

Case #7212 (10/06/2023)  
**Comcast Cable Communications, LLC**  
**Xfinity 10G Network**  
**Challenger:** T-Mobile US, Inc.  
**Product Type:** Telecommunication Products/Services  
**Issues:** Express Claims; Implied Claims / Consumer Perception; Product Description  
**Disposition:** Substantiated In Part / Modified-Discontinued In Part

**BBB NATIONAL PROGRAMS**

**NATIONAL ADVERTISING DIVISION**

T-MOBILE US, INC.,  
*Challenger,*

COMCAST CABLE COMMUNICATIONS,  
LLC,  
*Advertiser.*

Case No. 7212  
Closed 10/06/2023

**FINAL DECISION**

- NAD will generally not question an Advertiser’s designation that a name is a brand or product name, unless it is clear that the language is a description and not consistently used with the brand or product name.
- Many words in the English language have multiple definitions, and the same word can convey different express claims based on each definition. Where an express claim is capable of multiple meanings, the advertiser must support the meaning that consumers reasonably take away from the context of the claim.

**I. Basis of Inquiry**

The advertising industry established the National Advertising Division (“NAD”) and the National Advertising Review Board (“NARB”) in 1971 as an independent system of self-regulation designed to build consumer trust in advertising. NAD reviews national advertising in all media in response to third-party challenges or through inquiries opened on its own initiative. Its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business. Challenger T-Mobile US, Inc. (“T-Mobile” or “Challenger”) challenged express and implied claims made by Advertiser Comcast Cable Communications, LLC (“Comcast” or “Advertiser”) for its Xfinity 10G Network. The following are representative of the claims that served as the basis for this inquiry:

**A. Express Claim**

- “10G”
- “Xfinity 10G”
- “Xfinity 10G Network”
- “Next-Generation Network” or “Next Generation Network”

## *B. Implied Claim*

- All Xfinity customers receive 10 Gbps speeds
- Xfinity offers 10 Gbps speeds
- Xfinity Internet is inherently superior to 5G wireless technology
- Xfinity Mobile operates on “10G” —not 5G—wireless technology
- All Xfinity customers receive “10G” service
- Upon “introducing” its “Xfinity 10G Network” in February 2023, Comcast significantly increased speeds for all Xfinity customers
- Xfinity has already achieved a major technological revolution
- Only Xfinity offers 10G speeds
- Xfinity customers’ home internet is uninterrupted during power outages

## **II. Evidence Presented**

The Challenger submitted the following evidence:

- Industry publications about “10G” and potential confusion over the meaning
- Publications, statements and webpages from the NCTA and Cablelabs about 10G
- Comcast’s own website
- Communications between T-Mobile and Comcast regarding the claims
- An article about AT&T’s 5G Evolution
- A reddit post written by the moderator of the official Xfinity subreddit about how to subscribe to the Xfinity Gigabit x10 tier
- Articles about the availability of the 10 Gbps tier
- The FCC National Broadband Map
- A consumer perception survey

The Advertiser submitted the following evidence:

- Declarations from Comcast’s Executive Vice President and Chief Network Officer
- A description of Comcast’s recent technological upgrades
- Data on the availability of Comcast’s service at various speeds and adoption rate
- Definitions from several dictionaries
- Industry publications about 10G and Comcast innovations
- An expert report rebutting the Challenger’s survey
- Data from SamKnows comparing Xfinity to T-Mobile

## **III. Decision**

### *A. Background*

In February 2023, Comcast rebranded its fixed internet network as “Xfinity 10G Network” to signify technological upgrades to its network that are continuing to be implemented. The name “Xfinity 10G

Network” and the claim “10G” appeared in a myriad of advertisements in different contexts, both on the Internet and on television.<sup>1</sup>

One series of commercials (the “Moon Landing” commercials) compare the launch of the Xfinity 10G Network to the moon landing, with an emphasis on the ability to play games anywhere. A Super Bowl commercial, for example, features astronauts landing on the moon only to find children already there and the astronauts as mere characters in a videogame.

Another series of commercials (the “What a Time to Be Alive” commercials) focus on the ability to play games and stream simultaneously and depict children playing videogames or streaming at the same time in different parts of the house: “Every device, in every room!” The children then wax nostalgic about how in the old days (a year ago), they were unable to do so.

