering, and that fiber
is more weather resilient, were not supported and recommended that they be discontinued. The
panel concluded that Verizon’s evidence showing that its ISP service is faster did not provide
proper support for seamless streaming or buffering superiority claims. Nor did Verizon’s evidence
provide a reasonable basis for asserting that Fios service provides a benefit compared to cable
service in terms of performance during bad-weather conditions.
Regarding the claim “with fiber you can connect more devices at once,” the panel concluded that because the claim does not likely apply across-the-board (i.e., it is likely true at some level of usage, but Verizon did not show that upload speeds deliver a meaningful benefit to the typical business), to avoid misleading consumers, Verizon should clarify under what conditions the benefit would be likely.

Further, the panel recommended that Verizon’s unqualified claims of superior reliability for its Fios service be discontinued because evidence regarding superior speed does not provide a sufficient basis of support for such claims. The panel similarly determined that Verizon’s superiority in speed does not by itself give it support for an overall superiority claim for Fios, and therefore, recommended discontinuation of unqualified claims that Fios and fiber technology provide superior performance.

Finally, the panel concluded that the claim “fiber is better,” unqualified, conveys a message to reasonable consumers that ISP services based on fiber technology are invariably superior to ISPs using cable technology. However, the evidence in the record did not support this message and the panel recommended that such unqualified claims be discontinued.

Verizon stated that it “will comply with the NARB’s decision.” Verizon further stated that it is “pleased that the NARB found that the claim that Verizon’s Fios service is the ‘fastest internet available’ is substantiated, and thanks the NARB for its careful review of this case.”

**Verizon Communications, Inc.**

**Verizon 5G Availability**

Case #6384 (June 2020)

NAD recommended that Verizon Communications, Inc. (Verizon) discontinue advertising claims that its 5G wireless service is widely available in cities across the country, as well as claims communicating that its 5G service is broadly and readily accessible in the cities where it has been launched. AT&T Services, Inc. (AT&T) challenged two Verizon television commercials, arguing that the advertisements falsely implied that Verizon currently offers broadly available, ultrafast 5G wireless service. Verizon argued that the challenged commercials convey that its new 5G technology is being built and is a work in progress. Verizon further contended that it uses iconic locations in American cities to communicate the limited message that Verizon’s 5G is present in those cities and “orally discloses limitations on coverage by only naming the cities were Verizon’s 5G is currently available.” However, NAD found that the commercials also conveyed the net impression that Verizon’s “ultrafast” 5G network is widely available in cities across the country and, where it has already been launched, is broadly and readily accessible to consumers. Also, NAD noted that not all of the cities are verbally (or otherwise) disclosed in the commercials. To the extent consumers are unable to recognize certain cities, NAD was concerned that this ambiguity further contributes to the blurred impression of Verizon 5G’s wide availability. Even if consumers recognized all of the cities, neither the language nor the overall context of the commercials plainly limit Verizon’s 5G performance claims to the depicted cities, let alone portions of those cities. To the extent Verizon wishes to promote the current availability and performance of its 5G network to consumers across the nation – including people who live in cities and towns across the country that may not receive Verizon 5G coverage for months, if not years – Verizon should ensure that its advertising clearly and conspicuously communicates to consumers the relevant, material limitations of its current network.

Verizon failed to provide evidence showing that its speed test results accurately characterize how Verizon’s 5G network will perform under normal consumer use, or a clear and conspicuous disclosure of the expected results. AT&T argued that when Verizon engineers conduct speed tests on their phones and show results of “almost 2 gigs” to consumers they imply that these speeds are typical. Verizon did not demonstrate that these results are normal or typical results for consumers. Without evidence showing that Verizon’s speed test results accurately characterize how Verizon’s 5G network will perform under normal consumer use, or a clear and conspicuous disclosure of the expected results, NAD recommended these claims be discontinued.

Verizon agreed to comply with NAD’s recommendations.
T-Mobile USA, Inc.

T-Mobile's Mobile Phone Service Plan
Case #6379 (June 2020)

NAD recommended that when T-Mobile USA, Inc. (T-Mobile) advertises its Essentials plan and its unlimited plan offerings in a context which equates the benefits of the plans, it disclose sufficient details of its deprioritization policies to inform consumers as to why and when Essentials plan customers will experience deprioritization. Charter Communications, Inc. (Charter) challenged pages from T-Mobile’s website that contain information about T-Mobile’s Essentials plan. The parties disputed whether advertising for T-Mobile Essentials plan as an “unlimited” data plan was misleading to consumers because of the extent to which Essentials customers experience slowed data speeds, as well as the sufficiency of T-Mobile’s disclosures of the material terms of the plan. T-Mobile’s deprioritization policies make it clear that Essentials plan customers are deprioritized compared to all other T-Mobile brand customers at all times but only see reduced speeds in those times and locations where T-Mobile’s network is congested. All T-Mobile customers who exceed 50 GB in usage are deprioritized. The possibility of deprioritization and slower data speeds when T-Mobile’s network was sufficiently congested is material information that might impact the plan choice made by T-Mobile’s customers. Thus, when T-Mobile touts its Essentials plan and its unlimited plan offerings in a context which equates the benefits of the plans, NAD recommended that T-Mobile clearly and conspicuously disclose sufficient details of its deprioritization policies to inform consumers as to why and when Essentials plan customers will experience deprioritization. Also, NAD recommended that its disclosures encompass limitations on all of its unlimited plans. Where T-Mobile makes no representations about its unlimited plans, no disclosure is necessary. NAD recommended that T-Mobile’s disclosures be modified to be clearer and more conspicuous such that consumers can notice, read and understand them. Effective disclosures, regardless of format, must be “clear and conspicuous” such that the disclosure is “displayed in a manner that is readily noticeable, readable and/or audible, and understandable to the audience to whom it is directed.” A disclosure in the “Four iPhone 11s” advertisement, which appeared in bold at the head of a long paragraph of text while other text also appears on screen for a few seconds along with a rate card, then disappears as the screen shows images of people in remote areas, whereupon it reappears for six seconds on the same rate card was sufficient. However, a disclosure that appeared for less than one second in white text on a pink background such that consumers are unlikely to notice the disclosure, let alone be able to read it, was not clear and conspicuous. NAD recommended that T-Mobile’s disclosures be modified to be clearer and more conspicuous such that consumers can notice, read and understand them. Disclosures on websites are more likely to be effective if consumers are able to view the claim and disclosure together on the same screen. The FTC has stated that advertisers should not assume that a consumer will scroll down a web page to read a disclosure. The T-Mobile Plans Page of the advertiser’s website is a good example of a page where an asterisk or similar notification to consumers is necessary. The claim “Unlimited talk, text & smartphone data on our network” appears at the top of each column’s list of a plan’s features. The relevant disclosure, however, appears in small print at the bottom of the page, where users must scroll down to read it, over the action button, “Get Pricing & Details.” Consumers are not alerted at the top of the web page to the fact that the triggering unlimited claim is qualified and would likely fail to notice—indeed, might skip—the disclosure. Also, NAD concluded that consumers would be unlikely to know that the phrase “Unlimited talk, text & smartphone data on our network” is clickable, and that clicking on it reveals a disclosure. NAD has stated that such a mouseover hyperlink is not a sufficient disclosure because “[i]t is an icon and is therefore a ‘subtle’ type of disclosure which does not convey the importance, nature and relevance of the disclosure.” Lastly, the disclosure on the T-Mobile Essentials Plan Page appears in small print after the “See all plans” action button. It appears in unbolded print at the beginning of a block of text. The disclosure concludes with bold text stating, “Click on each benefit for important details.” However, there is no indication in the main claim that the phrase “Unlimited talk, text & smartphone data on our network” is qualified or clickable.
NAD concluded that T-Mobile pricing claims required no further disclosure given that the main claim expressly states that the touted price is the price per line for a specified number of lines. Charter argued that T-Mobile's advertising for four lines implied the unsupported message that consumers can purchase fewer than four lines at the same or similar prices available to customers who purchase four lines. Consumers understand an offer of “four lines” and know that means, in the context of wireless services, that the advertised price is only available when purchasing four lines of service. Consumers are not likely to be misled that other purchase options of three lines, two lines, and one line are offered at the same price. The qualification, “for four lines,” highlights that the advertised price requires the purchase of four lines. If the advertised price did not require the purchase of four lines the advertising would simply advertise the price per line. For the foregoing reasons NAD concluded that T-Mobile’s pricing claims were not misleading as to the price for one, two or three lines of service.

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

Verizon Communications, Inc.

Verizon 5G Stadium Access
Case #6364 (May 2020) // NARB #269 (August 2020)

Verizon Communications, Inc. (Verizon) was unable to support the claim that it is delivering “the most powerful 5G experience for America,” according to NAD. AT&T Services, Inc. (AT&T) challenged two of Verizon’s commercials touting its 5G wireless network in sports stadiums. The commercials stated that “Verizon is building the most powerful 5G experience for America.” In the context presented, NAD found that the commercials conveyed the message that Verizon is delivering “the most powerful 5G experience for America.” Verizon contended that its spectrum holdings substantiate the challenged claim, arguing that because its network has more mmWave spectrum than its competitors, it has shown that it has more capacity. However, the ownership of spectrum, by itself, does not confer a performance advantage because a carrier must deploy the spectrum, and current equipment limits the amount of spectrum per radio. Also, the commercials went beyond touting Verizon’s spectrum portfolio and reasonably communicates a message about the consumer experience of using 5G mobile service. Both commercials also convey a message about usage: large crowds sharing the experience via mobile service. It was unclear whether Verizon’s spectrum holdings combined with data on 5G network speeds would be sufficient to substantiate Verizon’s claim that it provides “the most powerful 5G experience.” The messages reasonably conveyed by the “most powerful network” extend beyond download speed. NAD concluded that the claim that “Verizon is building the most powerful 5G experience for America”, in the context presented, conveyed the message that Verizon is delivering “the most powerful 5G experience for America.” NAD further concluded that the evidence in the record was insufficient to support Verizon’s present tense “most powerful network” claim. Accordingly, NAD recommended that Verizon discontinue the claim that Verizon is delivering “the most powerful 5G experience for America.”

NAD recommended that Verizon modify challenged television commercials for its 5G service to ensure that disclosure regarding 5G coverage in the touted sports venues is clear and conspicuous. AT&T challenged two of Verizon’s commercials touting its 5G wireless network in sports stadiums. The commercials stated that “Verizon is building the most powerful 5G experience for America.” NAD concluded that both the express language of the commercials as well as the images reasonably conveyed the implied message that Verizon customers will experience the “massive capacity of 5G with ultra-wideband so more streaming, screaming, posting fans can experience 5G all at once” in stadiums and arenas with 5G. Both commercials contain the disclosure that Verizon’s 5G service will be available in “parts of” the sports venues. Verizon provided a study of 5G coverage in an empty stadium, one of the thirteen NFL stadiums where Verizon has deployed 5G. However, the study only evaluated a single stadium and did not evaluate coverage consumers might experience in a stadium full of fans. Also, Verizon’s own press release acknowledges coverage limitations on their 5G network in stadium. Although Verizon argued that its disclosures properly qualify its claim so that consumers will reasonably understand that 5G will be available in parts of the sports venues, the disclosures were not conspicuous. Generally, disclosures which are onscreen for a short time together with distracting visuals have been found ineffective. Thus, NAD recommended that Verizon modify the challenged advertising to ensure that the disclosures regarding 5G coverage in the touted sports venues are clear and conspicuous.
NAD recommended that Verizon modify television commercials for its 5G wireless service to clearly and conspicuously disclose the availability of Verizon's 5G service outside of the touted sports venues— for example that Verizon's 5G service is “available only in parts of select cities.” AT&T challenged two of Verizon's commercials touting its 5G wireless network in sports stadiums. Verizon argued that the challenged advertising in “5G Built Right: Madison Square Garden” and other challenged advertising describes the 5G service as coming “soon” and does not convey the message that Verizon’s 5G service is widely available. NAD disagreed, finding that the commercials conveyed a message about coverage outside of stadiums. For disclosures regarding service availability, when that service is more unavailable than available, NAD has repeatedly recommended that the disclosure be clear and conspicuous, e.g., made 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. Although the two advertisements contained disclosures, only one of them, “NFL: 5G Built Right,” contains a disclosure concerning the availability of Verizon’s 5G service outside of sports venues. Also, the disclosures appear at the busiest moment of each commercial, with a sport event in progress, in small white text on a rapidly changing background, for a brief time. Thus, NAD recommended that Verizon modify the challenged advertising to include a clear and conspicuous disclosure.

