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Congress of the United States
House of Representatives
Washington, DC 20515–1009

COMMITTEE ON
JUDICIARY
VICE CHAIRMAN OF COURTS, INTELLECTUAL PROPERTY AND THE INTERNET
REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

COMMITTEE ON RULES

CO-CHAIRMAN OF THE
CREATIVE RIGHTS CAUCUS

April 22, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Dear Chairman Wheeler,

As Members of Congress with an interest in copyright issues, we are carefully following the debate surrounding the Federal Communications Commission's (FCC) proposed rules to reform the cable set-top box marketplace. The market for video and television programming is one of the most competitive sectors in the creative economy, and we encourage continued innovation in that arena. However, we are concerned about the potential unintended impact that regulations inconsistent with our copyright licensing system could have on the existing ecosystem. Specifically, we urge the FCC to take into account the important contributions made by the creative community.

There are many creators and skilled workers that make up the television programming universe. On any given set you will see directors, writers, actors, costumers, cameramen, set designers, and grips working to produce a program. Further behind the scenes, the songwriters, composers, and recording artists ensure that music is a part of the storytelling process. These are some of the countless creators whose livelihoods depend on the elaborate copyright licensing and compensation regime underpinning the creation of television programming. They depend on direct payments (residuals or participations) generated by licensing of television programming, contributions to their health and pension plans, and the revenue earned through licensing the rights to "sync" their music with television shows.

In order to keep this ecosystem intact and ensure that creators are able to make a fair living from their trade, we urge you to prevent third party competitors in the set-top box market from making commercial use of or modifying copyrighted programming without acquiring a direct license from the owner of the content.

Instead, appropriate measures would maintain incentives for entities to directly license copyrighted programming with copyright owners and preserve the value of existing licensed programming. They would also ensure that programmers are compensated for the use of their content in the new markets envisioned by the FCC's proposal.

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We urge you to give full and careful consideration to these potential impacts. The FCC must take great care to ensure that this rulemaking does not result in harm to millions of creators in our country.

Thank you for your consideration.

Sincerely,

Doug Collins
Member of Congress

Theodore E. Deutch
Member of Congress

Tom Marino
Member of Congress

Hakeem S. Jeffries
Member of Congress

Marsha Blackburn
Member of Congress

Lamar Smith
Member of Congress

Tony Cárdenas
Member of Congress

Ted Lieu
Member of Congress

Lois Frankel
Member of Congress

Cedric L. Richmond
Member of Congress

Julia Brownley
Member of Congress

Mimi Walters
Member of Congress

Danny K. Davis
Member of Congress

Adam B. Schiff
Member of Congress

Joseph Crowley
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Steve Israel
Member of Congress

Alan S. Lowenthal
Member of Congress

Mike Bishop
Member of Congress

Gerald E. Connolly
Member of Congress

Brad Sherman
Member of Congress

Dave Trott
Member of Congress

Karen Bass
Member of Congress

cc: FCC Commissioners Clyburn, Rosenworcel, O'Rielly, and Pai

Congress of the United States
House of Representatives
Washington, DC 20515-0529

February 16, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Wheeler and Commissioners of the FCC:

On February 18, 2016, you will consider a proposal that has the potential to dramatically change the way Americans watch television. This proposal would open up the television set-top box market to third parties wanting to manufacture their own boxes or offer apps to consumers. As you know, this proposal has garnered vast national attention, owing to your impending vote and to its possible far-reaching effects, in a market that is delivering more choices for our constituents through over the top content and the recent rise of apps.

While we encourage growth and competition in the marketplace, too much government regulation can become burdensome and hurt the innovation it attempts to foster. It is important for the government to not stand in the way of innovation, and to not be overly prescriptive in regulation.

We have been approached by many companies, organizations and constituents that would be directly affected by this proposal, and as Representatives it is our responsibility to communicate their concerns.

We are proud to represent a community of talented and diverse independent programming providers that promote a vibrant vision of the American experience through their content. It is in our nation's best interest to make sure these minority-owned and independent providers are able to reach as many people as possible with high-quality, inclusive content.

As you continue to adjust the proposal in preparation for the meeting, we strongly urge you to take into account independent programmers. These providers share their work through carefully negotiated placement, scheduling, distribution and advertising agreements. Technology companies recognize this, and have declared that device manufacturers cannot violate contracts to which they are not party. The FCC General Counsel has addressed this concern by saying the proposal under consideration will maintain full protection of content, including restrictions on copying.

Any proposal must respect existing contracts so that independent and minority programmers can control the presentation of their content and secure funding essential for diverse voices to thrive in the marketplace.

The emergence of innovative content distribution mechanisms has allowed Americans to experience a vast array of quality television shows and compelling new networks. As we work to foster this growth, we

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must be especially careful that we respect copyright, licensing agreements and anti-piracy policies. We ask you to be vigilant and avoid policies or regulations that would erode any of the protections content creators enjoy, particularly in regards to anti-piracy mechanisms that allow these programmers to stay in business, and copyright protections that ensure content creators the exclusive rights to determine how their work is distributed to the public.

Many independent and minority programmers lack the legal, financial or personnel means to police violations of intellectual property themselves, and depend on carriage agreements that allow them to stay in control of the distribution of their content. Without strong safeguards many of these programmers, who live and work in our districts, would fail to earn a living wage for their products, to the detriment of the entire nation, and in particular minority communities.

Additionally, any new proposal should maintain or enhance consumer privacy safeguards in order for consumers to feel secure in their consumption of quality television. We ask that you make sure consumer data is respected and cannot be disclosed without the viewer's consent.

Our country is the innovation capital of the world. As we continue to evolve towards a television environment that allows consumers unprecedented choice of content and device, we ask that you ensure any new proposal avoids excessive government regulation and keeps us on a path forward that embraces consumer choice, protects content creators and safeguards our data. We further ask that any and all concerns raised are thoroughly and seriously considered.

We thank you for your commitment and service to our nation and constituents.

