

Congress of the United States
Washington, DC 20515

114

February 16, 2016

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler and Commissioners of the FCC,

We write to express our concerns with the Chairman's recent proposal on video devices and competition, which we understand the Commission will consider at its February 18, 2016, meeting. The proposal's potential implications on the marketplace for audio-visual content and copyrighted material lie squarely within Judiciary Committee's jurisdiction, and as current and former Members of the Committee, we plan to monitor its progress closely. We write today because we are concerned about the implications of this proposal for the nearly two million Americans who work to produce America's film and television content – particularly independent creators and those creating minority-focused and religious programming. Regulation in this space has the potential to upend ties between creators, channel providers, and cable companies – and jeopardize the rights of creators to negotiate directly with those selling their work to consumers.

The market for video and television programming is one of the most competitive and innovative sectors of the creative economy. Today's marketplace has undergone a rapid evolution to meet consumer demands and viewer preferences; viewers can subscribe to web-based streaming services like Netflix, Hulu, Amazon Video, Sling TV, and Sony Vue, as well as new streaming apps from individual programmers such as HBO Now, CBS All Access, and MLB Gameday. Consumers can also purchase a wide array of connected devices, including retail boxes like Roku, Apple TV, and Google Chromecast. With each new day, new technologies enter the marketplace, promoting competition and choice.

As Chairman Wheeler recently noted, “American consumers enjoy unprecedented choice in how they view entertainment, news and sports programming.” This innovation has fueled more high-quality, diverse, and creative content for viewers than anyone could have predicted just a decade ago. All of these legitimate services pay the creators and copyright owners who produce this content and have built their businesses around paying artists for their work.

We are concerned, however, that the Commissioner’s new proposal could undermine this creative ecosystem by enabling companies to make money distributing content without negotiating with creators – an approach that conflicts with the copyright law established by Congress and the very principles enshrined in Article I, Section 8, Clause 8 of the Constitution. Regulation in this space has the potential to drastically weaken the economics of the legitimate businesses that have fueled so much of the innovation and consumer choice that has taken place during the last decade.

We also write to express concern over the proposal’s potentially adverse impacts on independent, minority, and religious content creators. A proposal, for example, that would permit third parties to dismantle rigorously negotiated channel placement and advertising arrangements could disproportionately affect the smaller players in this marketplace. It could do so by leaving this programming out of new packages or relegating their channels to second-tier locations – with the ultimate effect of decreasing the value of their content to buyers and advertisers. As we are sure you agree, small and diverse voices are critical to the health and vitality of our media and culture – and FCC regulation should never be used to create additional hurdles to their success.

We respectfully request additional information about this proposal. Specifically:

1. How will the upcoming proceeding probe how to ensure that unlicensed copies of creative works are not promoted to viewers?
2. How will the proposal ensure that these new systems are free of malware or other cybersecurity risks?
3. How will you ensure that independent, minority-focused, and religious programming networks are not adversely impacted with regard to channel-positioning agreements?
4. How will the proposal ensure that third parties negotiate directly with content creators before they use the content for their own commercial purposes?
5. Will third parties be required to compensate content creators for any fees they collect for their new services? How will the advertising, for example, that third-parties might sell around content offerings flow back to rights holders and into the royalty-, pension- and benefit plans of the film and television workforce?

6. How will the NPRM probe how to extend consumer privacy and safety protections to third-party resellers? From the perspective of the individual television viewer, will the third party services be “seamless” and indistinguishable from an MVPD’s services? What guarantees will consumers have that third-parties will protect their privacy and safety just as MVPDs are required to do?

We ask that, prior to the issuance of or a vote on any Notice of Proposed Rulemaking on these issues, your office provides us with written responses to these questions. Thank you for your attention to these critical matters. Please contact Jennifer.Choudhry@mail.house.gov (Collins) or Linda.Shim@mail.house.gov (Chu) if you have any further questions.

Sincerely,



Doug Collins
Member of Congress



Judy Chu
Member of Congress



Lamar Smith
Member of Congress



Adam Schiff
Member of Congress



Mimi Walters
Member of Congress