Verizon appealed NAD’s contention that the claim “Verizon is building the most powerful 5G experience for America,” in the context of the Stadium Access commercial, conveys a claim that Verizon is currently “delivering the most powerful 5G experience for America.”

NARB — (#269 — August 2020) A panel of the National Advertising Review Board (NARB) recommended that Verizon Communications, Inc. (“Verizon”) discontinue the claim that “Verizon is building the most powerful 5G experience for America.” This claim appeared in two television commercials -- “NFL: 5G Built Right,” which focused on Verizon’s installing its 5G network in the home of the New England Patriots, Gillette Stadium and in “5G Built Right: Madison Square Garden,” which highlights Verizon installing a 5G network in Madison Square Garden in New York City. The two commercials were challenged by AT&T.

Verizon appealed NAD's finding (Case No. 6364) that the claim, “Verizon is building the most powerful 5G experience for America,” in the context of the two commercials, delivered a “present tense message” (i.e., that 5G is available now) as well as a “future” communication (that 5G will be available at later date). According to Verizon, the “present tense message” is limited to the stadiums shown in the commercials and makes clear Verizon 5G service is not widely available at present. Verizon also appealed NAD’s interpretation of “the most powerful 5G experience” in the challenged claim to be an unqualified superiority claim (i.e., referring to consumer relevant metrics, including speed, coverage and reliability, as well as metrics related to voice and text).

The NARB panel concluded that the two commercials did not communicate a “present tense” network message to reasonable consumers, i.e. that the commercials do not communicate that a Verizon 5G network is generally available in the United States but, rather, that Verizon is committed to building a first-rate 5G network.

The NARB panel also determined that the evidence in the record does not clearly demonstrate what consumers understand “powerful” to mean in “the most powerful 5G experience” in the contexts shown. The panel found that the claim “most powerful” conveys a broad superiority message and that the advertiser would need to demonstrate consumer understanding of the term “powerful” in order to make the claim.

The panel therefore concluded that absent this evidence of consumer understanding of the term “powerful,” Verizon did not have proper support for the claim “Verizon is building the most powerful 5G experience for America” and recommended that it be discontinued. The panel did note, however, that the claim would have been supported had it been non-comparative because the evidence in the record demonstrated that Verizon's future 5G network when generally available will provide the essential network metrics, whether one accepts NAD’s interpretation or Verizon's interpretation of “powerful.”

Verizon agreed to comply with NARB’s recommendations.
T-Mobile USA, Inc.

TVision Television Service
Case #6336 (January 2020)

NAD recommended that T-Mobile USA, Inc. (T-Mobile) discontinue a claim that that cable TV requires “a rat’s nest of devices and wires” and the implied claim that cable service providers require consumers to have numerous wires. Charter Communications, Inc. (Charter) challenged T-Mobile’s claims for its TVision television service in the TVision website and a press release (including a video advertisement that was part of the press release). TVision is being marketed as a replacement for cable at a price point of $90 per month, a premium price as compared to competing services or streaming services such as Netflix or Hulu. The video advertisement describes the wiring in and around the cable television set as “a rat’s nest of devices and wires.” However, T-Mobile’s service requires the same number of wires as cable TV service. NAD also rejected T-Mobile’s argument that the claim was so humorous and exaggerated such that consumers would not take the claim literally because it was plausible a consumer would believe TVision required fewer wires. Finally, the NAD recommended that T-Mobile discontinue the implied claim that its service is wireless or use a clear and conspicuous disclosure that three wires are required.

NAD recommended that T-Mobile USA, Inc. (T-Mobile) discontinue the claim that all cable companies offer “outdated technology” as evidenced by the “rat’s nest of devices” and “crappy cable interface” claims. Charter Communications, Inc. (Charter) challenged T-Mobile’s claim that the “crappy cable interface” leaves customers “bored out of their minds trying to find something good.” The on-screen menu of channels used by Charter is an industry-standard menu and Charter offers an app that provides additional capabilities to users on their cell phones. Regardless of whether an “industry standard interface” supplemented by an app can be called “crappy,” T-Mobile provided no information about the interfaces of other cable companies when it denigrates all “cable” interfaces. Thus, the denigrating claim is not truthful, accurate, and narrowly drawn and, as a result, NAD recommended that T-Mobile discontinue the claim that all cable companies offer a “crappy user interface.” However, the NAD rejected Charter’s argument that the “crappy user interface” claim and the on-screen depictions of cable content conveyed the message that cable content is inferior to the content offered by TVision.

T-Mobile did not support the claim that with its TVision television service consumers could “[w]atch whatever you want, whenever you want.” In the portion of the video advertisement where the claim is made, a disclosure states, “mobile device use requires app to be released soon.” Thus, the use depicted is not currently available to any consumer and contradicts the main claim that consumers can watch “anywhere in your home.” Nothing prevents T-Mobile from accurately touting the viewing of TVision on mobile devices once it has developed its app that will enable the viewing of content on mobile devices. Because the express claim was not substantiated, NAD did not review the challenged implied claim that T-Mobile’s TVision allows consumers to watch whatever they want, whenever they want, whereas Charter’s and all other cable providers’ cable services do not.

T-Mobile could not claim that it had “no hidden fees” as long as it charges fees that are not included in the advertised price, and NAD recommended that it discontinue implied comparative claims that cable service providers engage in sneaky pricing tactics. In the challenged video advertisement, the T-Mobile representative asks why customers put up with “sneaky pricing.” In the challenged press release, T-Mobile touts “No Bill Creep or Exploding Pricing.” The challenged advertising tells consumers that TVision is for people who “hate their cable company” but “love TV” and reasonably conveys the message that TVision is different, specifically with respect to fees and pricing. Comparing T-Mobile’s pricing practices with that of the cable industry requires support both about the practices of the cable industry and how T-Mobile is different. In light of NAD’s recommendation that T-Mobile discontinue its “no hidden fees” claim, and its other recommendations related to price disclosures, NAD concluded that the implied comparative message about TVision’s pricing as compared to cable was broader than the support provided in the evidence in the record. For this reason, NAD recommended that T-Mobile discontinue the implied comparative claims that Charter and all other cable service providers engage in sneaky pricing tactics.

NAD cautioned T-Mobile that should it again claim that consumers using its TVision can “Connect and watch in any room”, it must clearly and conspicuously disclose both that consumers would need Lite Boxes
to do so and disclose the pricing of the Lite Boxes. Additionally, NAD recommended that T-Mobile disclose the home Internet service requirement, clearly and conspicuously.

NAD recommended that T-Mobile discontinue express and implied claims that cable providers have “abysmal” and “crappy” customer service. T-Mobile submitted the American Consumer Satisfaction Index (ACSI) Telecommunications Report 2018, the ACSI Telecommunications Report 2018-2019, and a J.D Power report on telecommunications provider satisfaction in support of the claims. Among subscription TV providers, no cable company received a satisfaction rating higher than 62 and Charter received a rating of 58. Without reaching the issue of whether the evidence provided relating to consumer satisfaction with cable providers or their call centers rose to the level of “abysmal,” the NAD found there was no evidence in the record about TVision’s customer service. TVision is a new service and does not have a record of customer service upon which it can rely to demonstrate that its customers are more satisfied with TVision’s customer service and call centers than cable customers are. The NAD also noted that it was not clear that consumers will be satisfied with the customer service of TVision to the same extent that they are satisfied with T-Mobile’s wireless service.

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

Verizon Communications, Inc.

Verizon Wireless (Reopened “First to 5G”)

Case #6329 (December 2019)

NAD recommended that Verizon Communications, Inc. (Verizon) modify four video advertising to clearly and conspicuously disclose that its 5G wireless service is more unavailable than available. This is the first case reopened by NAD under new Rule 3.9. In the previous decision, NAD found that the challenged advertising reasonably conveyed the message that Verizon had already deployed a mobile 5G network, and that Verizon was the first to do so. In the reopened case, Verizon argued that the advertising was now substantiated by Verizon’s rollout of 5G mobile service. Verizon provided evidence that it launched its 5G service on April 3, 2019 at 11 AM EST, which was midnight in South Korea, and that it was the first to offer 5G service accessible to its mobile customers on 5G enabled smart phones. NAD determined that Verizon had substantiated its “First to 5G” claim. However, it was undisputed that Verizon’s 5G service is more unavailable than available even in markets where it is available. It is available in certain neighborhoods of some cities—it is not even available in the entirety of each city where it is available. Furthermore, the limited local availability of 5G is counterintuitive to consumers who are accustomed to the features and foibles of previous generations of wireless service. Thus, NAD recommended that Verizon modify its advertising to disclose that its 5G service is more unavailable than available. The disclosure should be clear and conspicuous, e.g., made 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. Nothing prevents Verizon from touting that it has achieved the important milestone of deploying the first mobile wireless 5G service network provided, however, that to the extent its advertising reasonably conveys a message about availability, the advertising discloses the limited availability of its 5G mobile network.

Verizon failed to support the implied message that its 5G wireless service can be used on a bus. Nothing prevents Verizon from accurately touting the current performance of its network, which should improve as the buildout continues and as 5G technology improves. The commercial shows students using their mobile devices to play games while riding a school bus as the voiceover says, “play console-quality multiplayer games on the go.” The evidence suggests that Verizon’s 5G service drops out suddenly (at the edge of a 5G cell it “just drops”) and there was no evidence that a passenger on a school bus would retain a 5G connection for a sufficient amount of time to complete a “console-quality multiplayer game on the go.” Although Verizon’s 5G service will improve steadily through increased network deployments and better technology, the message was not supported. Nothing prevents Verizon from accurately touting the current performance of its network, which should improve as the buildout continues and as 5G technology improves.
NAD recommended that, to the extent Verizon charges a fee for 5G service in the future, it clearly and conspicuously disclose this material term in its advertising for 5G. At the time this challenge was filed, Verizon’s 5G service was only available to Verizon customers who subscribed to the service for an additional $10 monthly fee. During the pendency of this decision, Verizon changed its pricing for 5G. Verizon’s 5G customers currently receive both a $10 per month charge on their bill and a $10 per month credit, making 5G temporarily free to Verizon customers. Nevertheless, Verizon did not commit to make this a permanent change to its pricing. As a result, NAD recommended that, to the extent Verizon charges a fee for 5G service in the future, it clearly and conspicuously disclose this material term in its advertising for 5G.

Verizon agreed to comply with NAD’s recommendations.

AT&T Services, Inc.

AT&T’s Wireless Network (“Best Wireless Network”)
Case #6323 (November 2019); NARB #264 (April 2020)

AT&T Services, Inc. (AT&T) provided sufficient support for the qualified claim that it had the “best wireless network according to America’s biggest test.” To support the claim, AT&T submitted testing by Global Wireless Solutions (GWS). The survey for the 2018 GWS report was conducted in the summer of 2018 and covered a cross-section of 5,000 Americans who use smartphones. Its “best network” rating reflects which network performs best on the metrics that matter most to consumers, based upon the results of its consumer survey. NAD concluded that the testing provided a reasonable basis for AT&T’s qualified “best network” claim. However, for advertising in which AT&T used a disclosure to qualify its “best network” claim, NAD recommended that AT&T disclose that the claim is limited to a specific test, in immediate proximity to its claim, and sufficiently prominently that the consumer will be able to notice, read, and understand the disclosure when they read the claim.

NAD held that AT&T’s claim that a test conducted by Global Wireless Solutions (GWS) test is America’s biggest test was supported. GWS collects data from 501 markets across the United States, Puerto Rico and the US Virgin Islands, covering nearly 1 million miles and 94% of the population. GWS collects 8 million data points. Although the record lacks some details concerning the Nielsen testing, GWS does cover substantially more Cellular Market Areas than other survey takers, and that served as a reasonable basis for AT&T’s “America’s biggest test” claim. However, NAD recommended that AT&T make its disclosure, “excludes crowdsourced studies,” clear and conspicuous—and sufficiently prominent that the consumer will be able to notice, read, and understand the disclosure when they read the claim.

