

Committee Report

CONSENT CALENDAR

March 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Commerce and Consumer Affairs to
which was referred HB 477,**

**AN ACT establishing consumer protections regarding
Internet service provider outages and download speeds.**

**Having considered the same, report the same with the
following resolution: RESOLVED, that it is
INEXPEDIENT TO LEGISLATE.**

Rep. Paul Terry

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Commerce and Consumer Affairs
Bill Number:	HB 477
Title:	establishing consumer protections regarding Internet service provider outages and download speeds.
Date:	March 2, 2021
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill attacks a problem the magnitude and frequency of which have not been established. It also presumes that Internet service providers egregiously fail to address service issues appropriately or at all. In summary, this bill would introduce onerous and unjustified government regulation in a type of commerce that, while not as yet widely and reliably available in modern high speed modes as we would like, is nevertheless not guilty of the offenses this bill wishes to remedy by its draconian, unjustified and unworkable standards and requirements. The best solution to perceived or claimed problems is increasing competition, not more heavy-handed government regulation.

Vote 18-0.

Rep. Paul Terry
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Commerce and Consumer Affairs

HB 477, establishing consumer protections regarding Internet service provider outages and download speeds. **INEXPEDIENT TO LEGISLATE.**

Rep. Paul Terry for Commerce and Consumer Affairs. This bill attacks a problem the magnitude and frequency of which have not been established. It also presumes that Internet service providers egregiously fail to address service issues appropriately or at all. In summary, this bill would introduce onerous and unjustified government regulation in a type of commerce that, while not as yet widely and reliably available in modern high speed modes as we would like, is nevertheless not guilty of the offenses this bill wishes to remedy by its draconian, unjustified and unworkable standards and requirements. The best solution to perceived or claimed problems is increasing competition, not more heavy-handed government regulation. **Vote 18-0.**

Original: House Clerk

Cc: Committee Bill File

NH House Commerce and Consumer Affairs Committee

Recommendation to ITL / [Majority Report re: [NH HB 477](#)]

Following is the report of [committee's majority](#) in recommending this bill as: [ITL](#)

From the Bill: "This bill [would] establish[ing] consumer protections regarding Internet service provider outages and download speeds."

[Comments and rationale for recommending ITL:](#)

This bill attacks a problem whose magnitude and frequency have not been established, as well as to presume Internet service providers' egregious failures to address service issues inappropriately or not at all. In summary, this bill would introduce onerous and unjustified government regulation in a type of commerce that, while not as yet widely and reliably available in modern high speed modes as we would like, is nevertheless not guilty of the offenses this bill wishes to remedy by its draconian, unjustified and unworkable standards and requirements. The best solution to perceived or claimed problems is increasing competition, not more heavy-handed government regulation.

Report prepared by Rep. Paul A. Terry and submitted on March 3, 2021.

Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 477

BILL TITLE: establishing consumer protections regarding Internet service provider outages and download speeds.

DATE: March 2, 2021

LOB ROOM: Zoom

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Terry

Seconded by Rep. Potucek

Vote: 18-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Keith Ammon, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/22/2021 9:55:55 AM
Roll Call Committee Registers
Report



2021 SESSION

Commerce and Consumer Affairs

Bill #: HB477 Motion: ITL AM #: _____ Exec Session Date: 3/2/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hunt, John B. Chairman	18		
Potucek, John M. Vice Chairman	1		
Osborne, Jason M.	2		
Ammon, Keith M. Clerk	3		
Abramson, Max	4		
Ham, Bonnie D.	5		
Depalma IV, Joseph	6		
Greeson, Jeffrey	7		
Johnson, Dawn M.	8		
Terry, Paul A.	9		
Bartlett, Christy D.	10		
Abel, Richard M.	11		
Herbert, Christopher J.	12		
Van Houten, Constance	13		
Fargo, Kristina M.	14		
Weston, Joyce	15		
Beaulieu, Jane E.	16		
Burroughs, Anita D.	17		
McAleer, Chris R.			
TOTAL VOTE:	18	0	

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 477

BILL TITLE: establishing consumer protections regarding Internet service provider outages and download speeds.

DATE: February 17, 2021

LOB ROOM: 302 Hybrid **Time Public Hearing Called to Order:** 9:03 a.m.

Time Adjourned: 9:49 a.m.

Committee Members: Reps. Hunt, Potucek, Ammon, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

Bill Sponsors:

Rep. Roy

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep John Patocek

Rock 6, Derry. Introducing for Rep Roy. (Reads the bill title.) The bill is déjà vu from two years ago. (that was all)

