

Silencing Diverse Voices on TV

The FCC's Set-Top Rule Takes a Giant Step Backward for Content Creators and Audiences of Color

FCC Chairman Tom Wheeler's proposed set-top box mandate – modeled on the AllVid proposal already rejected by a Democratic FCC in 2010 – could drive networks serving diverse audiences out of business, leaving communities of color with less access to independent voices telling stories that reflect their lives. Dozens of content providers and civil rights leaders say the proposal is a license for Silicon Valley tech giants to exploit the works of diverse creators for their own profit, while undermining the licensing agreements that are critical to the survival of niche networks and diverting revenue away from the production of quality shows. The result will be less choice for audiences of color seeking quality, authentic programming representative of their experiences.

An Assault on the Economics of Diverse, Independent Programming

Entrepreneurs of color who have built successful TV businesses, like Frank Washington of Crossings TV and Victor Cerda of VMe TV, have explained how the FCC's AllVid proposal will let tech giants like Google profit from their work without paying for it. Instead of negotiating for rights like Netflix, Hulu, and traditional TV distributors must do, Google wants to repackage valuable programming into their own products and services without paying licensing fees or honoring agreements on such vital issues as channel placement and advertising terms.

The rule then allows these tech companies to pile on new layers of advertising, hijacking revenue away from program creators and driving down the value of their content. Smaller and independent networks are most vulnerable to the revenue losses that will inevitably follow. As Catherine Pugh, Chair of the National Black Caucus of State Legislators, explained, the legacy of AllVid “*would be to dry up revenue that small and minority-focused networks depend upon to fund new programming and ‘cause the ‘Golden Age of TV’ that everyone celebrates today to collapse.*”

A New Era of TV “Redlining”

The FCC's AllVid rule threatens to reverse the gains that minority programmers have won through negotiated agreements with cable and satellite companies. While TV distributors must honor the terms of contracts that protect the visibility of diverse content, device makers would have no similar obligation. For independent networks serving audiences of color, these negotiated guarantees – such as channel placement near similar or popular networks – are critical to building and sustaining an audience.

But AllVid will let device makers re-arrange channel groupings, or replace channel guides altogether with Google-style TV search engines – a new gatekeeper that would reward already-popular mass market programming but bury niche content serving smaller, diverse audiences at the bottom of the pile. As TV One’s Alfred Liggins has argued, this could lead to *“a new form of digital ‘redlining’ that could bury diversity programming in the farthest reaches of the program guide.”*

Empty Promises from the FCC

Chairman Wheeler has attempted to deflect these criticisms by promising that his rule would forbid re-arranging channels, inserting new advertising, or otherwise harming diversity programming and the audiences that value it. But the proposed rule explicitly refuses to honor these promises, stating: *“[We] do not believe it is necessary for us to propose any rules to address these issues.”* Instead, the Chairman has said that existing copyright laws should be good enough – in effect, telling independent content creators their only recourse is to be prepared for years-long lawsuits against some of the wealthiest companies in the world.

Streaming Services are Already Widely and Easily Accessible

Chairman Wheeler has argued this rule could increase programming diversity by making web-based content more accessible. But the immense popularity of Netflix and YouTube are proof that streaming content is already widely and easily accessible to consumers through a growing universe of connected devices. Creators launching innovative new media platforms should be encouraged and applauded, but the challenge they face isn’t accessibility – it’s revenue. As LULAC has argued, *“Few if any minority channels have developed a sustaining revenue stream from over-the-top programming, and the edge providers themselves are some of the least diverse businesses operating in the United States. It is hard to understand why the Commission is under the impression that blending over-the-top programming with paid-TV channels in a 3rd party interface will lead to more revenue for diverse programmers.”*

Apps Are a Better Way to Increase Media Diversity While Respecting Creative Rights

Entrepreneurs, content creators, and communities of color are already benefitting from the innovation and massive growth in digital apps that offer audiences more ways than ever to find and watch diverse content. Apps give viewers the power to watch an unprecedented variety of programming through an ever-increasing galaxy of innovative devices, from smart TVs and Roku players to video game consoles and tablets. Apps from TV providers are available on more than 460 million consumer-owned devices, on equal footing with apps from streaming services – exactly what Chairman Wheeler says he wants. As Apple’s Tim Cook has said, *“Apps are the future of TV.”* The FCC shouldn’t slam the door on this bright future with a poorly conceived handout to Google that will devastate programmers serving communities of color and turn back the clock on television diversity.