



February 11, 2016

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

**Re: MB Docket No: 15-64, Request for Comment on the Report of the
Downloadable Security Technical Advisory Committee**

Dear Chairman Wheeler:

The Multicultural Media, Telecom, and Internet Council (MMTC), in partnership with 17 leading national and social justice organizations (“Concerned Organizations”), urges the Commission to consider the unintended consequences of your recent set top box proposal on diverse and independent programmers.¹ Our organizations share the Chairman’s goals of consumer choice and enhancing competition among video devices.² However, we strongly believe that the Chairman’s proposal could potentially harm consumers and diverse and independent programmers if manufacturers of these devices are given permission to ignore content licensing and financial agreements, and downplay consumer protections. As Concerned Organizations, we are equally displeased that the Commission has failed to consider the absence of cultural diversity among the corporate beneficiaries of this proposal—especially popular video streaming or edge providers—whose business models are not currently producing or distributing nearly enough multicultural content on their platforms and investing in diverse content creators.

¹ See FCC Chairman Proposal To Unlock The Set-Top Box: Creating Choice and Innovation, DOC-337449 (released January 27, 2016) (“Proposal”).

² Our organizations take note that the Commission’s technical advisory committee (DSTAC) did not arrive at a consensus recommendation on how to achieve this goal. See DSTAC Summary Report (released August 8, 2015), available at <https://transition.fcc.gov/dstac/dstac-report-final-08282015.pdf>.

The Current Record is Not Sufficient on the Impacts of the Commission’s Proposal on Diverse and Independent Programmers

The Concerned Organizations agree with the Commission that consumers in the 21st century video marketplace are now accessing content anywhere, any time and on any device.³ For diverse and independent networks, distribution on widely-subscribed video platforms continues to underpin their success and ability to fund quality programming. As more platforms emerge, the marketplace has already become more competitive, especially with the Internet expanding the pool to an ocean of opportunity for all types of programmers and content creators. According to research, the indexed web contains more than 4.84 billion pages, providing consumers with a plethora of content.⁴ In 2015, Google reported that the top five most accessed content were the Paris terrorist attacks (897 million views), pop singer Adele (439 million views), the Oscars (406 million views), the 2016 elections (338 million view), and the transformation of Caitlyn Jenner (366 million views).⁵ While this data suggests that the Internet is indeed representative of all types of people, perspectives and interests, it can also shows how diverse and independent programmers and content creators can easily get lost in the billions of pages of the Internet, and how the proposed device proposal could put their formal distribution and financial arrangements at risk.

When addressing diversity, you point out in the proposal that “[w]hen consumers are able to access all of their content – from MVPD programming to streaming video – in a single place, they will be better able to find and enjoy the programming most relevant to them.”⁶ You further indicated that the proposal makes it “[e]asier for content creators to reach consumers...leading to more and better programming accessed more easily, especially minority, independent, and international programming.”⁷ While we agree that diverse and independent networks need more options for visibility to be successful, we find these statements do not *accurately* reflect the current business models of diverse and independent programmers.

Rather, we agree with the concerns that have been raised by diverse programmers, such as TV One, FUSE, and others, that feel that the proposal will undermine business models that have supported and grown their networks.⁸ These programmers have worked hard to gain carriage on

³ See John B. Horrigan and Maeve Duggan, “Home Broadband 2015: The share of Americans with broadband at home plateaued, and more rely only on their smartphones for online access” PEW RESEARCH CENTER, December 21, 2015, *available at* <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last visited February 9, 2016).

³ See The Size of the World Wide Web (Internet), *available at* <http://www.worldwidewebsite.com/> (last visited February 9, 2016).

⁴ See A Year in Search 2015, *available at* https://www.google.com/trends/story/2015_US (last visited February 9, 2016).

⁵ See FCC Chairman Proposal To Unlock The Set-Top Box: Creating Choice and Innovation, DOC-337449 (released January 27, 2016) (“Proposal”).

