

March 28, 2016

Chairman Wheeler  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

As we pass the first anniversary of the FCC's landmark net neutrality rules, Internet service providers (ISPs) like Comcast, AT&T, Verizon, and T-Mobile are using new "zero-rating" plans to undermine the spirit and the text of the rules. Zero-rating allows ISPs to exempt certain content from customers' data caps. As currently offered, these plans enable ISPs to pick winners and losers online or create new tolls for websites and applications.

As a result, they present a serious threat to the Open Internet: they distort competition, thwart innovation, threaten free speech, and restrict consumer choice—all harms the rules were meant to prevent. These harms tend to fall disproportionately on low-income communities and communities of color, who tend to rely on mobile networks as their primary or exclusive means of access to the Internet.

The FCC's Open Internet Order protects the Internet as an open platform for commerce and innovation and ensures that Internet users control the content they access, not their ISPs. Importantly, the FCC's rules apply to both mobile and fixed networks. That means all users must have access to an open Internet, whether they connect using a smartphone, a tablet, or a personal computer.

Zero-rating plans come in a variety of forms. Comcast's plan directly favors its own content over competitors'. Plans from AT&T and Verizon charge application providers a fee in order to be zero-rated. T-Mobile zero-rates select video providers but only those that meet its substantial and sometimes burdensome technical requirements. It also throttles all online video, a whole class of applications, while allowing other classes to reach the user without interference. All of these plans violate net neutrality in specific ways.

The Open Internet rules say that ISPs cannot pick winners and losers online by slowing down some applications and services while speeding up others. Now Comcast has identified another way to pick winners and losers: It technically favors its own service above competitors' and exempts its own video application Stream TV from customers' data caps while counting all competing services toward those caps. This is a textbook case of an ISP abusing its power for its own competitive advantage.

The rules also say that ISPs can't charge websites and applications for access to a fast lane. Yet, AT&T and Verizon created a new toll by instead charging websites and applications for exemption from customers' data caps. These "sponsored data" plans motivate ISPs to keep data caps low in order to create pressure for companies to pay to circumvent the caps. These

plans distort user choice by pushing people toward websites with deep pockets and away from smaller applications who can't afford the toll. This includes start-ups, small players, and non-commercial providers. In this way, sponsored data plans create the same kinds of harms to innovation and free speech as online fast lanes.

Finally, the rules say that ISPs cannot be gatekeepers that determine which applications can be successful, including by treating some applications or classes of applications differently than others. T-Mobile is exempting the content of select video providers from customers' data caps as part of its Binge On program, but only if they meet its substantial—and proprietary—technical requirements. These requirements make it difficult for many start-ups, small players, and non-commercial speakers to participate in the program, creating lasting harms to innovation, competition, and free speech online. Moreover, by limiting Binge On to video providers, the program favors video as a class over all other classes of applications. In addition, in order to make Binge On work, T-Mobile is throttling a large portion of video traffic across its network, a form of application-specific discrimination. While we recognize that T-Mobile has made adjustments to its offering recently, our network neutrality concerns nonetheless hold.

In every case, websites that have not negotiated with a particular ISP now face new barriers to reaching that ISP's Internet users. These practices distort competition, stifle innovation, limit user choice, harm free speech, and drive up prices. In their current iterations, each of these plans run afoul of both the spirit of net neutrality and of the Open Internet rules.

Without action from the FCC, zero-rating plans will continue to expand, and ISPs will continue to seek out ways to monetize capped broadband service at the expense of an open Internet and the communities that rely on it. We urge the FCC to respond to the proliferation of these plans, fulfill its mandate to protect Internet users, and enforce its Open Internet rules.

Signed,

18MillionRising.org  
Access Humboldt  
Access Now  
Allied Media Projects  
Alternate ROOTS  
Black Alliance for Just Immigration  
Center for Media Justice  
Center for Rural Strategies  
Center for Social Inclusion  
ColorOfChange.org  
Consumers Union  
CREDO Action  
Daily Kos

Demand Progress  
Electronic Frontier Foundation  
Ella Baker Center  
Fight for the Future  
Free Press  
Future of Music Coalition  
Greenpeace  
Highlander Research and Education Center  
Institute for Local Self Reliance  
Martinez Street Women's Center  
May First/People Link  
Media Action Grassroots Network  
Media Alliance  
Media Mobilizing Project  
Million Hoodies Movement for Justice  
Movement Strategy Center  
MoveOn.org Civic Action  
National Alliance for Media Arts and Culture  
National People's Action  
New America's Open Technology Institute  
New Sanctuary Coalition of NYC  
OpenMedia  
Participatory Culture Foundation  
Participatory Politics Foundation  
Presente.org  
Progressive Change Campaign Committee  
Racial Justice Action Center  
RootsAction  
Rural Broadband Policy Group  
St. Paul Neighborhood Network  
SumOfUs  
The Greenlining Institute  
The Other 98%  
The Utility Reform Network  
UltraViolet Education Fund  
United Church of Christ, OC Inc.  
Urbana-Champaign Indendpent Media Center  
Voices for Racial Justice  
Women's Institute for Freedom of the Press  
X-Lab