Sincerely,

Tony Cárdenas

TONY CÁRDENAS
Member of Congress

LUIS V. GUTIÉRREZ
Member of Congress

JUAN VARGAS
Member of Congress

RAUL RUIZ
Member of Congress

KYRSTEN SINEMA
Member of Congress

JIM COSTA
Member of Congress

ALBIO SIRES
Member of Congress

PETE AGUILAR
Member of Congress

JANICE HAHN
Member of Congress

CHARLES B. RANGEL
Member of Congress

HENRY CUELLAR
Member of Congress

KURT SCHRADER
Member of Congress

RUBEN GALLEGO
Member of Congress

FILEMON VELA
Member of Congress

RON KIND
Member of Congress

ELIOT L. ENGEL
Member of Congress

PEDRO R. PIERLUISI
Member of Congress

BRAD ASHFORD
Member of Congress

LORETTA SANCHEZ
Member of Congress

NORMA J. TORRES
Member of Congress

TED LIEU
Member of Congress

BILL FOSTER
Member of Congress

DINA TITUS
Member of Congress

GRACE F. NAPOLITANO
Member of Congress

KATHLEEN M. RICE
Member of Congress

HARRY REID
NEVADA

DEMOCRATIC LEADER

United States Senate

WASHINGTON, DC 20510-7020

June 14, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Wheeler:

I appreciate your effort to expand consumers' choice of set-top boxes by improving competition in video navigation systems through your proposal to "unlock the set-top box." I am concerned that your proposal does not contain mechanisms to ensure that third-party set-top box providers will be required to adequately protect programming content or consumer privacy. I urge you to give careful consideration to these possible consequences and ensure that they are resolved before proceeding with your proposal.

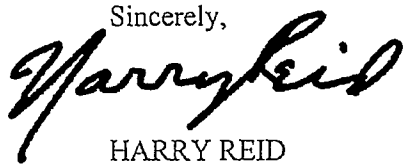
Programmers do not rely on copyright laws alone to protect their content. Rather, the complex licensing and contractual arrangements they negotiate are the means through which they exercise their legal copyright protections. As drafted, the FCC's proposal would not extend these licensing or contractual arrangements to third-party box providers, and it is unclear what, if any, duty such providers would have to protect programming content or otherwise comply with the licensing agreements. It also is unclear whether programmers would have any ability to enforce these agreements directly with the third-party providers. As a result, programmers may be forced to rely primarily on costly and lengthy litigation to protect their content. As we have seen in other contexts, relying on litigation as a sole remedy for copyright infringement creates an environment where piracy may flourish and the ensuing damage cannot be undone.

Moreover, it has become increasingly clear that for third-party box providers, the real value is not in producing or selling the box but in the data that the box will collect. Consumers will be handing over a significant amount of information about their viewing habits and, as the television interface is used more expansively, about themselves. While the FCC has jurisdiction to regulate how multichannel video programming distributors (MVPDs) use the consumer data they collect, the FCC has no similar jurisdiction over third-party box providers. As a result, a consumer using a third-party set-top box could have minimal recourse to ensure the strong privacy protections that the FCC currently obligates for MVPDs, leaving the FCC in the position of mandating privacy protections that it has no jurisdiction to enforce and leaving consumers without any meaningful remedy.

As you continue to pursue greater competition in the set-top box marketplace, I ask you to closely review the impact of this proposal on all affected parties and resolve these issues as you move forward.

Thank you for your attention to this matter.

Sincerely,



HARRY REID
Democratic Leader
United States Senate

Congress of the United States
Washington, DC 20515

April 22, 2016

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

Thank you for your leadership in making new technologies available to all Americans and fostering innovation in the field. Over the last two decades, we have witnessed remarkable changes in the competitive landscape that have rapidly expanded who provides video programming and how consumers enjoy it. If implemented, your recent Notice of Proposed Rulemaking concerning Navigation Devices will redesign the current video programming marketplace. The scope of the potential changes has left some parties concerned that the potential consequences have not been adequately studied.

In order to properly evaluate these issues, we believe it is essential for peer-reviewed studies to be conducted assessing the potential costs and benefits of the proposed rules as well as potential market-based solutions. These should include research on the impact of the proposed rules on diversity of programming, independent and minority television programming, content protection and consumer privacy. The studies should also analyze the potential impact of the proposed rule on the video programming marketplace, content diversity, intellectual property, content licensing, and consumer privacy.

We respectfully urge the Commission to work with independent parties and study these issues in greater detail while the process moves forward.

Sincerely,

JUAN VARGAS
Member of Congress

JOHN DELANEY
Member of Congress

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United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125
WEBSITE: http://commerce.senate.gov

April 22, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

I write to reiterate my view that the video market is increasingly competitive, particularly those parts of the market subject to the least regulation. I do not think this is a coincidence, and I am skeptical that new regulations, such as those proposed by the Federal Communications Commission (FCC or Commission) on February 18, 2016, would deliver better results for consumers and content creators than the astonishing and empowering disruption that is already happening in the marketplace.

Senator Bill Nelson, the Ranking Member on the Senate Commerce Committee, sent you a letter on February 12, 2016, that highlighted some concerns I share. I agree with Senator Nelson's sentiment that "advances abound in the competitive video navigation device market," and that "[s]ection 629 [of the Communications Act of 1996] should always be implemented with an eye towards what is actually happening in the marketplace." Further, I want to echo Senator Nelson's warning to the Commission that section 629 does not contemplate imposing regulations "by which third parties gain, for their own commercial advantage, the ability to alter, add to, or interfere with the programming provided by content providers."

On March 2, 2016, the Senate Commerce Committee held a hearing on FCC Oversight, during which I asked all five commissioners questions about the proposed technology regulations. Specifically, I made the point that section 629, by which the FCC claims authority to pursue set-top box technology regulations, is clearly written to address actual physical equipment. This is evident upon review of the section's legislative history, the plain language of the statute, and the consumer experience as it was 20 years ago when the provision was added to the law. I also asked how the Commission will ensure and enforce the security of the programming and services offered by multichannel video programming distributors when accessed through third parties via new regulation.

In your effort to execute your regulatory duties, the Commission must clearly identify the source for its claimed authority and justify that its actions will not unduly threaten the public

interest, including the interests of consumers as well as video content creators and distributors. Thank you for addressing my concerns as you consider public comments on the Notice of Proposed Rulemaking referenced above.

