

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

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

NOTICE OF INQUIRY

Adopted: October 2, 2024

Released: October 15, 2024

Comment Date: November 14, 2024
Reply Comment Date: December 2, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION...1
II. BACKGROUND...3
III. DISCUSSION...14
A. Consumer Data Usage...15
B. Impact of Data Caps on Consumers...18
C. Data Caps Experience for Consumers...25
D. Notice to Consumers Regarding Data Caps...39
E. Impact of Data Caps on Competition...42
F. Legal Authority for Potential Commission Action...45
IV. PROCEDURAL MATTERS...49
V. ORDERING CLAUSE...56

I. INTRODUCTION

1. Access to the Internet is not a luxury. It is essential for modern life. Nothing made this as clear as the COVID-19 pandemic, when people across the country turned to broadband connections to support their day-to-day activities.1 As a result, today we are consuming more data than ever before, and the trend shows no signs of slowing down.2 With many individuals and families more dependent on fixed and mobile broadband networks for work, healthcare services, education, and social activities, and an increasing number of connected devices that use the Internet for functionality, it is one of the Commission’s foremost priorities to ensure consumers across the nation have meaningful access to broadband Internet services.

1 Communications Marketplace Report, GN Docket No. 22-203, 2022 Communications Marketplace Report, 37 FCC Rcd 15514, 15655, paras. 219-20 (2022) (2022 Communications Marketplace Report).

2 See infra para. 3; see also, e.g., 2022 Communications Marketplace Report, 37 FCC Rcd at 15563 & 15656-57, paras. 62, 221-22.

2. Fixed and mobile broadband Internet access service providers (BIAS providers) have responded to increasing demand for more data by offering higher bandwidth plans.³ Many of these BIAS providers, however, have imposed limits on data usage, or data caps, that, when exceeded, may result in higher fees and slower speeds for subscribers.⁴ With this Notice of Inquiry, we explore the use of data caps (also referred to as “usage allowances” or “usage limits”) for fixed and mobile broadband Internet service, and their corresponding impact on consumers and competition. In light of the critical importance of broadband Internet access service, we seek comment to better understand the current state of data caps and whether data caps cause harm to competition or consumers’ ability to access broadband Internet services.

II. BACKGROUND

3. The Commission has recognized that individuals living in the United States increasingly rely on fixed and mobile BIAS in order to fully participate in society.⁵ Studies show that monthly consumer broadband data usage in the United States continues to increase significantly.⁶ During the COVID-19 pandemic, the demand for BIAS increased as consumers became more dependent on Internet access for work, healthcare, civic engagement, education, and entertainment.⁷ According to OpenVault, data usage increased by 50% between the fourth quarters of 2019 and 2020 and continued to increase through 2024.⁸ The number of subscribers who consumed greater than 1 TB of data per month using fixed broadband increased by 16 percent in second quarter of 2024 over the previous year, and now accounts for almost 20 percent of all fixed broadband subscribers.⁹ OpenVault also reports that the monthly average data consumed in the second quarter of 2024 was over 585 GB.¹⁰ And in the mobile

³ See, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15521-22, para. 16 (explaining that between December 31, 2019 and December 31, 2021, the number of fixed terrestrial residential connections capable of meeting a download speed threshold of 100 Mbps increased from approximately 66.4 million to 82.9 million, an increase of approximately 25 percent); Francesco Rizzato, *5G Users on Average Consume Up to 2.7x More Mobile Data Compared to 4G Users* (Oct. 21, 2020), <https://www.opensignal.com/2020/10/21/5g-users-on-average-consume-up-to-27x-more-mobile-data-compared-to-4g-users> (“Over the past ten years, mobile operators have been deploying increasingly large amounts of spectrum on their 4G networks[, and launching 5G services,] to cope with the rising demand for mobile data coming from their users.”).

⁴ See generally BroadbandNow, *Internet Providers with Data Caps*, <https://broadbandnow.com/internet-providers-with-data-caps> (last visited Aug. 29, 2024); *2022 Communications Marketplace Report*, 37 FCC Rcd at 15548, para. 42.

⁵ See, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15563, para. 62.

⁶ See OpenVault, *Broadband Insights Report (OVBI) 2Q24*, <https://openvault.com/resources/ovbi> (*OpenVault OVBI Report*); see also, e.g., Sam Fischer and Margaret Harding McGill, *Broadband Usage Will Keep Growing Post-Pandemic* (May 4, 2021), <https://www.axios.com/2021/05/04/broadband-usage-post-pandemic-increase> (stating that broadband usage increased 40 percent over the past year amounting to the highest annual growth rate in nearly 10 years).

⁷ See, e.g., Daniel Frankel, *Charter Says Broadband-Only Customers Are Now Using 700 GB of Data Per Month* (Mar. 8, 2021), <https://www.nexttv.com/news/charter-says-broadband-only-customers-are-now-using-700-gb-of-data-per-a-month> (noting that the average data usage of Charter Communications broadband-only customers increased from 339 GB of data per month in January 2020 to 707 GB in 2021); OpenVault, *OVBI: COVID-19 Drove 51% Increase in Broadband Traffic in 2020* (Feb. 10, 2021), <https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020> (noting that traffic on broadband networks increased by 51% between the fourth quarters of 2019 and 2020).

⁸ *OpenVault OVBI Report* at 2-3. The weighted average combines data from usage-based pricing and fixed-rated pricing categories. *Id.*

⁹ *Id.* at 6. In addition, users consuming over 2 TB or more per month increased by 31% year-over-year (from 2.8% to 3.7%), and users consuming 5 TB or more per month increased by 77%. *Id.*

¹⁰ *Id.* at 4.

context, the Commission reported that monthly data usage per smartphone subscriber rose to an average of 12.1 GB per subscriber per month, an increase of approximately 12% from year-end 2020 to year-end 2021.¹¹

4. Data caps are restrictions set by BIAS providers on the volume of bits that a consumer can transfer during a set period of time.¹² Customers who exceed the imposed data caps may be subject to additional fees or reduced upload and download speeds. The terms “hard data caps” and “soft data caps” are often used to describe, respectively, data limits which incur additional fees, and data limits which result in reduced upload and download speeds, or throttling.¹³ When we refer to “data caps,” we include both types of arrangements as well as data limits that result in suspension or termination of access to broadband entirely.¹⁴ The use of data caps and their limits typically vary by BIAS provider even when they use the same underlying network technology to deliver BIAS.¹⁵

5. Many fixed and mobile BIAS providers temporarily or permanently refrained from enforcing or imposing data caps in response to the COVID-19 pandemic.¹⁶ Reports indicate that the temporary suspension of data caps does not appear to have significantly affected fixed network performance,¹⁷ despite the fact that demand for broadband data significantly increased during the pandemic.¹⁸ The upward trends in broadband usage have continued post-pandemic.¹⁹

¹¹ 2022 *Communications Marketplace Report*, 37 FCC Rcd at 15575, para. 80.

¹² See, e.g., Peter Holslin & Kevin Parrish, *Which Internet Service Providers Have Data Caps?* (Feb. 14, 2023), <https://www.highspeedinternet.com/resources/which-internet-service-providers-have-data-caps>; ZDNet, *Internet Data Caps: Everything You Need to Know* (Aug. 16, 2021), <https://www.zdnet.com/home-and-office/networking/internet-data-caps-everything-you-need-to-know>.

¹³ See, e.g., CenturyLink, *What Are Data Caps?* (Oct. 22, 2021), <https://discover.centurylink.com/what-are-data-caps.html>.

¹⁴ This accords with the Commission’s definition of “data cap” in the Affordable Connectivity Program context as including “[b]oth throttling (soft caps) and the termination of service if a household exceeds the data allowance.” *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13773, 13796, para. 48 (2022) (*ACP Fourth Report and Order*); see also, e.g., Open Internet Advisory Committee, *Economic Impacts of Open Internet Frameworks Working Group, Policy Issues in Data Caps and Usage-Based Pricing* at 3 (2013), <https://transition.fcc.gov/cgb/oiaac/Economic-Impacts.pdf>.

¹⁵ See, e.g., Peter Holslin & Kevin Parrish, *Which Internet Service Providers Have Data Caps?* (Feb. 14, 2023), <https://highspeedinternet.com/resources/which-internet-service-providers-have-data-caps> (last visited Aug. 29, 2024); BroadbandNow, *Internet Providers with Data Caps*, <https://broadbandnow.com/internet-providers-with-data-caps> (last updated Aug. 28, 2024).

¹⁶ See, e.g., Press Release, Comcast Northeast Division, *We’re Giving Our Northeast Customers More Time* (Feb. 18, 2021), <https://corporate.comcast.com/stories/were-giving-our-northeast-customers-more-time>; Jeff Baumgartner, *Comcast Will Keep Data Caps Out of the Northeast in 2022* (Dec. 15, 2021), <https://www.lightreading.com/cable-tech/comcast-will-keep-data-caps-out-of-the-northeast-in-2022/d/d-id/774117>; Jon Brodtkin, *Small ISP Cancels Data Caps Permanently After Reviewing Pandemic Usage* (June 4, 2020), <https://arstechnica.com/tech-policy/2020/06/small-isp-cancels-data-caps-permanently-after-reviewing-pandemic-usage>; Nick Statt, *Comcast and T-Mobile to Suspend Internet Data Caps for the Next 60 Days* (Mar. 13, 2020), <https://www.theverge.com/2020/3/13/21179330/comcast-t-mobile-coronavirus-data-caps-hotspots-fcc>; Press Release, T-Mobile, *Update on COVID-19 Response* (Mar. 13, 2020), <https://www.t-mobile.com/news/community/t-mobile-update-on-covid-19-response>.

