Before the
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF
PUBLIC KNOWLEDGE
OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA
BENTON INSTITUTE FOR BROADBAND & SOCIETY
NATIONAL CONSUMER LAW CENTER ON BEHALF OF ITS LOW-INCOME CLIENTS

November 14, 2024

EXECUTIVE SUMMARY

Public Knowledge, the Open Technology Institute at New America, Benton Institute for Broadband & Society, and National Consumer Law Center on behalf of its low-income clients respectfully submit these comments in response to the Federal Communication Commission's Notice of Inquiry on fixed and mobile broadband internet service data caps and their effects on consumers and competition.[1] We support the Commission's inquiry to better understand the claims ISPs make to rationalize imposing data caps on data plans in light of their negative effects on consumers, especially those in the lowest income brackets, and believe that this inquiry will shed light on the critical need to issue a rulemaking proceeding to uncap broadband data plans. As consumer data usage continues to grow in an increasingly connected world, this inquiry is timely and important. The following comments provide information on consumer data usage trends, break down the technical arguments (or lack thereof) for data caps, and ultimately show that data caps are another profit driving tool for ISPs at the expense of consumers and the public interest.

[1] *Data Caps in Consumer Broadband Plans*, Notice of Inquiry, WC Docket No. 23-199, FCC 24-106 (rel. Oct. 15, 2024), available at https://docs fcc.gov/public/attachments/FCC-24-106A1.pdf.

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I. Introduction

For over a decade, data caps have been an issue of concern for Public Knowledge and other public interest groups. Fast forward several years, and the COVID-19 pandemic shed a bright light on the negative consumer effects of data caps, those which Congress tried to address by introducing the *Uncap America Act of 2022*. Efforts stalled but now the Commission has reopened the record with this Notice of Inquiry, demonstrating a renewed effort in a years-long push to understand how consumers are affected by data caps and the steps the Commission can take to protect the public's best interest.

II. Data Caps Negatively Affect the Consumer Experience, Making Internet Connectivity More Expensive in an Increasingly Connected and Data-Heavy World

A. Background

During the early dial-up days of home internet, ISPs charged based on connection time instead of data volume. As technology advanced and broadband connections became widespread, ISPs introduced speed or bandwidth tiers as a way of providing different tiers of service. These tiers allowed users to pick from different levels of service at varying price points. This approach

was relatively easy for users to understand. Higher-paying customers received faster internet service, and the pricing correlated with the quality of service provided.

However, as the demand for data-heavy services grew, ISPs looked for new ways to maximize profits, and the overall lack of competition in broadband gave them the ability to do so. It was in this context that ISPs first introduced data caps. Data caps set a limit on the total amount of data a user can consume within a billing cycle. Unlike speed tiers, data caps do not effectively manage network congestion or peak usage times, because they do not influence real-time network load. Instead, they enable further price discrimination by pushing consumers toward more expensive plans with higher or unlimited data allowances. They are price discrimination dressed up as network management. Data caps can be confusing and frustrating for consumers, who may not understand how their online activities equate to data usage. They also do not incentivize users to reduce consumption during peak periods, as the cap applies uniformly throughout the billing cycle. And it's particularly troubling because most consumers have no real way to track or understand their data usage.

The introduction of data caps represents a shift toward opaque pricing strategies that prioritize profit maximization over other goals. Data caps neither address peak usage nor network congestion while potentially limiting access to crucial online resources, making them less consumer-friendly than alternative methods of service differentiation.

Alongside other commenters, Public Knowledge (PK) has long supported the Commission's action on data caps, and today's comments seek to refresh this long standing record. More than a decade ago, Verizon announced that it was going to throttle the top 5 percent of its 3G wireless customers, which caused consumer advocates to publicly oppose data caps and

throttling.[2] Verizon ultimately retracted its throttling plan in 2014, around the same time the Government Accountability Organization (GAO) released a report on the impact of broadband data caps.[3] In response, advocates again explained the negative consumer effects of data caps, especially on competition.[4] In 2015, after little reaction from regulators, advocates again wrote about the competitive implications of data caps, explaining that "usage-based billing is not about managing network performance or congestion, but simply a way to make some users pay more" and asked the FCC once more to ensure that "broadband providers do not take advantage of their market power to impose unfair broadband billing practices."[5] Later that same year, PK remarked that former FCC Chairman Tom Wheeler's request for Comcast to explain its data caps and overage fee policies to broadband subscribers was long-overdue, and likely meaningless, but a step in the right direction.[6]

