

HENRY C. "HANK" JOHNSON, JR.
4TH DISTRICT, GEORGIA

COMMITTEES:
JUDICIARY
ARMED SERVICES

355
Congress of the United States
House of Representatives
Washington, DC 20515-1004

SUBCOMMITTEES:
REGULATORY REFORM, COMMERCIAL,
AND ANTITRUST LAW
COURTS, INTELLECTUAL PROPERTY,
AND THE INTERNET
SEAPOWER AND PROJECTION FORCES
INTELLIGENCE, EMERGING THREATS
AND CAPABILITIES
STRATEGIC FORCES

May 6, 2016

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

Re: Expanding Consumers' Video Navigation Choices, MB Docket No. 16-42

Dear Chairman Wheeler:

As the Ranking Member of the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, I write to applaud the Commission's decision to increase competition and expand consumer choice pursuant to its authority under section 629 of the Communications Act. The goals of the rule – to ensure a competitive manufacturing and retail marketplace for multichannel video programming distributor (MVPD)-provided devices – are grounded in smart and adaptive competition policy.

As you proceed with this rulemaking, I encourage you to adopt a strong, flexible rule that incorporates the Commission's longstanding authority to promote diverse media programming while also preserving the strong copyright protections that are foundational to our Nation's innovation and creativity economy.

As the Council of Economic Advisors recently noted, promoting and expanding competition in all markets benefits consumers through greater innovation, better products, and lower prices. This view is now a core pillar of the Administration's policy.¹ Through an Executive Order, the Administration has called on Executive Branch agencies to conduct a searching review of existing policies and formulate ideas and potential regulatory actions to promote competition across all sectors of our Nation's economy.² This Order reflects similar sentiments that I have expressed in hearings before the Judiciary Committee.³ Indeed, smart regulatory policy is the

¹ COUNCIL OF ECONOMIC ADVISERS, EXEC. OFFICE OF THE PRESIDENT, BENEFITS OF COMPETITION AND INDICATORS OF MARKET POWER 1-2 (2016),

https://www.whitehouse.gov/sites/default/files/page/files/20160414_cea_competition_issue_brief.pdf.

² Exec. Order No. 13,725, 81 C.F.R. § 76 (2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-04-20/pdf/2016-09346.pdf>.

³ See, e.g., *The State of Competition in the Health Care Marketplace: The Patient Protection and Affordable Care Act's Impact on Competition: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Administrative Law of the H. Comm. on the Judiciary*, 114th Cong. 2 (2015) (statement of Rep. Henry C. "Hank" Johnson (D-GA), Subcomm. Ranking Member).

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appropriate remedy where our antitrust laws or competition policies have failed to provide for competitive markets.⁴

However, as with any major rulemaking endeavor, there are concerns as to its potential impact on various industries and consumers.

One of the leading concerns is that the proposed rule may undermine the production and delivery of copyrighted content.⁵ Licensing agreements are one of the many copyright tools that play a critical role in protecting copyright owners, guarding against pirated content, promoting creativity, and limiting unnecessary content manipulation. I firmly believe that strong copyright protections spur both creativity and confidence in new products and services,⁶ and it also provides high-quality employment opportunities. For example, in my home state of Georgia, twenty-one movies and fifty-two television series were filmed in 2014. This industry directly employed more than 24,000 people with approximately \$1.68 billion in wages in Georgia alone.⁷ These workers' livelihoods depend heavily upon the economic incentives provided by copyright protections for their salaries, health, and pension plans. Strong copyright protections are the backbone of innovation and creativity and also support the public good.⁸ With this in mind, I urge the Commission to adopt a final rule that will not disrupt the licensing agreements of the works of copyright owners and that will protect copyright owners & consumers from pirated content.

There are also concerns as to whether the Commission's proposed rule will provide for an increasingly diverse media market or, conversely, rollback industry efforts to diversify the market.⁹ Diversity in media ownership and delivery is crucial to enhancing competition and benefitting consumers.¹⁰ The Commission has the authority to study, identify, and eliminate barriers to the marketplace for minorities and women as part of its broader mission to promote competition.¹¹ I have previously called upon the Commission to facilitate ownership in every

⁴ *Examining Consolidation in the Health Insurance Industry and its Impact on Consumers: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 114th Cong. 6 (2015) (statement of George Slover, Senior Policy Counsel, Consumer Union).

⁵ See, e.g., Letter from Rep. Doug Collins (R-Ga.), et al., to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, et al. (Feb. 16, 2016), <http://src.bna.com/cFZ>.

⁶ *Id.* at 50.

⁷ MOTION PICTURES ASS'N OF AMERICA, *Creating Jobs*, <http://www.mpa.org/creating-jobs/>.

⁸ *Unlocking Consumer Choice and Wireless Competition Act*, Hearing Before the Subcomm. on Courts, Intellectual Property, and the Internet of the H. Comm. on the Judiciary 113th Cong. 49–50 (2013) (statement of Rep. Henry C. "Hank" Johnson (D-GA), Subcomm. Ranking Member), <https://judiciary.house.gov/wp-content/uploads/2016/02/113-27-81346.pdf>

⁹ Letter from Marc Morial, President and Chief Executive Officer, National Urban League, et al., to the Honorable Tom Wheeler, Chairman, Federal Communications Commission (Mar. 21, 2016), <http://nulwb.iamempowered.com/content/civil-rights-organizations-set-top-box-diversity-concerns>.

¹⁰ Letter from Rep. Henry C. "Hank" Johnson, Jr., to the Honorable Tom Wheeler, Chairman, Federal Communications Commission, (Sept. 8, 2014), http://hankjohnson.house.gov/sites/hankjohnson.house.gov/files/documents/2014_FCC_letter.pdf.

¹¹ 47 U.S.C. § 257(b) (2016) ("[T]he Commission shall seek to promote the policies and purposes of this chapter

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area of media and telecommunications through all of its administrative tools.¹² I strongly encourage the Commission to do so here and to ensure consumers continue to have access to a diverse set of programming despite the delivery mechanism.

I applaud your leadership at the Commission and respectfully encourage that you study and accommodate these concerns when adopting a final rule. If you have any questions, please contact my Legislative Director Arya Hariharan at 202.225.1605 or arya.hariharan@mail.house.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hank Johnson", written in a cursive style.

Henry C. "Hank" Johnson, Jr.
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary

cc:

The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Ajit Pai, Commissioner, Federal Communications Commission
The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission

favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”).

¹² See, e.g., In the Matter of Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules, July 23, 2013, <http://www.fcc.gov/document/commission-grants-grain-management-waiver-section-12110b3>.