

# United States Senate

WASHINGTON, DC 20510

November 18, 2016

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

Dear Chairman Wheeler,

Today, internet access is no longer a luxury; it is essential. That's why in 2015, the Federal Communications Commission (FCC) correctly adopted the Open Internet Order, reclassifying broadband under Title II of the Communications Act and applying the principle of nondiscrimination to the internet. These net neutrality rules prohibit Internet Service Providers (ISPs) from prioritizing, blocking, or throttling content distributed over their wire or wireless infrastructure. These rules protect the free flow of ideas that are creating new industries, educating our youth, and supporting the communications that we rely on every day.

During the past several years, the practice of zero-rating has grown. While zero-rating describes a range of different practices, zero-rating offerings generally allow internet subscribers to stream certain applications, websites, and services without that data usage counting against a user's data caps or toward overage charges. Without proper oversight and enforcement action, zero-rating can discriminate against certain services, potentially distorting competition, stifling innovation, and hampering user choice and free speech. When ISPs, not the consumer, choose online winners and losers, the very core tenants of net neutrality could be disrupted. We call on the Commission to take enforcement action against harmful zero-rating offerings that violate the principles of the Open Internet Order.

In reviewing zero-rating offers, we encourage you to take the following into consideration:

- **Competition:** The internet is the world's greatest platform for communications and commerce because it allows those with the best ideas, not simply the best access, to share their content with the world. This coveted characteristic of the free and open internet is threatened when ISPs use their privileged position as broadband gatekeepers to give certain content and applications an unfair advantage over competitors. An ISP zero-rating its own or unaffiliated content but excluding competitors – whether by requiring payment or otherwise – should be considered a violation of net neutrality.
- **Paid Zero-Rating:** For the internet to remain a permission-less environment where anyone with an idea or voice can participate, ISPs should not charge fees to content providers simply trying to reach their audience. This is a fundamental violation of net neutrality. Paid zero-rating gives established, well-funded applications and services an unfair competitive advantage over start-ups, small businesses, and anyone else seeking to share their creations with the world. Such plans can create an online ecosystem where dominant platforms can stifle the development and deployment of competing services

simply because they can afford for their content to be zero-rated. It can also stifle the speech of educators, independent artists, faith groups, activists, bloggers, or everyday Americans who can't afford to zero-rate their content. The FCC should view ISPs charging fees to zero-rate content as a violation of net neutrality.

- User Choice: Zero-rating plans in which ISPs impose technical standards on content providers can allow ISPs to choose how content providers access the information superhighway. Even when no fees are charged, ISPs can still impose transaction costs on content providers, who may first be required to comply with potentially cumbersome and expensive technical standards and then may have to wait to be approved by the ISP before enjoying a zero-rating designation. To ensure that the principle objectives of net neutrality are not violated, the FCC should closely review the impact of zero-rating plans in which an ISP, not the consumer, has the power to choose which applications, websites, and services are zero-rated and impose technical standards. After all, consumers pay for their data and should have the right to choose how they use their bandwidth.
- Application Agnostic Plans – Application agnostic plans in which ISPs do not require payment from zero-rated applications or favor specific content distributors should be reviewed, but do not necessarily raise major Open Internet concerns. This includes zero-rating of low-bandwidth applications or zero-rating at certain times of day.

We appreciate your attention to this important matter.

Sincerely,



Edward J. Markey  
United States Senator



Ron Wyden  
United States Senator



Al Franken  
United States Senator



Bernard Sanders  
United States Senator



Elizabeth Warren  
United States Senator



Tammy Baldwin  
United States Senator

A handwritten signature in blue ink, reading "Richard Blumenthal". The signature is written in a cursive style and is positioned above a horizontal line.

Richard Blumenthal  
United States Senator