Brandon Garod

Attorney Legal Protection and Anti-trust NH DOJ. Neutral position. Point out issues this bill designed to connect. This bill explicitly provides protection and directs us to prosecute providers that have prolonged outages or deliver speeds significantly lower than advertised speed. We have a hotline and consumer protection process. The complaint is reviewed by a paralegal and then I review the official complaint. If I find there's a violation of the consumer protection act then I send it to the business for response. Almost 100% of the time the issue is being caused by something that interferes with the speed of the signal either before or after the consumers location. There are many factors that can affect speeds. Type of equipment the consumer is using, location, environmental factors, remote locations, weather, number of devices used in consumer's home. In our efforts to make sure the slower speed is not the fault of the business; the companies have been very responsive to making sure the consumer's issues are addressed. This bill expands the role of the CPB. Our resources are currently near or at near capacity and cannot be expanded on to be able to conduct new investigations. Every time there's a slow internet speed we would be required to conduct a thorough investigation and we don't have those resources. If the legislature were to give us those resources, slow speeds and outages, none of us are experts on internet speeds and how it all works. The signal is sent out from the internet provider, based on current CPB laws, as long as it's leaving the provider at the advertised speed they're not in violation. We'd have to prove it was not something caused by consumers. We'd have to do surveys of homes to see how many devices they're using. Not easy to do. No one in this building has the knowledge base to do that. We'd have to consult with experts. We have had really good results with working with internet providers. Under CP laws any unfair act or practice is a violation. This bill is designed to prevent a provider from advertising speeds and delivering significantly under that, that's already a violation of 358A. We already have the tools to bring them into compliance. Creating a carve out creates an unrealistic expectation that CPB would be able to do a thorough expectation.

Rep Weston

Q: Can anything be done if an outage is prolonged.

A: It depends. Two hypotheticals: Internet provider has something on their end that malfunctions and causes an outage that's within their control, they don't fix it, but continue to charge, we would get involved. If there was a serious ice storm that knocks out all power for a week, 100% outside the control of the company, that would be more difficult. If they continue to charge, that could be an unfair or deceptive act. That is already covered by our CP laws and we would have the ability to investigate.

Rep Bartlett

Q: AG's office uses volunteers to collect consumer complaint? How are they trained and where do you get these volunteers?

A: We have volunteers that man our hotline. We do not have full or part time AG staff that can stay on the phone for 7.5 hours a day. We developed a system to seek volunteers. Many are retired folks that want to give back to the community. We train them and support them. They're vetted and go through a hiring process. The volunteer's role is to find out if the person is calling about a valid CP complaint. Sometimes they're directed toward a private lawyer or another state department. We appreciate our volunteers.

Rep Van Houten

Q: Is the volume and frequently of complaints increased since covid?

A: Our complaints have been going up since covid. The hotline is an access point into the AG's office. We field calls about pretty much anything. We receive a high number of covid related complaints. They're not always violations of the CP Act. We've heard complaints about potential covid-related scams.

Rep Terry

Q: How many complaints are not the fault of ISP?

A: I can't give a percentage off the top of my head. Almost 100% of the time, it's an issue on the consumer's end. If there was a widespread impact we'd receive a lot of complaints. What we typically see is one or two complaints a month. Sometimes consumers complain the internet speed isn't what's been advertised. Sometimes it's a matter of using too many devices at once.

Q: What percentage of complainants did not first contact the ISP for a resolution, but came directly to you?

A: I do not have the ability to give a meaningful answer to that. We require our complaints to be entered on a complaint form. One of the questions is have you contacted the business.

Q: Small percentage?

A: I can't speak to it without further research. We always try to facilitate a resolution.

Rep Hunt

A: Tells story about an ice storm. Should I ask for a refund for the two days it took for them to get me back online.

Q: If there was a storm and your pole was impacted in a way that effects you, you notify them, and they choose not to and continue to charge you, that could be a violation.

Rep Hunt: Another case they sent out an email stating that they had a technical problem and they switched provider. When you get your email provider and they bring you a router, the built in Wi-Fi wears out. All Wi-Fi gets tired. You need to upgrade your wifi every five years. WYB?

Lisa McCabe*

(Read her written testimony) In opposition. Wireless Internet providers want to keep customers loyal. This bill would impose a one-size-fits all approach. Committed to consumer code. This bill would violate federal law.

Teresa Rosenberger

Burnstein Shur. The NH Telephone Association opposes this bill. This is an unregulated competitive industry. You want outages fixed ASAP because you don't want to lose one customer due to an outage. Second part of the bill, monitoring of download speeds, I agree 100% with attorney Garod. You have no control over what happens behind the door. Depends on brands and devices the consumer has. We all want to keep our customers happy.

Rep Bartlett

Q: We're both members of the woman's club of Concord. We've heard carriers are happy to give credits, but the customer has to ask for those credits. Is there no way carriers can tell which houses are down? Will they give a credit readily if customer asks?

A: Yes. Depends on the company. Smaller companies are generally aware of outages. Depends on the outage.

Rep Abramson

Q: Why not create a cause of action for the consumer or business experiencing an outage that they could gather evidence and take it to small claims court?

A: In most cases you'll get a refund if you ask.

Rep Hunt: You can sue and get triple damages.

Chris Hodgdon *

Comcast VP of government affairs and liaison with state's emergency management system. I'm very aware of what causes outages. All cable providers' policy is to provide credits when customers contact us about outage or service quality. The type of regulatory regime described in this bill isn't needed. I've done a speed test on an iPad 4. Due to the limits of the older device, I got 8mb/8mb. Using a new iPad, I got 300mb/~18mb dl/up. The FCC collected data on a range of ISPs over a decade. That data shows ISPs really are providing the speeds that they're advertising. Ask the committee not recommend passage of this bill.

