



June 3, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Expanding Consumers' Video Navigation Choices and Commercial Availability of
Navigation Devices, MB Docket No. 16-42; CS Docket 97-80

Dear Ms. Dortch:

On June 1, 2016, Harvey Rosenfield, Jamie Court and John M. Simpson of Consumer Watchdog discussed by telephone the above captioned proceeding with Gigi Sohn, Counselor to the Chairman and Jessica Almond, Legal Advisor to the Chairman. As you know, through this proceeding, the Commission proposes to open the market for set-top boxes, now dominated and controlled by cable and satellite TV companies, to third-party manufacturers.

In the telephone conversation, Consumer Watchdog reiterated its position that the set-top box rules proposed by the Commission should increase competition, cut costs to consumers and promote innovation. However, Consumer Watchdog stressed that it is *essential* that the final rule contain strong privacy protections for consumers, beyond those contained in the Commission's proposal. Consumer Watchdog noted the enormous opportunity for abuse of consumers' privacy by data collectors. Google, for example, has already amassed a massive profile of the online activities, behavior and habits of virtually every American, which it in turn sells to advertisers and others. The company seeks to add to its database by monitoring (and later marketing) consumers' private viewing and other activities via its own set top box.

The Commission's proposal would require that cable and satellite television service providers condition access to their programming by third party set top box manufacturers on certification by those manufacturers that they will comply at all times with the same privacy protections that govern the cable and satellite firms. With respect to this approach, Consumer Watchdog strongly supported the comment of the Federal Trade Commission,¹ which proposes that the FCC require third-party set-top box manufacturers to make that certification directly to consumers, i.e., require that such manufacturers issue a "consumer facing" commitment to honor the privacy

¹ Jessica Rich, Federal Trade Commission Comments, April 22
<http://apps.fcc.gov/ecfs/comment/view?id=60001656155>

requirements. By mandating that such a commitment be made to consumers, the rule would empower the FTC to exercise its Section 5 enforcement authority should a manufacturer violate the privacy requirements.

Consumer Watchdog also urged the Commission to utilize its authority to *directly* regulate third-party set-top devices under Section 629 of the Communications Act (47 USC § 629), which directs the Commission to adopt regulations to “assure” the “availability” of set top technology from “unaffiliated” manufacturers. The Commission can easily confirm, through this public inquiry, that failure to require compliance with currently privacy protections will hinder the growth of an independent market for set top boxes and thus frustrate the goals set forth in section 629. Consumer Watchdog noted that the analysis contained in comments submitted by Public Knowledge are in accord with this view of the Commission’s authority.² Under Section 629, the FCC would also have enforcement jurisdiction. When it comes to protecting privacy, the more cops on the beat, the better.

Consumer Watchdog also referred to the Commission’s authority under Section 706 of the Telecommunications Act of 1996 (47 U.S.C. § 1302(a), (b)), noting that it had petitioned the Commission in June 2015,³ seeking a rulemaking that would have required edge providers to honor do-not-track requests. Consumer Watchdog said that Section 706 provides the Commission with authority to regulate uses of third-party set-top boxes *not related* to satellite or cable television programming. It also urged the Commission to give further consideration to exercising its Section 706 authority regarding edge providers in the near future in order to extend the penumbra of privacy protections to all consumers utilizing advanced technologies, via television and otherwise.

Consumer Watchdog also discussed Section 631 of the Cable Communications Policy Act of 1984, suggesting that the Commission investigate current practices by cable and satellite television providers that defeat the requirement that consumers be able to exercise meaningful consent before their personal data is collected and divulged. It said that a report by the Center for Digital Democracy offered valuable insight into how much consumer information is being collected and misused.⁴

Finally there was discussion about copyright issues concerning set-top boxes, particularly regarding whether third parties could alter or reconfigure programming provided by an MVPD. Under the Commission’s proposed rules, any third-party set-top box that facilitated or enabled such actions would violate FCC rules requiring that all firms maintain and protect the integrity of the transmission of programming. Under the FCC’s proposal, any manufacturer violating those rules would be denied access to the MVPD’s content. Consumer Watchdog stated that that

² Public Knowledge Comments, April 22, 2016, <http://apps.fcc.gov/ecfs/comment/view?id=60001657351>

³ Consumer Watchdog petition for rule making, June 15, 2015, <http://www.consumerwatchdog.org/resources/fccdnptetiton061515.pdf>

⁴ Center for Digital Democracy, “Big Data is Watching: Growing Digital Data Surveillance of Consumers by ISPs and Other Leading Video Providers,” 23 Mar. 2016, <https://www.democraticmedia.org/article/big-data-watching-growing-digital-data-surveillance-consumers-isps-and-other-leading-video>

proposal would establish a disincentive to such misconduct, but that the Commission should consider further preemptive protections and harsher penalties.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (310) 392-7041.

Respectfully submitted,

/s/ John M. Simpson,
Privacy Project Director