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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

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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.

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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
Ranking Member

CC: The Honorable John Thune, Chairman