March 21, 2016

Representative Fred Upton
Chair, Committee on Energy and Commerce

Representative Greg Walden
Chairman, Subcommittee on Communications and Technology

2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton, and Chairman Walden,

We write to express strong opposition to the FCC's flawed plan for invasive new set-top-box technology mandates that will freeze obsolete technology in place, drive up consumer costs, create an unfair playing field on privacy regulation, and undermine the vibrant competition and innovation that exist in the market for video and television today. When you look carefully at these rules, you see that the FCC's stated concern for the cost of consumer set-top boxes is a smokescreen – since the new box and second device required by ***this proposal will almost certainly cost consumers even more*** – and they are actually little more than naked cronyism, propping up a few favored corporate interests at the expense of consumers and the marketplace itself.

1. *A solution in search of a problem.* Anyone who looks at the video market today sees vibrant competition and thriving innovation and consumer choice, even FCC Chairman Wheeler himself who recently said "Thanks to advances in technology, American consumers enjoy unprecedented choice in how they view entertainment, news and sports programming. You can pretty much watch what you want, where you want, when you want." New devices and services like Netflix, Roku, Apple TV and dozens more give viewers unprecedented options and choice, and revolutionary digital apps allow some consumers to access their entire pay TV package without a box at all, while others turn to apps like HBO Now or MLB Gameday to "cut the cord" and buy only the specific programming they want. Home gateways and Smart TVs have brought viewers universal, cross-platform search – which Chairman Wheeler inexplicably claims is the core innovation his new rule will bring about. This market is working – and the last thing it needs is a massive regulatory subsidy to a few companies that would undermine the healthy competition that is underway and lock in a one-size-fits-all solution that will stifle innovation and change.

2. *An obsolete second box in every home – with consumers footing the bill.* While Chairman Wheeler claims he wants to "unlock the box," ***this rule actually locks the existing box-based delivery model in place*** – at a time when the market is experimenting with dozens of new approaches and many providers are moving to "boxless" systems altogether. Even the strongest proponents of this rule, like Public Knowledge, admit the rule would require some kind of new device in every home and that "it's just sort of an open question of exactly what that device would be." And consumers will end up paying for this new adapter box, whatever new Google box or other interface they purchase at retail, and the back-office costs of reworking networks to make the system function – ***driving up bills even for consumers who do not need or want the new FCC-mandated system***.

3. *Unfair regulatory advantages.* The rules requiring existing TV providers to open up their programming feeds for new entrants like Google to use in launching competing services of their own. In other words, instead of negotiating for programming rights to launch their own services – like Netflix, Apple TV, Roku, Hulu, and every other new service has done – these latecomers to the market want to free ride off the programming libraries assembled by existing cable and satellite TV companies. You don't have to like the cable and satellite companies to think that kind of giveaway and attack on private competition is grossly unfair and out of bounds in a free economy.

4. *Breaching copyrights and destroying the economics of programming*. Programmers depend upon their ability to negotiate with the companies who distribute their creative works on vital terms like schedule, channel, placement, advertising rights, cross-promotion, digital and on-demand access and more. But the FCC rule makes those agreements impossible to enforce by forcibly transferring programming to new device companies without requiring them to negotiate or pay for rights or honor any of these vital terms. A wide range of ***programmers from the largest to the smallest have complained that hijacking their work in this way – and without any compensation at all – makes it impossible for them to reach and grow their audiences and earn fair rewards from the shows they have invested a great deal to create. All of these changes would harm the almost two million Americans who work in the movie and television production business, and ultimately the consumer***, who will be deprived of quality and diverse programming as the money that supports its creation is siphoned out to companies that don't pay a dime to the creators for the privilege of distributing their content. ***Chairman Wheeler has claimed many times that the regulations will protect against these predicted harms, but there are no such protections to be found in the actual text of the proposed rules***. That kind of misleading spin is not worthy of the FCC Chairman, who should at least have the forthrightness to address concerns about his proposal honestly and head on.

5. *A privacy double-standard.* Today, cable and satellite providers are subject to rigid privacy restrictions under Title VI of the Communications Act. Regardless of what one thinks about the wisdom of this law, its privacy constraints do not apply to the companies who would gain influence over TV viewing under the AllVid plan. The FCC admits it has no authority to directly regulate how those companies collect and use viewer data, and proposes a vague "self certification" system under which such companies would promise to abide by the same prescriptive rules that govern cable and satellite providers. ***Because the FCC cannot enforce such promises, however, its plan would create an unfair playing field and confound***

consumers' reasonable expectations about how their viewing habits can now be monetized.

We urge you to give Chairman Wheeler's proposed set top box regulations the strictest possible scrutiny. American consumers have a great deal to lose if this flawed plan is unleashed to destroy the healthy and vital market for video and TV.

Sincerely,

60 Plus Association
American Commitment
American Business Defense Council
American Conservative Union
American Majority
Americans for Job Security
Americans for Tax Reform
Center for Individual Freedom
Competitive Enterprise Institute
Council for Citizens Against Government Waste
Discovery Institute
Frontiers of Freedom
Grassroot Hawaii Action
Independent Women's Forum
Institute for Policy Innovation
Less Government
Log Cabin Republicans
Property Rights Alliance
Taxpayers Protection Alliance
Former FCC Commissioner, Harold Furchtgott-Roth