

United States Senate

June 4, 2020

Mr. Randall Stephenson
Chairman and Chief Executive Officer
AT&T Inc.
208 S. Akard Street
Dallas, TX 75202

Dear Mr. Stephenson:

We write regarding your company's policy of not counting use of HBO Max, a streaming service that you own, against your customers' data caps. Although your company has repeatedly stated publicly that it supports legally binding net neutrality rules,¹ this policy appears to run contrary to the essential principle that in a free and open internet, service providers may not favor content in which they have a financial interest over competitors' content.

Net neutrality is a set of principles necessary to keep the internet free and open. Before the Federal Communications Commission (FCC) acted in 2017 to undo net neutrality, internet users benefited from rules prohibiting blocking, throttling, and paid prioritization. The FCC also had the authority to prohibit unjust, unreasonable, and discriminatory practices by broadband providers, including potentially harmful practices such as "zero-rating." Before the current FCC began its efforts to eviscerate critical rules that benefit consumers, the Commission found that in many instances, when service providers zero-rate content by allowing end users to access that content without the requisite data usage counting towards the caps under users' plans, those providers engage in harmful conduct. Specifically, the FCC had determined that those providers "present significant risks to consumers and competition in downstream industry sectors because of network operators' potentially unreasonable discrimination in favor of their own affiliates."² Zero-rating carries a risk of manipulating the content marketplace in ways that ultimately harm internet users.

According to recent reporting and comments from AT&T executives, your company has a policy of favoring a specific streaming service in a manner that appears to runs contrary to your stated support for a free and open internet. According to reporting by *The Verge*, the HBO Max streaming service "will be excused from [AT&T's] traditional data caps and the soft data caps on unlimited plans."³ According to AT&T, HBO Max is benefiting from AT&T's "sponsored data"

¹ AT&T Statement on Support for Uniform, National Open Internet Protections, AT&T (Oct. 1, 2018), <https://www.attpublicpolicy.com/consumer-broadband/att-statement-on-support-for-uniform-national-open-internet-protections/>.

² Wireless Telecommunications Bureau, *Policy Review of Mobile Broadband Operators' Sponsored Data Offerings for Zero-Rated Content and Services* (2017), https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0111/DOC-342987A1.pdf.

³ Nilay Patel, *HBO Max won't hit AT&T data caps, but Netflix and Disney Plus will*, *The Verge* (Jun. 2, 2020) <https://www.theverge.com/2020/6/2/21277402/hbo-max-att-data-caps-netflix-disney-plus-streaming-services-net-neutrality>.

system, which allows content companies to pay AT&T for the right to be exempt from data caps. Although HBO Max may technically be paying for this benefit, AT&T is essentially paying itself. This practice of allowing one arm of your company to “pay” another arm of your company for preferential treatment attempts to mask its true impact.

The Trump FCC may have gutted critical net neutrality protections, but AT&T nonetheless has a responsibility to avoid any policies or practices that harm consumers and stifle competition. We urge you to provide us with an explanation for the behavior described above by June 25, 2020.

Thank you for your attention to these important matters.

Sincerely,

Edward J. Markey
United States Senator

Ron Wyden
United States Senator

Richard Blumenthal
United States Senator