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COMMENTS OF ITIF

Before the

Federal Communications Commission

Washington, D.C.

In the Matter of: Data Caps in Consumer Broadband Plans	)	WC Docket No. 23-199

November 14, 2024

INTRODUCTION AND SUMMARY

The Information Technology and Innovation Foundation (ITIF) appreciates the opportunity to comment on the Commission's Notice of Inquiry (NOI) regarding data caps in consumer broadband plans.[1] Data caps play a role in faciliating broad access to the Internet that enables the vast majority of consumers to successful access all the data they want. To the extent that the Commission is worried about whether data caps are too low, it should change its policies that have disincentivized broadband investment so consumers can benefit from increases in overall broadband network capacity. Doing so would decrease the situations in which data caps have a meaningful impact on consumers.

BROADBAND NETWORK CAPACITY IS A SCARCE RESOURCE

Data caps are one rational response to the economic problem that broadband network capacity is not unlimited. As overall data consumption continues to increase across the United States, ISPs must allocate their limited network capacity efficiently, even as they make immense investments to increase their networks' total capacity. Data caps are a tool in that balancing act, and they benefit the lion's share of consumers. For a household, working or studying from home generally requires around 600 gigabytes (GB) per month.[2] A small number of users, however, request far more data. It is the equivalent of going to an all-you-can-eat restaurant and having 10 percent of the customers consume 90 percent of the food. If those few users eat up all the network capacity in an area, all other users' applications will suffer, or the network will have to invest even more than it already does to upgrade, which would require higher prices on all users, which would have a disproportionate effect on low-bandwidth consumers. By pricing the usage of uniquely high-capacity users of a normal consumer broadband subscription, every other user is more likely to be able to use their broadband connection for all their desired applications.

Today, wireline home broadband services already have such high capacity that existing data caps are largely meaningless to the vast majority of users. Indeed, major ISPs' data limits often exceed 1.2 terabytes per month—the equivalent of a downloading four 4K movies every day of the month—twice the 600 GB per month a typical broadband-intensive household uses.[3]

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[1] Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute recognized as the leading think tank for science and technology policy. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. For more information, see: https://itif.org/about.

[2] Peter Holslin and Kevin Parrish, "Which Internet Service Providers Have Data Caps?" *HighSpeedInternet.com*, data as of August 4, 2022, https://www.highspeedinternet.com/resources/which-internet-service-providers-have-data-caps.

[3] "Internet Providers with Data Caps," *Broadband Now*, accessed November 9, 2022, https://broadbandnow.com/internet-providers-with-data-caps. "Q: How many videos can be stored in 1TB?," Asutor, February 22, 2024, https://www.asustor.com/en/knowledge/detail/?id=12&group_id=1215.

Users requiring more data every month are acting more like enterprise users, and ISPs have separate options to accommodate them. It is no policy failure when an enterprise must pay for an enterprise-level plan to receive enterprise-level capacity.

Consumers will pay less for a broadband plan that has a data cap even if they are unlikely to ever hit it. That lower price is beneficial to the consumer, and it is a consequence of the fact that the data cap essentially insures the ISP against sudden, immense traffic from such a user. This predictability is valuable to ISPs, so consumers pay less when they offer to keep their data use under a fixed cap, and they would have to pay more if the Commission makes it illegal for consumers to offer to do so.

Moreover, banning data caps would do nothing to affect the underlying economic problem of scarcity that occasioned them. Without data caps, bandwidth hogs would get to overwhelm the network at the expense of smaller users, including low-income users. In that way, eliminating data caps would harm those who are just starting to realize the benefits of a broadband connection and would thus be a regressive, anti-consumer policy.

PRIVATE INVESTMENT IS THE KEY TO INCREASING CAPACITY

While the Commission cannot wish away scarcity, or misattribute it to selfish corporations, it can create conditions for the private investment that drives increases in network capacity. As total capacity increases, the point at which data caps become a rational traffic-management measure also increases. Private ISPs have led the way in this process, making capital investments of $94.7 billion in 2023.[4] Indeed, in every year since the adoption of the one-time $42 billion Broadband Equity Access and Deployment Program, private investment has more than doubled that amount.[5]

In recent years, however, the Commission has enacted policies hostile to broadband investment. The Commission should reverse course on these policies rather than complaining that the solution to their ill effects is ever more regulation.

One example of this pattern is the Commission's expansive "digital discrimination" rules, which place the threat of liability on any network expansion that could have a disparate impact on members of a protected class. As ITIF explained in that proceeding, such a broad and nebulous standard will reduce, rather than enhance broadband capacity.[6] In the long run, this disparate-impact policy will therefore lead to more and lower data caps than would have otherwise existed.