Another commercial (“Bring Your Kid to Work Day”) shows kids at the Xfinity headquarters telling the developers about the features they need, which include reliability, low latency, low lag, and having multiple users online at once.

Other commercials focus on the speed of the Xfinity 10G Network, showing clips of Mario (a character from a videogame) sliding through pipes at rapid speed or clips from the movie *Fast X*.

Yet another commercial (“Red Flags”) focuses on the reliability of the Xfinity 10G Network, depicting a couple whose movie night is interrupted because of streaming and connection issues and the man’s attempts to restore connection is depicted as a “red flag.”

The 10G claim also appears in various print ads and on the Xfinity website.

Most of the commercials end with the text “10G” in stylized font prominently in the center of the screen, with an “X” behind it. The word “10G” on screen then fades and is replaced with the word “Xfinity.” A voiceover states, “The Next Generation 10G Network, only from Xfinity” or in some cases “Introducing the 10G Network, only from Xfinity.”

## *B. Standard of Review*

Advertisers must possess a “reasonable basis” for claims disseminated in advertising.<sup>2</sup> What constitutes a “reasonable basis” depends on several factors, including the type of product, the type of claim, the consumer benefit from a truthful claim, the ease of developing substantiation for the claim, the consequences of a false claim, and the amount of substantiation experts in the field believe is reasonable.<sup>3</sup>

Generally, absent extrinsic evidence of consumer confusion, NAD will not require an advertiser to change the name of a product or service name merely because a challenger suspects that consumers

---

<sup>1</sup> The Challenger identified dozens of representative advertisements. The following is merely a summary of some of them.

<sup>2</sup> *Guardian Technologies, LLC (GermGuardian and PureGuardian Air Purifiers and Replacement Filters)*, Report #6319, NAD/CARU Case Reports (November 2019).

<sup>3</sup> *Pfizer Inc.*, 81 F.T.C. 23 (1972). See also FTC, *Policy Statement Regarding Advertising Substantiation* (Nov. 23, 1984), <https://www.ftc.gov/public-statements/1984/11/ftc-policy-statement-regarding-advertising-substantiation>.

have been misled.<sup>4</sup> Given the burden of changing the name of a product or service, compelling evidence that the product name is confusing consumers is needed. A product name change can be required, however, even in the absence of extrinsic evidence if the product name expressly conveys a false message. Such claims are treated like any other express claims and require the advertiser to substantiate them.<sup>5</sup> When considering whether a challenged product name communicates an express performance claim, NAD looks at whether the product name conveys a clear, specific, or objectively provable claim, independent of the rest of the advertising claims and context in which it is presented.<sup>6</sup>

### C. *The Use of 10G as a Product Name*

T-Mobile challenged several variations of Comcast's use of "10G," including "Xfinity 10G" and "Xfinity 10G Network." The Advertiser argued that its new brand name is "Xfinity 10G Network" and that "10G" and "Xfinity 10G" are merely variations of that same brand name and that it is the Challenger's burden to present survey evidence to show that consumers were misled.

NAD will generally not question an advertiser's designation that a name is a brand or product name, unless it is clear that the language is a description and not consistently used with the brand or product name. Here, NAD accepted that Comcast named its network the Xfinity 10G Network and that it uses 10G as part of a product name.

The parties disagreed as to whether the 10G was used exclusively as a brand name or appeared in advertising standing alone without a tie to the Xfinity brand name. On the website, "Xfinity 10" appears against an image of the moon. The word "Xfinity" is shown above "10G" and both are stylized in white font with "10G" being slightly bolder and larger than "Xfinity." NAD found that the phrase "10G" is merely a variation of "Xfinity 10G Network."

In nearly all the advertisements "10G" appears by itself on screen (sometimes with an "X" in the background). Although a voiceover may mention "Xfinity" and the word "network," the network name does not appear on screen with 10G. Although in some commercials the voiceover includes reference to "Xfinity 10G Network," it generally occurs at a point in the commercial before "10G" appears on the screen. When seeing "10G" on the screen, reasonable consumers may not connect "10G" to the brand name Xfinity 10G Network.