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[2] Michael Weinberg, *Verizon Uses Throttling to Push Customers Away From Unlimited Data*, Public Knowledge (Sep. 19, 2011), https://publicknowledge.org/verizon-uses-throttling-to-push-customers-away-from-unlimited-data/. *See also* Kae Zulager, *Verizon is Throttling Data Users*, The Bill Police (Mar. 4, 2011), https://www.billpolice.com /wireless-industry-news/verizon-is-throttling-data-users/.

[3] Roger Cheng, *Verizon backs off plans to throttle unlimited data users*, CNET (Oct. 1, 2014), https://www.cnet.com /tech/mobile/verizon-backs-off-on-plans-to-throttle-unlimited-data-users/; U.S. Gov't Accountability Off., GAO-15-108, *Broadband Internet: FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education* (Nov. 24, 2014), available at https://www.gao.gov/products/gao-15-108.

[4] *GAO Report Highlights Problems With Data Caps*, Public Knowledge (Dec. 2, 2014), https://publicknowledge.org/ gao-report-highlights-problems-with-data-caps/. "This report is further evidence that today's data caps work against the best interests of consumers and the growth of the internet. Consumers and ISPs alike are unable to reliably determine which online activities are data-intensive or how much data a given activity will require. It's no surprise that consumers doubt their ability to accurately track their own data usage when ISP estimates of data requirements for standard activities vary by a factor of five. In fact, the only thing customers agree on is that ISPs are likely to use data caps to increase their bills. The report also highlights that today's data caps are not truly about consumer choice. Few customers have adopted offerings of small discounts in exchange for restrictive data caps. At the same time, ISPs are steadily moving away from the one option that the report found consumers consistently demand – unlimited data plans. By creating a disincentive to adopt distance education, teleworking, online video, and even security updates, data caps also work to undermine the virtuous cycle that the FCC has described as the heart of the Open Internet proceeding. Public Knowledge thanks Representative Eshoo and the GAO for shedding additional light on data caps, and hopes the FCC will move quickly to adopt strong Open Internet rules that prevent all types of discrimination, including discrimination instigated by data caps." *Id*. (*quoting* Michael Weinberg, Vice President of Public Knowledge).

[5] John Bergmayer, *With Data Caps on the Rise, the FCC Must Consider Competitive Implications*, Public Knowledge (Nov. 9, 2015), https://publicknowledge.org/with-data-caps-on-the-rise-the-fcc-must-consider-competitive-implications/.

[6] Shiva Stella, *Public Knowledge Applauds FCC Inquiry Into Concerning Data Cap Practices of Comcast, Mobile Carriers*, Public Knowledge (Dec. 17, 2015), https://publicknowledge.org/public-knowledge-applauds-fcc-inquiry -into-concerning-data-cap-practices-of-comcast-mobile-carriers/.

Years later, in 2020, data caps again were an issue of utmost importance as households shifted life online in response to the COVID 19 pandemic. The heightened importance of broadband made it more apparent how data caps are artificially imposed restrictions that negatively impact consumers, discriminate against the use of certain high-data services, and are not necessary to address network congestion, which is generally not present on home broadband networks.[7] In support of data caps, providers claimed that "usage-based pricing practices like data caps prevent users running the most data-intensive programs from degrading service" and, second, that data caps somehow de-congest data consumption.[8] However, this rationale ultimately boils down to money.[9] Later, as Congress turned attention to data caps in 2022, consumer and public interest advocates again supported the proposed elimination of data caps in the Uncap America Act of 2022, showing support for legislation to ban data caps in lieu of Commission actions.[10] Commenters strongly support the Chairwoman's opening of this docket,

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[7] Kathleen Burke, *Keep All Americans Connected By Prohibiting Data Caps During the COVID-19 Pandemic*, Public Knowledge (Mar. 27, 2020), https://publicknowledge.org/keep-all-americans-connected-by-prohibiting-data-caps-during-the-covid-19-pandemic/.