Sincerely,

JOHN THUNE
Chairman

MITCH McCONNELL
KENTUCKY

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(202) 224-2541

United States Senate

MAJORITY LEADER

COMMITTEES:
AGRICULTURE
APPROPRIATIONS
RULES AND ADMINISTRATION

June 10, 2016

Mr. Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

In recent months, I have heard from many Kentuckians expressing their opposition to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking on Navigation Devices, more commonly known as the "set-top box" proceeding. I write to say I share those concerns and encourage the FCC to reconsider moving forward.

In the last decade, we have witnessed a revolution in how Americans receive news, sports, and entertainment content. A few years ago, most video programming was only widely available at the time of broadcast via a television that was wired to a cable or satellite feed. Today, millions of consumers receive that same content on their phone, tablet, laptop, over-the-top streaming devices…wherever and whenever it works for them.

These advances are not the result of FCC mandates or congressional directives. Instead, they are the result of a free market in which content providers, programming distributers, device manufacturers, app developers, and consumers willingly agree to terms they each find beneficial. The content providers are compensated for their creativity through license agreements, the programming distributers provide valuable content to their customers, and the consumers can receive the content they enjoy in a time, place, and format of their choosing. As Commissioner O'Rielly recently noted, these advances are "due to disruptive technologies, not disruptive regulation."

Despite this progress, the FCC takes a markedly different direction in its proposed set-top box rule-making. Rather than applying a light regulatory touch, the FCC would require existing programming distributors to provide the copyrighted programming they have licensed from content providers to third party manufacturers and app developers, none of whom would be bound by the agreements to protect this content.

I am particularly concerned about the impact of these changes on small programming distributors and the customers in rural America, especially Kentucky. Even absent these new proposed mandates, providing video services in a rural area poses many challenges. As a number of Kentucky distributors have noted, the rural geography means higher costs to deploy fiber and their small customer bases means they frequently pay higher costs for content. The proposed set-top box regulations would add new costs for hardware and equipment that will inevitably be borne by consumers.

These problems with the proposal are not lost on Kentuckians. In recent months, I have heard from hundreds in Kentucky who are concerned about the impact of the content they enjoy, about the

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LEXINGTON, KY 40503
(859) 224-8286

300 SOUTH MAIN
SUITE 310
LONDON, KY 40741
(606) 864-2026

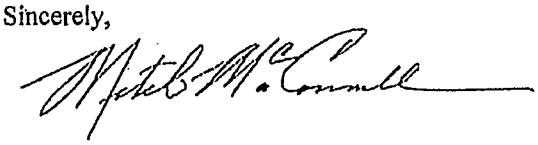
601 WEST BROADWAY
SUITE 630
LOUISVILLE, KY 40202
(502) 582-6304

100 FOUNTAIN AVENUE
SUITE 300
PADUCAH, KY 42001
(270) 442-4554

complexity of compliance, and about the potential added costs of new hardware to meet the new standards. And I hope the FCC will listen carefully to the myriad similar concerns raised by lawmakers and organization across the ideological spectrum and reconsider moving forward.

Thank you in advance for your attention in this matter.

Sincerely,



MITCH McCONNELL
UNITED STATES SENATOR

MM/qs

cc: Mignon Clyburn, Commissioner, Federal Communications Commission
Jessica Rosenworcel, Commissioner, Federal Communication Commission
Ajit Pai, Commissioner, Federal Communications Commission
Michael O'Rielly, Commissioner, Federal Communications Commission

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125
WEBSITE: http://commerce.senate.gov

February 12, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

I write today regarding your plan for the Federal Communications Commission (FCC) to begin a rulemaking regarding competition in the cable set-top box marketplace. Section 629 of the Communications Act of 1934 directs the FCC to "assure the commercial availability" of navigation devices used to access cable and satellite pay TV services. I continue to support this mandate and its recognition that consumers should have options for how they access and watch pay TV services, while allowing innovators the freedom to do what they do best. And like so many others, I long for the day when the clunky set-top box fades away.

Indeed, even without FCC action, this day may be closer than we think. How consumers access and watch video programming has changed dramatically in recent years. From smart TVs to Internet-based video platforms to Apple TV, Roku, Amazon Fire TV, and Google Chromecast, advances abound in the competitive video navigation device market. TV viewers have downloaded hundreds of millions of video navigation applications on their phones, tablets, TVs, and set-top box alternatives, dwarfing the number of cable set-top boxes in use. Section 629 should always be implemented with an eye towards what is actually happening in the marketplace, and your rulemaking should conduct a fair and balanced inquiry about the many possible approaches to accomplish the goals in Section 629. The FCC should not proceed down a path to rules that fails to fully account for today's pay TV viewing landscape.

While I support the objective of enabling competition and innovation in the market for set-top boxes, any new FCC rules in this area must not harm the production and distribution of video content. The FCC's rules should not allow third-parties to do more with programming content than has been done through negotiated arrangements between content owners and their partners. Nor should any new FCC rules be the means by which third parties gain, for their own commercial advantage, the ability to alter, add to, or interfere with the programming provided by content providers. Otherwise, both the viewing experience and the economic underpinnings that support investment in innovative content stand to be diminished. Section 629 does not seem to contemplate such an outcome.

Given these concerns, the FCC must take a measured approach with respect to any rulemaking related to its Section 629 obligations. Your inquiry should be impartial and evenhanded, so that the FCC can develop a fulsome record on how best to ensure the availability of competitive TV navigation devices. The FCC also should avoid taking any action that could ultimately threaten the vibrant market for quality video programming.

Sincerely,

Bill Nelson

Bill Nelson
Ranking Member

CC: The Honorable John Thune, Chairman

Congress of the United States
Washington, DC 20515

February 12, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: MB Docket No. 15-64

Dear Chairman Wheeler:

We write to ask that you fully consider the impact of your announced set top box proposal on the rights of creators involved in the production of television programming. As Members of the House Judiciary Committee, we have jurisdiction over the Copyright Act, which provides creators exclusive rights in their works and thus incentivizes creativity that benefits our society as a whole. As a result, it is our responsibility to ensure that no government action weakens these incentives or undermines the exclusive rights Congress has granted.

