



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

May 23, 2016

The Honorable Juan C. Vargas  
U.S. House of Representatives  
1605 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Vargas:

Thank you for your letter regarding the Commission's proposal for better fostering competition in the set-top box and navigation app marketplace. One of the central issues in this proceeding is how competition can support and promote diverse and independent voices in our media landscape. Your engagement and leadership in our proceeding is invaluable and helps further the public discourse on this important issue.

This February the Commission put out for public comment a proposal that would fulfill the statutory requirement of competitive choice for consumers. This action opened a fact-finding dialog to build a record upon which to base any final decision.

The notice-and-comment process, as well as subsequent *ex parte* communications, will constitute the most complete and thorough examination of this issue ever undertaken or contemplated. Already, the record contains over 104,000 comments representing a broad range of viewpoints and data. This includes both theoretical economic studies, as well as real-life experiences.

In order to provide guidance to commenters, we specifically requested information from all sides on the issues you raise in your letter – the impact on all parties in the video marketplace, the impact on content diversity and intellectual property, and the impact on consumer privacy – as well as many other topics.

As you know, the first round of comments on this proposal were filed last month. Responses are due today. However, as with all of our proceedings, we will continue accepting comments, studies and observations for the record well after our formal comment period closes.

And, of course, every single one of these pages of comments will be available online for public scrutiny and comment. The ultimate record will no doubt reach multiple of hundreds of thousands of pages of information, which is why I am confident it will be the most extensive examination of the subject ever undertaken. As always, your participation in the record is appreciated.

As the video ecosystem evolves it should be creating more opportunities for independent and minority-owned programming. By using the set top box as a way to limit program carriage,

however, MVPDs constrict opportunities. While the most popular MVPD packages contain 200 to 500 channels, there are currently only two Hispanic-owned and four African-American owned networks. Not only is there limited carriage, but there is also limited financial support. While a channel like ESPN is paid over \$7.00 per month per subscriber by MVPDs, minority channels receive pennies. What's more, minority networks are often placed on premium tiers requiring an additional payment from the consumer which also limits potential advertising revenues by limiting potential audience reach.

Thus far, our record is replete with comments from minority programmers who have been locked out from carriage on traditional cable networks.<sup>3</sup> For the sake of these entrepreneurs and the audiences they hope to reach, we must move forward.

Our proposal would provide minority and independent programmers with an equal opportunity to reach their audiences. The proposal would facilitate competition in interfaces, search functions, and integration of programming sources, all of which would provide programmers with a greater ability to find audiences and consumers with a greater ability to access independent and minority programming. For those few independent and minority-owned programmers who already have carriage on the traditional pay-TV system, nothing in the Commission's proposal disrupts existing contractual relationships between programmers and MVPDs.