[8] Antoine Prince Albert III, *("No Cap"): The Truth about Data Caps and Zero-Rating*, Public Knowledge (May 13, 2021), https://publicknowledge.org/no-cap-the-truth-about-data-caps-and-zero-rating/. "Network congestion arguments in this debate operate on an unsubstantiated and uncontextualized assumption of scarcity. . . scarcity is not a reality for broadband providers, even with super-users. Internet functions by 'statistical multiplexing' meaning that bandwidth is dynamically allocated and reused without a limit '[u]nlike other utilities such as water, electricity, gas or oil.' This means that no super-user is consuming bandwidth at the expense of other users… This brings us to the real reason broadband providers apply data caps to consumers: money. Applying data caps to *all* of us, therefore, enables broadband providers to pat themselves on the back for devising clever 'overage' fees." *Id*.

[9] "Evidence… shows that there is no basis on which companies need to impose data caps. Consumers and the FCC should no longer accept as given that data caps have a role in the broadband experience for American consumers. Moreover, zero-rating gives internet service providers gatekeeper control. Consumers and the FCC should no longer tolerate self-dealing zero-rating schemes masquerading as feigned benevolence. Disallowing all data caps would eliminate the incentive for zero-rating and liberate websites, web services, and web-based applications from the grips of invisible decision-makers — putting consumers back in control. To put consumers back in control, we need the FCC to reassert its jurisdiction over broadband and eliminate the practice of imposing data caps on consumers. By eliminating data caps, we eliminate the need for zero-rating schemes." *Id*.

[10] Shiva Stella, P*ublic Knowledge Welcomes Bill Prohibiting Predatory Broadband Data Caps*, Public Knowledge (July 12, 2022), https://publicknowledge.org/public-knowledge-welcomes-bill-prohibiting-predatory-broadband-data-caps/. "Data caps make life particularly difficult for consumers. If users hit their monthly data limit, they are either forced to pay extra for more data or their broadband provider slows their connection to an unusable crawl. Worse, these data caps disproportionately impact low-income people who can't afford *to pay up* in the first place. The pandemic has proven that broadband is an essential service, and many of the pandemic's most critical online activities, like distance learning and telehealth, are almost certainly going to stick around. However, these are data intensive services that often cause people to hit their data caps. Many consumers, particularly low-income ones, find

calling for broad Commission support[11], and further support the Commission's important vote to open this Notice of Inquiry.[12]

B. The Typical Consumer Household's Total Data Usage is Growing

When assessing data caps, it is an important first step for the Commission to determine how much data a household needs. It is equally important, when considering the uncertainty surrounding affordability programs and continuing broadband support, to establish an understanding of data usage at the individual user level as well. The following is a summary of average data usage and trends per household and per individual in a household based on available information.

The average internet user consumes 585.5 GB per month on their home internet plan in 2024, according to the most recent report from OpenVault.[13] This represents a 9.7 percent increase from 2023. By the end of 2024, the 2023 OpenVault report even estimated the average

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themselves severely restricting their online activities so that they *don't* hit their data caps. This is especially frustrating because data caps are largely unnecessary – most simply operate as a roundabout way for providers to increase prices." *Id*. (*quoting* Jenna Leventoff, Senior Policy Counsel at Public Knowledge); *See also* Jonathan Schwantes, *Consumer Reports supports the Uncap America Act to limit unnecessary internet data caps*, Consumer Reports (July 21, 2022), https://advocacy.consumerreports.org/press_release/consumer-reports-supports-the-uncap-america-act-to-limit-unnecessary-internet-data-caps/.

[11] Shiva Stella, *FCC Chairwoman Rosenworcel Moves To Investigate Data Caps*, Public Knowledge (June 15, 2023), https://publicknowledge.org/fcc-chairwoman-rosenworcel-moves-to-investigate-data-caps/ "Data caps are one of the most confusing and pernicious aspects of subscribing to broadband… In addition to burdening subscribers, these data caps potentially burden the economy as a whole. By limiting the online activity of consumers, they severely limit the capacity for innovation… We hope the other commissioners will move swiftly to approve this item." *Id*. (*quoting* Harold Feld, Senior Vice President at Public Knowledge).