We understand it is not, nor should it be, in the jurisdiction of the Federal Communications Commission (FCC) to regulate either the exclusive rights of copyright owners or the licensing of these rights. However, there is no doubt that telecommunications and copyright law affect one another and even overlap.[1] Therefore, it is sometimes the case that FCC actions designed either to further or implement telecommunications policy affect the rights of copyright holders.

You have acknowledged that your set top box proposal has implications for copyright protection.[2] Even proponents, in referencing the copyright fair use defense, acknowledge that your proposal has copyright implications.[3] Others, including many in the creative community, have raised concerns that your proposal may impact the rights Congress has granted to them under the Copyright Act and that an apps-based approach would better protect the rights of copyright rightsholders. Therefore, we must take seriously the potential that this proceeding, depending on the path chosen, could upset the delicate system that underlies the creation, licensing, and distribution of copyrighted television programming and potentially jeopardize efforts to prevent copyright infringement.

Production of professional motion picture and television programming is a complex undertaking that requires creative contributions from hundreds, and sometimes thousands, of creative professionals. Due to the high costs and risks associated with these productions, and the number of different copyrighted works involved, a complex system has been developed that finances production, compensates the myriad creators, and licenses rights from many

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[1] Sections 111, 119, and 122 of the Copyright Act of 1976

[2] Tom Wheeler, "It's Time to Unlock the Set-Top Box Market," *<re/code>*, January 27, 2016, http://recode.net/2016/01/27/its-time-to-unlock-the-set-top-box-market/

[3] Filing of Consumers Union, MB Docket No. 15-64 at 5 (Oct. 8, 2015) and Filing of Public Knowledge, MB Docket No. 15-64 at 15 (Oct. 7, 2015)

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rightsholders. Creators often bargain to receive payments derived from the advertising revenue and subscriber fees collected by distributors of television programming. So, for example, each subsequent time a program airs on television: directors, actors, and writers may receive direct payments ("residuals" or "participations"); below-the-line film crews may receive contributions toward their pension and health care plans; and songwriters, composers, and music publishers receive performance royalties for the music synched with the television programming. Songwriters, music publishers, recording artists and record labels similarly receive performance royalties generated by cable music channels, which may also be impacted by your proposal. Producers of television programming finance production by bargaining for compensation from television distributors and often separately license rights by geography, format, and time.

Any regulatory action that threatens the revenue sources from which these myriad creators receive compensation could shift revenues to unlicensed sources or sources that pay less. This action could also facilitate copyright infringement, negatively affecting the entire creative ecosystem underpinning television programming. Enforcement of copyright law and protection of the rights granted to holders of copyrights are not subjects natural to the pursuits of the FCC. Accordingly, we urge you to ensure that your notice of proposed rulemaking (NPRM) is balanced, fully considers information related to both your announced set-top box proposal and other approaches such as an apps-based model, and gauges the impact of each on the creative community. Due to the complexity of these issues, we suggest you consult with agencies more familiar with rightsholder issues, like the USPTO and Copyright Office, both when crafting those aspects of the NPRM and as a resource for understanding the copyright issues raised during the rulemaking process.

Thank you for your careful consideration in this regard.

Sincerely,

Tom Marino
Member of Congress

Ted Deutch
Member of Congress

Cc: Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Reilly

PATRICK LEAHY
VERMONT

COMMITTEES
AGRICULTURE, NUTRITION, AND FORESTRY
APPROPRIATIONS
JUDICIARY

United States Senate

WASHINGTON, DC 20510–4502

May 26, 2016

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

As a longtime supporter of the need for meaningful competition in the pay-television set-top box marketplace, I applaud the Commission for beginning a discussion of how best to do so in today's environment. While a lot has changed in the 20 years since the enactment of the 1996 Telecommunications Act, one thing has not: consumers should have meaningful choice in television navigation systems. Unfortunately, despite some improvements, that goal has not yet been fully achieved.

For that reason, I have been following your proposal to "unlock the box" with great interest. The proposed rules you have put forward provide a meaningful opportunity to increase consumer choice, but important clarifications are needed to ensure that consumers and programmers are protected. In my view, any proposal that the Commission ultimately adopts must be guided by the principle that the same rights and obligations that apply to multichannel video programming distributors (MVPDs) in this space must also extend to third-party navigation systems, regardless of whether those rights and obligations flow from statutory, regulatory, or contractual sources.

As the Administration acknowledged last month, the programming choices made by MVPDs "reflect investment decisions and market assessments" and the "constellations of licensing arrangements between MVPDs and program producers." A third-party navigation system should not be able to do more with the content the MVPD is providing it with than the MVPD itself is able to do under contractual agreements made with programmers, since doing so could have a direct impact on the ability to produce new and diverse programming. While you have repeatedly said that copyright law will not be impacted by the proposal, reliance on existing copyright protections is insufficient.

The principle that the same rights and obligations should extend to third-party navigation systems should also inform the Commission's treatment of consumer privacy protections. The same federal privacy protections and enforcement mechanisms that apply to proprietary set-top boxes today should apply to third-party navigation systems as well. Consumers should not be forced to make the false choice between proprietary set-top boxes and applications that may not meet their needs, or competitive options that do but come without all the tools available to protect and enforce their privacy rights. I share the Administration's concern that the proposed

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SENATOR_LEAHY@LEAHY.SENATE.GOV
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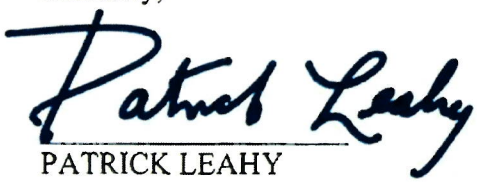
licensing process to address consumer privacy "leaves important questions to be addressed." The patchwork of state privacy laws and Federal Trade Commission enforcement alone are not adequate protections and would leave consumers guessing about which set of laws apply depending on where they live and from whom they purchase a navigation system.