AT&T’s commercial with the tag line “just O.K. is not O.K.” did not falsely denigrate competitors and were supported. A series of challenged commercials include the claim, “just okay is not okay” following a vignette in which a trusted person (such as a doctor, tattoo artist, or interpreter) or object (such as a climbing rope) is portrayed as humorously failing minimal expectations. NAD concluded that, in context, the “just okay is not okay” claim and vignette reinforce AT&T’s qualified superiority claim, which NAD found supported. Without a depiction or description of poor service on competing wireless networks, NAD concluded that the “just O.K. is not O.K.” claim and related vignettes do not falsely denigrate competitors but highlight its claim that AT&T “is America’s best wireless network according to America’s biggest test,” a claim NAD determined to be supported.

NAD recommended that AT&T discontinue advertising that it now has “5G Evolution, The First Step to 5G.” There was no dispute that the portion of AT&T’s network that it calls “5G Evolution” is a 4G network. Instead, AT&T argues that its claim “5G Evolution, The First Step to 5G” communicates a message about its network upgrades that will enable 5G. The claim “5G Evolution, The First Step to 5G,” NAD concluded, reasonably conveys a misleading message. According to the NAD, the claim referred to a level of technology, 5G, which AT&T’s “5G Evolution, The First Step to 5G,” service does not deliver. Even if consumers take away a qualified message, the claim reasonably conveys the message that AT&T delivers next generation service, more than 4G LTE service, a message that was not supported by the evidence in the record. Also, even if reasonable consumers understand that “the first step to 5G” is 5G service, or a service that is beyond 4G LTE, consumers could still reasonably take away the message that beginning 5G
technology is delivered. Nothing prevents AT&T from describing the steps it has taken to prepare its 4G network for the rollout of 5G.

AT&T appealed NAD’s recommendations regarding AT&T’s “5G Evolution” and “5G Evolution, The First Step to 5G” claims.

NARB — (#264 — April 2020) A panel of the National Advertising Review Board (NARB) has recommended that AT&T discontinue its “5G Evolution” and “5G Evolution, The First Step to 5G” claims. The advertising at issue had been challenged by T-Mobile before NAD. AT&T appealed NAD’s recommendation that these two claims be discontinued.

Agreeing with NAD’s findings and recommendations, the NARB panel determined that both claims will mislead reasonable consumers into believing that AT&T is offering a 5G network and recommended that the claims be discontinued. At NAD and on appeal, it was not disputed that the AT&T network is not a 5G network. The NARB Panel agreed with NAD’s analysis and concluded that the term “Evolution” is not likely to alert consumers to the fact that the service is not 5G. The Panel noted that the current prevalent technology in wireless is 4G LTE, and LTE stands for “evolution.” Thus, consumers may well interpret “Evolution” in the challenged claims as signifying that AT&T’s technology has already evolved into 5G.

Further, the Panel agreed with NAD’s conclusion that the addition of “The First Step in 5G” does not cure the concern that consumers could reasonably take away the message that beginning 5G technology is delivered. The Panel noted that a reasonable consumer could conclude that the reference to “The First Step to 5G” was the advertiser’s way of promoting a 5G network, while promising an even more robust 5G network at a later time, especially since the slogan is being used in conjunction with “5G Evolution.”

AT&T agreed to comply with NARB’s recommendations.

NFL Enterprises LLC

NFL Network
Case #6309 (November 2019)

NAD concluded that the NFL Enterprises LLC (NFL) provided a reasonable basis for its express claims that AT&T “discontinued” or “dropped” the NFL Network from its DIRECTV NOW and U-Verse platforms and that the inability of AT&T’s viewers to watch the NFL Network on these platforms came about “as a result of AT&T’s decision.” The NFL, through an integrated marketing campaign of emails, a website, and a television commercial, stated that AT&T was solely at fault for discontinuing the NFL Network on its platforms. AT&T argued that the carriage contracts for the NFL Network expired on their own terms and, therefore, it had no right to carry the NFL Network on its platforms. AT&T asserted that the NFL Network had refused to renewed the agreements with the NFL. There was no evidence in the record that the NFL Network had refused to renew the agreement. Rather, the NFL made an overture for continued carriage beyond April 16, 2019 but was rejected by AT&T. NAD concluded that the relevant target population—NFL viewers on the challenger’s DIRECTV NOW and U-Verse platforms—are, at the very least, aware that industry practices dictate that programming such as the NFL Network is contingent upon a carriage contract, that carriage contract disputes are commonplace and that, sometimes these disputes result in a loss of programming (either temporarily or permanently).

NFL did not convey the messages that (1) the NFL “had no involvement in the circumstances” that led to NFL Network’s discontinuance on AT&T’s platforms; (2) “AT&T could easily resume carrying NFL Network without further discussions with the NFL”; or (3) AT&T is at fault for its customers’ inability to view NFL Network on the platforms (in essence a restatement of the alleged implied claim that it was AT&T that unilaterally decided to discontinue carrying the relevant platforms). Also, the NFL’s claims did not suggest that AT&T is in some way a bad actor. At a minimum, consumers are cognizant of the fact that the ability to view a program such as the NFL Network is dependent upon a carriage contract between the content provider and the platform and, further, are keenly aware that programming distributors and programmers regularly get into disputes over carriage agreements. Indeed, AT&T acknowledges as much, and the
advertiser noted at least three such disputes involving AT&T of which its subscribers would no doubt have been aware. Whether or not consumers/viewers understand the intricacies of these carriage contracts, the underlying negotiation process, terms, proposals, etc. is irrelevant for purposes of this discussion. They do understand the basic concept that a contract must be agreed upon between two parties in order for a programmer to air a provider’s content. For these reasons, NAD determined that the challenged implied claims are not reasonably conveyed by the challenged advertisements/communications by the NFL.

The NFL supports the self-regulatory process and appreciates the prompt manner in which NAD reached its decision and its thoughtful evaluation of the evidence supporting the NFL’s advertising claims.

**Cox Communications, Inc.**

**Cable Television Service**

Case #6308 (November 2019)

A commercial for Cox Communications, Inc.’s (Cox’s) cable television service that was challenged by AT&T Services, Inc. (AT&T) did not reasonably convey that “DIRECTV does not work in bad weather and is highly unreliable,” NAD concluded. The commercial depicts two side-by-side living room sets in a large television studio—one labeled “Cox” and one labeled “DIRECTV.” A spokesperson with unblended makeup stands in front and states, “With Cox you can watch all your movies and shows whatever the weather.” Lightning flashes and thunder rumbles in the background as he continues, “With DIRECTV, heavy rain or snow can affect your signal.” The spokesperson continues, “It’s clear that Cox is the better choice, just like it’s clear that the make-up artist is still learning the ropes.” The commercial ends with the statement “Cox is reliable in any weather.” NAD determined that the commercial, as modified by Cox during the pendency of the action, did not convey the message that DIRECTV is “highly unreliable.” The express language in the commercial was appropriately qualified, stating that “heavy rain or snow can affect your signal (emphasis added).” There was not additional language or visual context that undercuts that qualification. Also, NAD has previously found that it is not misleading to depict service outages or consumer frustration if “rain fade” interrupts their television viewing.

NAD recommended that Cox permanently discontinue the claim that “Unlike DIRECTV, Cox works in any weather” because it conveyed the unsupported message that in contrast to cable, DIRECTV does not work in inclement weather. Cox provided a survey of DIRECTV subscribers to elicit the relevance and impact of weather-related outages on their television viewing in support of the claim. The survey provided a reasonable basis to support the messages reasonably conveyed by the challenged commercial, as modified. However, it did not reliably show that DIRECTV weather-related outages are frequent, that the service does not work in the rain, or that it is “highly unreliable.” Accordingly, the survey does not support the messages reasonably conveyed by the original closing statement of the commercial, “Unlike DIRECTV, Cox works in any weather.” NAD recommended that Cox permanently discontinue the use of that claim.

Cox agreed to comply with NAD’s recommendation.

**Charter Communications, Inc. d/b/a Spectrum**

**Spectrum Mobile**

Case #6304 (August 2019)

Cox Communications, Inc. (Cox) agreed to modify its commercials for its Internet service by removing the phrase “in 8 seconds” from the phrase “I just downloaded 10 HD movies.”

Cox failed to support advertising claims for its Internet service speeds, according to NAD. AT&T Services, Inc. challenged claims made by Cox in two video advertisements (one for its 1 Gbps internet service and another for its 300 Mbps Internet service) that AT&T argued reasonably conveyed the message that AT&T Internet does not deliver sufficient speeds to stream or download movies. Although Cox maintained that AT&T offers speed tiers that are too slow to reliably stream movies, Cox provided no data concerning the prevalence of areas where AT&T’s fastest speed is insufficient for streaming. AT&T’s most widely
available speed tiers, such as 50 Mbps, 25 Mbps, and 18 Mbps are all speed tiers at which AT&T customers can stream and download movies. Also, the commercial did not make clear that the AT&T customer is attempting to both download and stream at the same time. As a result, NAD recommended that the challenged claim be discontinued or modified to avoid conveying the misleading message that AT&T Internet does not provide sufficient speeds to stream movies.

NAD recommended that Cox modify its price claim to clearly and conspicuously disclose, in close proximity to the display of its $19.99 introductory price, that the advertised benefits of Cox’s 1 Gbps or 300 Mbps service are not included in the displayed price. Each advertisement at issue concludes with a price, $19.99 per month, for up to 10 Mbps service. It was undisputed that Cox’s “up to 10 Mbps” service does not deliver the comparative performance benefits touted in the advertisements. Cox voluntarily modified the commercials, updating the voiceover to state “Get Cox internet starting at $19.99 a month for up to 10 megs” and increased the size of its on-screen disclosure which states, “up to 10 Mbps incl.” but the on-screen disclosure remained small. NAD noted that without a clear and conspicuous disclosure that the advertised benefits of high speed Internet are not available at an introductory price, the price claim here could reasonably convey a misleading message about material features of the Cox service available for $19.99.

NAD recommended that Cox discontinue the claim “Cox offers Gig speed internet everywhere” or modify it to reflect the availability of its 1 Gbps speed tier. Cox presented confidential data, which NAD can only describe elliptically, that showed that the availability of its 1 Gbps service in the urban markets where the advertising ran, in areas that are served by both AT&T and Cox, and where AT&T does not offer fiber service, is very high. Cox evidence did not show that the advertised services are available everywhere. Further, Cox’s disclosure, “Gig availability varies by home” by itself contradicts the “available everywhere” claim, and a disclosure cannot be used to contradict the main claim. Because Cox claims that it offers “Gig speed internet everywhere,” but the evidence supplied supports a more limited claim. NAD recommended that Cox discontinue this claim or modify it to reflect the availability of its 1 Gbps speed tier. Nothing prevents Cox from touting the wide availability of its 1 Gbps speed tier where Cox service is available as compared to the more limited availability of AT&T’s 1 Gbps speed tier where AT&T service is available.

Cox agreed to comply with NAD’s recommendations.

**Charter Communications, Inc. d/b/a Spectrum**

**Spectrum Mobile**

Case #6301 (August 2019) // NARB #261 (January 2020)

NAD recommended that Charter Communications, Inc. d/b/a Spectrum (Charter) modify advertising for its Spectrum Mobile service to avoid conveying the unsupported message regarding savings consumers could expect. T-Mobile USA, Inc. (T-Mobile) challenged Spectrum’s television and YouTube commercials, as well as claims made on its website, for its Spectrum Mobile product. As to claims that switching to Spectrum Mobile will result in annual savings of “up to $300” or “up to 40%,” or that Spectrum Mobile provides the “Best Value,” NAD recommended (1) that Spectrum Mobile's savings claims be modified to clearly and conspicuously disclose that consumers must obtain Spectrum Internet in order to purchase Spectrum Mobile service; (2) limit the claims to the support provided (i.e., that consumers with one line of service can achieve the claimed savings); and (3) while NAD concluded that the other ancillary benefits that T-Mobile offers its consumers, such as free Netflix subscription, T-Mobile Tuesdays, or an opportunity to obtain a free MLB.TV subscription, are not material differences requiring disclosure.

