

Congress of the United States  
House of Representatives

Washington, DC 20515

April 21, 2016

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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 by 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 manufacturers 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 come into possession of protected private information about viewing habits with their extensive databases of personal information. Given that the FCC lacks the legal authority to regulate these

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,

A handwritten signature in dark ink that reads "Ron Kind". The signature is written in a cursive, flowing style.

Ron Kind

Member of Congress

Received & Inspected

APR 25 2016

FCC Mail Room



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 11, 2016

The Honorable Ron Kind  
U.S. House of Representatives  
1502 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Kind:

Thank you very much for your letter sharing your views about how the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace might impact copyright protections and the privacy protections afforded to pay-TV consumers. I take your input on these issues seriously and assure you that it will receive careful consideration.

Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. Yet, unfortunately, the statutory mandate in section 629 is not yet fulfilled. The lack of competition in this market has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. One of the main contributing factors to these high prices is the no-option, add-on fee for set-top box rental that is included on every bill, forcing consumers to spend, on average, \$231 in rental fees annually. Even worse, a recent congressional investigation found that the price of most equipment fees is determined by what the market will bear, and not the actual cost of the equipment.<sup>1</sup> With the lack of competition in this market, it should come as little surprise that fees for set-top boxes continue to rise.<sup>2</sup> Clearly, consumers deserve better.

This February the Commission put out for public comment a proposal that would fulfill the statutory requirement of competitive choice for consumers. This action opened a fact-finding dialog to build a record upon which to base any final decisions. Our record already contains more than 280,000 filings, the overwhelming majority of which come from individual consumers. FCC staff is actively engaged in constructive conversations with all stakeholders—content creators, minority and independent programmers, public interest and consumer groups, device manufacturers and app developers, software security developers, and pay-TV providers of all sizes—on how to ensure that consumers have the competition and choice they deserve. I am hopeful that these discussions will yield straight-forward, feasible and effective rules for all.

You shared your views about how this proceeding might affect copyright protections. Let me assure you that I share your interest in ensuring strong anti-piracy protections. Our

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<sup>1</sup> U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE, MINORITY STAFF REPORT, *INSIDE THE BOX: CUSTOMER SERVICE AND BILLING PRACTICES IN THE CABLE AND SATELLITE INDUSTRY*, 17 (Jun. 23, 2016).

<sup>2</sup> One recent analysis found that the cost of cable set-top boxes has risen 185 percent since 1994 while the cost of computers, television and mobile phones has dropped by 90 percent during that same time period.

proceeding will protect the role of digital rights management (DRM) platforms in the television ecosystem. DRM platforms offer rigorous protection against unauthorized copying and other violations of content owner rights.<sup>3</sup> Importantly, DRM platforms are not developed by content owners or pay-TV providers, but rather, by businesses with expertise in DRM. Some of the more popular solutions currently on the market are Microsoft PlayReady and Adobe Primetime. The Notice of Proposed Rulemaking adopted by the Commission in February proposed that content owners would remain free to select the DRM platforms that they prefer. Developers of competitive apps and set-top boxes would license the DRM technology and satisfy compliance requirements – in the very same way that current set-top boxes support DRM, and the same way that competitive apps and devices already support DRM for online video.

I also share your goal of ensuring that the privacy protections that exist today will also apply to alternative navigation devices and applications. Pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior consent.

I strongly believe that third-party app developers and device manufacturers must afford consumers the same level of protection as afforded by pay-TV providers. While the NPRM proposes that competitive devices and apps certify compliance with the privacy protections in the Act, we also invited parties to provide alternative proposals that would ensure the preservation of these important privacy protections.

We will continue to engage with stakeholders on this important issue. Notably, our record includes filings on this issue from the Federal Trade Commission (FTC) and a group of state attorneys general (state AGs)—representing the states of California, Illinois, New York, Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, Oregon, Pennsylvania, Vermont, and the District of Columbia. In their comments, the FTC and the state AGs explain that—if we require competitive devices and apps to publicly commit to providing the same privacy protections required of pay-TV providers under the Communications Act—the FTC and the state AGs would be willing and able to enforce the privacy commitments made by third party app and device manufacturers just as they currently enforce other privacy commitments made by apps and devices. I am confident that by working with stakeholders and our federal and state partners, we will identify clear rules of the road that will afford consumers with strong privacy protections and the enforcement mechanisms necessary to ensure compliance by third parties.

The record we are developing will help us preserve strong copyright and privacy protections while delivering American consumers meaningful choice. Thank you for your

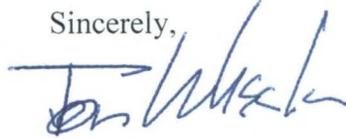
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<sup>3</sup> See DOWNLOADABLE SEC. TECH. ADVISORY COMM., DSTAC FINAL REPORT 262-67 (Aug. 28, 2015), <https://transition.fcc.gov/dstac/dstac-report-final-08282015.pdf>.

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engagement in this proceeding, and I look forward to continuing to work with you on this important consumer issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler". The signature is stylized with a large, sweeping initial "T" and a long, horizontal stroke extending to the right.

Tom Wheeler