¹⁷ See, e.g., FCC, *Eleventh Measuring Broadband America Fixed Broadband Report, Annex: MBA Performance During COVID-19 Pandemic 59-62* (2021), <https://data.fcc.gov/download/measuring-broadband-america/2021/2021-Fixed-Measuring-Broadband-America-Report.pdf>.

¹⁸ See *supra* para. 3.

6. *Government Actions to Address Impact of Data Caps on Consumers.* The Commission, other parts of the U.S. Government, and states have undertaken efforts to address the potential impact of data caps. First, in the Universal Service Fund Lifeline program, the Commission established minimum service standards for data usage allowances for fixed and mobile broadband plans that are eligible for a Lifeline discount.²⁰ The minimum service standards are evaluated annually to ensure that low-income consumers are provided sufficient service to meet evolving data usage demands.²¹ The Commission also requires fixed eligible telecommunications carriers that receive Universal Service Fund support for deployment of voice and broadband networks to provide minimum monthly usage allowances reasonably comparable to those available through comparable offerings in urban areas.²²

7. The Commission has also taken into consideration the impact on consumers of data caps when evaluating potential transactions. As a condition of its 2016 merger with Time Warner Cable Inc. and Bright House Networks, LLC, the Commission prohibited Charter Communications, Inc. from imposing data caps or usage-based pricing until May 18, 2023, seven years after the close of the transaction.²³ In June 2020, Charter filed a petition to sunset the data caps and usage-based pricing condition, but subsequently withdrew that petition in January of 2021.²⁴ Charter has publicly indicated it does not plan to change its data caps or usage-based pricing policy even though the condition has expired.²⁵

(Continued from previous page) _____

¹⁹ Axios, *Broadband Usage Will Keep Growing Post-Pandemic* (May 4, 2021), <https://www.axios.com/2021/05/04/broadband-usage-post-pandemic-increase>.

²⁰ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3988-4000, paras. 69-106 (2016) (*Third Lifeline Reform Order*); 47 CFR § 54.408(b)-(c).

²¹ *Third Lifeline Reform Order*, 31 FCC Rcd at 3988-4000, paras. 69-106; 47 CFR §54.408(b)-(c). The minimum service standard for fixed broadband data usage is 1,280 GB per month. *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, 37 FCC Rcd 8811, 8811 (WCB 2022). In July 2024, the Wireline Competition Bureau paused any increase in the Lifeline minimum service standard for mobile broadband data capacity until December 1, 2025. The standard thus continues to be 4.5 GB per month. *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Order, DA 24-642, para. 10 (WCB 2024).

²² Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2023 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers, WC Docket No. 10-90, Public Notice, 37 FCC Rcd 14863 (2022) (WCB/OEA Urban Rate Survey Public Notice); see Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17699, para. 99 (2011) (USF/ICC Transformation Order), aff'd sub nom, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014); see 47 CFR §§ 54.308(a), 54.309(a). The Commission delegated to the Wireline Competition Bureau (Bureau) the task of setting a specific minimum usage allowance and stated that the minimum should be adjusted over time. USF/ICC Transformation Order, 26 FCC Rcd at 17699, para. 99. For 2023, the Bureau adopted a minimum monthly usage allowance of 600 GB; however, the minimum usage allowance for carriers receiving support from the Rural Digital Opportunity Fund (RDOF) is 600GB for the lowest two tiers of RDOF service and 2TB for the upper two tiers. See WCB/OEA Urban Rate Survey Public Notice, 37 FCC Rcd at 14865-66.

²³ *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6543-49, Appx. B (2016) (*Charter Merger Order*).

²⁴ See *Charter Communications, Inc. Withdraws Petition to Sunset Merger Conditions*, Public Notice, 36 FCC Rcd 775 (WCB 2021).

²⁵ Jeff Baumgartner, *Charter Has No Plans to Add Data Caps When FCC Ban Lifts*, Light Reading (Apr. 4, 2023), <https://www.lightreading.com/broadband/charter-has-no-plans-to-add-data-caps-when-fcc-ban-lifts/d/d-id/784184>.

8. In November 2021, the President signed into law the Infrastructure Investment and Jobs Act (Infrastructure Act), which, among other things, transformed the short-term Emergency Broadband Benefit Program, which was established in early 2021 at the height of the COVID-19 pandemic to provide low-income households with discounted BIAS and connected devices, into the Affordable Connectivity Program (ACP).²⁶ Signaling the technical feasibility of providing broadband Internet access services that do not include usage limits, in May 2022, 20 BIAS providers committed to offer ACP households at least one high-speed Internet plan with no data caps for no more than \$30 per month.²⁷ Notably, the combined service areas for these BIAS providers covered more than 80 percent of the population of the United States.²⁸ Due to a lack of additional Congressional funding, the Commission was required to end the ACP on June 1, 2024.²⁹

9. The Infrastructure Act also authorized the Broadband Equity, Access, and Deployment (BEAD) Program.³⁰ The BEAD Program provides States and territories of the United States funding opportunities to help facilitate fixed broadband deployment to unserved locations.³¹ In May 2022, the National Telecommunications and Information Administration (NTIA) announced a Notice of Funding Opportunity for the BEAD Program, which sets forth the requirements for States and territories to receive funding.³² To participate in the BEAD program, grant recipients must ensure that subgrantees “do[] not impose data usage caps” on any plans offered over a network funded by the program.³³

10. Various states have also taken action regarding data caps. In 2021, the Pennsylvania Attorney General announced an agreement with Comcast to delay its planned implementation of data caps due to the increased importance of broadband data usage during the pandemic.³⁴ In the last few years, multiple state legislatures have introduced legislation aimed at restricting data caps.³⁵ Similarly,

²⁶ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60102, 135 Stat. 429, 1184 (2021) (Infrastructure Act); 47 U.S.C. § 1752.

²⁷ The White House, *Fact Sheet: President Biden and Vice President Harris Reduce High-Speed Internet Costs for Millions of Americans* (May 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/09/fact-sheet-president-biden-and-vice-president-harris-reduce-high-speed-internet-costs-for-millions-of-americans>.

²⁸ *Id.*

²⁹ *Wireline Competition Bureau Announces the Final Month of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice (WCB Mar. 4, 2024); Press Release, FCC, FCC Brings Affordable Connectivity Program to a Close (May 31, 2024).

³⁰ Infrastructure Act § 60102(b)(1); 47 U.S.C. § 1702(b)(1).

³¹ See Infrastructure Act § 60102(b), (c). The term “State” is defined to include the District of Columbia and Puerto Rico. *Id.* § 60102(a)(2)(M) (citing 47 U.S.C. § 942).

³² Press Release, U.S. Dep’t of Commerce, Biden-Harris Administration Launches \$45 Billion “Internet for All” Initiative to Bring Affordable, Reliable High-Speed Internet to Everyone in America (May 13, 2022), <https://www.commerce.gov/news/press-releases/2022/05/biden-harris-administration-launches-45-billion-internet-all-initiative>.

³³ NTIA, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity at 68 (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

³⁴ See Press Release, Pa. Att’y Gen., At AG Shapiro’s Urging, Comcast Delays New Data Thresholds (Feb. 3, 2021), <https://www.attorneygeneral.gov/taking-action/at-ag-shapiros-urging-comcast-delays-new-data-thresholds>.

³⁵ Illinois introduced legislation that, if adopted, would prohibit state-issued authorization holders from imposing data caps on broadband service provided to households. See Nat’l Conf. State Legislatures, *Net Neutrality 2022 Legislation*, <https://www.ncsl.org/technology-and-communication/net-neutrality-2022-legislation> (last updated May 4, 2022). New York adopted legislation that establishes a broadband deployment program and provides that

(continued....)

legislation has previously been introduced in Congress, including a ban on data caps that exist solely for monetary reasons.³⁶

11. *Providing Data Cap Transparency for Consumers.* The Commission also adopted a transparency rule that requires fixed and mobile BIAS providers to disclose accurate information regarding certain congestion management practices and commercial terms, including usage limits, the consequences of exceeding usage limits, and usage-based fees.³⁷ The transparency rule assists consumers by providing critical information necessary to make informed choices when purchasing BIAS, and also helps provide entrepreneurs and other small businesses by providing the information necessary to develop, market, and maintain Internet offerings.³⁸ As part of these disclosures, the *2015 Open Internet Order* required BIAS providers to specifically disclose “any data caps or allowances that are a part of the plan the consumer is purchasing, as well as the consequences of exceeding the cap or allowance (e.g., additional charges, loss of service for the remainder of the billing cycle)”³⁹ and also required that BIAS providers directly notify end users “if their individual use of a network will trigger a network practice, based on their demand prior to a period of congestion, that is likely to have a significant impact on the end user’s use of the service.”⁴⁰ The Commission eliminated the enhancements to the transparency rule in its *2017 RIF Order*, but continued to require the disclosure of “congestion management practices,” including “usage limits triggering the practices,” and “usage limits and the consequences of exceeding them.”⁴¹

12. In November 2022, the Commission adopted the *Broadband Labels Order*, which requires fixed and mobile BIAS providers to display, at the point of sale, certain information about broadband prices, introductory rates, monthly data allowances, the fees for exceeding imposed limits, broadband speeds, whether the BIAS provider participates in the ACP, and other critical BIAS information.⁴² The *Broadband Labels Order* also prescribes a label format and display location to ensure consumers can easily compare a BIAS provider’s services and services among different BIAS providers.⁴³

(Continued from previous page) _____

preference will be given to applicant providers who commit not to impose data caps on service provided to end-users. *See id.*

³⁶ *See* Uncap America Act, S.4590, 117th Cong. (2022).