NAD recommended that Charter disclose, clearly and conspicuously, Spectrum Mobile's data usage limits and discontinue the claim that Spectrum Mobile's unlimited plans have “no data usage limits,” and disclose that there are differences in data usage limitations between Spectrum Mobile and competing providers. Based on the advertising, consumers could reasonably believe that the unlimited data plan provides unlimited access to high-speed data, and not service slowed to speeds of 1 Mbps download and 512 Kbps upload if the data cap is reached. Charter argued that it did not need to disclose the data cap because less than 13% of its users reach the cap each month. However, Spectrum did not show that a de minimis number of consumers reach the cap, such that the distinctive features of Spectrum Mobile's data cap need not be disclosed.
NAD recommended that Charter modify a television commercial to specify the wireless service providers it referenced in comparing pricing and must avoid implying that T-Mobile charges taxes and fees. The commercial at issue stated that Spectrum Mobile does not charge taxes and fees and stated that unnamed providers do charge such fees. Consumers viewing the commercial could reasonably take away the message that the comparison between wireless providers was to all major competitors including T-Mobile. The majority of cellular carriers charge taxes and fees, but T-Mobile does not. Thus, NAD found the commercial was deceptive. Also, NAD rejected Charter’s argument that the claim was humorous and vague because taxes and fees are an important consideration for consumers, and claims regarding their elimination have long been the subject of challenges.

NAD recommended that Charter discontinue the implied claim that T-Mobile does not offer deals for consumers purchasing two or more lines of service. NAD reviewed the challenged claims in two separate commercials, keeping in mind that Charter had discontinued the advertisements but not the claims. The commercials stated that “T-Mobile says they have great deals, but to get those deals you have to sign up for four lines” and “If you only want one or two lines, there’s no deal!” T-Mobile charges less than $70 per line for consumers purchasing two or three lines, but the advertising conveyed the message that anyone paying for less than four lines pays $70 per line to T-Mobile. Because T-Mobile offers a deal for consumers purchasing two or three lines, the claim was not supported. Nothing prevents Charter from making a comparison that is accurate and not misleading.

NAD recommended that Charter discontinue a commercial stating “confusing deals with catches are evil. Spectrum Mobile doesn’t do that” followed by “T-Mobile bad. Charter good.” A statement that a feature of a competitor’s service is “evil” can convey a truthful message. Here, the claim conveyed the message that T-Mobile offers confusing deals with catches that is unsupported by the case record and should be discontinued. Nothing prevents Charter from conveying a narrowly drawn claim that is accurate and not misleading.

Charter agreed to modify its “Best Network” and “Most Reliable Network” claims to be consistent with NAD precedent. The modified claims will be treated, for compliance purposes, as if NAD had recommended the modifications and the advertiser had agreed to comply.

NARB — (#261 — January 2020) A panel of the National Advertising Review Board (NARB) has recommended that Spectrum modify comparative savings claims to clearly and conspicuously disclose limitations on the service. NARB is the appellate unit of the advertising industry’s system of self-regulation. The advertising at issue had been challenged by T-Mobile before NAD and Spectrum appealed certain recommendations made by NAD.

With regard to claims that switching to Spectrum Mobile will result in annual savings of “up to $300” or “up to 40%,” or that Spectrum Mobile provides the “Best Value,” agreeing with NAD’s findings and recommendations in the underlying decision, the NARB panel recommended that the claims should be modified to clearly and conspicuously disclose that there are differences in data usage limitations between Spectrum Mobile and competing providers, and that the savings are only available to consumers subscribing to one line of service.

Further, in the underlying decision, NAD determined that the challenged “Monsters Diner” and “Thesaurus” commercials convey the message that anyone paying for less than four lines pays $70 per line to T-Mobile. However, because T-Mobile offers a deal for consumers purchasing two or three lines, NAD found the four-line claim not supported. The NARB panel agreed with NAD’s analysis on this issue. Further, with regard to Spectrum’s “Monsters Diner” commercial, NAD concluded that the claim “confusing deals with catches are evil. Spectrum Mobile doesn’t do that,” followed by the tagline “T-Mobile bad. Spectrum good” conveys the unsupported message that T-Mobile offers confusing deals with catches, and NAD recommended that it be discontinued. As to the “confusing” reference, the panel agreed with NAD’s conclusion that Charter has not shown that T-Mobile’s offers are “confusing,” and therefore in this context should not characterize T-Mobile’s offers as either confusing or “evil.”

Charter stated that it will comply with NAD’s recommendations. Charter added that it “is disappointed with NAD’s and, now, NARB’s decision,” contending that it “did not have the opportunity during the NAD
Verizon Wireless, Inc.

Verizon Wireless (“Why I Chose Verizon”)  
Case #6299 (July 2019); NARB #260 (December 2019)

Verizon Wireless, Inc. (Verizon) did not convey a comparative message about specific claimed benefits of its wireless service in four challenged testimonial style television commercials. Each commercial begins with “Why I Chose Verizon” and ends with the message that Verizon is the nation’s most reliable network (or the best network). According to AT&T, these statements combine to reasonably convey the message that the challenged claims in the testimonials are comparative. Although each commercial begins with “Why I Chose Verizon” and closes with the claim that Verizon has the best network or the most reliable network, the focus of the commercial is not comparative. Each person’s story is the focus of the commercial. The “best network” or “most reliable network” claims appear fleetingly at the end of the commercial like the claim recently evaluated by the NARB. Each concluding message is not prominent and it is not a call to action for a specific service. It appears at the end of a commercial broadly touting Verizon’s service. NAD concluded that the claim featured briefly at the end of each commercial does not convey a comparative message about the specific claimed benefits of Verizon’s service made in each of the testimonials and, as a result, did not recommend further modifications.

NAD also evaluated separate challenges to each individual commercial.

The “Kellene” Commercial implied that Verizon offers imperfect but valuable service on the subway. It is common knowledge that subway coverage is improving, and mass transit systems tend to offer cellular service or Wi-Fi or both. The challenged claim is not a claim of perfect performance. It is a claim of sporadic or acceptable service in subways, a claim NAD found substantiated.

The “María” Commercial implied that Verizon offers acceptable service for video calls from the United States to Mexico. No phone call or video call is depicted. Thus, there is no performance message and did not reasonably convey the message that Verizon offers superior service compared to all other United States-based wireless carriers for completing video calls from the United States to Mexico. There are no comparative statements about other providers nor is there a performance message communicated by Maria’s obvious pleasure with her ability to keep in touch with her family in Mexico. The endorsement in the commercial communicates a message of acceptable performance rather than perfect performance and that consumers of Verizon can stay in contact with their family members who reside in Mexico, both truthful messages. As a result, NAD concluded that the commercial was not misleading.

The “Ned” Commercial conveyed the message that a Verizon user fell in a very remote area and that the phone saved his life. Verizon explained that the story actually happened to a customer near Atlanta, and submitted evidence demonstrating that it provides reliable coverage in Atlanta. However, the commercial conveyed the message that he fell down a ravine in a remote area. Because Verizon submitted no evidence that it has coverage in all remote areas, including the “middle of the woods,” and could therefore be “counted on” to save your life in an emergency, NAD recommended that Verizon discontinue the “Ned” commercial or modify it to more closely reflect the actual experience of Ned, for example, to better describe Ned’s fall from his tree stand on his property near Atlanta, and avoid conveying the unintended message that Verizon has coverage in all remote areas.

The “Jarrett” commercial begins with Jarrett explaining, “It’s really cool to be able to take a photo, take a video and be immediately able to post it on my social media” followed by, “I just love being the friend with service.” This statement reasonably conveys the message that Jarrett’s friends do not have service and thus that Verizon has superior capacity at concert venues compared to all other major networks. Verizon did not submit data concerning its competitors’ performance at concert venues. Accordingly, the comparative performance claim was not substantiated. Verizon further submitted no data concerning its performance at music events. Thus, NAD recommended that Verizon discontinue the “Jarrett” commercial or modify it to avoid conveying an unsupported comparative performance message related to Verizon’s network performance at concert venues.
AT&T, the challenger, appealed the NAD finding that the claims communicated by the Kellene commercial were supported. Conversely, Verizon, the advertiser, appealed from NAD’s recommendation to withdraw or revise Ned (the advertiser otherwise agreed to comply with NAD’s recommendations).

NARB — (#260 — January 2020) A panel of the National Advertising Review Board (NARB) has recommended that Verizon discontinue or modify two commercials featuring a “paid real customer story,” in which a customer describes an aspect of his or her Verizon Wireless service. NARB is the appellate unit of the advertising industry’s system of self-regulation. The advertising at issue had been challenged by AT&T before NAD. AT&T appealed NAD’s finding that the claims communicated by Verizon’s “Kellene” commercial (15-second version) were supported. Verizon then exercised its right under the applicable rules of procedure to file a cross-appeal with regard to NAD’s recommendations to discontinue or modify the “Ned” commercial.

In the “Kellene” commercial a dancer describes her experience with the Verizon service on a “subway,” and demonstrates how she rehearsed a dance routine while “streaming” a video on the way to an audition. In the underlying decision, NAD determined that the “Kellene” commercial was not misleading. However, the NARB panel upheld AT&T’s appeal, concluding that one message communicated to reasonable consumers is that the Verizon service provides effective streaming in underground mass transit systems across the country. Further, the panel concluded that such a message is not supported because Verizon did not offer any evidence regarding its service’s ability to provide streaming in underground mass transit systems, in New York City or anywhere else.

In the “Ned” commercial, Ned reports that he suffered a fall (22 feet) in a remote area (“the middle of the woods”), shattered his pelvis, and was only saved because he was able to use his Verizon service to reach his wife by phone. Agreeing with the challenger, the NARB panel determined that the commercial conveys the distinct message that Ned was in a remote area when he suffered an injury (although he was actually in a suburb of Atlanta). The panel also concluded that this commercial conveys an unsupported message of coverage in remote locations that is superior to at least some, if not all, of Verizon’s competitors.

For these reasons, the NARB panel recommended that Verizon discontinue the “Kellene” (15-second version) and “Ned” commercials, or modify them to avoid the claims that are not substantiated.

Verizon stated that it “will comply with the NARB recommendation, given that the advertising at issue has not aired for some time and despite Verizon’s strong disagreement with the decision in this case.” Verizon stated that it objected to what it considered the Panel’s consideration of “implied claims that were not identified in the NAD’s opening letter, the challenger’s complaint, or the NAD decision,” and further asserted that it “should not be faulted for failing to provide evidence in support of claims that were not properly before NAD, particularly given that NARB rules expressly prohibit the submission of any new evidence.”

Hawaiian Telcom, Inc.

Internet and Television Services
Case #6289 (June 2019)

Hawaiian Telcom, Inc. (Hawaiian Telcom) permanently discontinued challenged claims that its residential service “provide[s] a dedicated Internet line so you don’t have to share” and the challenged implied claim that there is a consumer meaningful benefit to such a “dedicated line.” HT also agreed to permanently discontinue any claims that upload speeds are of equal importance to download speeds or greater importance than download speeds. Finally, HT stated that it is permanently discontinued the claims that it a) has the fastest download speeds or b) is the exclusive provider of 1 Gbps internet. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and Hawaiian Telcom agreed to comply.
Hawaiian Telcom’s commitment to targeting its direct mail advertising touting its residential fiber service will be treated as if NAD recommended it. Advertising for new services that have limited availability should inform consumers about the limited availability of the new service in order to avoid conveying the message the new service is widely available. The challenged availability claims conveyed the message that HT’s fiber service, including its Fiber 1 Gbps product, are broadly available to most, if not all, customers within Hawaii. However, the service is available to fewer than 50% of customers in its service area, and is therefore more unavailable than available. HT has committed to including a “check availability” button in advertising its fiber speeds on its website arguing that a “check availability” button conveys the message that the advertised service may not be available at a customer’s own home address and, crucially, the customer can click on the button and obtain a quick answer as to whether the service is, in fact, available at their home.

HT’s direct mail advertising (which is, of course, not interactive because it is print advertising) is targeted to ensure that it only advertises high speed fiber services via direct mail to addresses that it has confirmed have FTTP enabled.

