

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

April 17, 2018

The Honorable Marsha Blackburn
Chairman, Subcommittee on Communications and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Michael Doyle
Ranking Member, Subcommittee on Communications and Technology
House Energy and Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20515

Consumers Union, the advocacy division of Consumer Reports,¹ writes to express our views on the U.S. House Energy & Commerce Committee, Subcommittee on Communications and Technology’s hearing, “*From Core to Edge: Perspective on Internet Prioritization*” being held today. The hearing will discuss “paid prioritization” on the internet and its place in the larger net neutrality debate. In a nutshell, should paid prioritization be allowed and is it good or bad for consumers?

In 2015, the Federal Communications Commission (FCC) adopted net neutrality rules banning paid prioritization, where an internet service provider (ISP) like Comcast or Verizon can charge consumers and edge providers more for a dedicated “fast lane” to the internet, including specific websites we visit or apps we use on our smartphones. Paid prioritization would allow those content providers and consumers who can pay more to skip to the front of the line or use a special lane apart from the whole of internet traffic, thus enjoying better access to faster-loading content. But for the rest of us who cannot afford prioritized access, it would make it harder for smaller companies to compete and consumers may be stuck with a slower, congested internet.

Fast forward three years later and the FCC, under new leadership, decided to lift the ban on paid prioritization, along with rules that barred ISPs from blocking or throttling access to websites and apps. The Commission decided it was better to have no rules at all, believing broadband internet access is not a telecommunications service worthy of basic, non-discriminatory common carrier rules. This absence of regulations — not upon the internet but

¹ Consumer Reports is the world’s largest independent product-testing organization. It conducts its policy and mobilization work in the areas of telecommunications reform, as well as financial services reform, food and product safety, health care reform, and other areas. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

upon service providers like AT&T—leaves ISPs to tinker with new business models bound by few, if any, consumer protections. And, to be very clear, nothing will stop ISPs from blocking internet traffic or erecting toll booths that will have the effect of restricting content and consumer choice.

Consumers Union has been a long-time supporter of net neutrality rules and has opposed paid prioritization for a variety of reasons. Granting ISPs the power to charge tolls for access to both consumers and content on the internet gives those same ISPs control over who wins and loses on the internet. Unlike edge providers like Amazon or YouTube, ISPs possess “last-mile” entry into consumers’ homes and devices, and that represents genuine gatekeeper power in the marketplace. With many consumers only having one, or maybe two choices for broadband service, there is little option but to tolerate the fees charged by, and the business practices engaged in, (be it blocking or paid prioritization), by their ISP. And, make no mistake, the *primary* reason that ISPs want to be free to engage in paid prioritization schemes is not to benefit consumers, but to increase their bottom line.

We are sure to hear a slew of arguments in favor of paid prioritization at this hearing, many of them pushed by ISPs for years. Some might even suggest that consumers will actually want the option of paying more for new, prioritized fast connections. It is not clear exactly what these new offerings will look like. And while ISPs promise a better overall online experience with these products, it is very possible that consumers will have to pay more just to maintain the service they have today. We find it difficult to imagine how adding a new cost to access the internet will help improve the consumer experience.

Another claim pushed by the industry is that paid prioritization is necessary for dedicated internet access to service a patient’s pacemaker or other telemedicine application. Without it, they argue that these services—which could also include home security monitoring systems or remote energy thermostats—will not be prioritized and get lost in the shuffle with everything else online.

This is simply false.

When the FCC adopted net neutrality rules in 2015, it carefully considered that critical services—like a medical device or autonomous vehicle sending data back and forth over the internet—required dedicated, priority access outside of the consumer or commercial internet that the rest of use on a daily basis to surf online or stream video. That’s why the Commission created an exception for these “specialized services,” or what is now referred to as “non-BIAS (broadband internet access service) data services.” The FCC even saw that this exception could be used to facilitate important, life-saving telemedicine devices and applications. This carve-out designed for critical or emergency services came with one condition: it could not be used as a loophole to avoid the rules that applied to the larger, commercial internet.

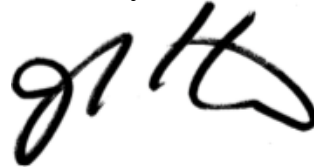
The FCC went even further beyond the non-BIAS data service exception and allowed ISPs a more general exception by permitting “reasonable network management” to ensure that some services, (e.g., an emergency alert) could be prioritized over others. To imply that paid

prioritization is needed to ensure that a life-or-death service dependent upon an internet connection ignores the plain text of FCC rules already in place.

Paid prioritization is a practice that not only gives ISPs control over how we access the internet, but would also give them control over the content that we are able to access. It fundamentally changes the nature of the internet as we have come to know it, where content is treated the same by ISPs and everyone competes on a level playing field. If an ISP can persuade lawmakers that for an extra fee, it will make sure that a loved one's heart monitor will be prioritized 24/7 over your neighbor's Netflix binge watching, we could all end up paying more for something we are already entitled to under the law.

For these reasons, Consumers Union remains opposed to paid prioritization, and will work to restore the net neutrality protections recently stripped away by the FCC.

Sincerely,

A handwritten signature in black ink, appearing to read 'JS' followed by a stylized flourish.

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cc. The Honorable Greg Walden
Chairman, House Energy and Commerce Committee

The Honorable Frank Pallone
Ranking Member, House Energy and Commerce Committee