³⁷ *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 440, 442, paras. 220, 223 (2017) (*RIF Order*); *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5669-82 (2015) (*2015 Open Internet Order*); 47 CFR § 8.1(a). The Commission recently adopted revisions to this transparency rule, which have been stayed pending judicial review; those revisions do not directly bear on disclosures regarding data caps. *See Safeguarding and Securing the Open Internet et al.*, WC Docket No. 23-320 et al., Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52, at 328-44, paras. 543-67 (May 7, 2024) (*2024 Open Internet Order*), *In re: MCP No. 185 et al.*, No. 24-700, Order (6th Cir. Aug. 1, 2024) (*per curiam* decision staying the *2024 Open Internet Order* pending review).

³⁸ *RIF Order*, 33 FCC Rcd at 438, paras. 215-16.

³⁹ *2015 Open Internet Order*, 30 FCC Rcd at 5673, para. 164.

⁴⁰ *Id.* at 5677, para. 171.

⁴¹ *RIF Order*, 33 FCC Rcd at 437-40, paras. 215-20.

⁴² *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13686, 13687, 13689-90, 13696, paras. 3, 12, 35 (2022) (*Broadband Labels Order*). As part of this label, the *Broadband Labels Order* requires BIAS providers to disclose any charges or reductions in service for any data used in excess of the amount included in the plan, and to “identify the increment of additional data, e.g., ‘each additional 50GB,’ if applicable, and disclose any additional charges once the consumer exceeds the monthly data allowance.” *Id.* at 13696, para. 35.

⁴³ *Id.* at 13687, para. 3.

The Commission has sought comment on further steps to ensure that consumers have the information they need to make informed BIAS purchasing decisions, including issues related to more comprehensive pricing information, bundled plans, label accessibility, performance characteristics, service reliability, cybersecurity, network management and privacy issues, the availability of labels in multiple languages, and whether the labels should be interactive or otherwise formatted differently so the information contained in them is clearer and conveyed more effectively.⁴⁴

13. In the same month, the Commission established the ACP Transparency Data Collection (ACP Data Collection), which collected information related to the price, subscription rates, and plan characteristics of the Internet service offerings of ACP-participating providers.⁴⁵ The summary, published May 30, 2024, provided a snapshot of the broadband Internet access services nearly 20 million ACP households were receiving from 1,600 providers on August 1, 2023,⁴⁶ and included information about service plan data caps (including hard caps, soft caps, de-prioritization, and throttling), the number of subscribers who have exceeded the data cap in the previous month, the average amount by which subscribers have exceeded their cap in the previous month, and any charges for additional data usages along with the relevant increment (e.g., 1 GB, 500 MB).⁴⁷ According to the summary, approximately 48.9% of ACP subscribers were on plans that had some form of data cap.⁴⁸

III. DISCUSSION

14. In furtherance of our goal of ensuring consumers have meaningful access to BIAS, we inquire about the current state of data caps—for both fixed and mobile broadband Internet service—and how they may impact consumers and competition. We seek to better understand why the use of data caps continues to persist despite increased broadband needs of consumers and providers' demonstrated technical ability to offer unlimited data plans. We first seek comment on current trends in consumer data usage. We next seek comment on the impact of data caps on consumers, consumers' experience with data caps, and how consumers are informed about data caps on service offerings. We then look at the impact of data caps on competition. Lastly, we ask about our legal authority to take action regarding data caps.

A. Consumer Data Usage

15. While the past several years have shown a marked increase in data usage, we seek comment on current consumer data usage for fixed and mobile BIAS to help us understand how data caps affect consumers and competition. How much data does a typical household currently need per month to provide sufficient capacity for consumers to engage in telework and online education, access telemedicine, participate in videoconferences, stream video content, engage in online gaming, and participate in other common data-driven activities? What amount of data is necessary to enable over-the-top (OTT) services, e.g., video streaming or voice over Internet protocol services, not provided by a consumer's BIAS provider? How do these data amounts differ based on the number of household members and the technical quality of content consumed over the broadband connection (e.g., 4K video vs. standard video)? For example, what would be a typical amount of data used per month to engage in livestreaming content creation, daily videoconferences, telemedicine functions, home alarm monitoring, Video Relay Services (VRS), and online gaming?

16. We also seek comment on the impact, if any, of the number of connected devices on data

⁴⁴ *Id.* at 13687, para. 4.

⁴⁵ *ACP Fourth Report and Order*, 37 FCC Rcd at 13774, para. 1.

⁴⁶ *The Office of Economics and Analytics and the Wireline Competition Bureau Announce Publication of Affordable Connectivity Program Transparency Data Collection Summary*, WC Docket No. 21-450, Public Notice, DA 24-504, at 1 (May 30, 2024).

⁴⁷ FCC, ACP Data Plan Updated (July 30, 2024), <https://docs.fcc.gov/public/attachments/DOC-404290A1.pdf>.

⁴⁸ *Id.* at 3.

usage. We note that a Deloitte survey reported that the average U.S. household had 21 connected devices in 2023,⁴⁹ compared to only 11 connected devices in 2019.⁵⁰ How has the increase in the number of household connected devices impacted current data usage needs? Are consumers aware of the impact that multiple connected devices or household users have on data consumption? To the extent the number of connected devices in a household effects data usage, to what extent is the average number of connected devices per household expected to continue increasing?

17. We next explore how consumer data usage needs are expected to change in the future, both in the near term and over the longer term, and the impact that data caps could have on those needs. Do commenters envision trends, such as an increasing use of Internet of Things (IoT) or artificial intelligence services, that could implicate future changes in consumer data usage? Will the continued use of data caps by BIAS providers undermine Internet adoption? What other services could significantly impact consumers' data usage in the future?⁵¹ Would acceptance of those services by households be undermined by data caps?

B. Impact of Data Caps on Consumers

18. We seek comment on how the imposition of data caps affects consumers and their use and purchase of BIAS. Specifically, we seek comment on how data caps may affect consumers' online behavior and consumer choice; the impact of data usage limits on public safety, consumer service quality, and price; and whether data caps have a disproportionate impact on certain consumers.

19. *Online Behavior and Choice.* We seek comment on how monthly data usage limits may affect consumers' online behavior and consumer choice. For example, in a 2022 report, OpenVault stated that an analysis of aggregated data revealed that U.S. consumers of fixed broadband Internet with usage-based pricing plans used an average of 501.5 GB of data per month, compared to 545.9 GB for consumers with flat-rate billing plans.⁵² Do usage limits encourage consumers to restrict their Internet use to avoid

⁴⁹ Deloitte, *Balancing Act: Seeking Just the Right Amount of Digital for a Happy, Healthy Connected Life* (Sept. 5, 2023), <https://www2.deloitte.com/us/en/insights/industry/telecommunications/connectivity-mobile-trends-survey.html#print-the-connected-consumer-survey-2023>.

⁵⁰ Kevin Westcott et al., *Build It and They Will Embrace It: Consumers Are Preparing for 5G Connectivity in the Home and on the Go* at 2 (2019), https://www2.deloitte.com/content/dam/insights/us/articles/6457_Mobile-trends-survey/DI_Build-it-and-they-will-embrace-it.pdf.

⁵¹ See, e.g., Harry Guinness, *Why Virtual Reality Needs Fiber Optic Internet* (July 12, 2021), <https://blog.frontier.com/2021/07/why-virtual-reality-needs-fiber-optic-internet> (“[T]ruly immersive VR with 4K-equivalent resolution has yet higher demands. We’re talking about needing connection speeds higher than a gigabit—more than almost any currently available home internet connection.”); Josh Hendrickson, *8K TV Has Arrived. Here’s What You Need to Know* (Jan. 6, 2020), <https://www.howtogeek.com/397365/8k-tv-has-arrived-heres-what-you-need-to-know> (“Even if you’re lucky enough to have a gigabit connection, you may need to worry about a data cap. An hour of 8K streaming is going to burn through 75.2 GBs of data If your cap is a mere 1 TB you could easily blow through this in a week”); Ericsson, *Ericsson Mobility Report* at 22 (Nov. 2022), <https://www.ericsson.com/4ae28d/assets/local/reports-papers/mobility-report/documents/2022/ericsson-mobility-report-november-2022.pdf> (“In North America, the average monthly mobile data usage per smartphone is expected to reach 55 GB in 2028. . . . The data traffic generated per minute of use will increase significantly in line with the expected uptake of gaming, XR, and video-based apps. These experiences require higher video resolutions, increased uplink traffic, and more data from devices off-loaded to cloud computing resources to satisfy users.”); Thomas Goepel, *Artificial Intelligence and Machine Learning Require a Better Network* (Oct. 12, 2018), <https://technative.io/artificial-intelligence-and-machine-learning-require-a-better-network> (“[AI and machine learning is] extremely data intensive and often requires real-time transit and processing speeds.”).