⁶ See *id.*

⁷ See *id.*

⁸) See Letter to Tom Wheeler, Chairman, Federal Communications Commission, from members of the Congressional Black Caucus, regarding “AllVID,” filed December 1, 2015, *available at* <http://futureoftv.com/wp-content/uploads/2016/01/Letter-from-CBC-to-Chairman-Wheeler-on-AllVid.pdf> (last visited February 10, 2016); Alfred Liggins, “Protecting Consumer Choice, Not Special Interests, In Video” THE TENNESSEAN, December 3,

TV platforms, and we believe that the current device proposal would threaten to undo that progress. As these programmers have explained, the proposal would allow tech companies to disaggregate the programming in pay TV services, repackage and rebrand it as their own, ignoring the agreements that these programmers have negotiated with their distributors.⁹ In our view, diverse and independent programmers and content creators would experience negative impacts on channel placement, advertising scheduling and other critical elements that have increased the visibility and profiles of these networks in a crowded video marketplace.¹⁰ If not carefully considered by the Commission, the proposal could create similar concerns for other independent programmers and content creators, including those who provide children's, international, and other niche content, as they compete head to head with Internet-based programming offerings.

Moreover, the corporate beneficiaries of the Commission's proposal, particularly Google, would be able to appropriate the valuable and expensive content from these specialty and diverse programmers under this proposed model.¹¹ Under the current proposal, the content of programmers with business arrangements with cable, satellite, or broadcast systems, could be turned over to Google, TiVo, and other edge providers without any guarantee of prominent placement for maximized search, and with the threat of repackaging and reuse without compensation.

Our Concerned Organizations find these actions are not only unreasonable, but also contribute to other problems that include copyright violations, piracy, degraded content value, and diluted advertising streams. In short, the economic model that has successfully supported diverse and independent programmers and content creators would be undermined, and the revenues needed to fund quality shows—or a suite of substantive programming—diminished. We are also concerned that prime distribution on online platforms will not compensate for these losses and potentially devalue what our communities consider as premium content that speaks to our interests and authentic experiences.

As Concerned Organizations, we believe that the Commission should not enable the “cherry picking” of networks that can potentially relegate diverse and independent networks to the fringes of the video marketplace, while inadvertently creating a new form of content redlining. Thus, we ask that the agency avoid acting on proposals that potentially upend the business

2015, available at <http://www.tennessean.com/story/opinion/contributors/2015/12/03/protecting-consumer-choice-not-special-interests-video/76744898/> (“Alfred Liggins Op-Ed”) (last visited February 10, 2016); Letter to Marlene Dortch, Secretary, Federal Communications Commission, from Michael Schwimmer, CEO of Fuse Media, Inc., filed January 21, 2016, available at <http://apps.fcc.gov/ecfs/document/view?id=60001409844> (“FUSE Letter”) (last visited February 10, 2016).

⁹ See *id.* (citing Alfred Liggins Op-Ed; citing FUSE Letter)

¹⁰ See *id.*

¹¹ TV One reports to us that it spends nearly a half million per episode to produce its new scripted television series and most recently spent millions for its NAACP Image Awards program, not to mention the investments in marketing and promotion that are required to ensure that its programs reach their target audience. As the record in this proceeding reflects, disaggregating and programming packages to allow others to exploit content harms *all* programmers but it has a disproportionate impact on smaller, independent programmers like TV One and Fuse Media that serve ethnic, niche audiences. See generally, Comments of Fuse Media in MB Docket 15-64.

models of diverse and independent programmers and defer any further consideration of device proposals until it has fully studied the impacts on diverse and independent programmers. On this same point, our Concerned Organizations are cautious that these government mandates will dilute business agreements that have become the lifeblood of programmers, in general, and are critical to growing and sustaining the aspirations of new content creators from the diverse and independent video marketplace.