It is as clear today as it was 20 years ago that consumers want the option to break free from proprietary set-top boxes. Your proposal is an important first step in the discussion of how we do so in the 21st century, but it must not leave consumers and programmers with fewer rights than they have today. I look forward to Commission action that meets all of these important goals.

Sincerely,



PATRICK LEAHY
United States Senator

cc: The Honorable Mignon Clyburn, FCC Commissioner
The Honorable Jessica Rosenworcel, FCC Commissioner
The Honorable Ajit Pai, FCC Commissioner
The Honorable Michael O'Reilly, FCC Commissioner

Congress of the United States
Washington, DC 20515

December 1, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554-0004

Dear Chairman Wheeler:

For years, we have been promised a vision in which technology unleashes TV and delivers consumers more choice, better content and new services that revolutionize the video experience. We've heard complaints from consumers about why they need a set-top box to watch their favorite programming. And we've pressed TV providers and networks to produce and carry the kind of diverse programming that represents all of America and not just the privileged few.

The good news is that it appears that we finally are on the cusp of this new unencumbered television frontier. How do we know? Just listen to leaders like Apple CEO Tim Cook who recently declared "The Future of TV is Apps." Netflix Chief Content Officer Ted Sarandos echoed those sentiments when he said that in 10 years TV, "will be a series of apps that's closer to what you see on smart TV." And when you look at the marketplace, companies like Amazon, Apple, Google and Roku all sell video devices that provide TV programming via apps. The evidence is overwhelming.

That is why we are concerned by reports that the FCC is considering new regulation called All Vid that would jeopardize this progress, raise consumer costs, require consumers to rent another set-top box, threaten diverse programming and erode consumer protections. This would be a disaster for consumers and minority voices.

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Instead of allowing innovators and competitors to continue building on the TV app frontier, All Vid would require consumers to add a government-designed set-top box, resulting in higher bills and higher energy usage. And even worse, while requiring consumers to rent more equipment it would eliminate consumer protections concerning privacy, emergency alerts, children's programming and more. Consumers would pay more and be protected less.

All Vid will cause irreparable harm to independent and minority programmers by allowing third parties to strip programming from visible channel placements and relegate it to the bottom of the pile. These merchants would also be allowed to sell intrusive advertising without sharing any revenue with programmers, cutting off the needed revenue to continue producing quality content.

Thank you for your attention to this important matter. We look forward to working with you to ensure that consumer welfare and diversity of voices are not the casualties of an unnecessary tech mandate like All Vid.

Sincerely,

Yvette D. Clarke
Member of Congress

Alcee L. Hastings
Member of Congress

David Scott
Member of Congress

Wm. Lacy Clay
Member of Congress

Eddie Bernice Johnson
Member of Congress

Donald M. Payne, Jr.
Member of Congress

Frederica S. Wilson
Member of Congress

Brenda L. Lawrence
Member of Congress

Henry C. "Hank" Johnson, Jr.
Member of Congress

Sanford D. Bishop, Jr.
Member of Congress

Chaka Fattah
Member of Congress

Bennie G.Thompson
Member of Congress

Corrine Brown
Member of Congress

Alma S. Adams
Member of Congress

Gregory W. Meeks
Member of Congress

Bobby L. Rush
Member of Congress

Hakeem S. Jeffries
Member of Congress

Danny K. Davis
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Marc A. Veasey
Member of Congress

Robin L. Kelly
Member of Congress

G. K. Butterfield
Member of Congress

Gwen S. Moore

Edward Markey

LA-2

Sheila Jackson Lee

Barbara Lee

John Lewis

Bonnie Watkins

Charles Rangel

John Conyers, Jr.

Congress of the United States
Washington, DC 20515

February 16, 2016

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler and Commissioners of the FCC,

We write to express our concerns with the Chairman's recent proposal on video devices and competition, which we understand the Commission will consider at its February 18, 2016, meeting. The proposal's potential implications on the marketplace for audio-visual content and copyrighted material lie squarely within Judiciary Committee's jurisdiction, and as current and former Members of the Committee, we plan to monitor its progress closely. We write today because we are concerned about the implications of this proposal for the nearly two million Americans who work to produce America's film and television content – particularly independent creators and those creating minority-focused and religious programming. Regulation in this space has the potential to upend ties between creators, channel providers, and cable companies – and jeopardize the rights of creators to negotiate directly with those selling their work to consumers.

The market for video and television programming is one of the most competitive and innovative sectors of the creative economy. Today's marketplace has undergone a rapid evolution to meet consumer demands and viewer preferences; viewers can subscribe to web-based streaming services like Netflix, Hulu, Amazon Video, Sling TV, and Sony Vue, as well as new streaming apps from individual programmers such as HBO Now, CBS All Access, and MLB Gameday. Consumers can also purchase a wide array of connected devices, including retail boxes like Roku, Apple TV, and Google Chromecast. With each new day, new technologies enter the marketplace, promoting competition and choice.

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As Chairman Wheeler recently noted, "American consumers enjoy unprecedented choice in how they view entertainment, news and sports programming." This innovation has fueled more high-quality, diverse, and creative content for viewers than anyone could have predicted just a decade ago. All of these legitimate services pay the creators and copyright owners who produce this content and have built their businesses around paying artists for their work.

We are concerned, however, that the Commissioner's new proposal could undermine this creative ecosystem by enabling companies to make money distributing content without negotiating with creators – an approach that conflicts with the copyright law established by Congress and the very principles enshrined in Article I, Section 8, Clause 8 of the Constitution. Regulation in this space has the potential to drastically weaken the economics of the legitimate businesses that have fueled so much of the innovation and consumer choice that has taken place during the last decade.

We also write to express concern over the proposal's potentially adverse impacts on independent, minority, and religious content creators. A proposal, for example, that would permit third parties to dismantle rigorously negotiated channel placement and advertising arrangements could disproportionately affect the smaller players in this marketplace. It could do so by leaving this programming out of new packages or relegating their channels to second-tier locations – with the ultimate effect of decreasing the value of their content to buyers and advertisers. As we are sure you agree, small and diverse voices are critical to the health and vitality of our media and culture – and FCC regulation should never be used to create additional hurdles to their success.