⁵² OpenVault, *Broadband Insights Report (OVBI) 4Q22*, at 6, <https://openvault.com/resources/ovbi> (4Q22 *OpenVault OVBI Report*).

exceeding caps? We observe that many consumers have access to both fixed and mobile BIAS.⁵³ What effect, if any, do data caps have on consumers' decision to purchase both fixed or mobile BIAS? Are consumers who subscribe to both fixed and mobile BIAS less likely to exceed their monthly data usage allowances?

20. As the Commission has previously explained, “data caps inherently limit the use of a subscriber’s broadband connection,” and a “low monthly data cap can prevent subscribers from using applications requiring high bandwidth.”⁵⁴ Are there certain types of BIAS uses that typically cause consumers to exceed their data caps (e.g., video streaming, video conferences, online gaming, telehealth)? Do data caps impact consumers’ use of OTT applications, services, and devices? To what extent, if any, do data caps discourage consumers from purchasing and using any OTT applications, services, and devices, particularly smart devices, that may use a significant amount of data? How have data caps, and particularly service suspension, throttling, and other enforcement of data caps, affected consumers’ ability to use the Internet for work, healthcare, education, commerce, civic engagement, and entertainment? What are the potential implications for free speech of data usage limits? For those states⁵⁵ that have adopted a version of the *2015 Open Internet Order*’s general conduct rule, under which the Commission previously evaluated data caps,⁵⁶ have there been any state actions concerning the use of data caps for BIAS offerings that might be relevant to our inquiry?

21. *Impact on Consumer Service Quality and Price.* We seek comment on whether data caps can prevent certain users from causing congestion that degrades the service of other users. We also seek comment on whether BIAS plans with data caps allow consumers who use less data to avoid subsidizing the consumers who use more data. To what extent do service plan offerings give consumers meaningful choice between plans with data caps that are less expensive and unlimited data plans that are more expensive? If so, how much less expensive are service plans with data caps? There is some evidence that

⁵³ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 22-270, 2024 Section 706 Report, FCC 24-27, at 50, fig. 13 (2024) (noting that 90 percent of Americans had access to both fixed and mobile broadband services as of 2022).

⁵⁴ *ACP Fourth Report and Order*, 37 FCC Rcd at 13794-95, para. 45.

⁵⁵ See, e.g., 2024 Minn. Sess. Law Serv. 148 (West) (prohibiting ISPs from “unreasonably interfering with or unreasonably disadvantaging: (i) a customer’s ability to select, access, and use broadband Internet service or lawful Internet content, applications, services, or devices of the customer’s choice; or (ii) an edge provider’s ability to provide lawful Internet content, applications, services, or devices to a customer”); ME. REV. STAT. ANN., tit. 5 §1541-13 (requiring that a state agency or other government body “may not commit state funds” to an ISP unless the provider agrees in writing to conform to the FCC’s *2015 Open Internet Order*); OR. REV. STAT. ANN. § 276A.418 (requiring that a public body may not contract with an ISP that unreasonably interferes with or disadvantages an end user’s ability to “select, access and use” the Internet service or lawful “Internet content, applications or services or devices of the end user’s choice” or an edge provider’s ability to make such devices, “content, applications or services” available); VT. STAT. ANN. tit. 3, § 348 (requiring that an ISP contracting with Vermont for Internet service must certify its compliance with net neutrality standards, including that it does not unreasonably interfere or disadvantage either (i) a customer’s ability to select and use Internet service or lawful “content, applications, services, or devices” of his/her choice or (ii) an edge provider’s ability to make such “content, applications, services, or devices available”).

⁵⁶ See *2015 Open Internet Order*, 30 FCC Rcd at 5668-69, para. 153 (declining to make blanket findings regarding data usage allowances, and concluding that the Commission will address concerns “under the no-unreasonable interference/disadvantage” standard on a case-by-case basis). The Commission recently voted to reinstate a general conduct rule largely mirroring the *2015 Open Internet Order*’s general conduct rule. See *2024 Open Internet Order* at 309-328, paras. 513-42. That rule is currently stayed pending review of the *2024 Open Internet Order*. See *supra* note 37.

the incremental cost to provide additional data to consumers has substantially decreased over time.⁵⁷ Is this accurate, and if so, have prices decreased for consumers relative to those decreased costs?

22. *Impact on Public Safety.* We seek comment on the impact of data usage limits on public safety. In the *RIF Remand Order*, the Commission recognized that certain consumers use their broadband connections to communicate with public safety officials and access public safety information⁵⁸—do data caps impact these uses? Similarly, do data caps impact consumers’ downloading of necessary device and security updates? How do data caps affect consumers’ use of E-911 services, emergency alerts, or other public safety services offered over the Internet, if at all? We seek comment on what steps, if any, the Commission should take to ensure that public safety is not impacted by data caps. Are there steps the Commission should consider taking to encourage BIAS providers to refrain from imposing data caps during an emergency situation, such as a pandemic or a natural disaster, and if so, what circumstances should constitute an emergency situation? As noted,⁵⁹ some BIAS providers waived their data caps during the COVID-19 pandemic.⁶⁰ Should such moratoria continue to be voluntary in the future? What is the Commission’s role in ensuring that consumers have access to meaningful BIAS in times of emergency?

23. *Impact on Consumers with Disabilities.* We seek comment on whether data caps have a disproportionate impact on consumers with disabilities, and if so, what steps the Commission can take to mitigate these effects.⁶¹ For example, video relay service (VRS) is a data-intensive service that relies on broadband.⁶² Once a cap is met, the VRS user may have to purchase additional data in order continue using VRS with the same video quality. The Commission has previously encouraged BIAS providers to “explore options for increasing usage allowances for Lifeline consumers who are deaf, hard of hearing, deaf-blind, or have a speech disability and rely on video connection for Video Relay Service and point-to-point calls and other bandwidth-intensive accessibility functionalities.”⁶³ Visual interpreting apps for

⁵⁷ See Tyler Cooper, *How Much Does Data Really Cost An ISP?*, <https://broadbandnow.com/report/much-data-really-cost-isps> (last updated Aug. 14, 2024).

⁵⁸ *Restoring Internet Freedom et al.*, WC Docket Nos. 17-108 et al., Order on Remand, 35 FCC Rcd 12328, 12342-43, paras. 29-30 (2020) (stating that “the record suggests that most data communications between public safety entities and individuals likely take place over broadband Internet access services, and not enterprise or dedicated services”).

⁵⁹ See *supra* para. 6.

⁶⁰ See, e.g., Comcast Northeast Division, *We’re Giving Our Northeast Customers More Time* (Feb. 18, 2021), <https://corporate.comcast.com/stories/were-giving-our-northeast-customers-more-time>. As noted above, in February 2021, the Pennsylvania Attorney General announced that “under a set of commitments agreed upon by the . . . Attorney General . . . and Comcast, the telecommunications provider will delay its planned implementation of usage-based data overage charges to existing customers until July 2021 in its Northeast Division.” Press Release, Pa. Att’y Gen., *At AG Shapiro’s Urging, Comcast Delays New Data Thresholds* (Feb. 3, 2021), <https://www.attorneygeneral.gov/taking-action/at-ag-shapiros-urging-comcast-delays-new-data-thresholds>.

⁶¹ *Broadband Labels Order*, 37 FCC Rcd at 13711, para. 81 (in requiring accessible labeling formats for broadband labeling, the Commission emphasized its “continued commitment to ensuring that broadband networks are accessible to and usable by individuals with disabilities”).

⁶² See *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98 at 17, para. 32 n.114 (citing *Telecommunications for the Deaf and Hard of Hearing, Inc. et al. Reply*, GN Docket No. 22-69, at 6-9 (rec. June 30, 2022) (arguing that data caps and slow speeds can lead to digital discrimination)).

⁶³ *Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect American Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3993, para. 84 n.248 (2016) (citing Letter from National Association of the Deaf et al. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42 et al. (Mar. 23, 2016) (explaining that 500 MB per month of data will provide about 60 minutes per month of calls that are made

(continued....)

people who are blind or have low vision also use broadband data. The American Foundation for the Blind noted that “assistive technologies and services, ranging from the use of multiple assistive technology devices on a single connection to visual interpreting apps and ASL [American Sign Language] interpreting . . . require significant amounts of data and low latency.”⁶⁴ How much data on average per month do people with disabilities need in order to use accessibility services and other broadband communications apps? To what extent are consumers using accessibility services exceeding data caps? How can BIAS providers ensure that overages caused by the use of accessibility services do not result in higher costs for subscribers with disabilities? For example, should BIAS providers be encouraged to consider usage exceptions for direct video calling to government agencies and business organizations that provide customer service representatives fluent in American Sign Language (ASL) to ensure more effective communication for users of ASL?⁶⁵ How can BIAS providers ensure that consumers with disabilities can use new accessibility technologies that may be developed in the future? We seek comment on what steps, if any, the Commission should take to ensure that data caps do not disproportionately impact consumers with disabilities.

