

United States Senate

WASHINGTON, DC 20510-7020

June 14, 2016

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

Dear Chairman Wheeler:

I appreciate your effort to expand consumers' choice of set-top boxes by improving competition in video navigation systems through your proposal to "unlock the set-top box." I am concerned that your proposal does not contain mechanisms to ensure that third-party set-top box providers will be required to adequately protect programming content or consumer privacy. I urge you to give careful consideration to these possible consequences and ensure that they are resolved before proceeding with your proposal.

Programmers do not rely on copyright laws alone to protect their content. Rather, the complex licensing and contractual arrangements they negotiate are the means through which they exercise their legal copyright protections. As drafted, the FCC's proposal would not extend these licensing or contractual arrangements to third-party box providers, and it is unclear what, if any, duty such providers would have to protect programming content or otherwise comply with the licensing agreements. It also is unclear whether programmers would have any ability to enforce these agreements directly with the third-party providers. As a result, programmers may be forced to rely primarily on costly and lengthy litigation to protect their content. As we have seen in other contexts, relying on litigation as a sole remedy for copyright infringement creates an environment where piracy may flourish and the ensuing damage cannot be undone.

Moreover, it has become increasingly clear that for third-party box providers, the real value is not in producing or selling the box but in the data that the box will collect. Consumers will be handing over a significant amount of information about their viewing habits and, as the television interface is used more expansively, about themselves. While the FCC has jurisdiction to regulate how multichannel video programming distributors (MVPDs) use the consumer data they collect, the FCC has no similar jurisdiction over third-party box providers. As a result, a consumer using a third-party set-top box could have minimal recourse to ensure the strong privacy protections that the FCC currently obligates for MVPDs, leaving the FCC in the position of mandating privacy protections that it has no jurisdiction to enforce and leaving consumers without any meaningful remedy.

As you continue to pursue greater competition in the set-top box marketplace, I ask you to closely review the impact of this proposal on all affected parties and resolve these issues as you move forward.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Harry Reid". The signature is written in a cursive, flowing style with a large initial "H".

HARRY REID
Democratic Leader
United States Senate