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**United States Senate**  
WASHINGTON, DC 20510-4502

May 26, 2016

The Honorable Thomas E. Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Wheeler:

As a longtime supporter of the need for meaningful competition in the pay-television set-top box marketplace, I applaud the Commission for beginning a discussion of how best to do so in today's environment. While a lot has changed in the 20 years since the enactment of the 1996 Telecommunications Act, one thing has not: consumers should have meaningful choice in television navigation systems. Unfortunately, despite some improvements, that goal has not yet been fully achieved.

For that reason, I have been following your proposal to "unlock the box" with great interest. The proposed rules you have put forward provide a meaningful opportunity to increase consumer choice, but important clarifications are needed to ensure that consumers and programmers are protected. In my view, any proposal that the Commission ultimately adopts must be guided by the principle that the same rights and obligations that apply to multichannel video programming distributors (MVPDs) in this space must also extend to third-party navigation systems, regardless of whether those rights and obligations flow from statutory, regulatory, or contractual sources.

As the Administration acknowledged last month, the programming choices made by MVPDs "reflect investment decisions and market assessments" and the "constellations of licensing arrangements between MVPDs and program producers." A third-party navigation system should not be able to do more with the content the MVPD is providing it with than the MVPD itself is able to do under contractual agreements made with programmers, since doing so could have a direct impact on the ability to produce new and diverse programming. While you have repeatedly said that copyright law will not be impacted by the proposal, reliance on existing copyright protections is insufficient.

The principle that the same rights and obligations should extend to third-party navigation systems should also inform the Commission's treatment of consumer privacy protections. The same federal privacy protections and enforcement mechanisms that apply to proprietary set-top boxes today should apply to third-party navigation systems as well. Consumers should not be forced to make the false choice between proprietary set-top boxes and applications that may not meet their needs, or competitive options that do but come without all the tools available to protect and enforce their privacy rights. I share the Administration's concern that the proposed

The Honorable Thomas E. Wheeler  
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Page 2 of 2

licensing process to address consumer privacy “leaves important questions to be addressed.” The patchwork of state privacy laws and Federal Trade Commission enforcement alone are not adequate protections and would leave consumers guessing about which set of laws apply depending on where they live and from whom they purchase a navigation system.

It is as clear today as it was 20 years ago that consumers want the option to break free from proprietary set-top boxes. Your proposal is an important first step in the discussion of how we do so in the 21<sup>st</sup> century, but it must not leave consumers and programmers with fewer rights than they have today. I look forward to Commission action that meets all of these important goals.

Sincerely,



PATRICK LEAHY  
United States Senator

cc: The Honorable Mignon Clyburn, FCC Commissioner  
The Honorable Jessica Rosenworcel, FCC Commissioner  
The Honorable Ajit Pai, FCC Commissioner  
The Honorable Michael O'Reilly, FCC Commissioner