24. *Impact on Low-Income Consumers.* We also seek comment on whether data caps have a disproportionate impact on low-income consumers, or consumers from historically disadvantaged communities, and if so, what steps the Commission can take to mitigate these effects. Multiple parties recently noted that low-income and historically disadvantaged households often rely on hotspots or cellular data for broadband, which can be subject to data caps and high latency.⁶⁶ Are low-income consumers and consumers from historically disadvantaged communities more likely to be offered and to purchase broadband plans with data usage limits as a cost-saving measure? Can data caps help to lower costs to make broadband more affordable for low-income consumers? Do plans with data caps allow low-income consumers who use less data to purchase less-expensive plans and avoid subsidizing the consumers who use more data? Do data caps restrict the ability of low-income consumers to use the services they need, or otherwise impact low-income consumers’ use of OTT applications, services, and devices? Have the Lifeline program or the ACP made a positive impact on low-income consumers’ access to plans without data caps? We seek comment on what steps, if any, the Commission should take to ensure that data caps do not disproportionately impact low-income consumers, or consumers from historically disadvantaged communities.

C. Data Caps Experience for Consumers

25. To help us understand how data caps affect the BIAS available to consumers and

(Continued from previous page) _____

through a Video Relay Service or point-to-point by videophone by deaf and hard of hearing consumers who rely on video communications technology for such calls).

⁶⁴ American Foundation for the Blind Comments, GN Docket No. 22-69, at 3 (rec. Feb. 21, 2023); *see also* American Association of People with Disabilities Comments, GN Docket No. 22-69, at 3 (rec. Feb. 21, 2023) (“Many people with disabilities may also need additional assistive technology and applications to use the internet . . . Assistive technology also often requires greater bandwidth. For disabled people (deaf people, deaf/blind, etc) that use visual language to communicate, broadband must provide adequate speeds, capacities, latency, and other quality of service metrics in a given area to support video relay service and other forms of video communication.”).

⁶⁵ *See* FCC, *Direct Video Calling (DVC)*, www.fcc.gov/dvc (last updated May 5, 2023) (promoting use of direct video calling for communication between consumers who rely on ASL and government agencies and other organizations).

⁶⁶ *See* Greenlining Institute Comments, GN Docket No. 22-69, at 4 (rec. Feb. 21, 2023); Lawyers’ Committee for Civil Rights Under Law Comments, GN Docket No. 22-69, at 23 (rec. Feb. 21, 2023) (Lawyers’ Committee Comments) (“[M]obile data caps may have an outsized effect on smartphone dependent subscribers, which include 25% of Hispanic users, 17% of Black users, and 12% of white users.”).

determine if there are steps the Commission can take to improve those services,⁶⁷ we now turn our inquiry to issues involving how consumers experience data and how BIAS providers enable consumers to manage their data usage. We specifically seek comment on how data caps influence BIAS providers' service plan offerings, the data allowances BIAS providers provide to consumers, the extent to which prices are related to the costs to provide data, how consumer data usage is measured, what tools consumers can use to manage their data usage, the extent to which consumers exceed their data caps, how data caps are enforced by BIAS providers, how unused data is treated for plans subject to data caps, and how consumers can submit complaints and resolve disputes regarding data caps with their BIAS providers.

26. At the outset we reiterate our observation that a number of fixed and mobile BIAS providers temporarily or permanently refrained from enforcing or imposing data caps in response to the COVID-19 pandemic.⁶⁸ We seek comment on the experience of consumers whose BIAS providers took these steps. Were any adverse impacts (e.g., network congestion) observed? Have BIAS providers returned to enforcing data caps on consumers' service plans? If so, what, if any, explanation did the BIAS provider offer for its reimposition of data caps? Did consumers typically exceed their plan's data caps during the period of time when data caps were not enforced? Has consumers' data usage remained at the same level as when data caps were not enforced? What percentage of consumers moved to a higher data usage plan once BIAS providers began enforcing data caps? Have BIAS providers raised their data cap thresholds since initial suspension of data cap enforcement during the pandemic?

27. *Service Plan Offerings.* We seek comment to understand how data caps affect the fixed and mobile BIAS provider service plans that are offered to consumers. To what extent can consumers choose from a range of data plans with and without data caps? What percentage of consumers have access to fixed service plans without data caps, and what percentage subscribe to fixed plans with data caps versus without? Similarly, what percentage of consumers have access to mobile service plans without data caps, and what percentage subscribe to mobile plans with data caps versus those without? Do consumers find that data caps are more common among all types of mobile BIAS providers or more common among certain types, such as mobile virtual network operators (MVNOs), and, if so, is it possible to ascertain why?⁶⁹ To what extent can consumers choose service plans with different data allowances for a given speed tier? Does the extent of choice vary depending on whether the BIAS provider is a fixed versus mobile provider? Can consumers typically choose from service plans with set amounts of data at differing price points or do BIAS providers apply a set data cap universally to all customers regardless of the service plan selected? To what extent are consumers subject to hard data caps versus soft data caps, and why might they be subject to one over the other? Do consumers sufficiently understand the difference between the two? How common is it for consumers to be subject to data caps only as part of a BIAS provider's excessive or acceptable use policy whereby a consumer's data usage may be examined and limited after a set data threshold? Does this differ depending on whether the consumer is using fixed versus mobile BIAS, and, if so, how?

28. As the Commission has previously explained, "information concerning data caps is critical to allow consumers and the Commission to determine the value provided by a service plan,"⁷⁰ and the Commission has gathered information about data caps in BIAS plans offered by ACP participating providers.⁷¹ We seek comment on the value of collecting information about data caps in all BIAS plans

⁶⁷ See generally *Broadband Labels Order*, 37 FCC Rcd at 13696, para. 35.

⁶⁸ See *supra* para. 6.

⁶⁹ MVNOs purchase mobile wireless services wholesale from facilities-based providers and resell the services to consumers. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 et al.*, WT Docket No. 11-186, Sixteenth Report, 28 FCC Rcd 3700, 3738, para. 29 (2013). They generally do not own any network facilities themselves. *Id.*

⁷⁰ *ACP Fourth Report and Order*, 37 FCC Rcd at 13794-95, para. 45.

⁷¹ *Id.* at 13794-96, paras. 45-48.

offered by BIAS providers. Should we collect the same categories of information that the Commission collected in the ACP Data Collection proceeding? Are there other data points we should consider requesting? How could we use the additional information to inform our decision-making, and would the benefits of collecting these data outweigh the burdens on BIAS providers?

29. *Data Allowance Amounts.* We seek information regarding the amount of data that consumers are allowed to use before being capped. At what amounts do fixed and mobile BIAS providers typically set data caps?⁷² Do BIAS providers set data caps based on average data usage among a given BIAS provider's customers or among customers generally? For customers that subscribe to MVNOs specifically, are data caps based on contract terms that restrict the amount of data the MVNO's customers can use collectively or individually in a given period? To what extent have data allowances increased or decreased over time? How have increases in consumer data usage or data speeds available to consumers affected data allowances? For example, have data caps increased or decreased proportionally to increases in data usage and/or speeds? Have data caps increased, decreased, or stayed the same relative to the incremental cost to provide data to customers?

30. To what extent does the network technology a BIAS provider uses to deliver BIAS (i.e., fiber, cable, DSL, fixed wireless, satellite, and mobile wireless) affect the consumer's data allowance? Notwithstanding differences in technologies, we reiterate that several BIAS providers suspended data caps during the height of the pandemic and their networks were able to provide consistent service during that period of significantly increased demand.⁷³ We also note that many BIAS providers are or may become subject to federal and state restrictions on the use of data caps related to funding for broadband deployment.⁷⁴ We seek comment on whether these facts indicate that BIAS providers' networks are technically capable of meeting consumer demand without the imposition of data caps.

31. *Measurement of Customer Data Usage.* We seek comment on methodologies for measuring consumer data usage. First, we seek to better understand why there does not appear to be a uniform methodology for measuring consumer data usage. Does this variability make it more difficult for consumers to assess and choose the right broadband service? Do BIAS providers make their measurement methodologies transparent to consumers, such that consumers can effectively compare the services of fixed and mobile BIAS providers? Are current data measurements based on estimates or actual usage? We also seek comment on the impact on consumers of the lack of any standardization for measuring usage. Should the Commission require BIAS providers to include information in transparency disclosures regarding their measurement methodologies and practices or consider setting standards for how BIAS providers measure data? Should the Commission consider establishing a standard that could easily be applied by the BIAS providers and understood by consumers?

32. *Consumer Tools for Managing Data Usage.* We next ask about the tools available to consumers for managing their data usage. For instance, can customers view the amount of data they have used in a pay period and, if so, how are those data presented and are they adequately explained to consumers? How accurate is the data usage information they receive? Are customers provided actual data usage or estimates? How granular is the usage information customers can access? Is data usage

⁷² See, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15548-49, paras. 42-43 (reporting the average minimum data cap by technology based on then-available data and identifying data caps ranges for the largest 15 fixed broadband service providers with data caps); *id.* at 15625-26, para. 152 (indicating that "many mobile wireless 'unlimited' plans stipulated that, during times where a cell is experiencing network congestion, those subscribers' traffic would be de-prioritized at that cell if they consumed beyond a limit that was typically set around 50 GB per month").

⁷³ See Doug Brake, *Lessons from the Pandemic: Broadband Policy after COVID-19*, Information Technology and Innovation Foundation (July 13, 2020), <https://itif.org/publications/2020/07/13/lessons-pandemic-broadband-policy-after-covid-19> (showing home broadband traffic increased 20-40 percent at the onset of the pandemic).

