Public Knowledge

September 21, 2016

The Honorable John Thune
Chairman
Committee on Commerce Science and Transportation
254 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Greg Walden
Chairman
Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Bob Goodlatte
Chairman
Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Thune, Grassley, Walden and Goodlatte:

After years of American consumers being overcharged by a cable monopoly on set top boxes, its time to live up to the Congressional mandate to give consumers the choice of a competitive box or other device. The only way to eliminate the outrageous $20 billion in annual fees on boxes is to break open this market and adopt the newest FCC proposal to "unlock the box".

Contrary to the claims of Hollywood and cable monopolies, the FCC's apps proposal will promote consumer choice while protecting copyright. Initially proposed by the cable industry, the apps proposal is a straightforward implementation of the law, which directs the FCC to assure that consumers can access their cable subscriptions on the devices of their choice. This approach will enhance competitiveness, promote programming diversity, and enable innovation, all while saving consumers billions. Yet some programmers seem to misunderstand how an apps-based approach would work and are seemingly arguing that, if the FCC follows its duties under the Communications Act, it somehow runs afoul of copyright or control law. This position is legally frivolous, and ignores the details of the Chairman's proposal.

To ensure competition, all programming made available via a cable box must be made available via cable apps. This principle of "parity" ensures consumers can choose any video device they like and still get the content they paid for. Cable companies are required to follow communications law, whether with respect to choice of competitive devices, privacy and accessibility rules. Communications law requirements have never been seen as conflicting with copyright or as constituting a compulsory license. Ultimately, copyright holders retain complete discretion as to who to distribute their programming through, and under what lawful terms.

Opposition to device competition and consumer choice appears to imagine a world that has never before existed, and which copyright law does not allow: a world where big cable companies and Hollywood studios can use whatever means at their disposal to control where consumers watch the content they've paid for. Right now, consumers can use television sets, mobile devices, stereo equipment, and other pieces of personal electronics to enjoy the copyrighted content they pay for,

all enabled by open standards and free competition. The locked-down, controlled set-top box is the exception to this rule, not the norm. But some of the arguments that have been levied in opposition to the Chairman's plan, taken seriously, imply that the rest of the market should become more like the set-top box, rather than the set-top box becoming more open. Applying such an inaccurate interpretation of copyrights would give content creators absolute control over what TVs consumers buy, what radios music fans can purchase, and computers you surf the internet with.

The FCC's apps-based approach already gives programmers and cable more, not less control over how programming is distributed to consumers than the current laws and rules. An apps approach allows cable companies to preserve their own user interface, and would require that competitive device and platform vendors enter enforceable agreements with cable that control exactly how they interact with the cable app. The most FCC "review" of these agreements that would be necessary would simply ensure nondiscriminatory treatment of programmers and device and platform vendors.

Great programming is why people subscribe to cable and other pay-TV services. A competitive device marketplace, enabled by apps, could reverse the trend of cord-cutting, especially among younger viewers, increasing revenue for cable and programmers alike. But maintaining a virtual monopoly on set-top boxes forces all consumers to continue to pay an average of $231 a year on a device worth a fraction of that cost. A proper view of the scope of copyright and consumer freedoms will benefit, not inhibit, the video marketplace. Consumers would much rather choose the device they use for video and use the savings on more diverse content.

Cable and its allies have delayed this choice for consumers for 20 years, since Congress mandated it in the Telecommunications Act of 1996. They continue to come up with misleading concerns to continue their multibillion-dollar monopoly. Consumers should not be overcharged any longer. I call on Congress to support FCC action to unlock the box as soon as possible.

Sincerely,

Gene Kimmelman
*President and CEO*
PUBLIC KNOWLEDGE

CC: Ranking Member Bill Nelson
Ranking Member Patrick Leahy
Ranking Member Frank Pallone
Ranking Member John Conyers