NAD found that when "10G" appears without being a part of "Xfinity 10G Network" consumers are unlikely to view "10G" only as part of a product name. NAD therefore concluded that the Advertiser's use of "10G" standing alone was not a variation of its product name.<sup>7</sup>

#### 1. *The Challenger's Survey*

The Challenger submitted a controlled survey conducted online of 400 actual and prospective customers of home internet services. Survey respondents were shown a print ad that featured the

---

<sup>4</sup> *SharkNinja Operating LLC (Ninja Foodi NeverStick)*, Report #6939, *NAD/CARU Case Reports* (August 2021).

<sup>5</sup> *Bayer Healthcare, LLC (One-A-Day All Day Energy / NARB Panel #145)*, Report #4684, *NAD/CARU Case Reports* (June 2007).

<sup>6</sup> *Zarbee's Inc. (Zarbee's Naturals Remedies and Supplements)*, Report #6927, *NAD/CARU Case Reports* (December 2020).

<sup>7</sup> NAD noted that whether a particular claim was a product name affected only the burden of proof in the case.

words “Xfinity 10G Network” in stylized text.<sup>8</sup> The survey showed that 40% of respondents took away a message that 10G was superior to 5G and 34.5% took away a message that 10G means 10 Gbps.<sup>9</sup>

NAD found the survey to be reliable evidence of how consumers perceived the use of “10G” in “Xfinity 10G Network.” The survey used an appropriate control and a series of non-leading questions that ultimately culminated in asking respondents what the term 10G communicated to them.

The Advertiser’s expert argued that the Challenger’s survey was fatally flawed in a number of ways:

- The survey improperly drew conclusions from open-ended responses that mentioned both 10G and speed, resulting in only 9 out of the 200 respondents in the control cell (400 respondents total) getting asked the ultimate question.
- The stimulus should not have included other claims about speed.
- The control was flawed.
- The survey questions were biased and leading.
- The survey isolated one non-representative advertisement and extrapolated results to the campaign without explanation of a basis to do so.

NAD considered these criticisms but concluded that they did not establish that the survey was fatally flawed.

First, NAD found that the Challenger’s analysis of the first two open-ended responses was not improper. Although the Challenger highlighted the percentage of respondents who mentioned both 10G and speed, all respondents who mentioned 10G or Z8 were allowed to proceed to subsequent questions. Although only 9 respondents made it to the final question, this may indicate that consumers take away specific messages from 10G that they did not when with the product name was changed to Z8.

Second, NAD found that the reference to speed in the fine print of the advertisement did not impact responses. While 45.5% of respondents mentioned speed in response to the test cell, only 4.5% of respondents in the control cell mentioned speed. It is therefore unlikely that a speed message was conveyed in the fine print at the bottom of the ad rather than the 10G language.

Third, NAD found that the control was not flawed. The Advertiser objected to the fact that the element at issue—10G—had both the number and the letter changed and their positions reversed in the control. Because the claim at issue here is “10G,” it was appropriate to change the entire claim—both

---

<sup>8</sup> At the top of the ad were the words, “The next generation network got game.” At the bottom, in small font, was a large block of text which included the claim “running at faster speeds.” In the control cell, “10G” was replaced with “Z8.”

<sup>9</sup> The survey questions followed a standard funnel format. Respondents were asked two open-ended questions about what the ad communicated, and those who mentioned 10G or Z8 were then asked a series of questions culminating in the ultimate close-ended question: “Which of the following, if any, did the term 10G communicate to you about the advertised services?” In response to this question, a net 40% of respondents took away the message that 10G was “an improvement over 5G wireless technology” 34.5% took away the message that it meant “gigabits per second,” 10.5% chose the response that 10G meant “advanced current technology and future innovation” and only 0.5% responded with, “nothing it is just part of a brand name.”

the number and the letter—for the control. The term “Z8” is an alphanumeric name without meaning to consumers.

Finally, NAD determined that the survey questions did not lead responses to an extent that created bias. The Advertiser argued that the final close-ended question asks about “gigabits” and “5G,” both of which naturally would be associated with 10G (because each contains “G”) in the test cell but not Z8 in the control. The Advertiser also argued that the choices would lead consumers away from indicating that 10G was a brand because they asked about “the term” 10G and the choice, “Nothing, it is just part of a brand name,” is disparaging (as well as an exclusive option). In an otherwise well-conducted survey, NAD concluded that it is unlikely that these alleged flaws led to the high level of consumer confusion as indicated by the results.

