

152. We are mindful of the concerns raised in the record that sponsored data plans have the potential to distort competition by allowing service providers to pick and choose among content and application providers to feature on different service plans.³⁶⁸ At the same time, new service offerings, depending on how they are structured, could benefit consumers and competition. Accordingly, we will look at and assess such practices under the no-unreasonable interference/disadvantage standard, based on the facts of each individual case, and take action as necessary.

153. The record also reflects differing views over some broadband providers' practices with respect to usage allowances (also called "data caps").³⁶⁹ Usage allowances place limits on the volume of data downloaded by the end user during a fixed period. Once a cap has been reached, the speed at which the end user can access the Internet may be reduced to a slower speed, or the end user may be charged for excess data.³⁷⁰ Usage allowances may benefit consumers by offering them more choices over a greater range of service options, and, for mobile broadband networks, such plans are the industry norm today, in part reflecting the different capacity issues on mobile networks.³⁷¹ Conversely, some commenters have expressed concern that such practices can potentially be used by broadband providers to disadvantage competing over-the-top providers.³⁷² Given the unresolved debate concerning the benefits and drawbacks of data allowances and usage-based pricing plans,³⁷³ we decline to make blanket findings about these

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applications to pay for the data usage, but does nothing to address the capacity constraints so widely touted as problematic by wireless carriers"); Letter from Ademir Antonio Pereira, Jr. to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 09-191, Attach. at 7-8 (filed Feb. 19, 2015).

³⁶⁸ See *supra* para. 151; see also Public Knowledge Comments at 21, 53-54.

³⁶⁹ See, e.g., CWA/NAACP Comments at 18-19; CFA Comments at 39 (expressing concern regarding Comcast's exemption of Xfinity online video app on Xbox and TiVo from data caps in 2012); Consumers Union Comments at 8; NPR Comments at 11; Nokia Comments at 8-10 (stating that "[t]he existence of data caps impacts content and OTT companies because these entities see a decline in traffic to their websites, applications, and other service platforms as the month progresses due to rationing by the consumer"); Public Knowledge Comments at 48-60 (asserting that usage-based billing could enable broadband providers to create metered and unmetered lanes, supposedly no different than the fast and slow lanes feared with paid prioritization); Roku Comments at 8; Telecommunications for the Deaf and Hard of Hearing et al Comments at iii, 15 (urging the Commission "to consider the disproportionate impact of data caps on people who are deaf or hard of hearing, who depend on data-intensive applications for basic communications"); T-Mobile Reply at 14-16 (describing consumer benefits of its "Simple Choice" plan); Writers Guild of America East and AFL-CIO Comments at 25; Tumblr Reply at 2.

³⁷⁰ See, e.g., U.S. Government Accountability Office, Report, Broadband Internet: FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education, GAO-15-108, at 8 (Nov. 2014) (GAO Report).

³⁷¹ See, e.g., T-Mobile Reply at 14-16 (noting that customers on T-Mobile's Simple Choice plan "can choose plans with unlimited high-speed data, or an allotment of high-speed data with unlimited data at 2G speeds after their allotment is used" and arguing that such plans are designed to "allow subscribers to decide what price they want to pay for what service, and still use as much mobile data as they want without incurring overage charges . . .").

³⁷² See, e.g., Public Knowledge Comments at 51-52; Consumer's Union Reply at 5 ("If the largest mobile carriers exempt certain uses from their data caps, the effect is to push consumers to watch affiliated content out of fear that doing otherwise will count against their monthly caps.").

³⁷³ Regarding usage-based pricing plans, there is similar disagreement over whether these practices are beneficial or harmful for promoting an open Internet. Compare Bright House Comments at 20 ("Variable pricing can serve as a useful technique for reducing prices for low usage (as Time Warner Cable has done) as well as for fairly apportioning greater costs to the highest users.") with Public Knowledge Comments at 58 ("Pricing connectivity according to data consumption is like a return to the use of time. Once again, it requires consumers keep meticulous track of what they are doing online. With every new web page, new video, or new app a consumer must consider how close they are to their monthly cap. . . . Inevitably, this type of meter-watching freezes innovation."), and ICLE & TechFreedom Policy Comments at 32 ("The fact of the matter is that, depending on background conditions, either usage-based pricing or flat-rate pricing could be discriminatory.").