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FCC cable box proposal affects more than just cable boxes

By former Rep. Henry Waxman (D-Calif.)

Throughout my four decades in Congress, my district included parts of Hollywood. So it should surprise no one that I have closely followed the evolution of the entertainment industry since the days when it was dominated by few large movie studios and three national broadcast networks. That time, of course, has long passed. And one result, as the many creative talents who live in my old district will affirm, is that we are now in the golden age of television.

Today we can enjoy an unprecedented proliferation of high-quality programming from an ever-increasing diversity of sources. The broadcast and cable networks have been taken on — and often been topped by — Internet-based content providers such as Netflix, Amazon, Hulu, YouTube and others. Writing, acting and production values have never been better. The range of audiences served has never been wider.

As a result, many viewers are cutting the cable cord. Ample content is available through apps on their smart phones and tablets, as well through alternative devices such as Rokus and smart TVs. In fact, there are more than 115 services Americans can use to legally access television and film content over the Internet.

That is why I am mystified by the Federal Communications Commission (FCC)'s decision to move forward with a plan to adopt a federal mandate for cable set-top boxes. The plan, which hearkens back to an earlier call in 2010 for government rules known as "AllVid," warrants caution for two main reasons:

First, it would apply the reverse-Midas touch to this golden age of television, because it would disrupt the delicately balanced competitive forces that are behind the explosion of creativity we've benefited from in recent years.

Today, emerging producers can invest in new content knowing they are likely to receive a reasonable return through agreements with distributors covering advertising, channel placement, on-demand rights, and anti-piracy protections. Pay TV companies have an incentive to do this because they face robust competition — most consumers can choose from a range of multichannel video programming distributors, including traditional cable companies, satellite companies and telephone companies that offer video services. It's the contracts these companies negotiate that supports the creation of quality original content and the addition of innovative new features that are rapidly emerging in today's 'app-based' world.

A new AllVid mandate risks reversing this progress by letting large companies take shortcuts to create new services on the backs of investments made by others, disrupting the carefullynegotiated arrangements between content companies and current multichannel pay TV video providers. Companies would essentially be able to poach TV programming without paying for it.

Minority content providers in particular lack the scale and resources to absorb the revenue losses, channel dislocation, and other harms that would result. That's why TV One CEO Alfred Liggins warned that a new AllVid mandate would lead to "digital 'redlining' that could bury diversity programming in the farthest reaches of the program guide."

The second reason why I oppose the new AllVid is because it would be a 20th century solution to a 20th century problem that the market is already solving on its own.

The reality of the FCC — and I write this as someone who consistently supports robust government regulation when it serves the public interest — is that its interventions often lag behind the rapid pace of technological and industry change.

In an era of such dynamism, the FCC's proposal is ill-timed at best. Instead of moving forward with new rules, the FCC should recognize the changes already occurring in today's marketplace. If the FCC persists, it should train its focus on ensuring there is a level playing field when it comes to consumer protection between traditional video providers and emerging over-the-top outlets.

More specifically, the FCC should closely scrutinize issues of privacy that its proposed new rule creates. Its suggestion that device maker "self-certification" can substitute for the rigorous statutory safeguards that protect personal viewing data is simply wrong – a toothless tiger that would let device makers circumvent the spirit, if not the letter, of the framework created by Congress to protect viewing data from prying eyes. In other words, the FCC should not help turn set top boxes into a platform for more intrusive, less regulated advertising opportunities.

Back in 2010, the FCC considered and then rejected an AllVid plan for many of the reasons I oppose it now. Since then, whatever rationale there was for this sweeping new mandate has only weakened. I hope Chairman Wheeler and his fellow commissioners come to recognize realities of today's TV marketplace and the need to protect consumers and content creators alike.

Waxman served in the House from 1975 to 2015. He is past chairman of the Energy and Commerce and Oversight and the Government Reform committees.

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