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March 28, 2016

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

Re: Docket No. 16-42

Dear Chairman Wheeler,

As the leading advocate for the Latino community on technology and telecom policy issues, TechLatino: Latinos in Information Sciences and Technology Association is deeply committed to advancing greater media diversity and representation. As our nation becomes increasingly diverse, it is vital that the television programming ecosystem continues to build on recent progress by increasing representation of and opportunities for communities of color.

That is why we write to you today to voice our strong opposition to the set-top box mandate laid out in the February 18th Notice of Proposed Rulemaking. This proposed mandate will devastate independent and diverse programmers – including those serving Latino audiences – leaving our community underserved.

If the FCC moves forward with its set-top box mandate, tech companies will be allowed to repackage licensed television program into their own unlicensed products and services, without having to pay content owners or respect the terms of underlying carriage agreements. This will leave these tech companies free to disregard negotiated terms regarding advertising rights and channel placement, and would even allow them to add new layers of advertising on top of programming content they did not pay for.

All television networks rely on the terms of these carefully negotiated licensing agreements to finance the development and production of programming. Small and independent networks, including those that serve the Latino community, are most vulnerable to the revenue losses that will occur if tech giants are allowed to repackage content for free and poach advertising revenue that would otherwise go to the programmers. These economic losses will leave smaller networks with less funding to invest in the high-quality programming our community demands and deserves.

The proposed set-top box mandate could further harm diverse and independent networks by making their programming more difficult to find within program guides or search menus.

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Under the current system, these networks are able to negotiate with providers for specific placement near similar channels or other popular networks, which helps them attract new viewers and build their audience. But third party tech companies aren't bound by these agreements, and could reorganize programming however they'd like – most likely rewarding popular mass-market shows while leaving niche programming vulnerable to being buried in the deepest depths of the program guide or back pages of search results. Despite the Chairman's previous promises to address this "digital redlining" concern within the proposal, the text of the rule instead rejects the need for any safeguards in this area.

This proposed rule also represents a threat to consumer privacy, by eliminating federal statutory protections for our private viewing data. If the proposed mandate is enacted, TV viewers would see many of their existing privacy rights vanish, because device makers are not covered by the federal laws that prevent cable and satellite companies from unilaterally selling or disclosing their customers' individual viewing data. The proposal's attempt to address this risk – an ill-defined "self-certification" scheme – is entirely inadequate, likely unenforceable, and even in the best-case scenario would still not restore to TV viewers the same rights and remedies they currently enjoy under the Communications Act.

Recently, leading civil rights organizations including the National Urban League, the NAACP, and LULAC wrote to urge the FCC to "hit the 'pause' button" on this proceeding until a thorough disparity study has been conducted to ensure the proposal will not undermine diversity and inclusion on television. They asked whether "unlocking the box [could] result in less diversity and fewer successful minority programmers and content producers" and "if so, what is the projected data on the extent/size of the disparity that would result?"

To date, the FCC has failed to answer these pertinent questions or even acknowledge the significant and credible concerns that have been raised by members of our community. At the very least, the Commission owes it to all those who will be impacted by this proposal to delay a final vote until we have a full understanding of its consequences.

Latinos and other communities of color have battled for years to expand our representation on TV and our economic opportunities on both sides of the camera. We call upon the Commission not to move forward with a sweeping set-top box mandate that threatens to reverse this progress.

Cordially,



Jose A. Marquez
National President, CEO and Founder

TechLatino: Latinos in Information Sciences and Technology Association (LISTA)

