Congress of the United States
Washington, DC 20515

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

Received & Inspected
JUN 20 2016
FCC Mail Room

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

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Cheri Bustos
U.S. House of Representatives
1009 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Bustos:

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 the privacy protections afforded to pay-TV consumers. I take your input on this issue 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.[1] With the lack of competition in this market, it should come as little surprise that fees for set-top boxes continue to rise.[2] 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.

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You shared your views about how this proceeding might affect the privacy protections afforded to pay-TV consumers. One of the goals of this proceeding is to ensure 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 Notice of Proposed Rule Making (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 privacy protections while delivering American consumers meaningful choice. Thank you for your engagement in this proceeding, and I look forward to continuing to work with you on this important consumer issue.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable David Cicilline
U.S. House of Representatives
2244 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Cicilline:

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 the privacy protections afforded to pay-TV consumers. I take your input on this issue seriously and assure you that it will receive careful consideration.

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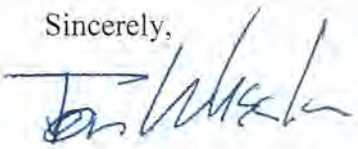

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Steve Cohen
U.S. House of Representatives
2404 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Cohen:

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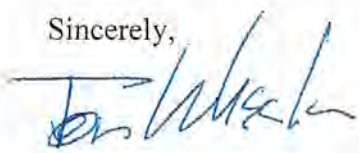

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Suzan DelBene
U.S. House of Representatives
318 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman DelBene:

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 the privacy protections afforded to pay-TV consumers. I take your input on this issue seriously and assure you that it will receive careful consideration.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Elizabeth Esty
U.S. House of Representatives
405 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Esty:

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 the privacy protections afforded to pay-TV consumers. I take your input on this issue seriously and assure you that it will receive careful consideration.

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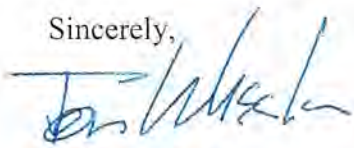

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Denny Heck
U.S. House of Representatives
425 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Heck:

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 the privacy protections afforded to pay-TV consumers. I take your input on this issue seriously and assure you that it will receive careful consideration.

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Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Rick Larsen
U.S. House of Representatives
2113 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Larsen:

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable John B. Larson
U.S. House of Representatives
1501 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Larson:

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Dave Loebsack
U.S. House of Representatives
1527 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Loebsack:

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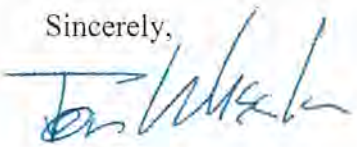

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Stephen F. Lynch
U.S. House of Representatives
2369 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Lynch:

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, D.C. 20515

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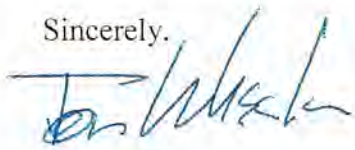

Tom Wheeler