NAD generally requires that a survey demonstrate that at least 15 to 20% of the respondents have taken away a misleading message from the ad.<sup>10</sup> Here, the Challenger’s survey showed that 34.5% of respondents took away the message that the “G” in 10G meant Gbps and 40.0% took away the message that it is superior to 5G. Both 34.5% and 40% are well above the 15-20% threshold required to demonstrate that a material number of consumers are misled.

The Advertiser also argued that the results of the Challenger’s survey could not be generalized to the entire campaign and maintained that when surveying a brand name, it would be appropriate to survey the brand name standing alone, without any context, as well as in a variety of different contexts to receive a clear picture. The stimulus in the Challenger’s survey was a plain print ad that prominently featured the name at issue: “Xfinity 10G Network” surrounded by empty space. Although text at the bottom of the page references speed, it is in small font and difficult to read and, as discussed above, a very small number of respondents took away a message of speed from the control ad. NAD therefore concluded that the results of this survey could be generalized to other uses of the product name.

## 2. 10G as an Express Claim Meaning 10 Gbps or 10<sup>th</sup> Generation

The parties disagreed as to whether the use of 10G in the product name is expressly false. The Challenger argued that the name 10G literally means 10 Gbps or 10<sup>th</sup> Generation. In addition to the consumer perception survey showing that consumers are misled by the product name, the Challenger provided evidence relating to the origin of “10G” as used in the cable industry and industry publications warning about consumer confusion. The Advertiser argued that the term “Xfinity 10G Network” is simply its brand name and does not convey any message and that, if there is any message to be taken away from 10G at all, it would mean superior technology because the Xfinity 10G Network is clearly superior to wireless networks including 5G.

Although “10G,” is not defined in any dictionary, the lack of a recognized dictionary definition does not preclude the term from having meaning and being an express claim. Nor does a claim need to literally spell out the message in full to be an express claim.<sup>11</sup> For example, people understand what

---

<sup>10</sup> *SharkNinja Operating LLC (Ninja Foodi NeverStick)*, Report #6939, *NAD/CARU Case Reports* (August 2021).

<sup>11</sup> The line between express and implied claims is not an immovable bright line that is clearly defined—it is more of a continuum based on the market and consumer understanding of the claim in that market. As such, although consumer perception evidence is not required in assessing express claims, it can often be helpful.

ASAP, RSVP, and other initials and acronyms mean without using (or sometimes without knowing) the full words they are replacing.

The term “10G” was first used by the NCTA, and it defined “10G” as “10 Gbps.”<sup>12</sup> In a press release introducing the 10G platform, the NCTA explained “10G” is “the cable industry’s vision for delivering 10 gigabit networks, or 10G™ - a powerful, capital-efficient technology platform that will ramp up from the 1 gigabit offerings of today to speeds of 10 gigabits per second and beyond . . . .”<sup>13</sup> Given the industry use of 10G, NAD found the Advertiser’s argument that “10G” does not mean anything more than a “superior” network to be unpersuasive.

In addition to the survey, which NAD found to be persuasive evidence that a substantial percentage of consumers would consider 10G to mean 10 Gbps and better than 5G, NAD found that the multiple industry publications warning of potential consumer confusion arising from the use of “10G” were also instructive. Articles from *GottaBeMobile*, *TheStreet* and *PCWorld* cautioned that Xfinity’s new 10G is unrelated to 5G and actually means 10 Gbps speeds but that Comcast does not yet offer 10Gbps.<sup>14</sup> NAD found that although this evidence is anecdotal, it provides insight into the industry definition of 10G and underscores the potential for consumer confusion arising from the use of “10G.”

The Advertiser argued that even if 10G had a literal meaning, it would mean different things to different people (such as “generation” and “Gbps”), and that a term capable of multiple meanings cannot be an express claim that is unambiguous on its face. Many words in the English language have multiple definitions, and the same word can convey different express claims based on each definition.<sup>15</sup> If some consumers reasonably understand “10G” to be “10 Gbps” and others “10<sup>th</sup> Generation,” then both meanings may be treated as express claims.<sup>16</sup> Where an express claim is capable of multiple meanings, the advertiser must support the meaning that consumers reasonably take away from the claim in the context of the advertising.

