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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

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 1, 2016

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
254 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Nelson:

Thank you for your letter regarding the recent Notice of Proposed Rule Making (NPRM) seeking comment on how to better foster competition in the set-top box marketplace and Section 629 of the Communications Act. Your views are very important and will be considered as part of the Commission's review.

I share your admiration for today's television landscape. There is an abundance of rich content and new technology. As you point out, technology is paving the way for software and apps to help consumers. Consumers deserve a variety of choices to view the programming they want, when they want and on the device they want. More choices often drive down consumer costs and drive up innovation.

The issue before the Commission is how to satisfy Section 629 in a world of evolving technology. I agree with you that any rules we adopt must reflect marketplace realities, and I assure you that is a paramount concern as we consider how to meet the statutory obligation.

At the February 18th Commission meeting, we adopted a NPRM to fulfill the statutory requirement of competitive choice for consumers. Like all NPRMs, this action opens a fact-finding dialog to build a record upon which to base any final decision.

The new proposed rules would create a framework for providing device manufacturers, software developers and others the information they need to introduce innovative new technologies, while at the same time maintaining strong security, copyright and consumer protections. Nothing in this proposal changes a company's ability to package and price its programming to its subscribers, or requires consumers to purchase new boxes.

You express concerns that rules intended to achieve Section 629's mandate could diminish the viewing experience and the economic underpinnings that support investment in innovative content. The Commission's proposal preserves copyright protections and the NPRM seeks comment on whether and how we should take further actions to address the concerns you raise. For instance, the item asks numerous questions about how to protect the rights and negotiated agreements of content owners. The item also specifically states that "our regulations must ensure that Navigation Devices…cannot technically disrupt, impede or impair the delivery of services to an MVPD subscriber." In this vein, the items asks a number of questions related to advertising and copyright concerns raised by content owners.

I believe the Commission's proposal will lead to innovation that will improve consumer choice and options for innovative content providers. As we develop a record and explore fulfilling the statutory mandate, I look forward to continuing to work with you on this important consumer issue.

Sincerely,

Tom Wheeler