

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

October 24, 2017

The Honorable Marsha Blackburn
Chairman, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Michael Doyle
Ranking Member, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2322A Rayburn House Office Building
Washington, D.C. 20515

Re: October 25, 2017 Oversight of the Federal Communications Commission Hearing

Dear Chairman Blackburn and Ranking Member Doyle:

Consumers Union, the policy and mobilization division of Consumer Reports,¹ appreciates this Subcommittee's oversight of the Federal Communication Commission (FCC) and looks forward to the hearing on October 25, 2017. In advance of that hearing, we urge you to consider for discussion the topics detailed below. These topics focus on how FCC policy affects U.S. consumers—and specifically, how it affects their access to the internet, the prices they pay, and the choices they have in the marketplace. This hearing provides a unique opportunity to review the Chairman Pai's agenda for the Commission to date, and measure it against these critical consumer interests.

Telecommunications in the early 21st century is all about connecting to the world around us—with friends, strangers, movements, information, art, ideas, and more. We can stream video via YouTube or Netflix, buy just about anything from Amazon or eBay, book an apartment overseas via Airbnb, post updates and organize rallies on Facebook, share photos on Instagram, hail a ride from a stranger via Uber or Lyft, or have a face-to-face chat with a friend on our smartphones. When we encounter something we don't know, we "Google it" or "look it up on Wikipedia" and seconds later, we have our answer. Telecom today means we truly have the world at our fingertips.

These advancements did not magically happen. Although many politicians and activists have long demanded an internet "free" from regulation, the fact is that government has carefully fostered the rise of a diverse internet full of choices—good choices—for consumers. By favoring competition over consolidation, and common-sense rules of the road over unbridled commercialization,

¹ Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumers Reports has over eight million subscribers to its magazine, website, and other publications. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health, auto and product safety, financial services, food safety, and privacy, among others.

policymakers have encouraged a rich and robust telecommunications industry and a vibrant, open internet that is changing our lives for the better every day.

Smart decisions by government have played a role, and must continue to do so, to protect consumers in a world of dizzying telecom inventions, and guarantee a marketplace where great ideas can flourish. Increased consolidation and industry calls for unwarranted deregulation pose challenges to the level playing field that benefits consumers. We at Consumers Union recognize the crucial role the FCC plays in the telecommunications sector, and urge you to examine the critical consumer issues described below.

I. The Future of Net Neutrality and the 2015 Open Internet Order

Consumers Union has long been a champion of strong net neutrality rules to ensure non-discriminatory treatment of internet traffic, and to prevent throttling or paid prioritization of web content. We supported the adoption of the FCC's 2015 *Open Internet Order* and have publicly stated our opposition in the Commission's current proceeding² that we are concerned could weaken or abolish the net neutrality rules contained within the *Order*.

Consumers are not clamoring for the repeal of net neutrality. In fact, evidence suggests that the majority of Americans support net neutrality rules. In partnership with our publication, Consumer Reports, in late July of this year we surveyed more than a thousand consumers about the role of the internet in their everyday lives, and whether they supported net neutrality.³ The survey results confirm that 57 percent of Americans support the FCC's current net neutrality rules. Only 16 percent said they either strongly opposed or somewhat opposed the rules. These results demonstrate that consumer opposition to net neutrality is small—fewer than two in 10. And neither is net neutrality a terribly partisan issue, with 61 percent of consumers identifying themselves as Democrats supporting the rules, and 48 percent of Republicans also responding in support, compared to only 13 percent of Democrats and 21 percent of Republicans opposed.

Equally important and relevant to the current net neutrality debate are the survey results of how consumers use and perceive internet access in 2017. For example, while the *NPRM* derides the 2015 *Open Internet Order* as “utility-style” regulation, our survey found that 61 percent of Americans equate internet access as important as water or electricity service. Although we disagree with the *NPRM*'s characterization, and with the related charge that the rules “regulate the internet”—indeed, the rules represent a “light touch” and regulate access *to* the internet—the FCC cannot ignore that many Americans already view internet service as a daily essential, much like a utility.