---

<sup>12</sup> NAD disagreed with the Advertiser’s contention that its intended meaning of “10G” is irrelevant—the Advertiser’s evidence would be relevant in the event that the Challenger meets its burden. In Lanham Act litigation, primarily in the trademark context, evidence of intent to confuse may create a rebuttable presumption of likelihood of confusion that obviates the need for additional extrinsic evidence. While NAD has not considered whether such a presumption would apply in its own cases, evidence of the industry definition is, at a minimum, relevant to NAD’s consideration.

<sup>13</sup> Press Release, *Introducing 10G: The Next Great Leap for Broadband*, NCTA, Jan. 7, 2019, <https://www.ncta.com/media/media-room/introducing-10g>.

<sup>14</sup> Xavier Lanier, Xfinity 10G Network: What it is...And Isn’t, *GottaBeMobile.com* (Mar. 20, 2023), <https://www.gottabemobile.com/xfinity-10g-network/>; Daniel Kline, Comcast Markets an Internet Service Designed to Mislead Customers, *TheStreet.com* (Mar. 5, 2023), <https://www.thestreet.com/technology/comcast-markets-an-internet-service-designed-to-mislead-customers>; Alaina Yee, Don’t be fooled: Comcast’s ‘10G’ doesn’t mean what you think it does: It’s not two times as fast as 5G, and has nothing to do with phones, *PCWorld.com* (Mar. 20, 2023), <https://www.pcworld.com/article/1662111/10g-doesnt-mean-what-youthink>.

<sup>15</sup> *Verizon Communications, Inc. (Verizon 5G Stadium Access)*, Report #6364, *NAD/CARU Case Reports* (May 2020) (“An express claim can convey more than one meaning depending on the context.”).

<sup>16</sup> 10G, as defined to mean 10<sup>th</sup> Generation, was not challenged as an express claim in this case; only the implied claim that Xfinity Mobile operates on “10G”—not 5G—wireless technology was challenged.

NAD concluded that “10G” as used in the name “Xfinity 10G Network” and “Xfinity 10G” is an express claim that means 10 Gbps, or 10<sup>th</sup> Generation.

### 3. Substantiation

#### a) 10 Gbps Substantiation

The Advertiser argued that even if consumers take away a message that the Xfinity 10G Network refers to 10 Gbps speeds, such a claim is supported by the fact that on June 13, 2023, Xfinity began offering 10 Gbps upload and download speeds on its Gigabit Pro tier of service, which is now available to 98% of customers in its service area. Comcast argued that since 10 Gbps is now available to 98% of its customers in its service area, calling its network “10G” is substantiated.

Information about the requirements for obtaining Gigabit Pro tier is difficult to locate on the Advertiser’s website. For example, it is necessary to navigate to a single webpage that that says, “Want the fastest internet? Discover speeds up to 10 Gbps on the Xfinity 10G Network. Call 1-800-934-6489 for details.”<sup>17</sup> The Advertiser also acknowledged that it must install fiber to the premises to provide the Gigabit Pro tier to customers but maintained that it is a service available to nearly all of its customers and submitted evidence confidentially of the subscription rate of the Gigabit Pro tier of service.

If a product or service is difficult to find or attain, NAD has found that a product or service is not a meaningful consumer option for purposes of a comparative claim.<sup>18</sup> In a challenge brought by T-Mobile against Comcast’s Xfinity Mobile’s comparative pricing claim, NAD determined that T-Mobile’s Base Essentials plan, a plan introduced during the course of that challenge, was not prominently featured as a purchase option on the website, could not be purchased online, and, as a result, was not a meaningful consumer option that could defeat the price comparison claim made by Comcast.<sup>19</sup>

Like T-Mobile’s Base Essentials plan, Comcast’s Gigabit Pro plan is difficult to locate on its website. It is not presented as one of the available plans for consumers to choose and a single mention on a webpage informs consumers that this plan is available by calling Comcast directly. Further, Comcast’s data reveals that the actual number of subscribers to the Gigabit Pro tier of service is only a small percentage of Comcast’s total subscribers.<sup>20</sup>