HOUSE COMMITTEE ON COMMERCE & CONSUMER AFFAIRS

PUBLIC HEARING on Bill # HB447

BILL TITLE: establishing consumer protections regarding Internet service provider outages and download speeds.

DATE: Feb 17, 2021

ROOM: Zoom

Time Public Hearing Called to Order: 9:03 AM

Time Adjourned: 9:49 AM

(please bold if present)

Committee Members: Reps. Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

TESTIMONY

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Attorney Legal Protection and Anti-trust NH DOJ. Neutral position. Point out issues this bill designed to connect. This bill explicitly provides protection and directs us to prosecute providers that have prolonged outages or deliver speeds significantly lower than advertised speed. We have a hotline and consumer protection process. The complaint is reviewed by a paralegal and then I review the official complaint. If I find there's a violation of the consumer protection act then I send it to the business for response. Almost 100% of the time the issue is being caused by something that interferes with the speed of the signal either before or after the consumers location. There are many factors that can affect speeds. Type of equipment the consumer is using, location, environmental factors, remote locations, weather, number of devices used in consumer's home. In our efforts to make sure the slower speed is not the fault of the business; the companies have been very responsive to making sure the consumer's issues are addressed. This bill expands the role of the CPB. Our resources are currently near or at near capacity and cannot be expanded on to be able to conduct new investigations. Every time there's a slow internet speed we would be required to conduct a thorough investigation and we don't have those resources. If the legislature were to give us those resources, slow speeds and outages, none of us are experts on internet speeds and how it all works. The signal is sent out from the internet provider, based on current CBP laws, as long as it's leaving the provider at the advertised speed they're not in violation. We'd have to prove it was not something caused by consumers. We'd have to do surveys of homes to see how many devices they're using. Not easy to do. No one in this building has the knowledge base to

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House Remote Testify

Commerce and Consumer Affairs Committee Testify List for Bill HB477 on 2021-02-17

Support: 20 Oppose: 11 Neutral: 1 Total to Testify: 4

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Hodgdon, Chris	chris_hodgdon@cable.comcast.com	A Lobbyist	Comcast	Oppose	Yes (4m)	2/16/2021 5:59 PM
McCabe, Lisa	lmccabe@ctia.org	A Lobbyist	CTIA	Oppose	Yes (3m)	2/15/2021 10:01 AM
Garod, Brandon	brandon.h.garod@doj.nh.gov	State Agency Staff	Brandon Garod - AG Consumer Protection Bureau	Neutral	Yes (3m)	2/16/2021 10:45 AM
Scarponi, Ellen	ellenscarp1@gmail.com	A Lobbyist	Consolidated Communications	Oppose	Yes (2m)	2/13/2021 4:47 PM
Flammer, Yadin	yadinflammer@gmail.com	A Member of the Public	Myself	Support	No	2/13/2021 8:43 PM
Johnson, Sara	nhchicagocubfan@gmail.com	A Member of the Public	Myself	Support	No	2/14/2021 5:49 AM
Wells, Lee	leewells.locustfarm@gmail.com	A Member of the Public	Myself	Support	No	2/14/2021 12:49 PM
Thompson, Laura	nicnmom@hotmail.com	A Member of the Public	Myself	Support	No	2/14/2021 4:07 PM
Yokela, Josh	josh.yokela@leg.state.nh.us	An Elected Official	Rockingham 33	Oppose	No	2/14/2021 4:17 PM
Babb, Paul	paulbabb@protonmail.com	A Member of the Public	Myself	Oppose	No	2/14/2021 8:48 PM
Ingram, April	aandk@tds.net	A Member of the Public	Myself	Support	No	2/14/2021 7:49 PM
Saperstein, Mike	msaperstein@ustelecom.org	A Lobbyist	Myself	Oppose	No	2/16/2021 1:32 PM
Briggs, Stacey	stacey.briggs@t-mobile.com	A Lobbyist	T-Mobile	Oppose	No	2/16/2021 2:39 PM
Rosenberger, Teresa	trosenberger@bernsteinshur.com	A Lobbyist	U.S. Cellular	Oppose	No	2/16/2021 2:59 PM
Frost, Sherry	sherry.frost@leg.state.nh.us	An Elected Official	Myself	Support	No	2/15/2021 2:32 PM
ingold, Bret	bretgold@gmail.com	A Member of the Public	Myself	Support	No	2/15/2021 4:42 PM
McLaughlin, Barbara	brbmclaughlin42@gmail.com	A Member of the Public	Myself	Support	No	2/15/2021 7:50 PM
Chase, Susan	srfchase@gmail.com	A Member of the Public	Myself	Support	No	2/16/2021 9:13 AM
Lucas, Janet	janluca1953@gmail.com	A Member of the Public	Myself	Support	No	2/16/2021 10:42 AM

