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## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

April 22, 2016

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

Dear Chairman Wheeler:

I write to reiterate my view that the video market is increasingly competitive, particularly those parts of the market subject to the least regulation. I do not think this is a coincidence, and I am skeptical that new regulations, such as those proposed by the Federal Communications Commission (FCC or Commission) on February 18, 2016, would deliver better results for consumers and content creators than the astonishing and empowering disruption that is already happening in the marketplace.

Senator Bill Nelson, the Ranking Member on the Senate Commerce Committee, sent you a letter on February 12, 2016, that highlighted some concerns I share. I agree with Senator Nelson's sentiment that "advances abound in the competitive video navigation device market," and that "[s]ection 629 [of the Communications Act of 1996] should always be implemented with an eye towards what is actually happening in the marketplace." Further, I want to echo Senator Nelson's warning to the Commission that section 629 does not contemplate imposing regulations "by which third parties gain, for their own commercial advantage, the ability to alter, add to, or interfere with the programming provided by content providers."

On March 2, 2016, the Senate Commerce Committee held a hearing on FCC Oversight, during which I asked all five commissioners questions about the proposed technology regulations. Specifically, I made the point that section 629, by which the FCC claims authority to pursue set-top box technology regulations, is clearly written to address actual physical equipment. This is evident upon review of the section's legislative history, the plain language of the statute, and the consumer experience as it was 20 years ago when the provision was added to the law. I also asked how the Commission will ensure and enforce the security of the programming and services offered by multichannel video programming distributors when accessed through third parties via new regulation.

In your effort to execute your regulatory duties, the Commission must clearly identify the source for its claimed authority and justify that its actions will not unduly threaten the public

The Honorable Tom Wheeler

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interest, including the interests of consumers as well as video content creators and distributors. Thank you for addressing my concerns as you consider public comments on the Notice of Proposed Rulemaking referenced above.

Sincerely,

A handwritten signature in blue ink that reads "John Thune". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

JOHN THUNE  
Chairman