² *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (*NPRM*)

³ Reply Comments of Consumers Union, *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (filed August 30, 2017; see Appendix for CR Survey Report)

Nothing in the *NPRM* persuasively demonstrates that the five net neutrality rules in the *2015 Open Internet Order* should be reconsidered now, much less repealed, or that broadband service was inappropriately reclassified as a telecommunications service regulated under Title II of the Communications Act. Of particular concern is the apparent justification provided by the Chairman to revisit these rules: that investment by ISPs in broadband has declined since adoption of the *2015 Open Internet Order*, and that consumers have been denied new services offered by ISPs as a result of this reduced deployment of broadband services. This justification is not borne out by the facts. As discussed in our formal comments,⁴ surveys of ISPs' capital expenditures, media reports, and announcements of better product offerings made by the ISPs themselves suggest a thriving broadband market with increased investments and new services—all despite the adoption of net neutrality rules and Title II reclassification in 2015. This evidence includes a report by one of the leading ISP trade associations, USTelecom, touting “substantial capital investment” by ISPs in their broadband networks.⁵

Consumers Union believes there is nothing wrong with the current rules that needs to be fixed as the *NPRM* suggests. The *2015 Open Internet Order*'s net neutrality rules and the Title II reclassification upon which they stand were twice upheld in federal court, and serve consumers well. Because of them, consumers have access to an open internet that is a level playing field free of blocking, throttling, and paid prioritization—core protections that preserve a dynamic internet full of competition, new services, and innovation that benefits consumers.

We encourage you to ask the Commissioners how repealing the FCC's net neutrality rules would help consumers—a majority of whom support the current rules—and how those supposed benefits compare with the likely benefits afforded to the ISPs. Further, we urge you to ask them how they can rely on the argument that the current rules have stymied broadband investment in light of substantial industry evidence to the contrary?

II. Stemming Rising Cable Prices and the Rapid Growth of Unwarranted, Company-Imposed Monthly Fees

More than six years ago, Charter Communications began charging a “broadcast TV surcharge,” purportedly to recoup the rising costs of network programming retransmission consent fees negotiated with broadcasters. Other large pay-TV providers—e.g., Comcast, and Time Warner Cable (now owned by Charter)—followed suit with their own “broadcast fee” in addition to other new

⁴ Comments of Consumers Union, *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (filed July 17, 2017)

⁵ Patrick Brogan, U.S. Broadband Availability Mid-2016, USTelecom Research Brief (August 25, 2017) <https://www.ustelecom.org/sites/default/files/BB%20Availability%202016%201H%20RB%20Final%207.pdf>.

charges, such as a “regional sports fee” for sports channels that some consumers never even watch. Some providers even add another “HD technology” fee. These fees are all in addition to hefty set-top box fees that pay-TV providers have been charging consumers for years.

Moreover, these add-on fees are tacked on top of the rates advertised to consumers, and are typically shown on the monthly bill near or with government-imposed taxes and fees, misleadingly suggesting that they are also required by law. Company-imposed fees cause consumer confusion, and more importantly, add up. A sample cable bill from December 2016 lists the bundled services rate of \$119.99 for video programming and broadband internet. But then there’s an “AnyRoom DVR” fee of \$10, an “HD Technology Fee” of \$9.95, a “Broadcast TV Fee” of \$5, and a “Regional Sports Fee” of \$3. That’s almost \$28 in add-ons in one month that consumers are often unaware of when signing up for service.

To make matters worse, some of these company-imposed fees have increased dramatically since being introduced a few years ago, and were hiked again for 2017. Taking a look at the same cable bill updated for February of this year reveals a “Broadcast TV Fee” of \$7, and a “Regional Sports Fee” of \$5—a 50 percent increase over what was charged last year. So, the add-ons rose to \$32 a month! This now represents close to a 27 percent surcharge per month on top of the rate for what consumers believe they are paying for cable and broadband service. What better way to camouflage rate increases?

We agree with the FCC’s Consumer Advisory Committee’s (CAC’s) recommendation that pay-TV providers should provide consumers with the estimated dollar amount of their total monthly bill that includes company-imposed fees and surcharges at the time service is initiated. Even better would be if pay-TV providers did away with these arbitrary add-on fees altogether, and offered a competitive bundled rate that fully represents the cost of programming consumers are purchasing.

We urge you to ask the Commissioners what should be done to stem the proliferation of company-imposed fees and whether they will adopt the CAC’s modest, consumer-friendly recommendation.