Most importantly, the Gigabit Pro service is one of Xfinity’s many tiers of service. As stated above, describing the entire network as “10G” conveys the message that all consumers on the network will receive a significant increase in speed up to 10 Gbps speeds. In a recent decision reviewing 5G claims for T-Mobile’s Home Internet service, NAD concluded that T-Mobile did not provide a reasonable basis

---

<sup>17</sup> The Challenger submitted a reddit wiki post written by a moderator of the official Xfinity subreddit, titled “Comcast\_Xfinity: Direct help from knowledgeable Comcast employees,” explaining the various steps necessary to subscribe to the Gigabit Pro tier, which includes multiple requirements, receiving permits from local governments, building out fiber to the home, and exorbitant fees.

<sup>18</sup> *Comcast Cable Communications, LLC (Xfinity Mobile Wireless)*, Report #7118, *NAD/CARU Case Reports* (October 2022).

<sup>19</sup> *Id.*

<sup>20</sup> As there may be other reasons besides the difficulty of accessing the service for a low subscription rate, this fact supplements the other evidence in the record as to the low availability of this tier of service.



for its “5G Internet” claims as, at that time, T-Mobile Home Internet customers did not receive a 5G signal at all times.<sup>21</sup> The decision reasoned that, “the claim identifies the service as ‘5G Internet,’ it conveys the message that consumers will connect to a 5G network and experience typical 5G speeds.” Here, only one of Xfinity’s many plans can reach 10 Gbps, and to access that service tier requires installation of fiber to the premises. The product name identifies the entire network as 10G, and therefore consumers reasonably associate the name, “Xfinity 10G Network”—and the 10G speeds—with the entire network, not a specific tier of service requiring the installation of fiber to the premises.

Moreover, there is no evidence in the record as to whether Xfinity has achieved the other goals of the 10G vision as defined by the NCTA. Although the Advertiser noted that 10G is a vision and not a standard, and therefore it can be achieved in any number of different ways, it is clear that the NCTA vision has aspirations as to very specific attributes of cable service, including “more capacity, lower latency and greater security. . . .”<sup>22</sup> The Advertiser has made many improvements to its network recently and is continuing to do so, but it is not clear from the record that it has in fact achieved the 10G vision as to each of those attributes.

*b) Better Than 5G Substantiation*

The Advertiser argued that by almost any measure of network performance, the Xfinity 10G Network is vastly superior to 5G. The Advertiser submitted data from SamKnows, a third-party consultant, that compares Comcast’s network to T-Mobile and Verizon’s wireless networks across a variety of metrics.

It is well-established that “[b]road superiority claims require supporting evidence that appropriately matches the breadth of the claims.”<sup>23</sup> Current fixed broadband technology is superior to mobile in many respects, as NAD noted in past decisions, because the nature of the two technologies means that mobile performance may be impacted by a number of factors (such as distance, weather, obstacles, congestion and deprioritization) that may be less of an issue for cable internet.<sup>24</sup> The record, however, lacked evidence supporting the broad superiority message conveyed by the Advertiser’s 10G claim.

Xfinity’s data from SamKnows shows that between June 16 and June 23, Xfinity’s network was superior to T-Mobile’s network as to latency under upstream load (99% percentile), downstream latency under load (99<sup>th</sup> percentile), UDP latency, UDP packet loss, median DNS response time, median website load time, Netflix stream startup delay, gaming latency and jitter (Call of Duty), Facebook app downstream performance, and Zoom latency. The same data was provided for a comparison between T-Mobile and Verizon from August 1 through August 16 (with additional data provided for multi-threaded download speed at the 75<sup>th</sup> percentile, where Xfinity was still superior).

---

<sup>21</sup> *T-Mobile USA, Inc. (Home Internet Service)*, Report #7066, NAD/CARU Case Reports (March 2022).

<sup>22</sup> Press Release, *Introducing 10G: The Next Great Leap for Broadband*, NCTA, Jan. 7, 2019, <https://www.ncta.com/media/media-room/introducing-10g>.