[12] Shiva Stella, *FCC Votes To Investigate Consumer Impact of Data Caps*, Public Knowledge (Oct. 14, 2024), https://publicknowledge.org/fcc-votes-to-investigate-consumer-impact-of-data-caps/. "Data caps remain one of the most mysterious – and abusable – limits for consumers using broadband. Providers offer multiple 'unlimited' plans with different limits, and different punishments for exceeding those limits. But despite the widespread use of data caps for both mobile and wireline broadband, we have virtually no way to know how these impact people… The FCC has both the authority and the responsibility to investigate these questions whether or not broadband is a Title II telecommunications service or Title I information service. We applaud Chairwoman Rosenworcel's determination to launch this important inquiry in the face of partisan and industry opposition, and look forward to the light it will shed on how data caps impact our digital lives." *Id*. (*quoting* Harold Feld, Senior Vice President at Public Knowledge).

[13] *OV Broadband Insights Report Q2 2024*, OpenVault LLC (Aug. 2024), available at https://openvault.com/wp-content/uploads/2024/08/OpenVault_2Q24_OVBI_Report_v3.pdf.

household would use at least 700GB every month.[14] In addition the latest report estimates that "Power users," who use more than 1TB per month, make up 18.2 percent of households and the number of "super power users" and "extreme power users" using over 2TB and 5TB of data per month, have grown by 31 percent and 77 percent respectively in the past year.[15] The average household uses 3.5x the amount of internet data it used five years ago, and the average household uses 38x the amount of internet data it used ten years ago.[16] Studies also show that 15 percent of adults rely solely on smartphones for broadband internet access, most of which are in America's lowest income brackets.[17]

C. Consumers Need More Data Without Arbitrary Data Cap, and Low-Income Households Especially are Harmed Most From Unnecessary Overage Fees

Data caps have a negative impact on all consumers but the effects are felt most acutely in low-income households. As household data usage has increased over the past few years, data caps have the potential to affect more users than before. Data through a high speed broadband connection is critical to life in 2024, not just for consumers to get the basics of life done, but for them to thrive. More of life is digital. Consumers need the internet to find employment, access government services, access healthcare, obtain an education , pay their bills, and much more. On top of this, consumers rely on broadband to be civically engaged, start and maintain businesses, and to maintain social connections with their family and friends. The internet can intersect nearly all parts of life. Life is becoming more digital, and any cap on the amount of data a consumer can use will have a restrictive impact on households.

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[14] *OV Broadband Insights Report Q4 2023*, OpenVault LLC (Feb. 2024), available at https://openvault.com/wp-content/uploads/2024/02/OVBI_4Q23_Report_v3.pdf.
[15] *OV Broadband Insights Report Q2 2024*, OpenVault LLC (Aug. 2024), available at https://openvault.com/wp-content/uploads/2024/08/OpenVault_2Q24_OVBI_Report_v3.pdf.
[16] *Report: The average household's internet data usage has jumped 38x in 10 years*, allconnect (Apr. 17, 2020), https://www.allconnect.com/blog/average-household-internet-data-usage-has-jumped-38x-in-10-years.
[17] Risa Gelles-Watnick, *Americans' Use of Mobile Technology and Home Broadband*, Pew Research (Jan. 31, 2024), https://www.pewresearch.org/internet/2024/01/31/americans-use-of-mobile-technology-and-home-broadband/.

Several internet providers have unlimited data policies, some throttle after a certain threshold is reached, and some others have explicit data caps.[18] Of note, some providers offer basic plans with data caps lower than what the average household uses.[19] Additionally, plans charge a range of fees from $10, $15, $30, to nearly $50 to add more data or unlimited data in the case of a data overage.[20] For low-income consumers, these fees are prohibitive. It is inexcusable for the rationale behind policy standards that affect low-income consumers most to be *something is better than nothing*. Low-income consumers need parity with other internet consumers, and the lowest tier plans, which are most likely to be capped, should be eliminated so as not to punish consumers who already need affordability support with unnecessary overage fees. Further, broadband affordability programs should be designed to allow more low-income households to access robust broadband offerings or packages, tied with enhanced consumer protections that ensure that affordability programs are not discriminatory regarding which households get the most data. Households should get the data they need without the fear of having to pay more, being cut off, or being throttled.