⁷⁴ See *supra* paras. 7-11.

information available to customers in real time or delayed, and if it is delayed, by how long? Can consumers access historical data usage? What, if any, tools do BIAS providers make available to customers to limit their data usage? For example, are customers given the ability to restrict access to certain categories of content that typically use large amounts of data, like streaming video? For service plans that are shared among a household, can customers restrict data usage by user or device? How useful and beneficial are the tools available to consumers to manage their data usage? Are there ways these tools can be improved, or are there other tools BIAS providers could develop or provide? Should the Commission consider requiring BIAS providers to offer certain tools or set standards for how tools are provided, and if so, how? Do BIAS providers charge customers an additional fee for any data management tools? If so, should the Commission consider prohibiting this practice?

33. We also seek comment on the extent to which consumers receive information from BIAS providers about their data usage. Do BIAS providers send text, email, or other alerts to notify customers when they are approaching or have exceeded their data allowances. If so, are these alerts automatic or must customers turn them on? Should we consider requiring BIAS providers to inform customers when they are close to reaching their data cap? If so, when should this notification requirement be triggered? Is there other information BIAS providers should be required to provide consumers to help them manage their data usage?

34. *Data Overages.* We seek comment to understand the extent to which consumers exceed their data caps. How many consumers typically reach or exceed their data caps on a monthly basis, regardless of whether BIAS providers are currently or strictly enforcing data caps? What percentage of consumers pay overage charges or fees to access additional full-speed data? To what extent do these consumers exceed the cap for the additional incremental amount of data provided? For consumers that exceed their data caps but are able to continue accessing data, what is the average amount of data at which they exceed their data cap? As noted above, the Commission, as part of its ACP Data Collection, collected information about service plan data caps (including hard caps, soft caps, de-prioritization, and throttling); the number of subscribers who have exceeded the data cap in the previous month; the average amount by which subscribers have exceeded their cap in the previous month; and any charges for additional data usages along with the relevant increment (e.g., 1 GB, 500 MB).⁷⁵ Should we collect this information regarding all plans?

35. *Data Caps Enforcement Policies.* We seek information about how consumers are treated when data caps are exceeded. For example, for customers who exceed caps, do BIAS providers suspend service, throttle their services, or use some other enforcement mechanism? If data service is throttled, to what speeds do fixed or mobile BIAS providers throttle? What services are consumers able to reasonably access at throttled speeds? Can customers access additional full-speed data for a fee, and if so, is that cost applied automatically as an overage charge or optionally as a purchase? In what increments are customers able to access additional data and how do BIAS providers set those increments? Is the cost for additional data proportional to the cost for initial allotments of data? For example, if a customer receives 1 terabyte of data for \$100 in a month, is the cost of an additional 100 gigabytes \$10, or is it more or less expensive? Should the Commission consider establishing more detailed disclosure requirements or other policies concerning any of the foregoing matters?

36. We also seek to understand how strictly BIAS providers enforce their data caps. Does it differ among types of fixed BIAS providers or for mobile BIAS providers? After customers exceed their data caps, do BIAS providers provide exceptions that allow customers to reach certain services, such as public safety or other government services, without restrictions or limitations, and if so, what exceptions are provided and why? Do BIAS providers consider whether a customer has previously exceeded their data caps or take into account other unique circumstances before strict enforcement, such that some

⁷⁵ See *ACP Fourth Report and Order*, 37 FCC Rcd at 13794-95, paras. 45-46; FCC, ACP Data Plan Updated (July 30, 2024), <https://docs.fcc.gov/public/attachments/DOC-404290A1.pdf>.

customers may get warnings or waivers for first offenses?

37. *Unused Data.* We seek information to understand how consumers' unused data is treated for plans subject to data caps. For example, if customers do not use their full data allowance in a monthly period, does the remaining data rollover to the next month? If so, are customers subject to specific policies regarding the use of rollover data, such as requirements that they use the data within a specific period of time? Does unused data simply "expire" at the end of a billing period?

38. *Dispute Resolution Procedures.* We seek comment on how fixed and mobile BIAS providers resolve disputes with customers regarding data caps.⁷⁶ Do BIAS providers offer their customers mechanisms to submit complaints and dispute the application of data caps, such as a challenge process? To what extent have BIAS providers been subject to litigation or arbitration regarding data caps, and what have been the outcomes of these challenges? Are there steps the Commission should take to ensure that BIAS providers meaningfully respond to and resolve complaints and disputes about data caps? What are the potential advantages and disadvantages of requiring specific procedures?

D. Notice to Consumers Regarding Data Caps

39. We seek comment on whether BIAS providers' existing disclosures regarding data caps are sufficient to allow consumers to make informed decisions about their BIAS plans. The Commission's transparency rule⁷⁷ and the *Broadband Labels Order* require BIAS providers to disclose certain information regarding their data caps to consumers.⁷⁸ In the *RIF Order*, the Commission explained that disclosures regarding network management practices must include, among other things, congestion management practices, including usage limits that trigger congestion management or other consequences for exceeding usage limits, as well as whether the BIAS provider inhibits or favors certain applications or classes of applications.⁷⁹ Additionally, it specified that commercial terms and disclosures must include prices and usage-based fees.⁸⁰ The expanded notice obligations adopted in the *Broadband Labels Order* require BIAS providers to display, at the point of sale, labels that disclose information about data allowances, among other things.⁸¹ Should the Commission consider additional disclosure requirements to ensure consumers have the information they need to make informed purchasing decisions regarding data caps?⁸² Do consumers find that BIAS providers disclose their data cap policies in a way that is easily

⁷⁶ The Commission's current transparency rule requires fixed and mobile broadband providers to disclose information regarding redress options, including "practices for resolving complaints and questions from consumers." *RIF Order*, 33 FCC Rcd at 442, para. 223.

⁷⁷ The Commission's current transparency rule requires BIAS providers to "publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings." *Id.* at 437-38, para. 215; 47 CFR § 8.1(a).

⁷⁸ *Broadband Labels Order*, 37 FCC Rcd at 13687, 13696, paras. 3, 35.

⁷⁹ *RIF Order*, 33 FCC Rcd at 440-41, para. 220.

⁸⁰ *Id.* at 442, para. 223.

⁸¹ *Broadband Labels Order*, 37 FCC Rcd at 13687, 13696, paras. 3, 35.

⁸² *Cf. Federal Trade Commission v. AT&T Mobility LLC*, Stipulated Order for Permanent Injunction and Monetary Judgement, Case No. 14-CV-04785-EMC (Dec. 4, 2019) (finding that AT&T engaged in deceptive or unfair acts or practices in violation of Section 5 of the FTC Act in the marketing of mobile broadband services as a result of claims that certain customers would receive unlimited data without adequately disclosing that broadband speeds would be throttled after a certain data threshold). We note that in the *Broadband Labels* proceeding, the Commission has sought further comment on whether a broadband label link to a BIAS provider's network management practices is sufficient or if the label should include more specific disclosures about whether the

(continued...)

understandable and accessible? How and where do BIAS providers currently disclose data allowance information to consumers, e.g., in marketing materials, online account portals, monthly bills, or elsewhere?

40. We seek comment on to what extent existing disclosures are effective at informing consumers of the practical effect of data caps. Is the information BIAS providers currently are required to disclose useful in helping consumers understand how their usage consumes data and how quickly they will reach their data caps? For instance, do consumers understand how much data is used by certain Internet activities, services, or devices (e.g., web browsing; telehealth applications and monitoring; streaming video in standard definition, high definition, and 4K; alarm camera monitoring; online gaming; messaging; Internet of Things connected devices, and video conferencing)? How accurate is the typical consumer's understanding of the amount of data consumed for both fixed and mobile services? Should the Commission consider requiring BIAS providers to disclose additional information regarding data caps? If so, what additional information would be helpful for consumers? For example, should the Commission require BIAS providers to give examples of how much data is used by typical activities, services, or devices, or by number of users or devices, perhaps distinguished by fixed and mobile services, so that consumers can more easily choose which plan is right for their needs? Should BIAS providers be required to disclose this information specific to the data offered with each service plan? To what extent do BIAS providers already disclose this information? Where and how should any such information be provided to consumers by BIAS providers? For instance, should the information be proximate to or prominently accessible from locations where BIAS providers disclose data allowances, on information pages available on a BIAS provider's website, or included in BIAS providers' general terms and conditions?

41. We invite comment on what role the Commission should play in educating consumers about data consumption and how much data they may need. Pursuant to the *Broadband Labels Order*, "the Commission will consider . . . providing examples of what speeds of service are normally required for typical activities such as web surfing, streaming, messaging, and video conferencing to assist consumers in understanding BIAS offerings," as part of its consumer education materials.⁸³ Should we publish guides designed to educate consumers on how much data is needed for various online activities?⁸⁴ Should we include meanings for any terms related to data caps in the glossary the Commission will publish on its website to help consumers understand broadband labels?

E. Impact of Data Caps on Competition

42. We seek comment on whether consumers view data caps as a distinguishing factor amongst BIAS providers when multiple services are available. Is there evidence that BIAS provider data cap practices are a significant factor in consumers' choice of BIAS providers? Do data caps serve to distinguish BIAS providers' services from competitors? How does local, regional, and national competition among fixed and mobile BIAS providers relate to the imposition of data caps by BIAS providers? Do BIAS providers apply data caps universally across their service areas (except where otherwise prohibited from doing so) or do they exclude some geographic areas from data caps due to the extent of competition? If the decision to employ data caps is affected by competition in an area, is the

(Continued from previous page) _____
provider engages in blocking, throttling, and paid prioritization. *See Broadband Labels Order*, 37 FCC Rcd at 13730-31, para. 145.