Consumers Will Be Affected by Differential Regulation of the Video Marketplace

Fourteen leading national and regional Latino organizations shared similar concerns in a letter to the Commission.¹² In their case, they cited “irreparable damage” to small Latino independent programmers and the Latino community if the proposed recommendations were enacted.¹³ We concur with these organizations and highlight two further concerns that are worthy of the Commission’s consideration.

First, the Commission is under congressional mandate to regulate the cable, satellite and broadcast industries.¹⁴ Yet, edge providers are not subjected to the same rules. For example, edge providers are not subject to significant privacy and other consumer protections that apply to cable and satellite TV providers. Consequently, when companies such as Google are given a government pass to siphon and repackage video content, they not only affect the formal deals between cable providers and content creators, but they also gain free rein to advertise around unbundled content and collect and monetize customer viewing information. Our organizations are concerned by the prospect of edge providers engaging in such practices, and believe they will ultimately harm both consumers and content creators. Consumers should be able to trust that the government has established a legitimate expectation that their viewing information will be protected under the existing rules, particularly among the edge providers who already have expansive access to personal data. Moreover, we believe that the Commission must consider the existing and emerging challenges of managing big data, particularly when third party companies continue to use this data for predatory, exclusionary, and piracy gains.¹⁵

Second, we believe that the device proposal would impose substantial costs on consumers. As a number of commenters have pointed out, the proposal would require cable, satellite, and telco video providers to re-engineer their networks and equipment to comply with the new technology mandates. These costs could ultimately be passed onto consumers. Moreover, rather than eliminating the need for equipment at all, the proposal may still require consumers to buy or lease this new technology hardware whose price will result in an expense, alongside the

¹² See Letter to Tom Wheeler, Chairman, and Commissioners, Federal Communications Commission, from HTTP and Hispanic Coalition, regarding “Response to AllVid,” filed February 4, 2016, *available at* <http://httponline.org/2016/02/http-and-hispanic-coalition-response-to-allvid-proposal-february-4-2016/> (last visited February 10, 2016).

¹³ See *id.*

¹⁴ See 47 U.S.C. § 151.

¹⁵ See “Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues” FEDERAL TRADE COMMISSION, January 2016, *available at* <https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf> (last visited February 9, 2016).

consumers' preferred subscription TV services. Our Concerned Organizations wonder why the Commission would suggest that consumers would be buffered from this expense, and not place more attention on apps that most consumers are already using to access TV and other Internet-enabled content on smartphones, tablets, gaming stations, smart TVs, and other devices. These apps are generally free for subscribers. In the end, the Commission should be providing consumers the opportunity to eliminate set top boxes and the fees associated with them, rather than using this proposal to create competition in video interface guides which consumers are not requesting.

The Commission Should Not Reward Companies that Do Not Value Diversity

Finally, the Concerned Organizations ask that the Commission consider the diversity records of those companies who will primarily benefit from your proposal. These corporations, especially the edge providers, have stunningly poor diversity records in the areas of employment, ownership, and supplier diversity, and have done a poor job of incorporating minority programming into their current offerings. Two years ago, MMTC called upon the Commission to address the dismal workforce diversity records of high tech companies.¹⁶ Back then, MMTC stated that the high tech industry's "[f]ailure to employ African Americans, Hispanics, and women detrimentally impacts the FCC's ability to fulfill Congress' commands that the FCC regulate EEO and promote employment and ownership diversity in the industries with which high tech converges – broadcasting, cable, and satellites."¹⁷ Today, these high tech industries still lack representation in their Board rooms and senior to mid-level management positions.

The lack of diversity has prompted formal actions by Members of the Congressional Black Caucus through its CBC Tech 2020 program, inspired quiet protests from the Rainbow PUSH Coalition and other civil rights organizations, and created a firestorm among edge providers to fund diversity initiatives.¹⁸ Yet, these programs have not addressed the challenges addressed in this letter.