NAD recommended that Hawaiian Telcom make clear that fiber is more unavailable than available and further recommended that when HT advertises 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.

Hawaiian Telcom has agreed to modify its 1 Gbps fiber claims in order to disclose that its 1 Gbps service delivers up to 940 Mbps download. The new disclosure will be treated, for compliance purposes, as though NAD recommended it and the advertiser agreed to comply.

Hawaiian Telcom lacked a reasonable basis for its superior performance claims based on upload speeds. NAD recommended that Hawaiian Telcom discontinue its comparative superior performance claims or modify those claims to provide the intended monadic context. NAD also recommended that Hawaiian Telcom discontinue implied disparaging performance claims or modify those claims to provide the intended monadic context. Nothing in this decision prevents Hawaiian Telcom from making superior performance claims where the basis of comparison is clearly disclosed and appropriately limited, and where the advertiser can substantiate the claim that the difference in upload speeds is meaningful to consumers.

NAD recommended that Hawaiian Telcom discontinue its “fastest internet” claim or clearly convey, in the main claim, that it offers the fastest combined speeds (upload plus download). In doing so, it should take care to avoid conveying the message that it offers the fastest download speeds – a claim that it has agreed to permanently discontinue. Furthermore, it should take care not to overstate the benefit conferred by, for example, the 300 Mbps upload speeds offered by HT with its 1 Gbps service as compared to the 200 Mbps upload speeds offered by Charter with its 1 Gbps service. Nothing in this decision prevents HT from making a parity claim stating, for example, that both HT and Charter offer speed tiers that deliver download speeds of approximately 1 Gbps.

NAD recommended that Hawaiian Telcom discontinue the claim “TV with HD for just $25” or modify it to more adequately explain the limitations of HT’s least expensive television package. NAD has recommended “that when the advertiser is making an introductory lower price offer, [it] employ language for its [introductory package] noting that this offer is ‘introductory’ or that the consumer can ‘now get started’ with this special offer (or words to that effect).” Here, the low price offer provides a restricted selection of channels, whereas in the cited case, the low price offer was a promotional price valid for a short time, after which the consumer pays the regular price. The principal is the same: the consumer should be informed about the terms of the offer. Because the restricted channel selection is a material term of the offer, the advertisement should clearly communicate the limited channel selection provided with “TV with HD.”

Hawaiian Telcom agrees to comply with NAD’s recommendations.
Verizon Wireless, Inc.

Verizon Wireless ("Best Network")
Case #6272 (April 2019)

Following a challenge by T-Mobile USA, Inc. (T-Mobile), NAD concluded that Verizon Wireless, Inc. (Verizon) provided a reasonable basis for its claim that RootMetrics is independent, as well as for its claims that it was “ranked #1 by RootMetrics in Call, Data, Speed, and Reliability,” and that RootMetrics ranked it the best network. However, NAD recommended that the unqualified claims that Verizon is the “Best Network” and “Best Unlimited” be modified so that they are clearly tied to RootMetrics’ test results, or be discontinued. NAD also recommended that Verizon discontinue its claims that it offers the “most reliable 4G LTE network” and the “best network for streaming.”

Claims made by Verizon in internet, television, and radio advertisements (and in two press releases for its wireless service) were challenged by T-Mobile. T-Mobile challenged several of Verizon’s claims that it is the “Best Network” and the “Best Unlimited,” arguing that the claims were not supported and, further, that the testing upon which Verizon relies, done by RootMetrics, is not independent. NAD found that Verizon had provided a reasonable basis for its claim that RootMetrics is independent; although Verizon licenses RootMetrics’ data, Verizon is not the only company that makes payments to RootMetrics for its drive test data, and RootMetrics is a subsidiary of IHS Markit. Because Verizon did not commission and fund the research, and the relationship took the form of typical licensing relationships, NAD concluded that Verizon had met its burden of providing a reasonable basis for its claim that RootMetrics is independent.

After an examination of RootMetrics’ methodology and testing, NAD further determined that Verizon had supported its claims regarding the results of RootMetrics’ testing, where it tied the award to the testing, such as in the claim “Verizon was ranked #1 by RootMetrics in Call, Data, Speed, and Reliability.” NAD noted that although the award is based on numerous tests, the weighting of each test is a decision that requires judgment, informed by RootMetrics’ research and expertise.

Where claims such as “Best Network” and “Best Unlimited” were not clearly tied to the RootMetrics testing, NAD recommended that the claims be modified or discontinued. As for the third-party data Verizon supplied showing that it wins numerous awards from different testing companies, the awards were inconsistent, with other companies tying or surpassing Verizon in different key metrics in different tests. Therefore, NAD recommended that Verizon discontinue the unqualified claim that it has the “most reliable 4G LTE network.” NAD recommended that Verizon discontinue its “Best Streaming” claim because the testing was not a good fit for its broad “Best Streaming” claim, and that insufficient information was provided for NAD to evaluate the reliability of the testing.

Verizon agreed to comply with NAD’s recommendations.

Frontier Communications

FiOS Internet Service
Case #6261 (March 2019)

Following a challenge by Charter Communications, NAD recommended that Frontier Communications discontinue two television commercials for its FiOS internet service, after finding that the commercials reasonably convey the unsupported and falsely disparaging message that Spectrum’s upload or download speeds are insufficient for the routine consumer tasks portrayed. NAD noted that nothing in its decision prevents Frontier from highlighting the truthful difference between its upload speeds and those of its competitors so long as it does not falsely disparage competitors’ internet services or tie its upload speed advantage overall superiority in internet speeds or reliability.

NAD determined that at least one reasonably conveyed message by each of the advertisements is that Spectrum’s internet service cannot provide internet speeds capable of supporting the tasks depicted in the commercial. Both commercials depict a failure of one’s internet service to perform a common task, either streaming video (in the “Yoga Pose” commercial) or working from home (in the “Coffee Shop” commercial). Those depicted failures are immediately followed by an express superiority claim comparing
Frontier’s FiOS service to Spectrum internet service. The scenes and the claim in each commercial are tied to each other, with characters from the vignettes holding the signs that display the comparative claims. Given the close proximity of the depicted internet failures and the express superiority claim comparing the advertiser’s service to the challenger’s, NAD found that consumers could reasonably take away the message that Spectrum’s service fails in the commercials. While the express claim is limited to upload speeds, the services depicted in each scene are not so limited. Additionally, the commercials convey that FiOS is superior and that the depicted service (i.e., Spectrum’s) is insufficient.

Frontier stated that it will permanently discontinue the claim that “cable companies intentionally use techy jargon to confuse you.” Thus, NAD did not review the claim on the merits, but the voluntarily discontinued claim will be treated as though NAD recommended their discontinuance and the advertiser agreed to comply.

Frontier agreed to comply with NAD’s recommendations.

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Verizon Communications, Inc.

Verizon Wireless Services (“First to 5G”)  
Case #6258 (March 2019)

NAD recommended that Verizon Communications, Inc. (Verizon) modify or discontinue certain claims regarding its 5G services following a challenge by AT&T Services, Inc. (AT&T) challenged claims made by Verizon in three television commercials, which touted Verizon’s history of technological achievements and its ambitions for the future. NAD recommended that these commercials be discontinued or modified in order to avoid conveying certain messages, including the unintended message that Verizon has launched 5G mobile wireless network.

NAD determined that the challenged commercials convey the message that Verizon has achieved the important milestone of deploying the first mobile wireless 5G network. As a result, NAD recommended that Verizon discontinue its commercials or modify them to make clear that Verizon is referring to its build-out of 5G technology for the future, or its release of 5G Home. Nothing in this decision precludes Verizon from touting its impressive history of technology firsts or its substantial plans for the future. NAD further recommended that the advertiser either discontinue the claim “America’s first and only 5G ultra wideband network” or modify the claim to tie it to its unique technology or benefits.

NAD concluded that using the present tense about Verizon’s 5G network – its capacity and its launch of 5G - reasonably conveys a message that 5G service is currently available. The overall context of the three commercials, and their discussion of Verizon’s present launch or present capabilities, reasonably convey a message broader than Verizon’s intent to advance 5G technology. Here, the language that Verizon is “First to 5G," in the context in which it is presented, reasonably conveys the unsupported message that Verizon’s 5G network is available for consumers to use.

NAD also determined that Verizon’s advertising conveyed a comparative message. If, as advertised, Verizon is “First to 5G”, NAD determined that this necessarily means that its competitors may be second or third. NAD disagreed with Verizon’s contention that the “first and only 5G network” claims are limited to its “ultra wideband network” and, thus, qualified to avoid conveying the message that Verizon is the nation’s only 5G network. NAD noted, Verizon’s claim, “America’s first and only 5G ultra wideband network” is not linked directly to the exclusive technology or benefits Verizon is claiming to provide. Consequently, to the extent that Verizon wants to use its “first and only ultra wideband network” claim, it can do so if it ties this claim directly to its unique technology or performance benefits.

After initially appealing NAD’s findings, and on the basis of new evidence that Verizon believes confirms that the claim “First to 5G” is truthful and accurate, Verizon petitioned the NAD to reopen the case and, subsequently, withdrew its appeal.
**AT&T Services, Inc.**

**AT&T's Internet and Television Services ("Historic Launch")**
Case #6254 (February 2019); NARB #253 (August 2019)

NAD recommended that AT&T Services, Inc. (AT&T) modify or discontinue claims that its DirecTV and U-Verse Internet services are more reliable than cable television and internet services, that cable offers unreliable entertainment, and that cable viewers frequently lose service, following a challenge by Comcast Cable Communications, LLC (Comcast). Comcast challenged implied claims that appeared in television advertising for AT&T. The claims included: (1) DirecTV’s signal is more reliable than Comcast’s; (2) AT&T’s U-Verse Internet service is more reliable than Comcast’s; (3) Comcast viewers frequently lose service; (4) Comcast provides “unreliable entertainment.”

NAD found that at least one message reasonably conveyed by AT&T’s portrayal of an unnamed, generic service provider experiencing a simultaneous internet and television outage at a critical, historical moment, juxtaposed with the statement, “Life is too short for unreliable entertainment,” is that the unreliable, generic service provider is, in fact, cable. Further, as Comcast is the only cable provider in many of the regions where the challenged advertising appeared, it is also reasonable for consumers in these regions to take away the message that the “Historic Launch” commercial is a specific reference to Comcast. Thus, NAD concluded that the challenged advertising reasonably communicates that DirecTV’s television and AT&T’s Internet are more reliable than cable. By stating, “Life is too short for unreliable entertainment. Get AT&T Internet and DirecTV with over 99% reliability...” the advertiser draws a distinction between a competitor’s poor reliability and its own superior reliability which, within the overall context of the commercial, conveys a comparative performance message.

Lastly, NAD determined that the depicted service outage during the generic competitor’s “Historic Launch” commercial, in which the host states “Sorry guys, it went out again” along with the reference to “again” reasonably conveys the message that such an outage is a regular or common occurrence and reinforces the impression that cable is unreliable.

AT&T said it would appeal NAD’s decision.

NARB — (#253 — 08.02.2019) A panel of the National Advertising Review Board (NARB) concluded that AT&T’s Historic Launch commercial compared the advertiser’s services favorably to a viable competing service and that said comparison was unsupported. The panel accordingly recommended that said unsupported comparative superiority message be discontinued. The advertiser agreed to comply with NARB’s recommendation.

**AT&T Services, Inc.**

**AT&T’s Telecommunications Services (“99% Reliability”)**
Case #6250 (February 2019); NARB #252 (August 2019)

NAD recommended that AT&T Services, Inc. (AT&T) modify or discontinue claims that its services deliver 99% reliability following a challenge by Charter Communications, Inc. (Charter).

Charter contended that certain AT&T television, internet, and radio advertisements conveyed the message that AT&T’s internet and television services are more reliable than competitors’ services, including Charter’s. Charter further argued that AT&T’s “99% reliability” claims must be read as a line claim, covering all AT&T’s internet service offerings, not just the fastest internet speeds offered by the company. AT&T countered that its television, internet, and radio advertisements do not convey a comparative message, noting the absence of any named competitor in its ads.