⁸³ *See Broadband Labels Order*, 37 FCC Rcd at 13706, para. 62; *see also id.* at 13705, para. 59 ("We require that providers include at the bottom of all broadband labels a link to the Commission's website, where CGB will post a web page with a glossary of terms used on the label.")

⁸⁴ *See, e.g.,* FCC, *Broadband Speed Guide*, https://www.fcc.gov/sites/default/files/broadband_speed_guide.pdf (last updated July 18, 2022); Tyler Cooper, *How Much Data Do I Need?*, <https://broadbandnow.com/guides/how-much-data-do-i-need> (last updated Mar. 1, 2021).

type of technology used by a competing BIAS provider relevant?⁸⁵

43. We also seek comment on the extent to which data caps affect competition between fixed BIAS providers' affiliated Voice over Internet Protocol (VoIP), cable television, video-on-demand (VOD), and streaming video services ("affiliated non-broadband services") and non-affiliated OTT VoIP and streaming video services. We note that many BIAS providers offer affiliated VoIP, cable television services with VOD, and streaming video services as part of bundles or special offers with their BIAS plans,⁸⁶ which often compete with non-affiliated OTT VoIP and streaming video services. To what extent do data caps impact cable television subscribership,⁸⁷ viewing of OTT streaming video services,⁸⁸ and competition from OTT VoIP services? Do data caps function as a competitive measure to encourage or promote consumer purchase of BIAS provider-affiliated non-broadband services and/or discourage customers from purchasing non-affiliated OTT VoIP and streaming video services? Are data caps effective at influencing consumers in this manner? If so, what effect do data caps have on competition between affiliated non-broadband services and non-affiliated OTT VoIP and streaming video services? We invite comment on what steps the Commission might take to ensure that data cap offerings do not hamper such competition.

44. We also seek comment on the effect that BIAS provider data usage limitations have on edge experimentation and innovation that could result in the development of OTT services and devices. Does the imposition of data caps stifle the growth of OTT services or other innovative online applications? For instance, do data caps deter innovators from developing applications, services, or devices that may use large amounts of data due to concerns, for example, that consumers may not purchase them because of data caps? How, if at all, do data caps create barriers to entry for small businesses that may create such innovative applications, services, or devices?

⁸⁵ For instance, cable provider Sparklight lifted data caps on its broadband service in certain geographic areas apparently in the wake of new competition from a fiber provider. Phillip Dampier, *The Magic of Broadband Competition: Sparklight Without Competition vs. Sparklight With Competition* (June 29, 2021), <https://stopthecap.com/2021/06/29/the-magic-of-broadband-competition-sparklight-without-competition-vs-sparklight-with-competition>. Additionally, Cox lifted data caps for some customers in areas where it faced new competition from providers offering unlimited 5G fixed wireless broadband. Phillip Dampier, *Cox Waives Its Own Data Cap When It Faces Unlimited 5G Home Wireless Competition* (Sept. 22, 2021), <https://stopthecap.com/2021/09/22/cox-waves-its-own-data-cap-when-it-faces-unlimited-5g-home-wireless-competition>.

⁸⁶ See, e.g., Xfinity, *Xfinity Internet Deals*, <https://www.xfinity.com/learn/deals/internet> (last visited Aug. 29, 2024); AT&T, *AT&T Fiber + DirecTV*, <https://www.att.com/bundles/directv-internet> (last visited Aug. 29, 2024); Verizon, *FiOS*, <https://www.verizon.com/home/internet/fios-fastest-internet> (last visited Aug. 29, 2024); Peter Hoslin, *5 Streaming Deals You Can Get When You Sign Up for a New Internet Plan*, <https://www.highspeedinternet.com/resources/best-internet-perks> (last updated Aug. 26, 2024) (highlighting several Internet plan bundles: AT&T with HBO Max; Verizon with Disney+; T-Mobile with Paramount+; and Spectrum with Peacock Premium).

⁸⁷ See *2022 Communications Marketplace Report*, 37 FCC Rcd at 15654, para. 218, Fig. II.E.1 (showing that multichannel video programming (MVPD) distributor subscribership has been declining since 2013, decreasing 8.8 percent between 2020 and 2021 alone, to a total 51.3 percent at the end of 2022); Lee Rainie, *Cable and Satellite TV Use Has Dropped Dramatically in the U.S. Since 2015* (Mar. 17, 2021), <https://www.pewresearch.org/fact-tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015> (showing that between 2015 and 2021, the share of Americans who say they watch television via cable or satellite has decreased from 76 percent to 56 percent, and a substantial number of those individuals (39 percent) have never had a cable or satellite TV subscription).

⁸⁸ See, e.g., *2022 Communications Marketplace Report*, 37 FCC Rcd at 15670, para. 253 (showing that from the first quarter of 2021 to the first quarter of 2022, viewing of OTT services from online video distributors on Smart TVs grew 34 percent).

F. Legal Authority for Potential Commission Action

45. As the Commission considers the impact of data caps on consumers and competition, we seek comment on our legal authority to promulgate rules in this area. Specifically, we seek comment on whether the Commission's authority to address market entry barriers related to telecommunications and information services in section 257 of the Communications Act of 1934, as amended, (Act) provides sufficient authority to take potential actions to address data caps.⁸⁹ We also seek comment generally on our ability to rely on other sources of statutory authority within the Act for potential actions related to data cap practices. For example, we seek comment on whether section 706 of the Telecommunications Act of 1996⁹⁰ would provide sufficient authority to take actions to address data caps. Can we similarly rely on our Title III spectrum licensing authority for potential actions to address data caps in the case of mobile BIAS?⁹¹ Could the Commission's oversight authority in Title III for the broadcast television and audio markets,⁹² sections 616(a) and 628 for the MVPD market,⁹³ and sections 201, 202, and 251 for telecommunications⁹⁴ provide additional authority to support potential actions to address data caps? Can the Commission address the impact of data caps on consumers with disabilities under sections 225, 255, and 617 of the Act?⁹⁵ We also invite comment on whether the Commission's section 218 authority to obtain "full and complete information" from common carriers and their affiliates to carry out its reporting obligations to Congress would be a source of authority for Commission actions addressing data cap

⁸⁹ See *RIF Order*, 33 FCC Rcd at 445-47, para. 232-33 (quoting 47 U.S.C. § 257(a)). The RAY BAUM'S Act of 2018 eliminated section 257(c) of the Act, and instead included language in new section 13 of the Act, 47 U.S.C. § 163, requiring similar review under that provision. RAY BAUM'S Act of 2018, Pub. L. No. 115-141, Div. P, §§ 401, 402(f), 132 Stat. at 1087-1089 (2018). The D.C. Circuit has acknowledged that the reporting requirement "was not altered in any material respect for purposes of the Commission's authority in this regard," see *Mozilla v. FCC*, 940 F.3d 1, 47 (D.C. Cir. 2019), and Congress emphasized that "[n]othing in this title or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.

⁹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, § 706 (1996), codified at 47 U.S.C. § 1302. Section 706(a) requires the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" by utilizing "regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." 47 U.S.C. § 1302(a). Section 706(b) requires the Commission to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market" if it determines that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion. *Id.* § 1302(b).

⁹¹ 47 U.S.C. §§ 301, 303, 304, 309, 316; see also *WBEN Inc. v. United States*, 396 F.2d 601, 618 (2d Cir. 1968); *Cellco P'ship v. FCC*, 700 F.3d 534, 542-43 (D.C. Cir. 2012); *Celtronix Telemetry v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5914-15, para. 36 (2007); *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, WT Docket No. 06-150 et al., Second Report and Order, 22 FCC Rcd 15289, 15365, para. 206 (2007) (open Internet principles); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services et al.*, CC Docket No. 94-54 et al., Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16340, 16352, para. 27 (1999) (resale rule).

⁹² 47 U.S.C. § 303(f)-(h); see also *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17972-75, paras. 124-29 (2010) (*2010 Open Internet Order*).

⁹³ 47 U.S.C. §§ 536(a), 548(c); see also *2010 Open Internet Order*, 25 FCC Rcd at 17975-77, paras. 129-31.

⁹⁴ 47 U.S.C. §§ 201(b), 202(a), 251(a)(1); see also *2010 Open Internet Order*, 25 FCC Rcd at 17972-74, paras. 124-26.

⁹⁵ 47 U.S.C. §§ 225 (telecommunications relay services), 255 (accessibility of telecommunications equipment and services), 617 (access to advanced communications services).

practices.⁹⁶ Are there any other issues we should consider here related to the interplay with the 2024 *Open Internet Order*?

46. We seek comment on whether we can rely on certain provisions within the Infrastructure Act to implement potential rules addressing data caps. For instance, to what extent can the Commission rely on section 60502 of the Infrastructure Act, which established the Affordable Connectivity Program, to implement such rules?⁹⁷ Would sections 60504 of the Infrastructure Act—which directed the Commission to adopt new broadband label rules⁹⁸—and section 60506 of the Infrastructure Act—which directs the Commission to adopt regulations to prevent digital discrimination of access in the provision of BIAS—provide additional authority to adopt rules addressing data cap practices?⁹⁹

47. We also seek comment on whether we can and should rely on our ancillary authority to adopt any potential proposals addressing data caps.¹⁰⁰

48. Finally, we seek comment on whether there are any legal limitations or barriers to the adoption of any rules concerning data caps, including First Amendment considerations.