ARONSON, LAURA	laura@mlans.net	A Member of the Public	Myself	Support	No	2/16/2021 7:28 PM
Mennella, Alexandra	amennella1@protonmail.com	A Member of the Public	Myself	Oppose	No	2/16/2021 8:04 PM
Axelmann, Elliot	aluaxelman@gmail.com	A Member of the Public	Myself	Oppose	No	2/16/2021 10:01 PM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	A Member of the Public	Myself	Oppose	No	2/16/2021 10:30 PM
Pedersen, Michael	PedersenUSA@aim.com	An Elected Official	Hillsborough 32	Support	No	2/16/2021 10:41 PM
Fedorchak, Gaye	gayevf@gmail.com	A Member of the Public	Myself	Support	No	2/17/2021 9:54 AM
Greenwood, Nancy	nancgreenwood@yahoo.com	A Member of the Public	Myself	Support	No	2/17/2021 8:04 AM
Larson, Ruth	ruthlarson@msn.com	A Member of the Public	Myself	Support	No	2/17/2021 9:47 AM
Groetzinger, Tonda	groetzinger6@aol.com	A Member of the Public	Myself	Support	No	2/17/2021 11:27 AM
Mangipudi, Latha	Nashua, NH Latha.mangipudi@leg.state.nh.us	An Elected Official	Hills 35	Support	No	2/17/2021 1:31 PM
Bates, David	dbates3@yahoo.com	A Member of the Public	Myself	Support	No	2/13/2021 11:36 AM
Fenner-Lukaitis, Elizabeth	glukaitis@mcttelecom.com	A Member of the Public	Myself	Support	No	2/13/2021 1:55 PM
Abruzzese, Cathleen	Catabruzzo@comcast.net	A Member of the Public	Myself	Support	No	2/13/2021 5:40 PM

Testimony



**Testimony of Chris Hodgdon, Vice President Government Relations
Commerce and Consumer Affairs Committee**

**HB 477 – Relative to an Act Establishing Consumer Protections Regarding
Internet Service Provider Outages and Download Speeds.**

February 17, 2021

Chairman Hunt and distinguished members of the Committee, thank you for the opportunity to offer comments on HB 477. My name is Chris Hodgdon. I am Comcast's Vice President of Government Affairs and, in addition to my public policy role, I am the liaison with New Hampshire's Emergency Operations Center in the event that the state's emergency response system is activated.

Every day, Comcast provides services to more than 325,000 New Hampshire homes and businesses, and we have over 2,200 hardworking employees in the state that enable us to do so. Comcast has made significant investments in a reliable and resilient network, investing over \$15 billion in our network since 2017. Since 2011, we have invested over \$630 million in New Hampshire alone. As Comcast's President of Technology, Product, and Xperience Tony Werner recently noted: "Thanks to a decades-long global commitment to investing, building and evolving technology to meet the needs of our most-demanding customers and capable of meeting unexpected challenges, the Internet became one of our greatest sources of strength in 2020."

Despite our best efforts, like all other Internet service providers (and communications providers generally), commercial power outages, automobile accidents, animals mistaking our cable for food, our outdoor equipment occasionally serving as targets for intentional damage, and numerous other events beyond our control can sometimes cause service disruptions. When an outage occurs, Comcast's objective is to restore service as quickly and safely as possible. During and after disasters, while restoration of service is pending, Comcast has opened its Xfinity WiFi network – including over 19,500 Xfinity WiFi hotspots in outdoor or business locations in New Hampshire – for free to customers and non-customers to ensure that they can continue to access the Internet through any connected device. In addition, Comcast already has an effective policy in place to issue credits in the event of a service interruption to customers that request one because their service has been impacted.

We also understand that slow Internet speeds and outages can be disruptive to the customer experience, which is why it is our policy to work with customers directly to

address the speeds they receive and outages if they occur. While multiple factors affect the actual speeds that customers experience on different devices, our own testing as well as independent testing, including that conducted by the FCC, shows that Comcast consistently provides customers with speeds that meet or exceed those advertised for the tier of service to which they subscribe.¹ Critically these studies rely upon statistically valid samples of customers. Attempting to measure at each individual's location would create significant unnecessary traffic on the network as a result of the constant use of testing data, and is technically infeasible as it would require installing extra test hardware or software in every customer home. Finally, the actual speeds a customer experiences are affected by many factors outside our control, including the customer's device, the use of Wi-Fi, congestion in other networks, the speeds at which the content provider transmits the content, etc.

