

October 7, 2016

Tom Wheeler, Chairman
Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

We write in support of the petition filed by nineteen civil rights groups on Sunday, asking the FCC to seek further public comment on its plan to regulate video content in the name of driving competition for set-top boxes.¹

Then-Senator Obama put it best in 2007:

Congress and the public have the right to review any specific proposal and decide whether or not it constitutes sound policy. And the Commission has the responsibility to defend any new proposal in public discourse and debate.²

President Obama required as much for Executive branch agencies in his Open Government Directive.³ We should expect nothing less from the FCC.

Since the Chairman has refused to share the current proposal, it is impossible to know exactly what is in it, and other Commissioners are prohibited by Commission rules from discussing the details of the proposal. But their public statements indicate that the nature of the proposal has changed significantly from the FCC's initial proposal, and still raises significant legal and policy concerns.⁴

Moreover, little more than two weeks ago, Commissioner Rosenworcel said of the Chairman's plan in Congressional testimony, "I just don't think we have the authority."⁵ The fact that the Chairman had to postpone a vote on this item at last week's open meeting — the first such postponement in his chairmanship — makes clear that this item requires a full reconsideration.

Members of Congress of both parties have urged the Commission to take further comment on the proposal. Sen. Feinstein (D-CA), for example, urged that:

¹ <https://goo.gl/950oZ8>

² <https://goo.gl/bgpZNS>

³ <https://www.whitehouse.gov/the-press-office/transparency-and-open-government> ("Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information.")

⁴ http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0916/DOC-341290A1.pdf; <https://twitter.com/AjitPaiFCC/status/780432281609601024>; <https://goo.gl/SVZ8wk>

⁵ <http://motherboard.vice.com/read/fcc-battles-skeptics-over-pro-consumer-set-top-box-reforms> ("I'm going to be very candid with you that I have some problems with licensing and the FCC getting a little bit too involved with the licensing scheme here. Because when I look at the Communications Act and Section 629, I just don't think we have the authority.")

Given the significance of this proceeding, I ask that you make public the new proposal under consideration by the Commission, so that all interested stakeholders, members of Congress, copyright experts, and others can comment on the potential copyright implications of the new proposal before the Commission votes on it.⁶

And Sen. Heller (R-NV) wrote that:

I believe it is unacceptable that the FCC has not released the text of this proposal before Thursday's vote. A three-page fact sheet does not provide enough details for Congress to conduct proper oversight of this rulemaking that will significantly impact both consumers and industry.... I encourage you to release the text immediately so that the American public has a full understanding of what is being considered by the Commission....⁷

We urge the Commission to seek public comment by issuing a Further Notice of Proposed Rulemaking on the Chairman's revised proposal.

The FCC should follow Commissioner Pai's simple rule, channeling Senator Obama: "The public should be able to see what we're voting on before we vote on it."⁸

Respectfully,

Organizations

TechFreedom

CALinnovates

Information Technology and Innovation Foundation

International Center for Law & Economics

Tech Knowledge

Individuals (*organizations listed for identification purposes only*)

Richard Bennett, Founder and Publisher, High Tech Forum

Hal Singer, Senior Fellow, George Washington Institute of Public Policy

⁶ <http://futureoftv.com/wp-content/uploads/2016/09/Feinstein-letter-to-Wheeler-09.21.16.pdf>

⁷ <http://www.heller.senate.gov/public/index.cfm/pressreleases?ID=270A79B4-764A-4D50-82F5-41BECD034996>

⁸ https://apps.fcc.gov/edocs_public/attachmatch/DOC-338511A1.pdf