IV. PROCEDURAL MATTERS

49. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).¹⁰² In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).¹⁰³ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

50. *Comment Filing Procedures.* Pursuant to sections 1.415, 1.419, and 1.430 of the

⁹⁶ See, e.g., 47 U.S.C. § 218; 2010 *Open Internet Order*, 25 FCC Rcd at 17981, para. 137.

⁹⁷ 47 U.S.C. § 1752(b)(1); Infrastructure Act § 60502.

⁹⁸ Infrastructure Act § 60504(a); 47 U.S.C. § 1753(a).

⁹⁹ Infrastructure Act § 60506(b); 47 U.S.C. § 1754(b).

¹⁰⁰ 47 U.S.C. § 154(i); see also *Am. Library Ass’n v. FCC*, 406 F.3d 689, 692 (D.C. Cir. 2005).

¹⁰¹ 47 CFR § 1.1200 *et seq.* Although the Commission’s rules do not generally require *ex parte* presentations to be treated as “permit but disclose” in Notice of Inquiry proceedings, see *id.* § 1.1204(b)(1), we exercise our discretion in this instance, and find that the public interest is served by making *ex parte* presentations available to the public, in order to encourage a robust record on a matter of widespread impact. See *id.* § 1.1200.

¹⁰² *Id.* § 1.1206(b).

¹⁰³ *Id.* § 1.49(f).

Commission's rules, 47 CFR §§ 1.415, 1.419, 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

51. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. These documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

52. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

53. *Contact Person.* For additional information on this proceeding, contact Mason Shefa, Wireline Competition Bureau, Competition Policy Division, at mason.shefa@fcc.gov or (202) 418-2494.

V. ORDERING CLAUSE

54. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2(a), 4(i), 201(b), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 201(b), 332, and 403, that this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry (October 15, 2024).

During the last year, nearly 3,000 people have gotten so aggravated by data caps on their internet service that they have reached out the Federal Communications Commission to register their frustration.

We are listening. Today, we start an inquiry into the state of data caps. We want to shine a light on what they mean for internet service for consumers across the country.

We are doing this to give voice to those who have told us that they lack competition and a choice of providers where they live and believe data caps are unfair.

We are doing this to give voice to those who have told us that data caps that limit their broadband usage restrict their ability to work from home.

We are doing this to give voice to those who have told us that as healthcare providers they are dialing back on telemedicine, including mental healthcare, because patients lack the capacity necessary for these services.

We are doing this to give voice to those who have disabilities and have told us that the bandwidth-intensive assistive technologies they need are hit disproportionately hard by data caps, denying them the functional equivalency they rely on under the law.

We are doing this to give voice to the students who struggle with the Homework Gap, because while they have broadband at school, their internet access at home is more limited, making it hard to complete nightly assignments and keep up in class. As one family wrote to tell us, they “take our kids to find public Wi-Fi to complete their schoolwork” because they “can’t afford \$190 a month for unlimited internet.”

Another submission to the agency came from a mother in Arizona who recently moved from an area where she had unlimited broadband to an area with only one home internet provider. She wrote: “We are a family of 4 doing fairly normal things. [One] of us works from home. The kids do their homework. We all stream music and television. Nearly every month I get a notice that we’re nearing our data cap, and then some months, we get a notice that we’ve gone over. It’s so frustrating to get multiple texts and emails about this, and I know there really isn’t anything we can do. It’s not like we’re going to stop using the internet. You just know you have to suck it up and pay their overage fee . . . I shouldn’t have to experience this stress every single month.”

To me, the word that sticks out to me in that message is “stress.” The mental toll of constantly thinking about how much you use a service that is essential for modern life is real as is the frustration of so many consumers who tell us they believe these caps are costly and unfair.

Our goal here is to understand what these caps look like now. We know that during the pandemic many fixed and mobile internet service providers refrained from enforcing or imposing data caps, suggesting that our networks have the capacity to meet consumer demand without these restrictions. We know that some providers do not have them at all. Others lifted them in network merger conditions. The bottom line is that in our post-pandemic world, so much in our lives depends on internet access and so many consumers are writing us frustrated by these restrictions.

We are going to get to the bottom of it with this inquiry. We are going to identify what is happening now and what we can do next; we are going to make sure that the consumers writing us are heard. So let’s get to it.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry (October 15, 2024).

In its decision to reinstate utility-style, Title II controls on the Internet, the FCC promised to forbear from all forms of price controls—namely, both *ex ante* and *ex post* rate regulation. The first crack in this commitment emerged immediately when the agency allowed New York’s price control law to move forward without the Commission stating the obvious—New York’s law is plainly preempted by the Communications Act and FCC precedent.

And with today’s Notice of Inquiry, the FCC itself starts down the path of directly regulating rates. It does so by seeking comment on controlling the price of broadband capacity (“data caps”). Prohibiting customers from choosing to purchase plans with data caps—which are more affordable than unlimited ones—necessarily regulates the service rates they are paying for.

Today’s NOI is legally infirm, too, for want of statutory authority. Indeed, the Sixth Circuit has stayed the FCC’s Title II decision, which is based on the same claims of authority that the FCC invokes today.

At bottom, then, I dissent from today’s NOI because I cannot support the Biden-Harris Administration’s inexorable march towards rate regulation and because the FCC plainly does not have the legal authority to do so.

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Data Caps in Consumer Broadband Plans*, WC Docket No. 23-199, Notice of Inquiry (October 15, 2024).

The public conversation on the issue this item address is replete with serious and sophisticated advocacy on the both sides of the issue. Is usage-based pricing, as some advocates claim, a way to monetize artificial scarcity in already-built network capacity, where the incremental cost of serving customers is assumed to be zero? Or is usage-based pricing, as many economists have claimed, a way to ensure that built network capacity is not exhausted through uncapped allocation of finite network resources to individual users (that is, an assumption of nonzero incremental cost of service)? It's an interesting debate—one that I have tracked closely over the years. But it is not a debate into which the Commission should wade. Because, *whether or not* usage-based pricing is pro-consumer, *regulation of usage-based plans of any variety is rate regulation by another name.*

Of course, my colleagues on the other side of this question will disagree (or, so I hope, as a vote for this item with full knowledge that it is rate regulation would be contrary to their public commitments). But I contend that regulation of the *essential* service components of what a BIAS provider provides to a customer at a given rate in terms of service—its speed, its quality, and, critically, its amount—is the same as regulating the rate itself.

Suppose we were a different FCC, the Federal Coffee Commission, and rather than regulating the *price* of coffee (which we have vowed not to do), we instead implement a regulation whereby consumers are entitled to free refills on their coffees. What effects might follow?

Well, I predict three things could happen: either cafés stop serving small coffees, or cafés charge a lot more for small coffees, or cafés charge a little more for *all* coffees. “Ah!” but the clever advocate rejoins, “in this analogy, already-built cafés *actually can* offer unlimited coffee for the same price as size-limited coffees. It is all of the existing plant, and employees, and advertising, and so on that represent the cost of coffee provision. The coffee *itself* is a *de minimis* cost.”

To this I reply: while skeptical, let us stipulate to that for a moment. But let us further assume, as is reasonable, that the coffee-serving capacity of the café is 20 simultaneous customers due to size considerations, and coffee enthusiasts routinely take up all of the seats with unlimited small coffees. What is the situation for the café owner? Well, she is either making less money (her revenue has been regulated downward, because previously coffee enthusiasts were paying more for large coffees), or she has auto-upregulated her revenue by charging *more* for what is now a uniformly a one-size, “unlimited coffee” plan. Had she retained her ability to limit coffee and price according to size, the marginal consumer who only wants a single small coffee would be *better* off, because they would be charged *less* for their coffee. Further, she has also lost the ability to discern *what* consumers are willing to pay for different sizes of coffee drinks, which, in a limited-coffee world, might have helped her to choose where to site a second café based on revealed consumer preference and purchasing profile.

“But,” the advocate persists, “first of all, the cost of the chair is fixed, and to serve a neighborhood of 20 people actually requires, in this case, 20 chairs. That’s just the nature of coffee provision. So why limit the amount of coffee—again, the marginal cost of which is *de minimis*—at all? The chairs and the rest of the plant are the cost. And if *every* café is put into the same position, consumer choice should hold café prices steady.”

And here I have to end my stipulation to the premise—I *don't* agree that the marginal cost of coffee is zero, actually, and not every rural consumer has a choice among equivalent cafés—and further point to the idea that tiers of coffee pricing creates pro-consumer price discrimination among coffee drinks and can increase overall revenue for the café, *which the café has demonstrated it uses to invest in more seats, more cafés, and faster coffee brewing.*

Now, a clever advocate, economist, or network engineer will be able to quibble with the fidelity of the above analogy to broadband. And fair enough. But here are two things about which they cannot quibble. One: *in a world of regulated unlimited coffee, either the cost of coffee drinks will rise, or the bottom lines of cafés will suffer*. What is that called? *Rate regulation*. Two: the reasoning *within* the Federal Coffee Commission on the topic of unlimited coffee is not better than what you've just read, which should give coffee drinkers and coffee access advocates nationwide pause.

Though only a notice of inquiry, because it is the first step down a path toward further rate regulation, I can't support the item we've brewed up here. I dissent.