NAD found that the advertiser’s television and internet advertising conveyed a comparative message that AT&T Internet is more reliable than its competitors, and recommended that the advertiser modify its advertising to avoid conveying an unsupported comparative reliability message or discontinue the challenged advertising. These commercials tell consumers to “Get AT&T,” to avoid the service disruption...
depicted, and reasonably convey the message another service providers' service is not as reliable as AT&T's. While AT&T contended that the message conveyed was that AT&T's service has improved, nothing in the commercials qualifies or limits the message to improvements in AT&T's service. On AT&T's webpage, comparative language is used which reasonably conveys the message the AT&T's services are more reliable than competing services.

With respect to AT&T's Facebook and radio advertising, NAD agreed with the advertiser that a monadic message was conveyed. The Facebook advertising and radio advertising only AT&T's reliability without inviting a comparison to competing providers. Both the text and context of this advertising highlight that AT&T's customers can do many things with their internet, without suffering interruptions. This advertising contains no negative stories.

NAD further concluded that consumers could reasonably take away the unsupported message that claims about AT&T internet refer to all AT&T internet service – regardless of which tier is available to them. After reviewing the claims and their accompanying disclosures in context, NAD determined that AT&T’s disclosures such as “U-verse” and “high speed internet” do not sufficiently narrow its 99% reliability claim to its non-DSL tiers of internet service. For these reasons, NAD determined that AT&T’s advertising reasonably conveys a message across the line of AT&T Internet, specifically the message that every tier of AT&T Internet service, including DSL, is more than 99% reliable and can stream video, including live video. NAD recommended that the 99% reliability claim and related implied claims be discontinued or modified to limit the claim to specific AT&T internet services, provided, however, that AT&T has a reasonable basis to make its reliability claim for the specified service tiers.

NAD also held that the reliability analysis did not provide sufficient support for AT&T’s claims that consumers can “Stream, download, connect all the time” and that AT&T provides “Internet with no interruptions.” NAD recommended AT&T discontinue these claims. Notwithstanding its decision, NAD noted that AT&T can highlight the reliability of its service, provided it does so in a truthful and accurate manner, and without making unsupported claims that competing service providers are unreliable.

AT&T appealed NAD’s determination regarding the 99% reliability claim and the conclusion that the challenged commercials communicate a comparative superiority claim.

NARB — (#252 — August 2019) -- A panel of the National Advertising Review Board (NARB) concluded that the “over 99% reliability” claim (and the 99% reliability claim), when made for AT&T’s internet service, is unsupported and should be discontinued. AT&T is free to use a modified version if, as NAD concluded, “AT&T has a reasonable basis to make its reliability claim for the specified [internet] service tiers.” Any such modification would have to clearly and conspicuously disclose the precise internet service for which the claim is being made. The panel further concludes that the two versions of the Historic Launch 30-second commercial made an unsupported comparative superiority claim which should be discontinued (and concludes that the other advertising reviewed did not convey comparative messages). The advertiser agreed to comply with NARB’s recommendations.

AT&T Services, Inc.

AT&T Internet Service (“Fees”)
Case #6247 (February 2019)

Following a challenge by Comcast Cable Communications, Inc. (Comcast), NAD recommended that AT&T Services, Inc. (AT&T) discontinue or modify claims in its advertising campaign which promises to “Get Rid of Fees” for consumers who subscribe to AT&T’s Internet service. Comcast argued that this claim is expressly false.

AT&T argued that its advertising limited the claim to getting rid of monthly equipment fees. The parties agreed that AT&T does not charge monthly fees for internet equipment, but that cable companies typically do. NAD observed, however, that the television commercial focuses on the claim, “get rid of fees,” and closes with “the price you see is the price you pay.” NAD noted that all AT&T internet packages are subject to other fees such as an installation fee, activation fee, early termination fee, and data overage charges. As
such, NAD concluded, the commercial reasonably conveys the message that AT&T charges no fees at all and that the advertised offer price is the total monthly bill. NAD further determined that the AT&T’s radio advertisement, with its main claim “get rid of fees,” and its internet advertisements which its “price you see is the price you pay” language, also reasonably convey the message that the price is inclusive of fees and other ancillary charges.

Most of the challenged advertising promotes an internet package priced at $40 per month which requires AT&T customers to subscribe to at least one other AT&T service – television, telephone, or cellular service – to get internet service for the advertised price. AT&T Internet, standing alone, is $60 per month. AT&T Internet customers pay a small monthly fee (the state cost recovery fee) and are also subject to non-monthly fees such as an installation fee, activation fee, early termination fee, and data overage charges—all of which, NAD concluded are fees that customers may reasonably understand they will avoid when AT&T offers consumers the opportunity to “get rid of fees.” As a result, NAD found that the absolute language of the advertising, such as “get rid of fees” and “the price you see is the price you pay,” reasonably conveys the unsupported message that AT&T has eliminated fees altogether.

NAD concluded that because of the broad language used in the challenged advertisement, especially the claim “the price you see is the price you pay,” consumers may reasonably take away the implied message that AT&T has included taxes in the list price, which it did not. NAD further held that AT&T’s disclosures advising consumers about the fees were neither clear nor conspicuous and that they are inconsistent with claims that offer to “get rid of fees” – categorical language that reasonably conveys the message that fees are eliminated without limitation.

NAD recommended that AT&T discontinue or modify the claims, “Get Rid of Fees,” “Unlike cable providers, with AT&T Internet the Price you See is the Price you Pay,” “Unlike cable, with AT&T Internet you won’t see extra monthly fees on your internet bill,” and “Unlike cable, get equipment included and no extra monthly fees on our 100% fiber network” to avoid conveying that it charges no fees and that its price is all-inclusive. NAD stated that nothing in the decision prevents AT&T from touting that it, unlike cable companies, does not charge monthly equipment fees for internet service.

AT&T agreed to comply with NAD’s recommendations.

**T-Mobile USA, Inc.**

**T-Mobile Wireless Services**

Case #6234 (December 2018)

NAD recommended that T-Mobile USA, Inc. (T-Mobile) discontinue its superior coverage claim “...we now cover more of [City] than Verizon and AT&T. In fact, we cover all of it,” as well as its “100% covered claim” following a challenge by AT&T Services, Inc. (AT&T), provider of a competing wireless service.

AT&T challenged a series of geo-targeted, online marques on T-Mobile’s coverage page which, AT&T argued, falsely claim that T-Mobile covers 100% of certain markets and has more coverage than AT&T. These Coverage Ads appeared in at least 5 major markets across the United States, including Atlanta, Detroit, Boston, Los Angeles and New York, and contain the headline: “[City], You’re 100% Covered.” Immediately below the headline, the ads state: “T-Mobile is America’s best unlimited network and we now cover more of [City] than Verizon and AT&T. In fact, we cover all of it.” To support the claims, T-Mobile submitted data comparing its population-based LTE coverage map to Verizon and AT&T’s population-based coverage maps, which showed that T-Mobile covered more people through its LTE network than Verizon in the Atlanta, Boston, Detroit, Los Angeles, and New York markets. NAD concluded that T-Mobile’s reliance on population-based coverage data was not a good fit for advertising claims that communicate a message about geographic coverage. NAD also observed that the T-Mobile’s coverage claims were not appropriately limited to T-Mobile’s LTE network. Additionally, NAD concluded that T-Mobile’s use of the numerical “100%” conveys a definitive message to consumers that T-Mobile covers every single person, in every possible geographic location within each market—a message not supported by the evidence in the record.
AT&T also challenged certain tweets promoting T-Mobile wireless services including: (1) “Just switched to T-Mobile from AT&T – best choice ever. Now my signal doesn’t randomly give out in my own apartment”; (2) “After over 15 years using your service I finally switched to a company who actually provides the services we pay for! T-Mobile is working like a champ!”; (3) “I loved the T-Mobile service on my deployment. It was the only service available, so I switched to you all. I’ve kept it since being home. Thank you T-Mobile”; and (4) “We had AT&T for 15 years. I was grandfathered into unlimited but it was expensive. We just switched to T-Mobile bc it’s all unlimited and about 1/3 of the cost. I don’t know why we waited so long.” Because the first three tweets were permanently discontinued prior to the date of the complaint, NAD administratively closed the inquiry as to those claims. Since T-Mobile agreed to permanently discontinue the one remaining tweet that was in use as of the date of the complaint, the discontinued tweet will be treated as though NAD recommended the advertiser discontinue reposting the tweet and T-Mobile agreed to comply.

The advertiser agreed to comply with NAD’s recommendations.

Comcast Cable Communications, LLC

**XFINITY Internet Service**
Case #6229 (December 2018)

AT&T challenged two Comcast television commercials (and one print advertisement) arguing that these advertisements reasonably convey the unsupported message that Comcast Xfinity offers the “fastest internet” along with Xfinity’s mobile service at savings of $400, $500, or $600 or more compared to AT&T, and that these benefits can be obtained for a monthly price as low as $19.99. Comcast countered that each individual claim contained in its commercial, under the conditions stated, is literally true. Further, Comcast stated that in crafting its advertisements, it followed NAD precedent and guidance as to superiority claims and introductory offers in the same commercial.

NAD concluded that Comcast’s challenged “Funktastic Music Video” commercial reasonably conveys the unsupported message that consumers can obtain the fastest internet, savings of $500 versus AT&T in the first year, all for $19.99 per month for twelve months. NAD recommended that this commercial and a print advertisement be permanently discontinued. NAD further found that the onscreen disclaimer, “*Compares Xfinity’s Performance Starter Internet and one mobile line with unlimited data to AT&T’s Internet 50 plus one line of Unlimited Wireless …*” was insufficient to qualify its savings claims. Lastly, NAD concluded that given the overall context of the spot touting the “fastest internet,” Comcast’s use of the “get started” qualifying language was insufficient to alert consumers to the fact that the $19.99 price was for its introductory baseline 25 Mbps offering. As such, NAD recommended that this commercial (and a print advertisement) be permanently discontinued.

NAD also recommended that in future advertisements, Comcast clearly delineate between its internet performance, savings, low price promotion claims. NAD further recommended that the advertiser clearly and conspicuously disclose the basis for its savings comparison and the features which comprise the advertised offers.

Comcast agreed to comply with NAD’s recommendations.

T-Mobile USA, Inc.

**T-Mobile’s Video Streaming Services (“Best Network for Streaming Baseball”)**
Case #6226 (November 2018)

NAD found that T-Mobile USA’s (T-Mobile’s) challenged advertisement did not convey the implied claim that T-Mobile has the best network for streaming video and further found that T-Mobile had substantiated its claims that it offers a combination of baseball benefits and streaming video capabilities to support the “Best Network for Streaming Baseball” claim. NAD further concluded that the challenged video advertisements did not convey the message that T-Mobile’s plans include a free subscription to MLB.TV.
Claims made by T-Mobile in its television and internet advertising with a baseball theme for its wireless service were challenged by AT&T Services, Inc. (AT&T) argued that T-Mobile’s claims that it is the “best network for streaming baseball” and the “BEST NETWORK FOR BASEBALL” are overly broad superiority claims that imply that T-Mobile has the best network for streaming video. NAD found that due to each commercial’s focus on Major League Baseball, the claim “Best Network for Streaming Baseball” was a limited claim that does not imply that T-Mobile has the best network for streaming video overall. Further, NAD found that the “Best Network for Streaming Baseball” claim was substantiated by a combination of Ookla data provided by T-Mobile demonstrating that its network consistently provides sufficient speed to deliver streaming content and by baseball benefits that T-Mobile offers to consumers through its exclusive relationship with Major League Baseball that are superior to the competition.

AT&T also noted that the video advertisements depicted consumers streaming baseball games in a variety of locations. AT&T argued that these images conveyed the implied message that T-Mobile’s wireless plans include MLB.TV, which would otherwise cost over $100.28 The challenger argued that phrases such as “never miss a game-changing moment” reinforced this implied message. T-Mobile replied that its advertisements do not mention MLB.TV, and that there are alternatives to MLB.TV for viewing baseball. NAD noted that the challenged advertising does not mention MLB.TV, and it determined that although the commercials depict viewers watching an out-of-market baseball game in iconic locations such as the New York City subway and the Brooklyn Bridge, the message reasonably conveyed was that T-Mobile’s network provides the best combination of baseball-related benefits and streaming capabilities to baseball fans, a message that was supported by a combination of the baseball-related benefits that T-Mobile provides and the Ookla data supplied by T-Mobile. In this context, consumers would not reasonably take away a message that MLB.TV is included with T-Mobile’s wireless plans.

