

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
Harry Potter Alliance
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 Independent Media Center
Voices for Racial Justice
Women's Institute for Freedom of the Press
X-Lab