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**VIA ELECTRONIC SUBMISSION AND ELECTRONIC MAIL**

January 29, 2016

Chairman Tom Wheeler  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

**Re: T-Mobile’s Binge On Video Streaming Program; GN Docket No. 14-28**

Dear Chairman Wheeler,

I am writing to submit a report on the net neutrality implications of T-Mobile’s Binge On program. The program allows T-Mobile customers on qualifying plans to stream video from the thirty-eight providers in the program – Netflix, Hulu, HBO, and others – without it counting against their data caps, a practice known as zero-rating. The report, entitled “Binge On Violates Key Net Neutrality Principles,” offers the first comprehensive analysis of the zero-rating aspects of the program.

The report is tailored to help the Commission engage in its case-by-case evaluation of zero-rating as described in the 2015 Open Internet Order. There, the Commission decided not to take a position on zero-rating and instead to evaluate specific instances of the practice under the general conduct rule. The general conduct rule prohibits practices by Internet service providers (ISPs) that harm Internet openness by, for example, harming consumer choice, competition, innovation, or free speech online.

Binge On is one of several new zero-rating programs introduced by ISPs in the last few months. Comcast exempts Stream TV, its own Internet TV application, from customers’ data caps; all other online video applications continue to count against the caps. AT&T’s “sponsored data” program allows any provider to pay to have its content zero-rated. Verizon just announced a similar program.

Comcast's, AT&T's, and Verizon's zero-rating programs raise clear net neutrality concerns. Comcast's zero-rating favors its own online video service over all competing online video services – a textbook example of an ISP using its position as a gatekeeper to pick winners and losers online. AT&T's and Verizon's plans allow app providers to buy a competitive advantage, causing the same harms to Internet openness as charging companies to be in a “fast lane.” During last year's Open Internet proceeding, many stakeholders asked the FCC to prohibit ISPs from zero-rating selected applications in a class of similar applications (as Comcast does) and from offering zero-rating to application providers for a fee (as AT&T and Verizon do or intend to do).

The net neutrality implications of T-Mobile's Binge On program are less obvious but nonetheless significant. Unlike Comcast, T-Mobile welcomes all video streaming providers to join its program. And unlike AT&T and Verizon, T-Mobile allows providers to join its program without paying a fee. As a result, Binge On seems on its face less harmful than these other zero-rated offerings.

However, as the report shows, Binge On violates key net neutrality principles necessary to preserve Internet openness. It limits user choice, harms innovation, distorts competition, and stifles free speech online. Therefore, based on what we know about the program, it is likely that Binge On violates the FCC's general conduct rule and the transparency rule.

T-Mobile could offer alternative innovative plans that respect net neutrality. The report outlines three network neutrality-friendly alternatives, including two that allow T-Mobile customers to continue to “binge on” video without endangering net neutrality.

I hope the Commission finds the report useful as it evaluates whether recent zero-rating programs offered by Comcast, AT&T, and T-Mobile violate the 2015 Open Internet rules. I would welcome the opportunity to discuss these important issues further.

Very truly yours,

/s/ Barbara van Schewick

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cc:

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