AT&T Services, Inc.

DirecTV
Case #6223 (November 2018)

NAD found that AT&T Services, Inc.’s (AT&T’s) “Signs” commercial promoting its DirecTV service did not convey any messages that Comcast or cable television service providers (or their customers) are associated with the occult, that consumers should switch to DirecTV because Comcast is an evil or disreputable company, or that Comcast service is inferior to DirecTV. Comcast Communications, Inc. (Comcast), a cable television service, challenged claims made by AT&T in television advertising for its DirecTV television service.

The challenged commercial identifies various supernatural “signs” sent to consumers signaling that they should cancel their cable television service and switch to DirecTV. First, a woman is shown holding up a piece of toast with the words “Quit cable” on it. The next scene depicts a crop circle in a field with the word “Cable” crossed out. The last “sign” depicts a man sitting alone in a convenience store who sees the words “quit cable” appearing on the ceiling above him as a pair of scissors fall to the floor, landing across a coaxial cable, inviting the man to “cut the cord.” The commercial ends with a promotional offer of a $100 gift card to consumers as an incentive to switch to DirecTV. Comcast argued that the implied claims clearly communicated by the “Signs” commercial are (1) that cable companies like Comcast, and all of their customers, are associated with the occult and forces of evil, (2) that consumers should switch to DirecTV because Comcast is an evil or disreputable company, and (3) that Comcast is inferior to DirecTV.

NAD determined the commercial did not convey any messages—monadic or comparative—about the quality of DirecTV service, cable service generally versus Comcast, nor any message about the integrity or character of Comcast or any other cable provider. The commercial does not refer to any feature or attribute of satellite or cable service or to the character of any cable company. NAD concluded that AT&T’s “Signs” commercial, urging consumers to switch to DirecTV and offering a $100 incentive to do so, is best described as a simple “sales pitch” for DirecTV.
Charter Communications, Inc.

Advertising by Charter Communications, Inc.
Case #6221 (November 2018)

NAD recommended that Charter Communications, Inc. (Charter), provider of cable television services, discontinue a commercial challenged by a competing television service provider, DirecTV, LLC (DirecTV), following NAD’s finding that it conveyed a message that DirecTV does not offer certain named sports programming. However, NAD found that Charter’s claims in a second commercial was supported by the record demonstrating that, per the DirecTV Residential Customer Agreement, customers will incur a $99 charge if a technician is dispatched to the home to resolve a service issue.

In Charter’s “Bad Deal” commercial, a door-to-door DirecTV salesman attempts to convince a homeowner to subscribe to DirecTV. As the salesman continues with his “pitch,” each subsequent “deal” is worse than the preceding one. DirecTV asserted that the overall takeaway from Charter’s commercial is that DirecTV does not offer any programming package with sports channels such as ESPN, CBS Sports and NBC Sports—not just that the SELECT package doesn’t offer these channels. In support of its position, DirecTV provided a consumer perception survey. NAD concluded that Charter’s “Bad Deals” commercial reasonably conveyed the unsupported message that all DirecTV programming packages do not offer the sports channels/programming mentioned in the spot, not just that the DirecTV Select Double Play package does not offer this programming. NAD noted that although the very opening of the commercial specifies a DIRECT package with the salesman asking the homeowner, “Can I interest you in the DIRECTV Select Double Play package with no ESPN?” this is the only instance in the 30-second spot that limits the commercial to a specific DIRECTV Package. The overarching theme of the commercial with its fast-paced “salesman speak” is that specific sports programming is not available. The salesman does not repeat the name of the DIRECTV package being highlighted, nor indicate that his “pitch” is for a specific package. As a result, a consumer could reasonably takeaway the message that the starting offer is as good as it gets, as DirecTV has nothing better to offer and that it has nothing in the way of sports channels to offer the homeowner—a message that is unsupported by the record. For these reasons, NAD recommended that the “Bad Deals” commercial be discontinued or modified to limit the claim to the specific DIRECTV SELECT package and avoid conveying the message that all DIRECTV packages do not provide the sports channels/programming mentioned.

DIRECTV also challenged express and implied claims in Charter’s “Monsters BBQ” commercial, which included: “Automatic charge” of $99 for any repair or service issue, no matter how trivial, in which “someone shows up” and “even if they don’t find anything.” NAD concluded that the advertiser’s “Monster’s BBQ” commercial was unlikely to be interpreted by consumers as meaning that customers will incur a $99 charge for any service issue whatsoever, no matter how trivial. Rather, NAD concluded, the commercial reasonably conveys the message that the satellite provider’s customers will incur a $99 charge if a technician is dispatched to the home (“if someone shows up”) to resolve a service issue—a claim that was supported by the challenger’s Residential Customer Agreement.

Charter agreed to comply with NAD’s recommendations.

AT&T Services, Inc.

AT&T Services (“More For Your Thing”)
Case #6212 (October 2018); NARB #248 (May 2019)

Claims made by AT&T Services, Inc. (AT&T) in its billboard, internet, and television advertising for its services were challenged by T-Mobile USA, Inc. (T-Mobile), a provider of competing wireless services. NAD recommended that AT&T modify or discontinue certain claims made as a part of its advertising campaign “More for Your Thing. That’s Our Thing.” NAD reviewed the “More for Your Thing – That’s Our Thing” tagline standing alone, as well as a number of uses of the tagline or its theme in the context of specific advertising, including billboard, internet, and television advertising.
NAD held that the slogan, “More For Your Thing. That’s Our Thing” alongside the AT&T logo, standing alone, was puffery. It found that the challenged claim, “More For Your Thing. That’s Our Thing” is vague, impossible to measure, and cannot be proved or disproved. NAD noted that, when standing alone and not in the context of claims about AT&T’s service, consumers are unlikely to take away the message that AT&T is promising anything, but rather are likely to take away the message that AT&T is expressing pride in its service.

NAD found that the “More For Your Thing” claim, when presented in the “Right Zone” buy one get one free advertisement and the “Make The Switch” discount ad, was limited to the specified offer and was therefore, supported. The “Right Zone” commercial that promoted AT&T’s iPhone 8 offer, told the story of a couple whose newly combined household includes two of everything. The advertisement stated “Buy One iPhone 8 Get One iPhone 8 on Us.” T-Mobile argued that in the context of this advertisement, which depicted the couple using their phone to browse online and video chat, “More For Your Thing” refers to the cell service plans’ data benefits needed to do the activities shown. AT&T responded by saying that the context, if not pure puffery, refers to the additional phone that customers get through the BOGO offer. NAD agreed with AT&T and found the message supported. AT&T’s “Make The Switch” advertisement highlights its offer of a lifetime monthly discount on their DIRECTV wireless service if they switch their wireless service to AT&T. NAD concluded that this advertisement limited the takeaway from the phrase, “more for your thing” to a factual description of AT&T’s DIRECTV bundle and savings offer.

Additionally, NAD reviewed a panel on AT&T’s wireless webpage, which read, “More For Your Stream Like a Boss Thing” followed by text that stated: “Stream your favorites anytime, anywhere, and say goodbye to overages when you talk, text, and surf.” AT&T asserted that the intended message of the text that follows “More For Your Stream Like a Boss Thing” claim reflected the truthful benefits of its wireless internet plans compared to plans with data limits. NAD concluded that this advertisement is misleading because it conveys an unsupported superiority claim comparing AT&T to its competitors, and recommended that it be discontinued or modified to eliminate the comparative message.

Finally, NAD reviewed AT&T’s “Do Your Thing” commercial, which was not tied to any specific AT&T offer. It featured music and images from television shows and AT&T customers pursuing a variety of interests, including computer games, sports, and music. The commercial concludes with images of fancy letters spelling “YOUR THING” as the voiceover states, “AT&T gives you more for your thing. More entertainment, internet and unlimited plans. More for your thing.” The screen then shows the AT&T logo as the voiceover states, “Yeah. That’s our thing.” NAD determined that consumers would reasonably understand the “more entertainment [and] internet” claims convey a comparative message. NAD recommended that AT&T discontinue the “Do Your Thing” commercial or modify it to limit the message conveyed to its intended takeaway that AT&T has a wide variety of service offerings for consumers.

NARB — (#248 – May 2019) — AT&T appealed NAD’s findings regarding the “More For Your Stream Like a Boss Thing” and the “Do Your Thing” ads to the National Advertising Review Board (NARB). The NARB agreed with NAD’s determination that the “Boss Thing” advertisement is misleading because it conveys an unsupported superiority claim comparing AT&T to its competitors, and recommended that it be discontinued or modified to eliminate the comparative message. The NARB concluded that the “Do Your Thing” advertisement is not misleading, found that the commercial is not comparative, and that the reference to “more” in the tagline ties it to the AT&T slogan (“More For Your Thing. That’s Our Thing”), which NAD determined was puffery. The advertiser agreed to comply with NARB’s determination.
Comcast Communications, LLC

Comcast Xfinity Television Service
Case #6207 (August 2018); NARB #247 (April 2019)

NAD recommended that Comcast Cable Communications, LLC (Comcast) discontinue its implied claim in a television commercial that DirecTV is highly unreliable in bad weather and recommended that Comcast modify the advertisement to avoid conveying the message that DIRECTV offers no free streaming.

Claims made by Comcast Communications, LLC (Comcast) in its television advertisement for Xfinity Television Service were challenged by DIRECTV, LLC (DirectTV), provider of a competing television service. NAD concluded that the advertisement reasonably conveyed several messages relating to the duration and frequency of weather-related outages that were not supported by the record. The advertisement states that Comcast’s Xfinity service, “delivers reliable TV service, rain or shine. So you can watch without worrying.” The advertisement then shows a picture of a DIRECTV antenna with a rain cloud in the background. As lightning strikes the antenna, causing it to shake, the voiceover states, “Whereas with DIRECTV, but... you get the idea.” A small super states, “Severe weather (heavy rain or snow) may interfere with a satellite signal causing the picture to freeze or pixelate.” DirecTV argued that, although not explicitly stated, Comcast’s advertisement strongly implies that DirecTV service interruption will last for entire programs or an evening’s worth of television. Further, DirecTV contended that NAD in previous decisions has recommended modifications to similar weather-related reliability claims advertising claims made by Comcast. NAD recommended that Comcast modify or discontinue the challenged commercial to avoid conveying the unsupported message that DirecTV is highly unreliable in bad weather. However, NAD also found that Comcast could support part of the challenged claim, which stated, “Xfinity delivers reliable TV service, rain or shine.” NAD further noted that the challenged commercial differed from any advertisements in the cases cited by the parties.

NAD then considered Comcast’s implied claims regarding the number of streaming shows and movies “on the go” available from DirecTV. The commercial voiceover stated that with Xfinity, “you get to stream more than 70,000 shows and movies on the go... whereas, with DirecTV, not so much.” The latter part of the voiceover was accompanied by a visual of a deserted desert scene, with a cactus in the background, the sound of wind, and a tumbleweed rolling by. It was not disputed that Xfinity offers more streaming shows and movies, 70,000, compared to about 40,000 available from DirecTV. NAD found that the commercial conveyed the unsupported message that DirecTV “offers little to no streaming,” and recommended that the advertising be modified to avoid conveying this unsupported message. NAD further found that, contrary to DirecTV’s argument, Comcast had not claimed to offer 70,000 free shows and movies on the go with its introductory package and recommended no changes to that portion of the advertisement.

NARB — (#247 — 04.10.2019) — Both Comcast and DirecTV appealed certain NAD findings to the NARB. The NARB recommended that Comcast withdraw or change the commercial under review to avoid conveying the messages that the DirecTV service (1) offers few, if any, shows or movies on the go, or (ii) is highly unreliable in bad weather. The panel further found that the introductory offer in the commercial was not misleading. Comcast agreed to comply with NARB’s recommendations.