Likewise, consumers are harmed if they buy fixed wireless broadband service from a mobile carrier if it is subject to a hard or soft cap (throttling) that is more restrictive than what a consumer would expect from a wireless offering. For example, AT&T caps its fixed wireless plan at less than just half the average household data consumption and charges high overage fees

[18] Camryn Smith*, Which internet providers have data caps?*, allconnect (May 13, 2024), https://www.allconnect.com/blog/internet-service-providers-with-data-caps.
[19] *Id*.
[20] *Id*.

up to $200.[21] For this service, AT&T may also "temporarily slow data speeds if the network is busy."[22]

As previously mentioned, low-income households are more likely to rely on mobile devices only for their broadband connection. Data from the Pew Research Center details that 27 percent of households who earn less than $30,000 a year are smartphone dependent as compared to 4 percent of smartphone dependent households that exist with those making $100,000 or more.[23] Internet users are increasingly using broadband data through mobile devices to connect to the internet. Mobile users face specific harms due to "soft caps" (throttling) on mobile plans, and these caps particularly harm lower-income consumers who rely on smartphones as their primary or even only device to access the internet.

D. Data Caps Impact Public Safety in Times of Crisis

In addition to significant consumer harms in everyday life in and out of the home, data caps pose even more threats to public safety - especially in the wake of disasters. In 2023, the Commission proposed reclassifying broadband internet under Title II of the Communications Act. In this proposal, the Commission noted the importance of the role that broadband plays in how public safety officials communicate and how the public receives critical public safety updates.[24] The Commission also made note of the importance of broadband for "allowing the public to easily and efficiently access public safety resources and information," allowing the

[21] *AT&T Fixed Wireless Plans and Pricing*, BroadbandSearch net, https://www.broadbandsearch net/provider/att-fixed-wireless (last accessed Nov. 11, 2024). AT&T fixed wireless plans require a yearly contract, cost $60 per month for 160 GB of data, and then charge an additional $10 per 50 GB of data used up to $200. *Id*.
[22] *AT&T Internet Air - Wireless 5G Home Internet*, AT&T, https://www.att.com/internet/internet-air/ (last accessed Nov. 11, 2024).
[23] Risa Gelles-Watnick, *Americans' Use of Mobile Technology and Home Broadband*, Pew Research Center (Jan. 31, 2024), https://www.pewresearch.org/internet/2024/01/31/americans-use-of-mobile-technology-and-home-broadband/.
[24] *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Notice of Proposed Rulemaking, FCC 23-83 (Oct. 20, 2023) at ¶¶. 18-20.

public to access medicine such as telehealth services, disaster relief and reporting, and much more.[25] As a result, in 2024 when the Commission published its declaratory ruling order Safeguarding and Securing the Open Internet, it found that broadband internet service is vital for public safety, and also found that data caps are not reasonable tools for network management.[26] Data caps limit broadband access and speed and can be incredibly detrimental to public safety.

III. Data Caps Harm Consumers and Competition Because they are not Transparent, nor are they Technically Necessary, for Consumers Using Broadband Internet Data

Data caps are unnecessary and ineffective for network management. They are a means for service providers to engage in price discrimination by differentiating their offerings and maximizing their revenue. However, compared to other ways for providers to optimize network performance or provide differentiated offerings, data caps are a blunt tool that often penalize users unfairly and restrict access to essential online resources. Instead of addressing peak congestion periods or enhancing network efficiency, data caps simply impose artificial limitations that do little to improve service quality.

Data caps should not influence ISP service offerings whatsoever, as there is little technical or economic rationale for supporting data caps. At a technical level, ISPs claim that data caps are important to protect consumers in general to keep networks fast and to prevent single users from using a disproportionate amount of bandwidth. But these are merely economic devices used to generate more revenue from those who are using the internet services they have paid for.

