

United States Senate  
WASHINGTON, DC 20510

February 6, 2019

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai,

We write to request that the Federal Communications Commission (FCC) investigate allegations that the four major U.S. mobile carriers are throttling and prioritizing internet traffic without disclosing these practices to their customers, a potential violation of the FCC's transparency rules.

Although the FCC repealed the 2015 Open Internet Order — an abdication of its responsibility to protect a free and open internet, which we oppose — the Commission retained certain transparency rules. The transparency rules provide consumers with the right to accurate information about their broadband internet access in order to choose, monitor and receive the service they have been promised. In relying on these rules, the FCC attempted to reassure consumers that disclosure would effectively restrain broadband providers from engaging in harmful practices. However, a recent study has found that the largest U.S. wireless companies are throttling popular video apps, such as YouTube and Netflix. Notably, customers are often not aware of such practices.<sup>1</sup>

On November 15, 2018, we wrote to the four major mobile carriers to express our concern that they were not properly informing their customers and third-party video providers about the carriers' throttling practices. The responses we received, which are attached to this letter, failed to answer many of our questions, leaving us even more concerned about the carriers' practice of purposeful degradation of certain services.

In their responses, the mobile carriers frequently attempted to shift the burden onto consumers and hide their practices. For example, in their responses, the mobile carriers attributed discrepancies as mere 'network management.' But network management alone does not explain why the aforementioned study found that the carriers were throttling some, but not all, video

---

<sup>1</sup> Olga Kharif, *YouTube, Netflix Videos Found to Be Slowed by Wireless Carriers*, Bloomberg (Sept. 4, 2018), <https://www.bloomberg.com/news/articles/2018-09-04/youtube-and-netflix-throttled-by-carriers-research-finds>.

providers. Nor does it explain why the throttling occurred at all hours of the day instead of taking place directly in response to time-varying network loads.

While T-Mobile and Sprint admitted that they engage in prioritization of certain service plans and claimed to be transparent about those practices, they buried notice of those practices. Lengthy terms and conditions or small text at the end of webpages using broad terms should not be considered disclosure, nor are they the basis of effective consumer choice or control. FCC rules require disclosure of those practices in a manner “sufficient for customers to make informed choices” regarding their internet access services.<sup>2</sup> As such, the Commission should investigate whether these boilerplate, difficult-to-find, and hard-to-read disclosures comply with current rules.

The Wehe results represent hundreds of thousands of actual performance tests collected from a vast number of consumers over the course of many months. They reflect the real experiences of millions of Americans with smart phones and mobile broadband access. The Commission must consider these findings and exercise its oversight role to protect consumers.

We therefore ask that by February 27, 2019, the FCC advise us in writing whether it will investigate both the mobile carriers’ video-streaming policies and their disclosures to their customers about those policies. The lack of clear and complete information that the carriers provided in response to congressional inquiries should prompt the Commission to investigate the carriers’ practices and determine if they violate existing transparency rules.

Thank you for your prompt attention to this matter.

Sincerely,



Edward J. Markey  
United States Senator



Ron Wyden  
United States Senator



Richard Blumenthal  
United States Senator

---

<sup>2</sup> Public Notice, Federal Communications Commission, Guidance on Open Internet Transparency Rule Requirements (May 19, 2016).