III. Examining the Sinclair-Tribune Merger

Earlier this year, Sinclair Broadcast Group announced its intention to purchase Tribune Media Company, increasing its ownership to more than 220 broadcast stations. The combined company would expand Sinclair’s reach to 72 percent of American consumers—irrespective of whether one takes into account the so-called UHF discount, whereby UHF television stations count as half of VHF stations when calculating compliance with the national media ownership cap, currently 39 percent. This past April, the Commission reinstated the UHF discount. Then, just a few weeks later, Sinclair announced its plans to acquire Tribune. As an initial matter, we observe this deal never

would have been possible had the FCC not resurrected the UHF discount, which many agree—including the current Commission—is technologically obsolete in today’s digital television marketplace. We strongly believe the FCC erred when it repealed the repeal of the UHF discount, and we have publicly endorsed legislation to permanently eliminate it.

Even when taking into account the UHF discount for legal purposes, the combined companies would still exceed the national media ownership cap. If we believe the goal of this limit upon what percentage of the national audience any one company may reach is to ensure a diverse media and localism of content—a goal we agree with and believe benefits consumer choice—the FCC must explain how a combined Sinclair-Tribune will restructure its assets to comply with the cap.

Finally, the retransmission consent regime, a product of the 1992 Cable Act, has long been broken. Though broadcasters and pay-TV providers point fingers, fight, and blame one another, the real losers are consumers who are harmed by higher prices and station blackouts. Unfortunately, Sinclair has developed a reputation for being one of the toughest broadcast groups to negotiate with, and its executives boast of extracting the highest fees from cable and satellite operators.⁶ As explained above, we know these increased costs are passed onto consumers in the form of the “broadcast fees” by pay-TV operators.

Of further concern, Sinclair was fined by the Commission for acting in bad faith during retransmission consent negotiations a little more than a year ago.⁷ It strains credulity, as well as basic economics, to think that a larger Sinclair will become a better actor with more stations under its control, or that this merger will benefit consumers with more choice and lower prices. A recent article in *The Economist* points out what experience already shows—the larger a media group becomes by adding stations through mergers and acquisitions, the more leverage it gains in retransmission consent negotiations with pay-TV providers.⁸ The same article points out that retransmission consent fees have grown dramatically in the last decade, and now represent nearly a quarter of the multi-billion dollar revenues enjoyed by broadcasters. We believe that if Sinclair is allowed to get even bigger, costs for consumers will only increase.

⁶ Reply Comments of DISH Network, *Tribune Media Company and Sinclair Broadcast Group, Inc.*, Consolidated Applications for Consent to Transfer Control, MB Docket No. 17-179 (Filed August 29, 2017) *citing on p. 19, footnote 45*: Sinclair Broadcast Group Inc. at JP Morgan Tech, Media and Telecom Conference, Fair Disclosure Wire (May 22, 2017) (comments of Christopher S. Ripley)

⁷ Daniel Frankel, *Sinclair Fined \$9.5M by FCC for Violating Good-Faith Retrans Bargaining Obligations*, Fierce Cable (Aug. 1, 2016), <http://www.fiercecable.com/cable/sinclair-fined-9-5m-by-fcc-for-violating-good-faith-retrans-bargaining-obligations>

⁸ *Sinclair Broadcast Buys Tribune Media*, *The Economist* (May 13, 2017) <https://www.economist.com/news/business/21721966-americas-media-regulator-aids-consolidation-tv-stations-sinclair-broadcast-buys-tribune>.

Parties to license transfers such as these bear the duty to demonstrate how the transaction serves the public interest. Based upon the evidence we have seen thus far, the deal as proposed fails this important test, and the Commission must conduct a very thorough review to ensure consumers' interests are protected. At the very least, a combined Sinclair must divest stations to satisfy the 39 percent national ownership cap.

We encourage you to ask the Commissioners if they anticipated the Sinclair-Tribune merger after reinstating the UHF discount earlier this year—a discount that will allow Sinclair to reach more than 70 percent of Americans and well above the national ownership cap of 39 percent. Further, we urge you to ask, if the merger is approved, what consumer benefits demonstrate that the deal is in the public interest.

We close with a note of appreciation for holding this important hearing overseeing the work of the FCC. Consumers deserve to know whether the Commission is working to create a telecommunications marketplace that promotes their interests and protects their pocketbooks. We stand ready to work with you, your fellow members on the Energy and Commerce Committee, and other stakeholders to address the issues we identified, to help ensure all consumers have reliable access to affordable products and services, and are empowered to participate fully in the modern-day telecommunications marketplace.

Respectfully submitted,



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cc. Members of the U.S. House Energy and Commerce Committee, Subcommittee on Communications and Technology