

United States Senate

WASHINGTON, DC 20510

July 11, 2017

The Honorable Rhonda K. Schmidlein, Chairman
The Honorable David S. Johanson, Vice Chairman
The Commissioners
United States International Trade Commission
500 E Street SW
Washington, D.C. 20436

Re: ***Certain Digital Video Receivers and Hardware and Software Components Thereof***
Inv. No. 337-TA-1001

Dear Chairman Schmidlein, Vice Chairman Johanson, and Commissioners:

I respectfully submit these comments in response to the Notice of Request for Statements on the Public Interest issued by the United States International Trade Commission (“ITC”) in the matter of *Certain Digital Video Receivers and Hardware and Software Components Thereof*, Inv. No. 337-TA-1001, on June 12, 2017.

I strongly urge you and your fellow Commissioners to consider whether the remedy chosen by the Administrative Law Judge (“ALJ”) is appropriate, given the facts of the case and the possible negative effects on competitive conditions in the United States economy, harm to U.S. consumers, and reduced domestic employment.

The facts of the case indicate that even if the ALJ’s legal conclusions were correct, the remedy is overly broad. The ITC’s jurisdiction extends only to blocking importation of goods that infringe valid U.S. patents. The ALJ ruled that the imported cable TV set-top boxes at issue have substantial, non-infringing uses, and that patent infringement occurs only when Comcast informs customers that they can use smart phones or other mobile devices to schedule a recording on their set-top boxes—an action that occurs within the U.S. using software created and distributed domestically, a domestic server, and mobile devices not provided by the parties in this case.

It would seem the proper remedy (assuming the ALJ’s legal conclusions were correct) would be to enjoin infringing uses of the set-top boxes, not to block all importation of the set-top boxes and preclude the boxes from being used legitimately in the U.S. In essence, the ALJ held that a non-infringing device can be banned from importation into the U.S. if it could potentially be used in a way that infringes on a patent. This reasoning could lead to an import ban on untold numbers of non-infringing, useful items and subsequent harm to competition and consumer welfare. To the extent the ITC does not have the jurisdiction to issue the proper remedy, this indicates that the case belongs in U.S. district court (where it was originally filed), not before the ITC.

I am also concerned that the ALJ’s ordered remedy will negatively affect competitive conditions in the United States economy, harm U.S. consumers, and reduce domestic employment.

Limiting Comcast’s ability to provide cable service will harm a major competitor in the cable market and hinder competition. According to the Federal Communications Commission, after it approved the AT&T-DIRECTV transaction, the percent of homes that had access to four competing

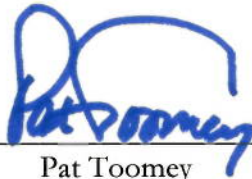
multichannel video programming distributors—including cable providers—dropped between 2014 and 2015.

The ALJ's ordered remedy will likely result in harm to consumers. Comcast's 22.5 million cable subscribers may be harmed by losing their choice of cable providers. Also, many more consumers may suffer due to a less competitive market, where remaining companies can limit choice and raise prices.

The ALJ's remedy could also negatively affect U.S. jobs. Comcast employs 91,000 individuals across America, including 13,000 in my home state of Pennsylvania. Unfairly hindering Comcast's ability to operate would have serious consequences for these workers.

Thank you for considering my comments.

Sincerely,



Pat Toomey
U.S. Senator