<sup>23</sup> *Verizon Communications, Inc. (Verizon 5G Stadium Access)*, Report #6364, NAD/CARU Case Reports (May 2020).

<sup>24</sup> *T-Mobile USA, Inc. (T-Mobile Home Internet)*, Report #7140, NAD/CARU Case Reports (January 2023).

While SamKnows data has been submitted in prior NAD cases,<sup>25</sup> NAD has not evaluated the representativeness or reliability of SamKnows data. Here, the data was provided only in a summary fashion in a series of charts without information in the record as to how the data was collected, the sample size, the geographic region from which the data was collected, what exactly is being compared, how comprehensive the data is, whether the one- to two-week snapshots are representative of performance generally, how the averages were calculated, and other open questions.

Additionally, although it shows superior results in metrics such as latency, website load time, some benefits in Netflix streaming startups and delay, and latency and jitter in Call of Duty, there was insufficient evidence in the record whether those differences, sometimes measured in milliseconds, impact end-user performance in a consumer relevant way.

As to the metric consumers are most likely to associate with a broad, unqualified superiority claim—speed—on the Xfinity network, consumer speed is determined by the service tier purchased. While the speeds reachable in the fastest Gigabit Pro tier exceed that of 5G, the same may not be true of Xfinity’s lower speed tiers. There is no information as to how the upload speeds in Xfinity’s other tiers compare to 5G networks.<sup>26</sup> NAD therefore concluded that the evidence in the record was insufficient to support the broad, unqualified superiority message conveyed by the 10G claim.

#### 4. Conclusion

NAD concluded that the Advertiser did not provide a reasonable basis for its 10G claims and, accordingly, NAD recommended that the Advertiser discontinue the following claims:

- “10G”
- “Xfinity 10G”
- “Xfinity 10G Network”

Alternatively, the Advertiser may modify its advertising to (a) make clear that the Advertiser is implementing improvements that will enable it to achieve 10G and that 10G is aspirational or (b) use 10G in a manner that is not false or misleading, consistent with this decision.

Nothing in this decision would prevent the Advertiser from making a more qualified claim, if supported, about the superiority of its network over 5G.

---

<sup>25</sup> *Comcast Cable Communications, LLC (Xfinity Extreme 505 High-Speed Internet Service)*, Report #5802, *NAD/CARU Case Reports* (January 2015); *AT&T Services, Inc. (U-verse)*, Report #5781, *NAD/CARU Case Reports* (November 2014).

<sup>26</sup> To the extent the claim conveys an express message that home internet service would run off 10G mobile technology, nothing in the record indicates that Xfinity’s mobile (or fixed) network runs on 10<sup>th</sup> generation technology (or that there even is such a mobile standard). The Advertising Standards Authority in the United Kingdom recently reviewed the name “6G Internet,” that referred to home internet, and concluded it was misleading because consumers could be misled into believing it was the next generation mobile network technology. ASA Ruling on 6G Internet Ltd, A23-1190482 (Aug. 16 2023), <https://www.asa.org.uk/rulings/6g-internet-ltd-a23-1190482-6g-internet-ltd.html>. This decision highlights the potential for consumer confusion when using terms traditionally associated with wireless technology to describe a different service.

NAD noted that the following alleged implied claims would derive from the 10G claim:

- Only Xfinity offers 10G speeds
- All Xfinity customers receive 10 Gbps speeds
- Xfinity offers 10 Gbps speeds
- Xfinity Internet is inherently superior to 5G wireless technology
- Xfinity Mobile operates on “10G”—not 5G—wireless technology
- All Xfinity customers receive “10G” service
- Upon “introducing” its “Xfinity 10G Network” in February 2023, Comcast significantly increased speeds for all Xfinity customers
- Only Xfinity offers 10G speeds

Because the challenged implied claims would derive from the express 10G claims, and NAD recommended the express 10G claims be discontinued or modified, NAD did not review the implied claims on their merits.

#### *D. “Next Generation” and Technological Revolution Claims*

NAD next examined the “Next Generation” claim and whether the Advertiser’s advertisements convey the implied message that Comcast has already achieved a major technological revolution.

