

February 17, 2016

Sen. John Thune, Chairman
Sen. Bill Nelson, Ranking Member
Senate Committee on Commerce, Science, & Transportation
512 Dirksen Senate Office Building
Washington, DC 20510

Rep. Fred Upton, Chairman
Rep. Frank Pallone, Ranking Member
House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Thune, Ranking Member Nelson, Chairman Upton, and Ranking Member Pallone,

As independent programmers and content creators, we're proud to be a part of the most vibrant, diverse period in the history of American television. Where viewers once had only three broadcast networks to choose from, today's television fans enjoy an almost unimaginable number of choices from broadcast networks, satellite and cable TV providers, an exploding number of streaming services and devices, and web-based digital channels.

The programming that we produce and our audiences enjoy does not come free. Passion and creativity alone won't keep the lights on; if the revenue we generate from our work isn't sufficient to cover the cost of producing it, our businesses won't survive very long and our audiences' viewing options will shrink. That's why true media diversity requires a level playing field where independent voices like ours can negotiate with distributors and advertisers to build lasting, sustainable businesses.

The set-top box proposal Chairman Tom Wheeler plans to introduce tomorrow at the Federal Communications Commission would fundamentally undermine this level playing field, stacking the deck against creators by giving tech companies a license to repackage and profit from our work without any need to negotiate, much less pay, for the rights. We're grateful to the Members of Congress from both parties who have voiced serious concerns about this proposal, and we urge your Committees to fully consider the devastating and lasting harm this ill-conceived proposal would have on the diversity of independent choices available to American television viewers.

This proposal shares the same fundamental flaws as the "AllVid" plan the Commission wisely chose to shelve in 2010. Third party device-makers will be allowed to unbundle licensed video streams from TV providers, repackage these shows and movies into their own devices and services, and generate revenue from advertising and data collection – without having to negotiate with us for licensing rights or pay any licensing fees.

Meanwhile, these device makers will be free to ignore the hard-fought terms of licensing contracts we have negotiated with TV distributors to govern channel placement, advertising restrictions, digital rights and much else. Box makers would be free to shuffle channels or replace traditional lineups with opaque search algorithms, becoming a gatekeeper between independent networks and our audience.

It's not hard to understand why tech giants like Google are lobbying for this rule. Right now, if they want to incorporate our programming into YouTube or other video products, they must negotiate for the rights and pay fair market licensing fees. If this rule passes, Google will instead be able to strip-mine our creative work for free, while collecting valuable data on users' viewing history and monetizing it through ads. The Commission should not be in the business of placing its thumb on the scale by giving billions of dollars of business value to tech companies at the expense of independent programmers.

Chairman Wheeler has stated repeatedly in recent weeks that this rule wouldn't diminish the licensing fees that programmers earn from carriage agreements. That's simply not the case. As Google exploits this government handout to skim ad revenue out of the TV ecosystem, the value of our content to distributors will shrink. That means that the next time we sit down to negotiate a carriage deal, the revenue we'll be able to generate from licensing fees will be diminished. The value of our programming will quickly become pegged to price that the FCC has allowed Google to set for it: zero.

Some advocates for this set-top box proposal have suggested that it would benefit independent content creators, and particularly those focused on serving minority audiences, by allowing streaming services and digital-only channels to more easily reach their audience. These arguments are deeply flawed. Digital channels and streaming services are already widely accessible today to anyone with a computer, smartphone, tablet, smart TV, video game console, Roku player, Apple TV, or any other connected device. Netflix already has more subscribers than any cable company; it strains credibility to hear AllVid advocates suggest that consumers in 2016 are somehow confused about where and how to find video on the web.

The challenge facing web-only content producers today isn't accessibility – the challenge is revenue. Without the stable revenue stream afforded by negotiated carriage deals with TV distributors, web-only channels will struggle to ever afford the production budgets necessary to create the quality programs our audiences expect and deserve. It's remarkable that the streaming video entrepreneurs who recently met with FCC Commissioners in support of this proposal complained existing carriage fees aren't high enough – but then suggested we'd somehow all be better off with a model that eliminates these fees altogether. We don't follow that logic.

It's clear that the independent programming landscape would quickly become a "race to the bottom" if this rule were to pass. Entrepreneurs and artists would be free to launch online-only video services – just as they already can today – but the business model that supports full service independent networks today would be torn down. Putting web-only content "on an equal footing" with traditional TV content does creators – and audiences – little good if that equal footing is on the bottom step of a broken escalator.

In light of these significant concerns, we hope your Committees will challenge the Commission to fully examine the impact this proposal will have on independent content producers, and to reject any new regulations that will limit the diversity of independent voices available to American television viewers.

Sincerely,

Roger M. Bobb, President, BobbCat Films

Victor Cerda, Senior Vice President, VMe Media Inc.

Sang H. Cho, President & CEO, MNET America

Brett Dismuke, President & COO, Swirl Group

Jorge Fiterra, President & CEO, Condista Networks

Feliciano Garcia, President & CEO, Manteca Media

Timothy Greenfield Sanders, Perfect Day Media

Bel Hernandez, Creator/Executive Producer, Hola! LA, Latin Heat Media

Alfred Liggins, President & CEO, TVOne

Eva Longoria, UnbeliEVable Entertainment

Melissa Narvaez, Vice President of Productions, Stateless Media

Catherine Pino, Founder, Freemind Beauty

Robert Rader, General Counsel, Ovation TV

Marisa Rivera, MPowerment Works

Mario Solis Marich, President & CEO, Feel Good TV

Tirrell D. Whittley, CEO & Principal, LIQUID SOUL

Tommy Walker, Producer and Partner, Freemind Ventures

Frank Washington, CEO, Crossings TV