Comcast Cable Communications, LLC

Xfinity Internet Service
Case #6199 (June 2018); NARB #243 (March 2019)

NAD recommended that Comcast Cable Communications, LLC (Comcast) discontinue the express or implied advertising claim that AT&T deceives potential customers concerning the speed or reliability of its internet service, as well as the claim that Comcast offers the most reliable network. However, NAD found that Comcast had substantiated certain claims regarding the availability of AT&T’s fiber network and certain advertised speed. AT&T challenged claims made by Comcast in one radio and two television advertisements.
NAD reviewed the express claim regarding Comcast’s use of the pun “Internot” in the radio commercial, which was defined as “internet that could be only a fraction of the speed advertised because of where you live - and you pay the same price.” It was undisputed that AT&T charges $40 for the fastest speed available to customers, whether the speed of that service is 50 Mbps, 25 Mbps, 18 Mbps, or 10 Mbps. Based off data from a survey Comcast conducted, Comcast asserted that a significant amount of AT&T customers are not able to obtain the 50 Mbp service. AT&T did not dispute this, but instead argued that since the 50 Mbps service is available to more than half of its customers, NAD precedent allows it to advertise the service. NAD determined that while AT&T service may be sufficiently available to allow it to broadly advertise its service, nothing prevents Comcast from truthfully and narrowly disparaging AT&T’s pricing policies in its advertising.

NAD held that Comcast substantiated its claim that AT&T offers “internet that could be only a fraction of the speed advertised because of where you live - and you pay the same price.” However, it recommended that Comcast modify its advertisements to avoid communicating the express or implied messages that AT&T does not deliver the speed tier that its customers subscribe to or that AT&T is deceiving customers regarding the speed they subscribe to. NAD held that the claim that AT&T Fiber is “really only available to like 10% of their customers,” was substantiated, but that Comcast could not support the claim that AT&T “was telling people everywhere that they could get AT&T Fiber when it’s really only available to, like, 10 percent of their customers.” NAD found that there was nothing in the record to support the claim that AT&T deceives customers about the speed or reliability of its service, and NAD recommended that Comcast discontinue this claim.

Finally, NAD examined the claim, featured in radio advertising and at the end of one television commercial, that “Only Xfinity delivers the fastest, most reliable internet.” To substantiate this claim, Comcast supplied the FCC’s 2016 Measuring Broadband America Fixed Broadband Report. NAD concluded that the FCC Report does not substantiate Comcast’s “most reliable internet” claim because it measured networks that are different from networks that are in use today. In the absence of any evidence in the record demonstrating that Comcast provides the “most reliable internet” based on its current network, NAD recommended that the claim be discontinued.

NARB — (#243 — March 2019) — Comcast appealed NAD’s adverse finding to the NARB. The NARB recommended that Comcast discontinue implied claims that AT&T “deceives” customers. However, NARB also found that Comcast could continue its “The Most Reliable Network” claims, provided it remains substantiated by the most available data and it includes a conspicuous disclosure as to the source of its substantiation. Comcast agreed to comply with NARB’s decision.

T-Mobile USA, Inc.

T-Mobile Wireless Service “Best Unlimited Network”
Case #6186 (May 2018)

NAD recommended that T-Mobile USA, Inc. (T-Mobile) discontinue its “Best Unlimited Network” advertising claims. T-Mobile said that it appealed NAD’s decision to the National Advertising Review Board. AT&T Services, Inc. (AT&T) challenged T-Mobile’s internet, television, and radio advertising for T-Mobile’s wireless services in which it claimed, “T-Mobile is America’s Best Unlimited Network*** “Video typically streams at 480p. On all T-Mobile plans, if congested, top 3% of data users (>32 GB/mo.) may notice reduced speeds due to prioritization. Does not depict coverage.” NAD noted that it has consistently held that while wireless service providers should be free to truthfully promote advantages that their innovations provide consumers. However, these comparative advertising claims must nonetheless be substantiated in order to avoid misleading consumers and to ensure that wireless service providers compete on a level playing field. Further, NAD has consistently held that broad superiority claims such as “largest” “best” and “highest” must be supported by reliable data against all or a significant portion of the market for the attribute at issue in the claim. In support of its “Best Unlimited Network” claims, T-Mobile provided data from two independent sources, Ookla and OpenSignal, showing that it provides superior data speeds as compared to its six major competitors.
NAD concluded that the “Best Unlimited Network” claim could reasonably be understood by consumers as a general network superiority claim for mobile services that offer unlimited plans of any sort, including unlimited data, talk, and/or text. NAD held that even if it accepted T-Mobile’s evidence as reliable, the evidence did not match the breadth of the “Best Unlimited Network” claim. NAD noted that T-Mobile did not provide evidence that its network is superior in providing talk and text mobile services or in providing high-speed data more reliably or to a greater coverage area. Further, NAD concluded, the promotion of various features to T-Mobile’s unlimited plan subscribers – including a higher deprioritization threshold – are elements of T-Mobile’s unlimited plans, not the T-Mobile network, and do not support the “Best Unlimited Network” claim.

In addition, NAD determined that T-Mobile’s “Best Unlimited Network” claim did not convey a superior coverage message when used in conjunction with coverage claims by T-Mobile. The remaining elements of the advertising are monadic in nature and did not convey a comparative superior coverage message when used on their own (i.e. “our 4G LTE coverage has doubled since 2015” and “feel at home even way out there with our extended-range LTE coverage that goes farther than before.”). As to an implied superior coverage message based on the overlay of the challenged claim over a pink map of the contiguous 48 states, NAD determined that consumers were unlikely to interpret that usage of the U.S. map to be a coverage map and the image did not convey the implied message that T-Mobile has perfect coverage in that area.

After initially appealing NAD’s adverse findings to the NARB, the advertiser withdrew its appeal and agreed to comply with NAD’s findings.

Comcast Cable Communications, LLC

XFINITY Television Service
Case #6170 (March 2018)

Comcast Cable Communications, LLC (Comcast) 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 (AT&T), 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 (February 2018)

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. (Verizon) 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 (February 2018) // NARB #234 (August 2018)

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.

NARB — (#234 – 8.27.18) — 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. The panel recommended that DIRECTV discontinue the challenged claims that DIRECTV’s signal reliability is “worry-free” and that DIRECTV consider modifications to the challenged advertising to avoid categorial denials that the DIRECTV signal will go out. DIRECTV agreed to comply with NAD’s recommendations.

Charter Communications, Inc.

Satellite Television Service
Case #6147 (January 2018) // NARB #232 (June 2018)

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.

NARB — (#232 - June 2018) — 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 and Spectrum as reliable.

The advertiser agreed to comply with NARB’s determination.

**Charter Communications, Inc.**

**Spectrum**

Cases #6133 and 6134 (November 2017)

NAD recommended that Charter Communications, Inc. (Charter) 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. (AT&T) 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 make 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 agreed to comply with NAD’s recommendations.
AT&T Services, Inc.

AT&T Fiber
Case #6122 (October 2017) // NARB #227 (April 2018)

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. Charter Communications, Inc. (Charter) 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 – April 2018) 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 (September 2017)

T-Mobile USA, Inc. (T-Mobile) was unable to support the claim that it had the fastest 4G LTE network. Verizon Communications, Inc. (Verizon) 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 that T-Mobile’s.

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

Verizon Communications, Inc.

Google Pixel Phone
Case #6086 (May 2017)

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 peaks 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 (March 2017)

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 (December 2016)

Frontier Communications, Inc. (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. (Charter). 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 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 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 (September 2016)

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 (September 2016)

In reliance on DISH Network LLC’s (DISH) 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 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 (September 2016)

Comcast was unable to support claims that competitor DIRECTV was built on “tech that’s old.” DIRECTV, LLC (DIRECTV) 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 (July 2016) // NARB #214 (December 2016)

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. (Verizon) 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 - December 2016) — The panel recommended 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 recommended that Comcast discontinue the challenged “faster 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 (May 2016)

T-Mobile USA, Inc. (T-Mobile), 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 (February 2016)

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 (February 2016)**

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 agreed to comply with NAD’s recommendations.

DIRECTV, INC.

4K, Wireless, Price, Free Upgrade
Case #5906 (November 2015) // NARB #211 (June 2016)

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. (Charter) 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 DIRECT 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.

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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 (October 2015) // NARB #210 (May 2016)

NAD recommended that T-Mobile USA, Inc. (T-Mobile) 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. (AT&T) 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 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 appealed NAD’s decision to the National Advertising Review Board.

NARB — (#210 - May 2016) — NARB 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 (September 2015)

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. (T-Mobile) 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 (Sprint) 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’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 (May 2015)

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 (May 2015)

NAD recommended that Comcast discontinue the unqualified claim that CenturyLink, Inc. (CenturyLink) 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 (March 2015)

Best Buy Stores, L.P. (Best Buy), 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, 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’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.

The advertiser agreed to comply with NAD’s recommendations.
DIRECTV, LLC

DIRECTV Picture, Sound, Signal Reliability and Customer Service Advertising
Case #5820 (March 2015) // NARB #201 (June 2015)

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.

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

NARB — (#201 - June 2015) — NARB 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.

DirecTV agreed to comply with NARB’s recommendations.
Sprint Corporation

Sprint Wireless Services
Case #5812 (February 2015)

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 (January 2015)

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 (December 2014)

NAD concluded that consumers were unlikely to take away a comparative superiority message that Verizon Communications, Inc. (Verizon) 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.

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**AT&T Services, Inc.**

**U-verse**

Case #5781 (November 2014)

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. (AT&T) 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.

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**Verizon Wireless, Inc.**

**Wireless Services and 4GLTE Network**

Case #5778 (October 2014)

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 (September 2014)

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 (September 2014)

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. CenturyLink agreed to comply with NAD’s recommendations.

Verizon Communications, Inc.

FiOS® Internet Service
Case #5750 (August 2014)

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 agreed to comply with NAD’s recommendations.

Comcast Cable Communications, LLC

AT&T’s U-Verse Wireless Receiver
Case #5730 (June 2014)

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 (February 2014)

Sprint Corporation (Sprint) 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 (February 2014)

NAD recommended that Sprint discontinue online and print advertising for its Unlimited My Way Monthly Service Plan. T-Mobile USA, Inc. (T-Mobile) 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 (December 2013)

AT&T Services, Inc. (AT&T) 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 (October 2013)

AT&T Services, Inc. (AT&T) 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 (September 2013)

NAD found that it was appropriate for Qualcomm, Inc. (Qualcomm) 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
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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 (September 2013)

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 (August 2013)

CenturyLink, Inc. (CenturyLink) 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 (November 2012)

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 (August 2012) // NARB #182 (January 2013)

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.

NARB — (#182 – January 2013) — NARB recommended that Frontier discontinue claims that reasonably communicate a message that Frontier’s “dedicated” Internet connection is faster and/or more reliable/consistent than cable. The panel also recommended that Frontier discontinue claims that Frontier’s “dedicated” Internet connection provides superior privacy and/or security as compared to cable. Finally, the panel recommended that Frontier discontinue claims that reasonably communicate a message that cable providers do not have a 100% U.S. based workforce and/or local managers unless that is true with respect to all or a significant portion of cable providers in areas where the advertisement is disseminated. Frontier agreed to comply with NARB’s recommendations.

**Verizon Communications, Inc.**

**Verizon’s Internet Services**  
Case #5499 (August 2012)

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 agreed to comply with NAD’s recommendations.

Comcast Communications, Inc.

XFINITY Internet Services
Case #5463 (May 2012)

NAD 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 agreed to comply with NAD’s recommendations.

Comcast Cable Communications, LLC

Xfinity
Case #5420 (January 2012)

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 agreed to comply with NAD’s recommendations.

**Cablevision Systems Corporation**

**Ultimate Triple Play with Optimum Online Boost**
Case #5412 (January 2012)

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 (January 2012)

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 (November 2011)

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 recommendation.

Comcast Communications

Xfinity
Case #5372 (August 2011)

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 (July 2011)

NAD determined that Comcast'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 (August 2010)

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.

The advertiser agreed to comply with NAD’s recommendations.

**Echostar Communications Corporation**

**DISH Network Satellite Television Service**  
Case #5193 (June 2010)

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.”

The advertiser agreed to comply with NAD’s recommendations.

**Verizon Communications, Inc.**

**Verizon FiOS**  
Case #5179 (May 2010)

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 (April 2010)

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 (April 2010) // NARB #166 (December 2010)

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.

NARB — (#166 - December 2010) — NARB affirmed NAD’s decision in its entirety.