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<sup>3</sup> See, e.g., New England Broadband Comments, MB Docket Nos. 16-42, 97-80, at 2 (Apr. 22, 2016) ("On behalf of the dream that was the Black Education Network and on behalf of all of the other generations of quality programming strangled to demise by a merciless cable system, I enthusiastically applaud the FCC's efforts to unlock the box!"); GFNTV Comments, MB Docket Nos. 16-42, 16-41, 97-80, at 2 (Apr. 22, 2016) ("Fortunately, the FCC has the ability to create this opportunity for independent and minority programmers -- but it must act soon before cable operators can set the only gatekeepers to this online video market. We need a path to greater distribution of this content and the way to do this is to have a competitive set top box or no set top box system. Online video minority programmers will not be able to grow and thrive with the current system."); BLQBOX Comments, MB Docket Nos. 16-42, 16-41, 97-80, at 1-2 (Apr. 22, 2016) ("So why should minorities—or anyone else— care about this fight? Because as a battle wages on #OscarsSoWhite, there are hundreds of thousands of hours of quality programming—documentaries, shorts, lifestyle, indie movies, global movies—that don't fit well within the traditional ad-based TV model and will never make it onto broadcast, cable or even Netflix and Amazon. And for those content creators and the entrepreneurs who want to distribute that work, the only viable market is direct to consumers in the streaming world. But as long as the streaming world is locked out from the mainstream, many audiences will never find them and they will not succeed. Set-top box innovation would open that system."); The Townsend Group Comments, MB Docket Nos. 16-42, 16-41, 97-90, at 2 (Apr. 22, 2016) ("Unless we eliminate the gatekeeper system, we will forever be just talking about how to improve markets for independent and diverse programmers. The proposed Unlock the Box regulations significantly lower barriers to market entry for diverse and independent programmers. In addition, the proposal represents a positive evolution in our vide-programming ecosystem bringing us closer to the non-gatekeeper system we deserve. I urge the FCC to move deliberately implementing this proposal and finally establishing a cable marketplace that lives up to its potential."); UNIFYme.TV Comments, MB Docket Nos. 16-42, 16-41, 97-80, at 2 (Apr. 22, 2016) ("Unlock the Box gives audiences easy access to diverse programming from streaming services like UNIFY and other content providers who have been shutout from cable outlets. Cable and satellite stations have been gatekeepers who have invariably dismissed so much rich content and deprived audiences from experiences of old and/or new content.").

You have been thoughtful in identifying the issues that are important to you in this proceeding. I owe you the same courtesy insofar as responding to some of the issues that have been surrounding this topic:

- Debra Lee, CEO of BET, recently stated that our proposal would give away “BET programming for free.” I can assure you nothing in the proposal would require anyone to give away their content for free. If there is specific language you or Ms. Lee would like to suggest to make that clear, we are interested in seeing this language.
- Alfred Liggins, CEO of TV One, commented: “The programming market today is working for content providers seeking to reach consumers, including minority content providers.” Comments in the record take the opposite view. For instance, GFNTV submitted comments that “minority programmers will not be able to grow and thrive with the current system.”<sup>4</sup> Ultimately, the record being developed will answer this question.
- There have also been continuing allegations about copyright protections. If copyright can be protected on Smart TVs, iPads and iPhones, there is little reason to expect it cannot similarly be protected on a third party set-top-box or app. We actually incorporated the industry’s CableCARD license protections into the proposal since that has been so successful in protecting content for the last 20 years. Again, if there is other language necessary to ensure copyright protections, we are interested in seeing such language.

Developing a robust record addressing these issues will ultimately benefit consumers. Ninety-nine percent of today’s pay TV subscribers lease their set top box. This lack of competition has meant few choices and high prices for consumers—on average, \$231 in rental fees annually for the American household. Even worse for consumers, these rental fees continue to increase. One recent analysis found that the cost of cable set-top boxes has risen 185 percent since 1994 while the cost of computers, televisions and mobile phones has dropped by 90 percent during that same time period.

The record we are developing will help us address the outstanding issues you raise while delivering American consumers meaningful choice, and opening new opportunities for minority programmers.

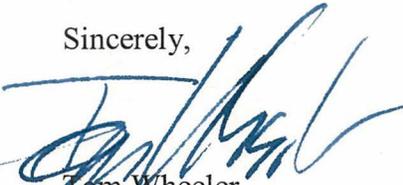
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<sup>4</sup> GFNTV Comments, MB Docket Nos. 16-42, 16-41, 97-80, at 2 (Apr. 22, 2016)

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Sincerely,



Tom Wheeler



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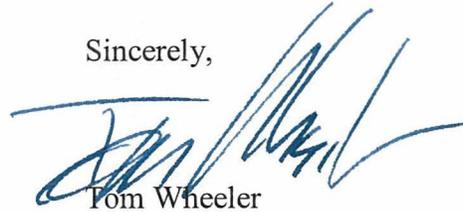
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A handwritten signature in blue ink, appearing to read "Tom Wheeler", written over a horizontal line.

Tom Wheeler