

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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In the Matter of:	)	)	
Expanding Consumers' Video Choices	)	)	
	)	)	MB Docket No. 16-42
Commercial Availability of Navigation Devices	)	)	
	)	)	CS Docket No. 97-80
_____)	)	)	

COMMENT OF THE CENTER FOR INDIVIDUAL FREEDOM

On behalf of 250,000 supporters and activists across the United States, the Center for Individual Freedom (hereinafter "CFIF") submits the following Comment in response to the proposed rulemaking by the Federal Communications Commission (hereinafter "FCC" or "Commission") in the above-entitled matter.

As any American who watches television already knows, the thriving video entertainment sector in the United States manifests innovation, consumer choice, affordability, quality and enjoyment as well as, if not better than, any other sector of the modern economy. Despite that reality, the Commission now proposes a new regulation that is not only unnecessary and already outdated, but will also ultimately introduce affirmative harms upon that market.

The proposed rule would artificially impose a one-size-fits-all mandate that would require customers to lease and install new, government-approved converter boxes in order to use third-party devices; it constitutes corporate favoritism in its worst form; it poses a threat to consumer privacy it undermines incentives that sustain the creative community; and it jeopardizes intellectual property protections by facilitating piracy.

It is on that basis that we submit this opposition to the proposed rulemaking.

As an initial matter, the proposed regulation is unnecessary because the market for video devices and services continues to flourish without the regulation. By way of illustration, the total number of scripted series - whether dramas, comedies or other non-reality television programs - across cable, satellite and online increased to 409 in 2015. That represents a 94% increase from just 2009, with a 174% growth in scripted series on basic cable (from 66 then to 181 today). Additionally, that content is widely available online. As another illustration, a recent survey reported that 98% of premium films and 94% of premium television series were digitally available on at least one of the online services reviewed.

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Proponents of the Commission's proposed rule claim that they merely seek to expand consumer video through such capabilities as mixing and matching content from online sources like YouTube with pay-TV. Such voices, however, ignore the obvious fact that existing technologies like Roku and Apple TV already provide those capabilities and more. Some 60% of Americans have already connected their TVs to the Internet, demonstrating that few, if any, barriers exist between consumers and easy access to streaming services. Cable companies and other entertainment industry players are already abandoning traditional cable boxes in favor of devices owned and maintained by individual consumers as they choose.

Additionally, events just this week illustrate that the Commission's proposed rule is already obsolete. The new joint Xfinity TV Partner Program announced between Comcast, Samsung and Roku merely adds another way in which consumers can access their cable subscription via an app compatible with multiple devices, without the need for any set-top box. Thus, without any need for a set-top box at all, consumers can access live, on-demand, cloud, DVR and other televised content on smart televisions and other IP-enabled technology.

That project and other ongoing technological advances show that the video entertainment and app markets continue to evolve alongside consumer demand, rendering the Commission's proposal obsolete before it can even be imposed. The marketplace is a fully functioning one, and the Commission's proposal constitutes an imaginary "solution" to a non-existent problem.

Unfortunately, the Commission's proposed regulation isn't merely unnecessary and obsolete in the manner described above. It would also introduce affirmative harms to the video entertainment market. For instance, the proposed regulation threatens great harm to the creative community that provides the content on which today's golden age of video entertainment flourishes.

One way in which that threat would unfold is that the proposed rule would effectively force creators, networks and pay-TV providers to give away their products and services for other companies to exploit for their own commercial purposes. Those improper beneficiaries of the proposed rule would accordingly be free to repackage video content as they see fit, drop programming or bury it deep in search algorithms, add their own advertising and strip out existing ads and even mine viewer data. All of that could occur without even negotiating in good faith with programmers and distributors, or adhering to privacy laws currently applicable to traditional providers.

An additional concern with the proposed rule is that it contains nothing to prevent companies exploiting it from combining legitimate content with video from piracy sources. To illustrate, the United Kingdom's Police Intellectual Property Crime Unit recently arrested six individuals for selling Android set-top boxes modified to deliver pirated films and television shows. That concern applies with particular force to boxes manufactured in China and other overseas locations.

Further highlighting the risk of commingling pirated online video with legal pay-TV content through online search functions, a recent survey showed that an alarming 74% of consumers responded that they had employed search engines when viewing pirated content. Researchers at Carnegie Mellon University also conducted an experiment demonstrating that search rankings drive consumer behavior, and the likelihood that consumers chose pirated content increased proportionally with the prominence in which it appeared in search results.

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In another alarming example, online search engines have pushed links to piracy sites even when consumers hadn't engaged in any search at all. Specifically, after Google Now determined that a user had "shown an interest" in the film "Deadpool," it proactively delivered a link to one of the largest torrent sites in the world. In other words, its algorithm unilaterally suggested access to stolen content without any action on the part of the user.

Here is why the aforementioned examples matter for purposes of this Comment: The Commission's proposed regulation would increase the likelihood that that this sort of conduct common with online search engines would become just as common in new TV search interfaces built by the same companies under this proposal. It would compromise the integrity of the creative ecosystem that continues to produce a metaphorical explosion of artistic creativity and technological innovation in video entertainment. Under the Commission's proposal, creative content could be taken without negotiation or compensation, and even exploited by other companies to collect consumer viewing data. That would simultaneously and necessarily undermine the economic incentives of creativity and consumer security.

Accordingly, on behalf of 300,000 supporters and activists across the country, CFIF implores the Commission to exercise the proper degree of restraint and modesty in its review of this proposed regulation.

Respectfully submitted,

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April 22, 2016