We respectfully request additional information about this proposal. Specifically:

1. How will the upcoming proceeding probe how to ensure that unlicensed copies of creative works are not promoted to viewers?

2. How will the proposal ensure that these new systems are free of malware or other cybersecurity risks?

3. How will you ensure that independent, minority-focused, and religious programming networks are not adversely impacted with regard to channel-positioning agreements?

4. How will the proposal ensure that third parties negotiate directly with content creators before they use the content for their own commercial purposes?

5. Will third parties be required to compensate content creators for any fees they collect for their new services? How will the advertising, for example, that third-parties might sell around content offerings flow back to rights holders and into the royalty-, pension- and benefit plans of the film and television workforce?

6. How will the NPRM probe how to extend consumer privacy and safety protections to third-party resellers? From the perspective of the individual television viewer, will the third party services be "seamless" and indistinguishable from an MVPD's services? What guarantees will consumers have that third-parties will protect their privacy and safety just as MVPDs are required to do?

We ask that, prior to the issuance of or a vote on any Notice of Proposed Rulemaking on these issues, your office provides us with written responses to these questions. Thank you for your attention to these critical matters. Please contact Jennifer.Choudhry@mail.house.gov (Collins) or Linda.Shim@mail.house.gov (Chu) if you have any further questions.

Sincerely,

Doug Collins
Member of Congress

Judy Chu
Member of Congress

Lamar Smith
Member of Congress

Adam Schiff
Member of Congress

Mimi Walters
Member of Congress

Congress of the United States
Washington, DC 20515

April 22, 2016

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th St, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

Over the last two decades, we have witnessed remarkable changes in the competitive landscape that have rapidly expanded who provides video programming and how consumers enjoy it. Your recent Notice of Proposed Rulemaking concerning Navigation Devices proposes far reaching rules affecting the current video programming marketplace, programming, security, consumer protections, costs, networks and consumer electronics. It raises substantial issues of concern to many parties that have not been adequately studied.

In order to evaluate the current marketplace and to assess the potential impact of the proposed rules, we believe it is essential for independent, peer-reviewed studies to be completed of current developments towards market-based solutions and of the potential costs and benefits of the proposed rules, including the impact of the proposed rules on diversity of programming, independent and minority television programming, content protection and consumer privacy.

At a minimum, these studies should analyze:

- The potential impact of the proposed rule on all parties in the video programming marketplace, including video programming creators, satellite-delivered video programming vendors, multichannel video programming distributors, and subscribers of multichannel video services;
- The potential impact of the proposed rule on content diversity, intellectual property, and content licensing;
- The potential impact of the proposed rule on consumer privacy, and the legal remedies available to consumers for violations of video privacy obligations.

Therefore, we urge the Commission to suspend further action on its Notice of Proposed Rulemaking until these studies are completed and Congress has the opportunity to review and assess the studies.

Sincerely,

Yvette Clarke
Member of Congress

Gene Green
Member of Congress

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Eliot Engel
Member of Congress

G. K. Butterfield
Member of Congress

Bobby Rush
Member of Congress

Paul Tonko
Member of Congress

Henry Cuellar
Member of Congress

Loretta Sanchez
Member of Congress

Ted Lieu
Member of Congress

Cedric Richmond
Member of Congress

William Lacy Clay
Member of Congress

Terri Sewell
Member of Congress

Frederica Wilson
Member of Congress

Brenda Lawrence
Member of Congress

Brendan Boyle
Member of Congress

Bennie Thompson
Member of Congress

Grace Napolitano
Member of Congress

Albio Sires
Member of Congress

Alma Adams
Member of Congress

Norma J. Torres
Member of Congress

Dina Titus
Member of Congress

Luis V. Gutiérrez
Member of Congress

Robert Brady
Member of Congress

Pete Aguilar
Member of Congress

David Scott
Member of Congress

Eddie Bernice Johnson
Member of Congress

Alcee L. Hastings
Member of Congress

Brad Ashford
Member of Congress

Filemon Vela
Member of Congress

Gregory W. Meeks
Member of Congress

Joyce Beatty
Member of Congress

Corrine Brown
Member of Congress

Chaka Fattah
Member of Congress

Hakeem Jeffries
Member of Congress

Robin Kelly
Member of Congress

Stacey Plaskett
Member of Congress

Mark Takai
Member of Congress

Mike Quigley
Member of Congress

Timothy Walz
Member of Congress

C.A. Dutch Ruppersberger
Member of Congress

Ann McLane Kuster
Member of Congress

Alan Lowenthal
Member of Congress

Ruben Gallego
Member of Congress

Kyrsten Sinema
Member of Congress

Matt Cartwright
Member of Congress

Jim Costa
Member of Congress

Brian Higgins
Member of Congress

Donald M. Payne, Jr.
Member of Congress

Gwen Graham
Member of Congress

Richard Neal
Member of Congress

Gwen Moore
Member of Congress

Scott Peters
Member of Congress

Marcia L. Fudge
Member of Congress

Marc Veasey
Member of Congress

Sheila Jackson Lee
Member of Congress

Congress of the United States
Washington, DC 20515

May 11, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler,

As Co-Chairs of the Congressional Privacy Caucus, we write to express our concern that existing privacy protections enjoyed by cable and satellite subscribers will not be retained as the Commission moves forward on a rulemaking regarding third party navigation devices.

Sections 631 and 338(i) of the Communications Act provide clear and specific protections for the privacy of cable and satellite subscribers. Multichannel Video Programming Distributors (MVPD) must clearly and conspicuously explain data collection and use practices to consumers as well as being prohibited from collecting personally identifiable information without the subscriber's prior consent. Additionally, subscribers are entitled to private rights of action through the federal courts should these privacy protections be violated.

Under the current Commission proposal, third parties would be required to self-certify that they will, and do, adhere to privacy protections in sections 631 and 338. Should the MVPD believe that the third party has violated the self-certification requirement the only remedy to immediately protect customer information would be to shut off service to all users of a third party device or application found to be in violation of the self-certification. This outcome will harm consumers equally if not more so than it would the third party in violation of sections 631 and 338.