In light of the foregoing, and as discussed in more detail below, I submit that HB 477 is technically infeasible, would unnecessarily impose additional costs on ISPs and their customers and divert investment from network upgrades and innovation, and is not necessary for the following reasons:

Outage Reimbursement

- **Comcast has built and maintains a highly dependable and resilient network.** All services originate at a Comcast head end facility, of which Comcast has several in New Hampshire. Each of these large facilities has battery and generator backup, allowing it to function for sustained periods without commercial power. From the head end, Comcast's fiber optic network carries information in the form of light signals to a node at or near the customer's location. Every node, of which Comcast has thousands in New Hampshire, is connected to the commercial power grid by a power supply. The node converts light signals into radio frequency signals, which then travel over co-axial cable to each customer's home. In the event that a node loses power, all of Comcast's power supplies contain batteries and can be powered by a fleet of nearly 600 portable generators for longer periods when it is safe and feasible to do so.
- **Network reliability and resiliency are critical for any ISP hoping to successfully serve customers in today's competitive environment.** In addition to the network investments described above, Comcast operates a local Network Operations Center that integrates network health with technical operations and customer care 24/7, 365 days a year. In New Hampshire alone, we employ over 400 technicians and network engineers and have more than 100 external business partners available to respond to service issues. In the event of a major outage, typically caused by a storm, we operate under an incident command structure, which streamlines and speeds network recovery, and have

¹ See <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-tenth-report> and <https://www.netforecast.com/netforecasts-report-on-comcasts-network-performance-measurement-system-results-data/>.

pre-assigned teams who are able to travel into New Hampshire to assist in recovery.

- **Communications networks are dependent on commercial power and other factors beyond the ISP's control.** Some outages are unavoidable. HB 477 does not recognize that many service interruptions are beyond the ISP's control or influence because the services cannot function without commercial power. During post-storm restorations, ISPs cannot access affected areas until power companies have restored service. Requiring ISPs to reimburse customers for all "outages of service," regardless of the cause, would simply increase costs for ISPs and their customers and would not in any way protect consumers from outages caused by these external factors.
 - Comcast's services require a source of power at each customer's home for equipment such as cable modems, Wi-Fi routers, and other broadband devices to continue functioning. Consistent with FCC regulations, Comcast offers voice customers the option of purchasing a backup battery to help maintain access to 911 during a power outage. But while some New Hampshire households have generators, uninterruptible power supply ("UPS") systems, or other sources of in-home backup power, many do not. No amount of backup power in Comcast's network will ensure continuous Internet access to those customers during a power outage.
 - Likewise, unforeseen events such as fiber cuts due to construction or vehicles running into curbside cabinets or utility poles may result in service outages through no fault of Comcast's.
- **The current policy of trusting the customer and providing a credit upon request is the best solution.** Despite Comcast's robust network monitoring capabilities, there continue to be limits to ISPs' awareness of service interruptions, particularly at the customer level. For example, if the electric utility power circuit serving a network node remains powered but the circuit serving a customer's home loses power, the ISP may have very little visibility into the customer's experience. In addition, while ISPs can monitor their networks up to the customer premises, they may have little visibility or control over the operation of Wi-Fi routers, home networking, or devices connected to a home network. That is why consumers are generally in the best position to determine whether a service interruption appears due to an ISP network failure or other factors and to contact their ISP to request a credit if appropriate. Comcast provides customers with a variety of ways to get 24/7 help from customer service to troubleshoot service issues (and often resolves those issues quickly), identify whether there is an outage, and request credit for any outage.

Download Speeds

- **Comcast engineers its network and provisions network capacity to deliver speeds at or above those advertised.** Comcast provides residential customers

with a variety of high-speed broadband Internet access service plans from which to choose. We over-provision the speeds to our customers' modems and gateways and engineer our network with the goal of meeting or exceeding the speeds advertised for each tier of service. Our own as well as independent speed testing demonstrates that we successfully deliver actual speeds to our customers' homes that are consistent if not above those to which they subscribe, at both peak and off-peak times.

- **FCC speed measurements confirm that Comcast consistently delivers speeds at or above those advertised.** The FCC's recent Measuring Broadband America ("MBA") reports reflect the relationship between the speeds customers purchase and those they actually receive. The SamKnows data used in these reports is often held out as the gold standard for speed testing. Despite the potential for variance, MBA test results show that Comcast consistently provides customers with speeds that are at or above those advertised for the tier of service to which they subscribe. For example, in the most recent, 2019 testing period, Comcast provided actual median download speeds that were 107% of advertised speeds to at least 90% of participating subscribers.² Similarly, the median download speed received by participating Comcast customers during peak usage times was 117% of advertised speeds, compared to 118% in off-peak hours.³ Test results demonstrated similarly excellent performance for the upload speeds Comcast provides.
- **The actual speeds a customer experiences on their devices, however, are affected by many factors outside the control of the ISP.** Although Comcast consistently delivers advertised speeds to its customers' homes, Comcast cannot guarantee that a customer actually will experience those speeds on every device at all times. This is because the speeds that customers experience while using our Internet access service depend upon a variety of conditions, many of which are beyond our control as an ISP. This is why systems such as the FCC MBA program and Comcast's internal measurements are embedded either in a special Ethernet-connected measurement probe or are embedded into a cable modem gateway. These conditions outside the control of the ISP include:
 - The performance of the customer's connected device (i.e., computer, tablet, router, modem, etc.), which can be affected by the device's age and processing capabilities, among other factors. Comcast has a Device-to-Product Enforcement program to identify when customers may be using incompatible or old modem devices to help with this issue.
 - The use of in-home wireless connections, e.g., Wi-Fi, to connect to the Internet. Wi-Fi uses unlicensed spectrum that is utilized by a wide range

² FCC, Tenth Measuring Broadband American Report at 57 (2021), <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-tenth-report>.