[4] USTelecom, *2023 USTelecom Broadband Capex Report*, October 7, 2024, https://ustelecom.org/research/2023-ustelecom-broadband-capex-report/.

[5] *Ibid*.

[6] Joe Kane, "Reply Comments to FCC About Implementing Prevention and Elimination of Digital Discrimination" (ITIF, April 25, 2023), https://itif.org/publications/2023/04/25/reply-comments-to-fcc-about-implementing-prevention-and-elimination-of-digital-discrimination/.

Most notably, the Commission's decision to subject broadband Internet access service to Title II regulations has been empirically shown to diminish broadband investment.[7] That lost investment is the very thing that could have increased network capacity in a way that reduces the need for data caps. But the Commission swept the investment data under the rug and explicitly scoffed at ITIF's suggestions that broadband policy should seek to enhance broadband investment.[8] Reversing this mistake instead of compounding it by seeking to paper over the effects of scarcity without addressing their cause is the best way to ensure consumers benefit from greater network capacity in the long run.

The Commission intimates that data caps must not really be necessary since many ISPs waived them during the COVID-19 pandemic. This logic is shortsighted. ISPs can evaluate their resources and assess the benefits and costs of a one-time, short-term, emergency measure to benefit their customers, but this does not mean that it would be equally beneficial for the Commission to make the same decision everywhere in perpetuity without access to the same decision-making data. Here again, consumers would benefit more from a measured investment strategy that increases long-run network capacity rather than one that views the status quo as a fixed pie to be eaten up as fast as possible by all comers.

DATA CAPS ARE GENERALLY NOT ANTICOMPETITIVE

It is true that a monopolist will earn more profit by restricting supply and increasing prices, but there are numerous reasons to believe that data caps are not exhibitions of this behavior. First, the U.S. broadband market is highly competitive, not a monopoly. Broadband prices are relatively low compared to peer countries, averaging about 1 percent of per capita income.[9] Intermodal competition has been rapidly increasing, too: Fixed wireless access has been among the fastest-growing broadband services in the country, and low-earth-orbit satellite service is now available throughout the United States.[10] The argument that U.S. broadband operates like a monopoly is thus belied by the empirical evidence.

Furthermore, since consumers mainly select their broadband provider based on price, there is no need for a large number of competitors to push prices toward a competitive outcome.[11] Indeed, the only time that the Bertrand competition dynamics will not predominate is when there are real capacity constraints—the very factor that rationally occasions data caps in the first place.

The competitive dynamics of data caps are most prominent in the mobile market since capacity constraints there have made limited data more common. Today, however, mobile network operators routinely offer and advertise unlimited data plans as their flagship products. These offerings show that operators expect to gain a competitive advantage from raising or removing data caps on consumers, not from tightening them further.

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[7] George S. Ford, "In Response to the FCC…" Perspectives: Phoenix Center For Advanced Legal & Economic Public Policy Studies (2024); 24-04, https://www.phoenix-center.org/perspectives/Perspective24-04Final.pdf.

[8] FCC, "Safeguarding and Securing the Open Internet," Report and Order, WC Docket No. 23-320, para 273.

[9] Jessica Dine and Joe Kane, *The State of U.S. Broadband in 2022: Reassessing the Whole Picture* (ITIF, December 5, 2022), https://itif.org/publications/2022/12/05/state-of-us-broadband-in-2022-reassessing-the-whole-picture/.

[10] *Ibid.*

[11] Mike Walker "Bertrand-Nash Equilibrium," Concurrences, accessed October 7, 2024, https://www.concurrences.com/en/dictionary/bertrand-nash-equilibrium.

The use of data caps under capacity constraints also fosters competition among edge services. If edge applications can offer to pay network operators for the capacity necessary to deliver their content, then consumers benefit by not having to consume data against their cap, network operators benefit by having more resources to bolster their networks, and edge services benefit by making their products more attractive to consumers. Here, again, the Commission's Title II order has looked askance at sponsored data and "zero rating" arrangements, which stifles these competitive effects.[12] This area is yet another in which the Commission's overregulation, not market actors, is the cause of competitive harms.

CONCLUSION

Today, data caps are seldom relevant for most consumers' home Internet, but they do protect those same users from potential data hogs. Long-run increases in network capacity are the solution to any potential problems with data caps, so the Commission should enable the investment that facilitates capacity increases rather than saddling more regulations on top of existing ones.

Thank you for your consideration.

Joe Kane
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[12] "Safeguarding and Securing the Open Internet" Order at para. 526-28.