We agree that providing for robust competition in navigation devices, as directed by Congress, should be pursued by the FCC. However the Commission chooses to go forward, its actions cannot result in a loss of privacy protections, customers' loss of service through no fault of their own or that of an MVPD, or customers' private right of action against violators.

We respectfully request that the Commission take these concerns into account and we look forward to hearing from you directly as to how our shared concerns will be addressed moving forward.

Sincerely,

Diana DeGette

Diana DeGette
Member of Congress

Joe Barton

Joe Barton
Member of Congress

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Congress of the United States
Washington, DC 20515

The Honorable Tom Wheeler
Chairman, Federal Communications Commission
445 12th Street, Southwest
Washington, DC 20554

June 15, 2016

Dear Chairman Wheeler,

We write with interest in the FCC's ongoing proceedings to implement Section 629 of the Communications Act. We commend this effort to provide consumers with greater choice, and spur innovation.

Ensuring the competitive availability of navigation devices can help expand consumer choice in terms of both features and prices. Consumers could shop around and select from a range of competitive devices equipped with different features. And they would have greater options to purchase rather than lease a device -- not unlike the myriad options we all currently enjoy to purchase a modem and router rather than lease them from a multichannel video programing distributor (MVPD). These are the positive benefits promised by section 629, and we commend the effort to update the rules to that section so that it better serves consumers and reflects the way technology has evolved. However, we wish to highlight some potential issues related to protecting consumer privacy that we feel remain unresolved, and urge the Commission to address these with the utmost care before moving forward in the rulemaking process.

As the NTIA noted in a letter dated April 14, 2016, there are very real privacy concerns the Commission should consider to ensure that its actions in addressing the set top box market does not degrade existing privacy protections for consumers. We are particularly concerned that the self-certification process that has been suggested for MVPDs does not provide an adequate level of protection for consumers. There remain critical unanswered questions about this framework, such as who will ensure compliance, what source of law will provide the teeth behind enforcement, and how consumers will be assured that they will retain their existing consumer remedies for infringements of privacy. Even if, as the Federal Trade Commission (FTC) staff notes, the FTC might play an enforcement role under Section 5 of the FTC Act, the FTC does not have the authority to award private damages or to create a consumer's private right of action. Nor can the FTC assure the same protections for consumers against government agencies who seek personally identifiable viewing records as consumers are provided under Section 631.

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Keeping these concerns in mind, we urge the Commission to pursue a privacy framework that is robust, enforceable and technology-neutral, providing parity between cable providers' devices and new market entrants' devices.

Thank you for taking these concerns into consideration. Should you have any questions, please feel free to contact my staff, Lauren Soltani at lauren.soltani@mail.house.gov or 202-225-6311.

Sincerely,

Suzan K. DelBene (WA-01)
Member of Congress

Steve Cohen (TN-09)
Member of Congress

David N. Cicilline (RI-01)
Member of Congress

Cheri Bustos (IL-17)
Member of Congress

Denny Heck (WA-10)
Member of Congress

John B. Larson (CT-01)
Member of Congress

David Loebsack (IA-02)
Member of Congress

Donald Norcross (NJ-01)
Member of Congress

Rick Larsen (WA-02)
Member of Congress

Elizabeth H. Esty (CT-5)
Member of Congress

Stephen Lynch (MA-08)

Member of Congress

DIANNE FEINSTEIN
CALIFORNIA

SELECT COMMITTEE ON INTELLIGENCE - VICE CHAIRMAN
COMMITTEE ON APPROPRIATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION

United States Senate

WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

May 25, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

I write in response to the Federal Communications Commission's Notice of Proposed Rulemaking in the Matter of Expanding Consumers' Video Navigation Choices and Commercial Availability of Navigation Devices, dated Feb. 18, 2016. While I am glad that the Commission is seeking to provide consumers with more freedom to choose their own set-top (cable) box, I encourage the Commission to do so in a way that will maintain ongoing improvements in energy efficiency and avoid any adverse impact on content providers.

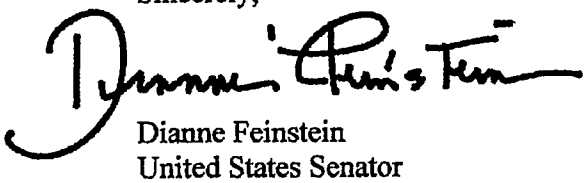
I support the Commission's effort to foster competition in the marketplace for set-top boxes. The current market for set-top boxes is dominated by the cable providers who charge consumers on average $231 per year to lease their cable boxes. Cable providers collect nearly $20 billion per year in revenues from leasing cable boxes. Introducing competition into this market will spark innovation and help lower consumers' cable bills.

Although I support the Commission's effort to provide consumers with more choice, I am gravely concerned that the Commission has not fully considered the potential negative impact on content providers. Content providers rely on strong copyright protections such as anti-piracy technology in set-top boxes to protect their creative work. Content providers also rely on heavily negotiated licenses and distribution agreements to ensure that they are fairly compensated for their work. I am concerned that third-parties could create devices that enable piracy and hinder the ability of content providers to control their creative work. I urge you to ensure that any final rule issued by the Commission adequately protects the rights of content providers.

The Commission should also be aware that the cable industry is pursuing a voluntary agreement with the Department of Energy to improve set-top box energy efficiency by up to 45% by 2017. These improvements will save 5 million tons of carbon dioxide emissions and an estimated $1 billion per year in avoided electricity costs. I encourage the Commission to tailor the final rule to preserve these energy efficiency improvements.

Thank you for your time and attention to this important matter. I am confident that the Commission will be able to resolve these concerns at the same time as it expands the ability of customers to use the devices of their own choice in a competitive marketplace.

Sincerely,



Dianne Feinstein
United States Senator

cc: Commissioners Clyburn, Rosenworcel, Pai, O'Rielly

DEREK KILMER
6TH DISTRICT, WASHINGTON

COMMITTEE ON APPROPRIATIONS

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May 27, 2016

The Honorable Tom Wheeler
Chairman, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler,

I would like to thank you and your colleagues at the Federal Communications Commission for your dedication to protecting consumers and promoting innovation in the communications and entertainment industries. I appreciate your efforts to expand consumer choice and encourage innovation with the recently released proposed rule concerning Competitive Availability of Navigation Devices. In an effort to more fully understand the benefits of the proposed policy prior to its implementation, I would like relay to you some questions that have been brought to my attention.

