

## **FCC CHAIRMAN PROPOSAL TO UNLOCK THE SET-TOP BOX: CREATING CHOICE & INNOVATION**

*Ninety-nine percent of pay-TV subscribers are chained to their set-top boxes because cable and satellite operators have locked up the market. Lack of competition has meant few choices and high prices for consumers – on average, \$231 in rental fees annually for the average American household. Altogether, U.S. consumers spend \$20 billion a year to lease these devices. Since 1994, according to a recent analysis, the cost of cable set-top boxes has risen 185 percent while the cost of computers, televisions and mobile phones has dropped by 90 percent. Congress recognized the importance of a competitive marketplace and directed the Commission to adopt rules that will ensure consumers will be able to use the device they prefer for accessing programming they've paid for.*

*Today, FCC Chairman Wheeler is circulating for a vote a Notice of Proposed Rulemaking (NPRM) that would tear down anti-competitive barriers and pave the way for software, devices and other innovative solutions to compete with the set-top boxes that a majority of consumers must lease today. The proposal will be voted by the full Commission on February 18, 2016. This proposal is about one thing: consumer choice. Consumers should have options created by competition. The Chairman's proposal will let innovators create and then let consumers choose.*

### **The Proposal**

The Chairman's proposal will create a framework for providing innovators, device manufacturers and app developers the information they need to develop new technologies. Consumers should be able to choose how they access the Multichannel Video Programming Distributor's (MVPDs) – cable, satellite or telco companies – video services to which they subscribe. For example, consumers should be able to have the choice of accessing programming through the MVPD-provided interface on a pay-TV set-top box or app, or through devices such as a tablet or smart TV using a competitive app or software. MVPDs and competitors should be able to differentiate themselves and compete based on the experience they offer users, including the quality of the user interface and additional features like suggested content, integration with home entertainment systems, caller ID and future innovations.

To ensure a competitive marketplace as required by the Telecommunications Act of 1996, the proposal identifies three core information streams that must pass from MVPDs to the creators of competitive devices or apps:

- **Service discovery:** Information about what programming is available to the consumer, such as the channel listing and video-on-demand lineup, and what is on those channels.
- **Entitlements:** Information about what a device is allowed to do with content, such as recording.
- **Content delivery:** The video programming itself.

### **Standards: Promoting interoperability and removing barriers to innovation**

- Instead of mandating a government-specific standard for these three information flows, which might impede innovation, the Chairman's proposal recommends that they be made available to the creators of competitive devices and navigation solutions using any published, transparent format that conforms to specifications set by an independent, open standards body.
- The proposal identifies five characteristics that must be met by an independent standards body: openness in membership, a balance of interests, due process, an appeals process, and consensus.

### **Security: Preventing theft and misuse**

As technology has evolved, so has the market's ability to prevent theft and misuse. Smart TVs, for example, currently ensure the same security for copyrighted material as the traditional set-top box. The proposal provides MVPDs flexibility in the security systems they use while putting in place some constraints to ensure that they do not use their security choices for anti-competitive purposes.

- The proposal does not propose a single mandated security system, but rather simply requires MVPDs to offer at least one content protection system that is openly licensed on reasonable and non-discriminatory terms. This will allow each MVPD to determine the content protection systems it deems sufficient to prevent theft and misuse, and will not impede the introduction of new content protection systems.

### **Programming: Lifting Up Independent and Minority Content**

When consumers are able to access all their content – from MVPD programming to streaming video – in a single place, they will be better able to find and enjoy the programming most relevant to them. When it's easier for content creators to reach consumers, we would expect this to lead to more and better programming accessed more easily, especially minority, independent, and international programming.

### **Copyright Protection and Distribution: Honoring the sanctity of contracts**

The proposal maintains important aspects of the traditional video distribution regime, such as protections against copyright infringement and theft of service. The proposal is clear – the Commission will not interfere with the business relationships between MVPDs and their content providers or between MVPDs and their customers. The proposal does not change a company's ability to package and price its programming to its subscribers.

- **Maintains strong protections for copyrighted content:** Copyrights and licensing agreements will remain in place, and copyrighted content will be protected from piracy much as it is protected under the existing CableCARD regime. Similarly, the proposal honors the limits on the use of programming agreed upon between cable companies and content providers (e.g., ability to record content).
- **Existing content distribution deals, licensing terms, and conditions will remain unchanged.** These deals made between MVPDs and content providers are not affected by this proposal. MVPDs retain their customers and will still get a monthly fee for the subscription service that the MVPD provides. The only change the FCC is proposing is to allow consumers alternative means of accessing the content they pay for.

### **Consumer Protection: Emergency Alerts, Privacy and Advertising**

The proposal seeks to ensure that important consumer protections like emergency alerting, privacy, and children's advertising restrictions will apply.

- **EAS:** The emergency alerting system is built to be technology neutral so that any entity – from an MVPD to an ISP to an online streaming service – can provide EAS alerts. The proposal notes that under the CableCARD regime competitive devices are required to pass through EAS alerts, and it proposes to require the same here.
- **Privacy:** The FCC has a long history of protecting the privacy of consumers of communications services. Device manufacturers and software developers already must comply with applicable state and federal laws regarding consumer privacy. The proposal seeks to ensure that the privacy protections that exist today will also apply when alternative navigation devices are used.

- **Advertising restrictions:** The proposal seeks to ensure that restrictions on children’s advertising will apply, whether a consumer uses an MVPD-supplied set-top box or a competitive alternative.

### **The Bottom-Line for Consumers**

- **More Choice:** More choices for innovative ways to access the programming they pay for on the device or app they prefer. Just as consumers shop at retail for a smart phone today, and they can choose to purchase a wireless router instead of leasing one from their provider, consumers will have the same choice to use a competitive device with a third-party app if they choose.
- **Greater Flexibility:** No one will be required to purchase a new device to continue receiving the services they do today. Consumers will be free to retain the setup they have today.
- **Increased Innovation:** The proposal paves the way for user-friendly interfaces that integrate pay-TV and streaming content on one device.
- **More Competition:** A competitive marketplace could drive down costs. On both landline and wireless telephone and data networks, device prices decreased after consumers were allowed to choose how they connect to the networks they pay for – the FCC’s Carterfone and Open Access decisions, respectively – because closed markets were opened and competition increased.
- **Better Prices:** Notably, the average charge for a set-top box is \$7.43 per month, an increase of 185 percent since 1994. This is over three times the increase in the Consumer Price Index (CPI) over that same period. With more choices on the marketplace, consumers could expect to pay less to own the device with the software of their choice rather than being forced to lease costly set-top boxes from their service providers.