

November 1, 2016

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

Dear Chairman Wheeler,

I write to raise concerns about the proposed merger between Time Warner and AT&T, in particular, how it could dramatically increase the use of data caps and zero-rated content, two anti-competitive practices that harm consumers. Internet Service Providers (ISPs) are already using so-called “data caps,” which are artificial limits on how much data can be used in a month, to squash competition and gouge consumers under the unconvincing guise of limiting network congestion.

Nearly all data caps, and particularly those attached to wireline broadband plans, have nothing to do with network management and everything to do with profiting from of an ever-more-consolidated broadband market. Data cap plans that zero-rate data at the discretion of the ISP violate the principle of net neutrality by creating an internet where one bit is favored over another bit absent user control. Troublingly, AT&T proved itself to be an early and enthusiastic adopter of zero-rating in order to monetize data and boost its bottom line. I am deeply concerned that if AT&T acquires Time Warner’s content, the new mega-company will have incentives to prioritize its own content over content created by small business, independent artists or by its rivals. For example, should AT&T decide to zero-rate data associated with streaming HBO, one can easily foresee a quick uptick in Game of Thrones streaming, instead of Mr. Robot, which is owned and produced by a rival network. AT&T has already announced that it will zero-rate online video from DirecTV, including its forthcoming streaming service (DirecTV Now). The merger would eliminate competition from Time Warner’s own over-the-top video services, and could give AT&T even more incentives and abilities to disadvantage other competitors, such as Netflix and Sling.

In 2012, I introduced the Data Cap Integrity Act, a bill which prohibits an ISP from imposing a data cap unless it is certified by the Federal Communications Commission (FCC). The Data Cap Integrity Act also disallows any data cap plan from providing preferential treatment based on the source or content of the data, effectively disallowing harmful zero-rating.

As Chairman of the FCC, you have a strong record of consumer protection, and by vigorously pursuing and defending net neutrality you have laid the groundwork for a thriving open internet. Under the FCC’s authority, it may regulate data caps and zero-rating - something the agency has said it will consider on a case-by-case basis.

Over the coming months, I will continue to keep an eye on data caps and zero-rating, with the full intention of zealously pursuing legislation like the Data Cap Integrity Act, should it be required. I ask you to do the same and to please reach out to me if you believe we can partner on protecting consumers in this arena.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RW', is written over a horizontal line. The signature is stylized and extends downwards with a long, sweeping stroke.

Ron Wyden
United States Senator