Committee on Appropriations
Subcommittee on Homeland Security
Subcommittee on Labor, Health and Human Services and Education

Democratic Senior Whip

Congressional Hispanic Caucus Healthcare Task Force Chair

LUCILLE ROYBAL-ALLARD
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February 17, 2016

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

Dear Chairman Wheeler:

I am writing in regard to the Notice of Proposed Rulemaking aimed at creating a competitive retail market for set-top boxes and at reducing fees for the average American household. It is of great importance to me that my constituents and consumers across the country have choice in the marketplace and opportunities to save money on their bills. As such, I commend you for your proposal's focus on the customer.

While I support the empowerment of the consumer, I also want to highlight concerns that have been brought to my attention, including issues surrounding diversity programming and privacy. Latino programmers have expressed a concern that Latino inclusion in programming will be diminished if the carefully negotiated license agreements that set the terms of show distribution, advertisement, and channel placement are not upheld, but are unbundled. Your proposal's fact sheet states that, "the proposal does not change a company's ability to package and price its programming to subscribers" and that you expect that the proposal will "lead to more and better programming accessed more easily, especially minority, independent, and international programming." I believe that Latino inclusion in programming is essential to the advancement of the Latino community as a whole and I encourage you to continue lifting up independent and minority content as the rulemaking process moves forward.

I also understand that existing TV providers and potential set-top box manufacturers would be governed by different regulations regarding the use and collection of consumer data. It is extremely important that the proposed framework protects consumer's privacy, clearly outlines how consumers' data will be protected, and what recourse consumers have if their data is improperly used.

Thank you for your attention to my letter. I look forward to your response and will continue to follow the rulemaking process with a focus on the consumer, privacy, and the advancement of our Latino community.

Sincerely,

LUCILLE ROYBAL-ALLARD
Member of Congress

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 19, 2016

The Honorable Lucille Roybal-Allard
U.S. House of Representatives
2330 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Roybal-Allard:

Thank you for your letter regarding the recent Notice of Proposed Rulemaking (NPRM) seeking comment on how to better foster competition in the set-top box marketplace and Section 629 of the Communications Act. I appreciate your recognition of the proposal's focus on consumers, and I take very seriously your concerns regarding diverse programming and privacy. Your views are very important and will be considered as part of the Commission's review.

Today, there is an abundance of rich content in the television landscape New technology is paving the way for software and apps to help consumers enjoy this content. 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.

As you know, the Commission has a statutory obligation under Section 629 of the Communications Act to assure the commercial availability of navigation devices to consumers from sources other than their traditional video programming providers, like cable, satellite, or telecommunications providers.

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. To the extent that parties have concerns about any of the proposals in the NPRM they should submit specific recommendations for solutions or adjustments into the record.

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. This new framework would make it easier for independent and minority-owned programmers to reach consumers while at the same time maintaining strong security, copyright and consumer privacy protections. To be clear, nothing in this proposal changes a company's ability to package and price its programming to its subscribers.

I also share your goal of ensuring this proposal benefits independent and minority programming. The proposal would facilitate competition in interfaces, search functions, and integration of programming sources, all of which would provide customers with a greater ability to access independent and minority programming. Our goal is to maintain the opportunity for those independent programmers who already have carriage on a pay-TV system and provide

additional opportunities for those independent programmers who currently cannot reach consumers of pay-TV providers because they are locked out of the system.

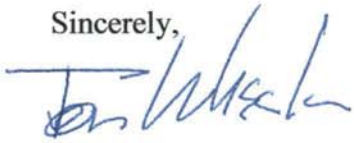
In furtherance of this goal, the Commission's proposal preserves copyright protections and the item asks numerous questions about how to protect the rights and negotiated agreements of content owners. The item also specifically states that "our regulations must ensure that Navigation Devices…cannot technically disrupt, impede or impair the delivery of services to an MVPD subscriber." In this vein, the NPRM asks a number of questions related to advertising and copyright concerns raised by content owners, including independent and minority-owned programming providers.

You also note the importance of privacy protections for consumers under the new framework. Let me assure you that the proposal we adopted seeks to ensure that the privacy protections that exist today will also apply to alternative navigation devices and applications. Today, pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing to other companies personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior written or electronic consent. The proposal tentatively concludes that third-party device manufacturers must afford consumers the same level of protection. Specifically, the proposal tentatively concludes that new device or app vendors must certify they are in compliance with the same privacy obligations as pay-TV providers. The proposal asks a number of questions about how best to enforce such a requirement. Additionally, the NPRM notes that today, competitive navigation devices such as TiVo must comply with a host of state and federal privacy protections that include various remedies for consumers. All of these protections and remedies would continue to apply under the proposal in the NPRM.

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, especially those faced by independent and minority-owned programmers, and the privacy rights of consumers. I assure you that these are paramount concerns as we consider how to meet the statutory obligation.

I believe the Commission's proposal will lead to innovation that will improve consumer choice and help independent and minority-owned content providers better reach audiences. 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