

Review: Consumers lose as FCC retreats on set-top box proposal

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Under fire from Hollywood and Big Cable, Tom Wheeler, the chairman of the Federal Communications Commission, lost his nerve.

And many of us are going to lose out.

Since the beginning of the year, Wheeler has been promising that consumers will soon be able to ditch our cable and satellite boxes. Instead of coughing up a pretty penny every month to our pay TV providers to rent those boxes, we'd be able to pick our device, whether it's a smart TV, or a TiVo box or an Apple TV.

But the FCC is now backing off that ambitious goal. As a result, our set-top box alternatives are likely to be severely restricted. The experience they offer may leave lots to be desired. And not everyone will even have an alternative.

"The whole intention of this was to open up the market so that people could compete," said Steve Wymer, head of communications for TiVo, which is one of the few companies that has a long history of competing in the set-top box market. "But we've seen the power of ... the Comcast lobby and Time Warner and others, and they've squelched this."

In an op-ed for the Los Angeles Times, Wheeler defended the revised proposal, saying the agency had listened to various stakeholders.

"These rules will open the door for innovation, spurring new apps and

devices, giving consumers even more choice and user control," he said.

Earlier this year, in an effort to fulfill a 20-year-old congressional mandate, Wheeler's FCC unveiled a new rule designed to spur set-top competition. The proposed rule would have required pay TV operators to essentially offer their video services as a digital streams. Any manufacturer who agreed to abide by certain rules to protect copyrights would be able to make devices that could tune in pay TV channels from those digital streams. Anything consumers could do with a cable box - view live TV or watch on-demand or recorded programs - they could do with basically any device of their choice.

That proposal would have essentially wrested control over connecting to the pay TV streams from Comcast and the other operators and given it to device manufacturers. In the same way that any company can make a device that can connect to the internet or the phone network without asking permission first from a broadband provider or phone company, manufacturers could make devices that tuned in pay TV.

As you can imagine, the pay TV industry, which makes billions of dollars renting the boxes, and its friends in Hollywood weren't thrilled by this. They publicly worried that the proposal would violate the agreements they've signed concerning channel order and advertising. And they've spent much of this year lobbying the FCC and Congress to try and stop it.

Well, Wheeler finally caved. The new proposal, which he just started circulating to fellow commissioners last week and which the agency will vote on at the end of the month, caters to the pay TV operators.

Instead of requiring operators to offer streams of content that can be tuned in by just about any other device, the revised rule now will require the operators themselves to make apps for connected TV devices.

Now you may wonder what's so bad about that. Lots of devices, including TVs, run apps these days. And if I can get my pay TV service through an app on my smart TV, isn't that better than the current situation?

Well, it might be, if an app is actually made for your device. But under the new proposal, operators would only have to make apps for operating systems that ship in excess of 5 million units in the United States. What that threshold means is that you'll be able to watch your pay TV service on an iPhone or iPad, a Samsung smart TV or an Android phone - and likely not a lot else.

If you look just at the smart TV market, the only operating system that will probably hit 5 million units this year is Tizen, which is the software that underlies Samsung's sets, according to tech research firm IHS. If you have an LG smart TV, which relies on webOS, you're going to be out of luck. So too if you have a Vizio set that runs the Via environment.

Although there have been a proliferation of digital streaming devices in recent years from companies like Apple, Google, Amazon and Roku, it's not clear which of those would actually meet the FCC's 5-million unit bar, particularly if the operating systems underlying Apple TV and Amazon's Fire TV are considered to be distinct from iOS and Android. But the threshold almost certainly would mean the end of TiVo as a set-top box alternative. It's U.S. sales wouldn't meet the bar, Wymer said.

The idea of opening up the set-top box to competition was intended to spur innovation. But the FCC's new rule could actually do the opposite by distorting the market and limiting competition again to a select few devices.

If you have the choice between a set-top box that can tune in your cable programming and one that can't, which are you going to choose? Why

would you ever choose a model from a startup company? No matter how innovative its box would be it wouldn't be competitive with rivals until it hit the 5 million sales threshold, setting up a chicken-and-egg scenario.

But that's not the only problem with the new proposal. The rule would exclude smaller cable operators - those with fewer than 400,000 subscribers - from ever having to comply. While subscribers to those systems only make up about 5 percent of pay TV customers, you'd still be talking about millions of people who wouldn't have access to competition.

And there's another fundamental shortcoming of the proposal. By focusing on apps made by pay TV operators, the rule would keep the power with those companies. They'll get to decide how often they update and how well they maintain their apps as long as they technically meet the rule's requirements. And they'll have an incentive to offer a worse experience, even if the differences are only subtle.

And it's not even clear that the apps will truly be able to replace boxes, the whole reason for the rule. For example, the rule would carve out an exception for satellite providers, allowing them to continue to require users to have a satellite box in their living room to tune in signals. It's quite possible that cable operators who only offer a digital video recording feature through a hard drive in a cable box may get a similar exception.

Thanks to the proposed rule, some consumers in some cases may be able to finally be able to ditch their [set-top box](#). But from here, it's looking like a giant missed opportunity.

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