For those providers that do impose data caps, the means of enforcement varies and includes throttling, stopping data transfer, or imposing additional fees and charges. The practices

[25] *Id*.
[26] *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52 (May 7, 2024).

of the largest ISPs offer important insights into how data caps impact the services they offer customers. There are several providers that do not have data caps, including Frontier, Spectrum, Verizon Fios, AT&T Fiber, GFiber, CenturyLink, Windstream, Astound, Optimum, Earthlink, and more.[27] Regardless of the plan offered, that plan's tier, or the type of broadband service delivered, these providers offer services without throttling or data caps and compete effectively and efficiently in the market. It is important to note that, for many of these providers, the imposition of data caps and throttling is even less justifiable because these networks use fiber and other very high-capacity services that clearly best serve consumers' long-term needs. Several other ISPs have data caps or throttle services, including T-Mobile (Internet Lite product), Xfinity, Buckeye Broadband, Cox, Mediacom, Hughesnet, Sparklight, and more. Xfinity, for example, has a data cap that stops data transfer once a customer uses 1.2 terabytes of data in a billing cycle.[28] Others have even smaller caps which affect customer data usage.[29] For example, Buckeye Broadband has a data cap at 250GB per cycle and then offers an unlimited package for an additional $30.[30]

Data caps are not useful and can also be confusing to consumers. Most ISPs offer the ability to monitor data usage throughout monthly billing cycles, but this should not be a task passed on to the consumers. Consumers pay for access to the internet and should be able to access it to the extent necessary to perform the tasks they need. Speeds should not be throttled and caps should not limit the consumer. The Commission can play a critical role in educating consumers about data caps - what they mean, where consumers can find such information, and

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[27] Peter Holslin and Kevin Parrish (ed. Cara Haynes), *Which Internet Service Providers Have Data Caps?*, HighSpeedInternet.com (Oct. 4, 2024), https://www highspeedinternet.com/resources/which-internet-service-providers-have-data-caps.
[28] Xfinity, available at https://www.xfinity.com/learn/internet-service/data (last accessed Nov. 11, 2024).
[29] Holslin and Parrish, *Which Internet Service Providers Have Data Caps?*.
[30] *Unlimited Data Plan*, Buckeye Broadband, available at https://www.buckeyebroadband.com/unlimiteddata (last accessed Nov. 11, 2024).

best practices to conserve data usage (if necessary) - in order to protect the consumer from being charged unnecessary overage fees. Educational web tools, such as an interactive data usage calculation where one can estimate their monthly data usage based on a typical day's internet activities, could also be helpful in educating the consumer to make them more aware of how much data they need. While the federal government makes strides to improve consumer outreach and accessibility to consumer services particularly online, it becomes even more crucial to explore the negative impacts of data caps and find sources of legal authority to regulate or ban data caps in the public interest.

Data caps are unnecessary and providers can and should find other ways to compete between the services they provide by focusing on other metrics that are important to the consumer experience. Importantly, "[a] data cap that is too low can discourage certain kinds of usage, including online video, backup services, and streaming games. A data cap is also harder for users to conceptualize… [t]hus, usage-based billing and data caps raise a host of issues.[31] While many users may not understand the technicalities surrounding data caps, they understand what they are paying for service. Consumers pay for their data and providers should not grovel over data caps, and should instead find ways to lower prices while increasing the overall flow of broadband data. The Commission must further investigate whether data caps are designed with anti-competitive purposes, to drive profits, or both.

IV. Conclusion

In conclusion, the undersigned applaud the Commission for moving forward with its Notice of Inquiry to collect data and real consumer stories related to data caps and their effects

[31] John Bergmayer, *With Data Caps on the Rise, the FCC Must Consider Competitive Implications*, Public Knowledge (Nov. 9, 2015), https://publicknowledge.org/with-data-caps-on-the-rise-the-fcc-must-consider-competitive-implications/.

on consumers. We support the inquiry and advocate for the Commission to initiate a rulemaking to ban predatory, profit-driven data caps.

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