In 2015, Netflix, one of the world's leaders in Internet video subscription services, fared among the worst for having directors of color and women for their original programming, and the recent

¹⁶ See Letter to Tom Wheeler, Chairman, and Commissioners, Federal Communications Commission, from David Honig, President, Multicultural Media Telecom and Internet Council, regarding "Diversity and EEO in the Tech Sector," filed September 16, 2014, *available at* <http://mmtconline.org/wp-content/uploads/2014/09/MMTC-Tech-EEO-Ltr-091614.pdf> (last visited February 10, 2016).

¹⁷ See 47 U.S.C. §257(a) (envisioning the removal of market entry barriers in the provision and ownership of both telecommunications and information services).

¹⁸ See Dawn Chmielewski, "Congressional Black Caucus Calls on Silicon Valley to Improve Diversity" RE/CODE, August 4, 2015, *available at* <https://cbc-butterfield.house.gov/media-center/in-the-news/congressional-black-caucus-calls-on-silicon-valley-to-improve-diversity> (last visited February 10, 2016); Press Release from Congressional Black Caucus, regarding "CBC Delegation Takes Tech 2020 Initiative to Silicon Valley," July 30, 2015, *available at* <https://cbc-butterfield.house.gov/media-center/press-releases/cbc-delegation-takes-tech-2020-initiative-to-silicon-valley> (last visited February 10, 2016).

announcement of their 2016 line up does not include any multicultural content.¹⁹ Given this, our Concerned Organizations are hesitant to entrust corporations who struggle with Board and workplace diversity to elevate and promote the significance of diverse and independent content in a competitive video market.

In a Huffington Post op-ed on the lack of diversity in online video programming, Larry Irving, former administrator at the National Telecommunications and Information Administration (NTIA) at the U.S. Department of Commerce, stated that “the new media gatekeepers no longer live in Hollywood, they live in Seattle and Silicon Valley.”²⁰

No matter how it is spun, this proposal provides edge providers with a government pass to capture the fruit of other people’s work without compensating talented individuals—especially those who desire to create and distribute substantive content reflective of all American’s experiences.

We strongly recommend that the Commission pause its efforts due to the pending impacts of this proposal on the business models of diverse and independent programmers and content creators, and exposure of consumer data to edge providers without the privacy protections that apply to other video providers. We also advise the Commission against favoring models from companies that fail to promote diversity and inclusion in their current business practices. If the Commission moves forward on this item, we strongly recommend that these consequences be fully considered to ensure that we do not contribute to the already abysmal diverse representation in media ownership and representation in our nation.

Sincerely,

Asian Pacific American Institute for Congressional Studies (APAICS)

Asian Americans Advancing Justice (AAJC)

Blacks in Government (BIG)

Cuban American National Council

National Organization of Black Elected Legislative (NOBEL) Women

LGBT Technology Partnership

League of United Latin American Citizens (LULAC)

Latinos in Information Sciences and Technology Association (LISTA)

Multicultural Media, Telecom, and Internet Council (MMTC)

National Association of Hispanic Publications

National Association of Multicultural Digital Entrepreneurs (NAMDE)

National Black Chamber of Commerce

National Newspaper Publishers Association

¹⁹Bryan Patrick Byrne, “These Netflix Shows Have A Diversity Problem,” VOCATIVE, August 26, 2015, *available at* <http://www.vocativ.com/news/225506/directors-guild-of-america-diversity-minority-women-netflix/> (last visited February 9, 2016).

²⁰ See Larry Irving, “Larry Irving: Netflix, Amazon Programming As White As Its Executive Suite,” SAN JOSE MERCURY NEWS, July 10, 2015, *available at* http://www.mercurynews.com/opinion/ci_28462023/larry-irving-netflix-amazon-programming-white-its-executive (last visited February 9, 2016).

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National Organization of Black County Officials (NOBCO)

National Puerto Rican Chamber of Commerce

OCA-Asian American Advocates

Rainbow PUSH Coalition

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