³ *Id.* at Chart 15.1.

of devices, so these connections generally may be slower than wired connections and are subject to greater performance fluctuations, caused by factors like interference, attenuation, and congestion.

- The distance and time it takes packets to travel between a customer's modem and their final destination on the Internet, or their point of origination and a customer's modem, including the number and quality of the networks of various other entities in the transmission path. The Internet is a "network of networks." As such, Internet traffic can traverse the networks of multiple providers and may be negatively affected by the low quality of and/or congestion on each of these networks.
- Congestion (i.e., high usage levels) at or gating of speeds by the edge provider or destination. Edge providers (i.e., online content providers) control the capacity of their facilities to handle traffic and may limit the speeds at which a visitor can download from their site, which can affect the speeds that customers perceive on their Internet connections.⁴

For the reasons discussed above, new legislation is not needed to address Internet speeds or outages, and in some respects would be technically infeasible to implement. More importantly, such unnecessary regulatory mandates would divert investments of time and money away from network upgrades and innovation enhancements, thereby harming New Hampshire residents and businesses. Thus, we would ask you to recommend against adopting this legislation.

Thank you for the opportunity to address the Committee. I would be pleased to address any questions that the committee may have.

Chris Hodgdon
Comcast NBCUniversal
603-628-3380
chris_hodgdon@comcast.com

⁴ See also Nick Feamster & Jason Livingood, *Measuring Internet Speed: Current Challenges and Future Recommendations*, Communications of the ACM (Dec. 2020), <https://cacm.acm.org/magazines/2020/12/248801-measuring-internet-speed>.

Archived: Wednesday, April 14, 2021 11:07:16 AM

From: Jenna Alsayegh

Sent: Tuesday, February 16, 2021 1:36:57 PM

To: ~House Commerce Committee

Subject: USTelecom letter opposing HB 477

Importance: Normal

Attachments:

USTelecom NH HB 477 Letter.pdf ;

Good afternoon,

USTelecom would like to submit the following comments opposing HB 477.

Thank you,

Jenna Alsayegh

Director, Strategic Initiatives & Partnerships

USTelecom – The Broadband Association

O: 202-326-7267 | M: 202-802-4288

USTELECOM | THE BROADBAND ASSOCIATION

Archived: Wednesday, April 14, 2021 11:05:24 AM

From: [Hodgdon, Chris](#)

Sent: Thursday, March 4, 2021 8:50:30 AM

To: [~House Commerce Committee](#)

Subject: NH House Remote Testify: 9:00 am - HB477 in House Commerce and Consumer Affairs

Importance: Normal

Attachments:

[HB 477 Comcast testimony 2-17-2021.pdf](#) 

Please see attached Comcast's testimony related to HB 477.

Chris Hodgdon

Sent from [Mail](#) for Windows 10

Archived: Wednesday, April 14, 2021 11:05:24 AM

From: [Lisa McCabe](#)

Sent: Tuesday, February 16, 2021 8:44:01 AM

To: ~[House Commerce Committee](#)

Subject: NH House Remote Testify: 9:00 am - HB477 in House Commerce and Consumer Affairs

Importance: Normal

Attachments:

NH HB 477 CTIA Opposition 2.16.21.pdf ;

Dear Chair and members of the Committee-

On behalf of CTIA, the trade association for the wireless communications industry, please find the attached testimony in opposition to House bill 477.

Sincerely,

Lisa McCabe

 ctia

Lisa Volpe McCabe

Director, State Legislative Affairs

1400 16th Street, NW

Washington, DC 20036

202-736-3889 (office)

202-714-4948 (mobile)

lmccabe@ctia.org



Testimony of

Lisa McCabe

CTIA

Opposition to House Bill 477

New Hampshire House of Representatives

Commerce and Consumer Affairs Committee

February 17, 2021

Chair Hunt, Vice Chair Potucek and Committee Members, thank you for the opportunity to testify today on behalf of CTIA®, the trade association for the wireless communications industry, in opposition to New Hampshire House Bill 477 regarding internet service provider outages and providing automatic credits regarding service interruptions. This bill is unnecessary, unworkable as applied to wireless service providers, and would restrict how wireless providers contract with wireless consumers

The wireless industry is competitive and providers compete for consumers daily. Wireless providers work with consumers impacted by outages, including providing credits and other policies to ensure customers remain loyal. This legislation would interfere with that relationship by mandating a “one size fits all” approach to outages – many times outages caused by the loss of commercial power or backhaul transport, including fiber cuts, that are beyond the control of wireless providers.

Regarding the outages referred to in the bill, it is important to note that in a wireless environment, there may be many reasons why a consumer may not be able to receive service. These could include an issue with the handset or device, which has nothing to do with the provision of service, or that a consumer may be out of a carrier’s service area. In many instances, a wireless provider may be unaware that a particular consumer does not have service. While providers monitor



their network for outages and restore services as soon as possible, it is not possible for them to know exactly which consumers were on the network at the time of the outage. The very essence of wireless services is mobility. A consumer, for example, may be traveling in a part of the state that is outside an outage area and may have appropriate coverage. Additionally, those service providers that operate as Mobile Virtual Network Operators, do not own their own networks and therefore may not know there is a service outage impacting a consumer.

