

January 9, 2014

Tom Wheeler
Chairman
Federal Communications Commission
445 12th St. NW
Washington, DC 20554

Dear Chairman Wheeler,

When asked about AT&T's new "sponsored data" scheme during your discussion at CES yesterday, I was delighted to hear that your attitude was straightforward: "let's take a look at what this is, let's take a look at how it operates." Public Knowledge could not agree more.

Over two and a half years ago, Public Knowledge urged the FCC to take basic steps to take a look at data caps.¹ Since then the FCC has ignored our request and so, as we have unfortunately had many opportunities to do in the intervening years,² on Monday made the request again.³

AT&T's sponsored data scheme is just the most recent example of the troubling trend of ISPs using data caps to threaten an open internet. Regrettably, the FCC's neglect of data

¹ Letter from Public Knowledge and New America Foundation's Open Technology Initiative to Sharon Gillett, Chief, Wireline Competition Bureau, FCC (May 6, 2011) available at <http://www.publicknowledge.org/letter-to-FCC-on-ATT-Data-Caps>.

² See, e.g. Letter from Public Knowledge, New America Foundation's Open Technology Initiative and Future of Music Coalition to Julius Genachowski, Chairman, FCC (July 14, 2011) available at <http://www.publicknowledge.org/files/docs/GenachowskiDataCapLetter.pdf>; Public Knowledge Petition to Enforce Merger Conditions, *Application of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, MB Docket No. 10-56 (Aug. 1, 2012) available at <http://www.publicknowledge.org/comcast-xbox-data-caps-petition>; Letter from Public Knowledge to Mignon Clyburn, Acting Chairwoman, FCC (Aug. 22, 2013) available at <http://www.publicknowledge.org/files/PK%201%20Year%20Letter%20on%20Comcast%20Xbox%20Petition.pdf>; Michael Weinberg, *After All These Years, We Still Don't Know Much About Data Caps*, Public Knowledge Policy Blog (August 22, 2013) available at <http://www.publicknowledge.org/blog/after-all-these-years-we-still-don%E2%80%99t-know-muc>.

³ Michael Weinberg, *AT&T's New "Sponsored Data" Scheme is a Tremendous Loss for All of Us*, The Daily Beast (January 7, 2014) available at <http://www.thedailybeast.com/articles/2014/01/07/at-t-s-new-sponsored-data-scheme-is-a-tremendous-loss-for-all-of-us.html>

caps means that today the Commission is largely unprepared to take the common-sense steps you outlined yesterday.

Fortunately, you are in a position to change that. First and foremost, I urge you to turn your attitude into action and open a proceeding into AT&T's sponsored data scheme. Gather the information required to evaluate if the scheme interferes with the operation of the internet, if it is or has the potential to be an anticompetitive practice, or if it creates an opportunity for preferential treatment. If you find that the scheme does any of these things follow through on your stated intent and intervene on behalf of the public interest.

Second, I urge you to investigate data caps more broadly. The FCC's Open Internet Advisory Report vividly illustrated the Commission's – and the public's – embarrassing lack of real information about this vital element of today's broadband economy.⁴ AT&T's scheme may be the most recent example of an ISP testing the Commission's willingness to intervene on behalf of an open internet, but it most certainly will not be the last.

By opening a thorough investigation into AT&T's scheme, you make it clear to AT&T and all other ISPs that the FCC takes its commitment to an open internet seriously. And by taking steps to gather information about data caps industry wide, you can prepare the FCC to respond to potential threats in the future.

Sincerely,

Michael Weinberg
Acting Co-President,
Public Knowledge

⁴ Michael Weinberg, *After All These Years, We Still Don't Know Much About Data Caps*, Public Knowledge Policy Blog (August 22, 2013) available at <http://www.publicknowledge.org/blog/after-all-these-years-we-still-don%E2%80%99t-know-muc>