

Congress of the United States  
House of Representatives  
Washington, DC 20515-6503

July 26, 2016

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

Dear Chairman Wheeler:

On February 18, 2016, the Federal Communications Commission (FCC) voted to adopt a Notice of Proposed Rulemaking with the intended purpose of creating competition in the video set-top box marketplace. Billed as an effort to “unlock the box,” the FCC proposes to require multichannel video programming distributors (MVPDs) to provide sensitive consumer data to third-party device manufacturers in an attempt to create a new set-top box market, cede enforcement of important contractual provisions, and provide valuable content to third-parties without a copyright license. The FCC alleges that the new rules are necessary to increase innovation and lower prices for consumers, yet the proposal ignores the many innovations already occurring today. Unfortunately, these burdensome regulations would bring drastic changes to the marketplace that will likely have the reverse effect of harming consumers.

Commercial stakeholders and a number of bipartisan Congressional colleagues have weighed-in with critical questions about the potential negative impacts of this proposal on American consumers. Some of the most problematic concerns that have been raised include the exposure of sensitive consumer data, protection of valuable programming content, the ability of small and rural MVPDs to comply with heavy-handed mandates, and the potential harm the rules would have on independent and minority programmers. In my opinion, this robust record of concern and opposition justifies abandonment of the proposal.

As you know, following widespread objection from industry and Congressional leaders, a diverse multitude of stakeholders presented an alternative proposal that focuses on “ditching” the box altogether instead of the FCC’s shortsighted goal of “unlocking” it. This alternative plan more accurately reflects the state of today’s marketplace by allowing consumers to download an app on a smart TV or any other connected device, thereby ensuring that copyright licenses are protected while eliminating the need for a set-top box and the accompanying monthly set-top box rental fees. This industry compromise would help achieve the FCC’s original mission of creating more choice for consumers without tinkering with the dynamic innovation already flourishing among stakeholders.

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It has become increasingly evident that the original “set-top box” proposal is deeply flawed and should be abandoned. Instead of rushing the original proposal through the rulemaking process to meet an artificial deadline, it is my hope that the FCC will strive for industry collaboration and give every consideration to the alternative approach recently submitted. I urge you and your colleagues to seize this opportunity by going back to the drawing board and charting a new path forward that encourages bold innovation and truly benefits consumers.

Sincerely,



Steve Scalise  
Majority Whip

cc (by email only): 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



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

August 23, 2016

The Honorable Steve Scalise  
U.S. House of Representatives  
2338 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Scalise:

Thank you very much for your letter regarding the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace. 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. 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.

As you mention, 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 came 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. These conversations have covered a wide range of issues, included those raised in the cable industry's one-page filing on June 16, 2016. I am hopeful that these discussions will yield straight-forward, feasible and effective rules for all.

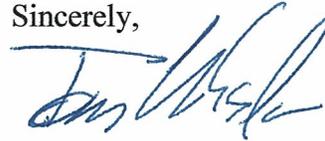
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<sup>1</sup> U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS COMMITTEE, MINORITY STAFF REPORT, INSIDE THE BOX: CUSTOMER SERVICE AND BILLING PRACTICES IN THE CABLE AND SATELLITE INDUSTRY, 17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

The record we are developing will help us preserve strong privacy protections and strong copyright protections, as well as avoid overburdening small pay-TV providers while delivering American consumers meaningful choice and opening new opportunities for independent and minority programmers. Thank you for your 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", written in a cursive style.

Tom Wheeler