The Advertiser’s commercials, such as the Super Mario commercial, includes a voiceover stating that “the future starts now.” The “What a Time to Be Alive” commercials feature kids talking in the past tense about the old days where they could not play games in all the rooms of the house at once. The moon landing commercials also focus on a breakthrough—that has already happened—that was as momentous as the moon landing.

The Advertiser explained that it has implemented several substantial upgrades to its network and aspires to further improve its network. In the past five years, Comcast has invested over \$20 billion in upgrading its network. Improvements include:

- New digital nodes that can support up to 10 Gbps speeds using either fiber or coaxial cable;
- Ongoing efforts to upgrade to a virtual cable modem termination system that will allow it to deliver services using digital rather than analog transmissions;
- Deploying new smart technologies that will allow it to monitor, identify and repair network impairments automatically;
- Implementation of the latest active queue management system to reduce latency, with ongoing efforts to further reduce latency;
- Ongoing efforts to increase download speeds offered over coaxial connection to 2 Gbps.

Together, these upgrades have resulted in significant improvements in terms of network reliability, lower latency and other features across all tiers of service in areas where the upgrades have been implemented. Although it is true that these efforts are ongoing, it is also clear that the Advertiser has already achieved and implemented significant improvements in its network technology.

Accordingly, NAD concluded that the Advertiser provided a reasonable basis for the “Next Generation” claim and implied claims that it already achieved a major technological revolution.

### *E. The Power Outage Implied Claim*

The Challenger argued that the “What a Time to Be Alive” commercials convey the message that Xfinity customers’ home internet is uninterrupted during power outages. During the commercial, a girl says to her sister who is playing on a laptop, “When I was your age, we couldn’t stream a movie when the power went out.” The sister responds, “You’re only a year older than me.” The Challenger notes that this claim is premature, and the Xfinity website during the course of the challenge stated that “storm-ready” WiFi “Coming soon.”

Although the Advertiser did not address this argument in detail, it did note that one of its new monitoring technologies would help reduce disruptions during adverse weather conditions. The record does not include details of the effectiveness of this monitoring technology in ensuring that customers can still stream a movie uninterrupted when power runs out. NAD concluded that the Advertiser did not provide a reasonable basis for this claim.

Accordingly, NAD recommended that the Advertiser modify its advertising to avoid conveying the unqualified message that Xfinity customers’ home internet is uninterrupted during power outages.

## **IV. Conclusion**

NAD concluded that “10G” as used in the name “Xfinity 10G Network” and “Xfinity 10G” is an express claim that means 10 Gbps, or 10<sup>th</sup> Generation.

NAD concluded that the Advertiser did not provide a reasonable basis for its 10G claims. Accordingly, NAD recommended that the Advertiser discontinue the following claims:

- “10G”
- “Xfinity 10G”
- “Xfinity 10G Network”

Alternatively, the Advertiser may modify its advertising to (a) make clear that the Advertiser is implementing improvements that will enable it to achieve 10G and that 10G is the aspiration or (b) use 10G in a manner that is not false or misleading, consistent with this decision.

Nothing in this decision would prevent the Advertiser from making a more qualified claim, if supported, about the superiority of its network over 5G.

Because certain challenged implied claims would derive from the express 10G claims, and NAD recommended the express 10G claims be discontinued or modified, NAD did not review those implied claims on their merits.

NAD concluded that the Advertiser provided a reasonable basis for the “Next Generation” claim and the implied claim that it already achieved a major technological revolution.

NAD recommended that the Advertiser modify its advertising to avoid conveying the unqualified message that Xfinity customers’ home internet is uninterrupted during power outages.

## **V. Advertiser’s Statement**

Comcast will appeal NAD’s determination to NARB. Comcast disagrees with NAD’s decision, including NAD’s determination that the Xfinity 10G Network brand name constitutes an “express

claim” and that the survey submitted by T-Mobile constituted sufficient extrinsic evidence of certain claims and was not fatally flawed. Comcast is pleased that NAD found that Comcast provided a reasonable basis for claims that the Xfinity 10G Network is “Next Generation” and a major technological revolution. Comcast remains concerned regarding the manner in which NARB may address concurrent appeals on similar matters and is working to resolve those issues. **(#7212 ZW, closed 10/06/2023)**

© 2023 BBB National Programs