Furthermore, issues may arise that are out of the control of a wireless service provider that may impact service. Wireless providers purchase backhaul service from cable and wireline providers and an outage on their end could cause an outage for wireless services. Additionally, a loss of commercial power in an area could cause a cell site to go down also potentially impacting wireless service.

Many additional provisions in this legislation do not appear to be intended for wireless internet service providers as wireless providers do not offer service directly to a residence, do not advertise download speeds as contemplated in the bill, and therefore would not be able to operationalize these provisions in the wireless environment.

The wireless industry's competitive nature has spurred rapid wireless development with the wireless industry contributing \$475B a year to the U.S. economy and with about 1.3 million subscriber connections in New Hampshire. This rapid development was ushered in by Congress' decision in 1993 to create a national regulatory framework for wireless. This national framework allowed wireless providers to offer innovative service options, which significantly lowered the cost of services and provided more consumers with greater access to wireless. This legislation would threaten this



national framework and its resulting benefits by introducing jurisdiction-by-jurisdiction regulation that could limit consumer choice and increase consumer costs.

Since 2003, CTIA's Consumer Code for Wireless Service has been an integral part of delivering superior customer service to wireless consumers. The Code – which is followed in all 50 states, including New Hampshire – has helped consumers make informed decisions when selecting a wireless plan and has contributed to the continued competitiveness within the wireless industry. The Code affords wireless providers the flexibility to respond to changes in consumer demand. CTIA and its member companies regularly review the Code to ensure it reflects the ever-changing wireless marketplace.

Wireless carriers that are signatories to the Code, including AT&T, T-Mobile, US Cellular and Verizon, have committed to voluntarily adhere to a set of industry standard principles, including, providing ready access to customer service and promptly responding to consumer inquiries and complaints received from government agencies. Additionally, the industry has evolved to offer no-contract rate options for consumers offering additional consumer choice and flexibility. These efforts are just some examples of the wireless industry's responsiveness to consumer issues without the need for prescriptive legislation like HB 477.

Passage of HB 477 would run contrary to federal law. The Communications Act expressly forbids states from regulating the rates or entry of mobile communications providers. Specifically, Section 332(c)(3) of the Communications Act provides that “no State or local government shall have any authority to regulate ... the rates charged by any commercial mobile service or any private mobile service.”¹ These two classes of services – “commercial mobile service” and “private mobile service” –

¹ 47 U.S.C. § 332(c)(3).



encompass *all forms* of mobile traffic, including mobile voice service, mobile broadband service, and text messaging service. Thus, the prohibition against state rate regulation applies to *all mobile wireless offerings*.

The Communications Act prohibition on rate regulation extends to regulations that would have the *effect* of regulating wireless rates. As the FCC has stated, and as the courts have agreed, “it is the substance, not merely the form” that determines whether Section 332 preempts state action.² For example, the FCC has gone so far as to find that regulation of the manner in which telephone bills are calculated is equivalent to rate regulation, because wireless rate structures are an integral part of rates.³ Passage of the bill would functionally permit New Hampshire to regulate the rate structure of wireless providers. These requirements would bring New Hampshire into conflict with federal law.

The competitive wireless market offers consumers numerous providers and options to choose from when selecting wireless service plans and works to provide the appropriate credits to consumers when there are significant network outages. New Hampshire should not inhibit this competitive market, potentially limit consumer choice and increase consumer costs by passing this bill, especially as wireless providers work to expand coverage for consumers in New Hampshire and across the country. CTIA respectfully requests that the committee not forward HB 477.

² *Wireless Consumers Alliance*, 15 FCC Rcd 17021, at 17307 ¶ 28 (2000); see also *Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 457 F.3d 1238 (11th Cir. 2006) (quoting same).

³ See, e.g., *In the Matter of Southwestern Bell Mobile Systems, Inc., Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Challenges to, Rates Charged by CMRS Providers when Charging for Incoming Calls and Charging for Calls In Whole-Minute Increments*, Memorandum Opinion and Order, 14 FCC Rcd 19898, 19906 ¶ 19 (1999). See also *AT&T v. Central Office Tel., Inc.*, 524 U.S. 214 (1998) at 223 (“Rates ... do not exist in isolation. They have meaning only when one knows the services to which they are attached.”).

February 16, 2021

The Honorable John Hunt, Chair
House Commerce and Consumer Affairs Committee
Legislative Office Building
33 North State Street
Concord, NH 03301

The Honorable John Potucek, Vice Chair
House Commerce and Consumer Affairs Committee
Legislative Office Building
33 North State Street
Concord, NH 03301

Dear Chair Hunt and Vice Chair Potucek:

USTelecom appreciates the opportunity to submit written comments on HB 477. For the reasons outlined below, USTelecom opposes HB 477 as a misguided regulatory measure with limited consumer benefit.