As the Representative of an area that includes many rural communities, I was interested to learn that concerns have been raised by smaller providers that they may not have the resources to meet the requirements contained in the proposed rule. What assurances can you provide that small providers will be able to meet the standards of the new rule, and that their customers will realize the benefits of increased choice and new technologies?

As you know, the technology innovation in recent years has brought about a great number of benefits for consumers and industry. However, it has also brought increased consumer attention to issues surrounding privacy, and created new challenges in enforcing intellectual property laws. How does the proposed rule take into account privacy concerns and intellectual property rights, and how would any protections in these areas be enforced?

Finally, I have seen some public commentary on the proposed rule which points out that access to a wide variety of programs is already available and seems to be expanding naturally through the market due to consumer demand, and that industry is already deploying new and innovative systems for distributing that content. Given the pace of recent innovation in this field, can you describe why you believe now is an appropriate time for federal action on this issue?

Thank you again for your effort in this regard and for your consideration of my request.

Sincerely,

Derek Kilmer
Member of Congress

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United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

May 23, 2016

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

In February 2016, the Federal Communications Commission ("FCC") issued a Notice of Proposed Rulemaking ("NPRM") seeking comment on changes to existing set-top box rules. These changes would require Multichannel Video Programming Distributors ("MVPDs") to deliver to third-party manufacturers selling set-top boxes and suppliers of software, video programming and other information about what programming is available to consumers. The NPRM states that these rules are "intended to assure a competitive market for equipment, including software, that can access multichannel video programming."

I support the goal of greater competition and innovation in the marketplace for how consumers are able to access and watch video programming. That is why I have been heartened to see a flourishing of new technology over the past several years that give consumers greater access to content on a growing array of devices. However, I am concerned that this proposed rulemaking would replace marketplace solutions with greater government regulation. Further, there are significant concerns as to how the FCC's proposal affects important consumer privacy and copyright interests.

Under federal law, MVPDs must keep subscribers' viewing habits private, abide by advertising limits during children's programming, and build devices that display emergency alerts, closed captioning, and parental controls. These privacy protections are important to my constituents and others around the country. It remains unclear how these important consumer protections will be extended under this proposal in an effective manner.

Committee Assignments

CHAIRMAN
JUDICIARY

AGRICULTURE
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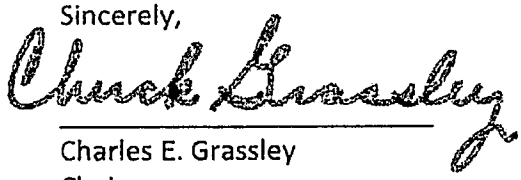
CO-CHAIRMAN
INTERNATIONAL NARCOTICS
CONTROL CAUCUS

Further, existing copyright protections have encouraged a vibrant, creative climate which has led to more interesting and greater quality television content for consumers. There are concerns that the proposed regulations will harm creators and impede innovation thereby ultimately hurting viewers. Additionally, it is important that this proposed rulemaking not disproportionately affect rural providers and consumers.

Achieving greater competition in the set-top box marketplace is a valid goal but it must not come at the expense of important consumer protections, market-based competition, or America's creators and innovators.

Sincerely,



Charles E. Grassley
Chairman
United States Senate Committee on the Judiciary

cc: Commissioner Mignon Clyburn
Commissioner Michael O'Reilly
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel

RON KIND
Third District, Wisconsin
Senior Whip
Ways and Means Committee
Subcommittee on Health
Subcommittee on Trade

Congress of the United States
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April 21, 2016

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

I appreciate your prompt response to my letter. While your answer addressed a number of the issues raised my original letter, I remain concerned that certain issues have not been adequately addressed.

The Notice of Proposed Rulemaking concerning Navigation Devices includes a series of significant changes that would have a significant impact on the video market. While these changes are designed to promote competition, it is important to recognize that the video industry is already experiencing a historic level of competition. As you consider the final rule, I urge you to consider the potential impact that it will have on all parties in the video programming market.

Content providers depend on strong copyright protections and anti-piracy technology to ensure that their products retain value. Emerging technologies have made it easier than ever to reproduce and redistribute copyrighted content. Multichannel video programmers and content providers understand this and include powerful anti-piracy technology in their navigation devices because they have a shared interest in preventing piracy. Third-party device manufacturers do not share the incentive to prevent piracy. I urge you to ensure that the final rule adequately addresses this disparity in incentives and provides strong protection for content against piracy.

Emerging technologies have also created new concerns about privacy rights. Current pay-TV providers are obligated to protect private information about their customers' viewing habits, and the FCC has the authority over pay-TV providers to enforce those obligations. The current proposal does not apply a similarly stringent standard to third-party device manufacturers. Instead, it relies on device manufacturers to self-certify that they are in compliance with these privacy protections. It remains unclear how the FCC can ensure that device manufacturers actually comply with these obligations. Given that the FCC's legal enforcement authority is limited, I urge you to clarify how these privacy obligations can be enforced, including addressing what recourse consumers have against third-party device manufacturers that violate their privacy obligations.

This issue is of particular concern because some potential third-party device manufactures rely on gathering information about their users for their primary source of revenue. Even if these companies earnestly self-certify that their devices do not violate the proposal's privacy obligations, it is not clear how the FCC can ensure that these companies do not inadvertently comingle protected private information about viewing habits with their extensive databases of personal information. Given that the FCC lacks the legal authority to regulate these

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industries, it remains unclear how it can prevent privacy violations from occurring as a result of this rule. As the Commission considers the final rule, I urge you to adequately address how it can ensure privacy protections for consumers.

If enacted, the rules in your proposal will dramatically change the way Americans view and interact with video content. The proposal has generated an overwhelming public response, which underscores both its significance and its far-reaching consequences. As you review public comments to this proposal and draft the final rule, I urge you to ensure that it adequately addresses the concerns raised in this letter.

Sincerely.

Ron Kind

Member of Congress