USTelecom and its members, ranging from large global communications providers to small broadband companies and cooperatives, understand the essential role that broadband plays in the lives of New Hampshire residents. Broadband, particularly during the COVID-19 pandemic, has proven to be a lifeline for nearly every aspect of life -- work, education, healthcare, and social wellbeing. Our members are proud of the robust and resilient service they have been able to provide when much of the world went virtual nearly simultaneously.

The bill poses a number of concerns. Primarily, the bill does not recognize that broadband is a competitive service and those competitive market conditions create every incentive to provide the best quality of service possible in order to retain satisfied customers. To that end, service providers are continually investing in their networks,¹ both to improve performance but also to ensure network resilience and reliability.

No one likes service disruption, but such disruptions may be wholly outside of a provider's control, such as when there are physical events affecting the lines or creating power failures. While these physical issues cannot be eliminated, providers are taking every effort to minimize these situations. For example, USTelecom members are currently working with the Edison Electric Institute (EEI), a group of the largest electric service providers, in a Cross-Sector Resiliency Forum designed to increase response times and ultimately communications network resiliency. The participants in this Forum regularly update the Federal Communications

¹ In 2019 alone, communications providers invested \$78.1 billion in capital expenditures, which is on trend for this capital-intensive, competitive industry. See USTelecom—The Broadband Association, Broadband Investment Remains High in 2019, [Broadband Investment Remains High in 2019 – USTelecom](#) (last visited Feb. 15, 2021).

Commission (FCC) on their progress and we would encourage you to [track it as well](#). These efforts, not punitive laws, will best serve to improve network resiliency to the consumer's benefit.

Regarding section 2 on “Advertised Download Speeds,” HB 477 makes errant assumptions about both the quality and technical nature of broadband service. First, the FCC has been testing the service quality of America's communications providers—specifically how the advertised speed compares to the “actual” speed—for a decade as part of its “[Measuring Broadband America](#)” program. This report has consistently and continually found that America's broadband providers deliver on their promises and that customers get the services they expect and deserve. In fact, many providers deliver performance exceeding their advertised product.

Further, there are already significant transparency requirements in place regarding broadband service quality.² Broadband service providers can comply with their FCC-mandated transparency disclosures about the performance of their service by either publicly linking to the Measuring Broadband America report or, if they are not tested in the report, offering detailed descriptions about the nature of their broadband service.³

Importantly, HB 477 makes erroneous technical assumptions about broadband service and the user experience. There are many factors in broadband performance, many of which are in the exclusive control of the customer, including inside-wiring, the age and performance of the device used, the location of a router and the number of devices connected at any one time. Second, there are many network elements that are beyond the local service provider's control that can affect broadband performance. Given the global and connected nature of the Internet, performance is directly affected by the network and capabilities of the site or system the user is accessing. The Measuring Broadband America report expressly acknowledges that “the service performance that a consumer experiences could differ from our measured values for several reasons.”⁴ Yet HB 477 fails to take this into account, and in fact, provides punishments in spite of it.

Practically, there is no feasible way to provide the tests HB 477 would require on a mass basis. All federal testing programs—both the Measuring Broadband America report and the FCC's performance testing system for its high-cost universal service fund⁵—are done using a

² See 47 CFR § 8.1(a) (“Any person providing broadband internet access service shall publicly disclose accurate information regarding the network management practices, performance characteristics, and commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain internet offerings. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.”).

³ See, e.g., Consolidated Communications, Open Internet Information FAQs, <https://www.consolidated.com/support/terms-policies/internet-terms-policies/open-internet-information-faqs> (last visited Feb. 15, 2021).

⁴ FCC, Tenth Measuring Broadband America Fixed Broadband Report, 21 (2020) available at <https://data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf>.

⁵ *Connect America Fund*, Order on Reconsideration, 34 FCC Rcd 10109 (2019).

sampling of customers. Reliable testing requires special equipment in the home to be connected, equipment which itself can have an effect on performance as it is bandwidth intensive. While there are consumer speed tests available, they suffer from the problems described above and cannot reliably isolate the individual performance of the local service provider. At best they are providing a rough gage of network performance and in no circumstances should they be used to punish a provider as an “unfair or deceptive act” as HB 477 contemplates.

Beyond these issues, HB 477 lacks clear definitions, requires record keeping that is impossible to fulfil, and will ultimately not improve the consumer experience. New Hampshire’s broadband service providers are committed to keeping their customers connected and to providing the best service quality possible. We look forward to continuing to work with you on that important goal.

Sincerely,

/s/ Mike Saperstein

Mike Saperstein
Vice President, Strategic Initiatives & Partnerships
USTelecom—The Broadband Association

cc: New Hampshire House Commerce and Consumer Affairs Committee Members

Bill as
Introduced

HB 477 - AS INTRODUCED

2021 SESSION

21-0617

10/06

HOUSE BILL **477**

AN ACT establishing consumer protections regarding Internet service provider outages and download speeds.

SPONSORS: Rep. Roy, Rock. 32

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill establishes consumer protection provisions for customers of Internet service providers for service outages and less than advertised download speeds.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 477 - AS INTRODUCED

- Page 2 -

1 2 Effective Date. This act shall take effect January 1, 2022.